

Follow-Up on Recommendations from Report No. 18-03, *Audit of the Office of Hawaiian Affairs*

A Report to the Governor
and the Legislature of
the State of Hawai'i

Report No. 22-04
March 2022



OFFICE OF THE AUDITOR
STATE OF HAWAII



OFFICE OF THE AUDITOR STATE OF HAWAII

Constitutional Mandate

Pursuant to Article VII, Section 10 of the Hawai'i State Constitution, the Office of the Auditor shall conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions.

The Auditor's position was established to help eliminate waste and inefficiency in government, provide the Legislature with a check against the powers of the executive branch, and ensure that public funds are expended according to legislative intent.

Hawai'i Revised Statutes, Chapter 23, gives the Auditor broad powers to examine all books, records, files, papers and documents, and financial affairs of every agency. The Auditor also has the authority to summon people to produce records and answer questions under oath.

Our Mission

To improve government through independent and objective analyses.

We provide independent, objective, and meaningful answers to questions about government performance. Our aim is to hold agencies accountable for their policy implementation, program management, and expenditure of public funds.

Our Work

We conduct performance audits, which examine the efficiency and effectiveness of government programs or agencies, as well as financial audits, which attest to the fairness of financial statements of the State and its agencies.

Additionally, we perform procurement audits, sunrise analyses and sunset evaluations of proposed regulatory programs, analyses of proposals to mandate health insurance benefits, analyses of proposed special and revolving funds, analyses of existing special, revolving and trust funds, and special studies requested by the Legislature.

We report our findings and make recommendations to the governor and the Legislature to help them make informed decisions.

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PHOTO: OFFICE OF HAWAIIAN AFFAIRS

Follow-Up on Recommendations from Report No. 18-03, *Audit of the Office of Hawaiian Affairs*

Section 23-7.5, Hawai‘i Revised Statutes, requires the Auditor to report to the Legislature annually on each audit recommendation more than one year old that has not been implemented by the audited department or agency. We follow up on recommendations in two ways. First, annually, we ask agencies to report the status of their implementation of our audit recommendations. We compile agencies’ self-reported implementation status in a consolidated report. Second, we conduct an “active” follow-up two to three years after issuance of the audit report containing the recommendations where we, independently, assess the agency’s progress in implementing each recommendation and issue a separate follow-up report. This report presents the results of our follow-up on the Office of Hawaiian Affairs’ implementation of the 39 audit recommendations made in Report No. 18-03, *Audit of the Office of Hawaiian Affairs*.

The Office of Hawaiian Affairs

The Office of Hawaiian Affairs (OHA) is a unique state agency. Established by the State Constitution, independent of the executive branch, its primary responsibility is to better the conditions for Native Hawaiians. OHA is the principal agency responsible for the performance, development, and coordination of programs and activities

We determined that OHA has implemented 11 and partially implemented 13 of the 39 recommendations made in our report. An additional nine recommendations were not implemented and we determined six to be not applicable.

relating to Native Hawaiians. OHA's other purposes include assessing the policies and practices of other state agencies that impact the Native Hawaiian community and conducting advocacy efforts for its Native Hawaiian beneficiaries.

OHA is governed by a Board of Trustees (Board) comprised of nine members chosen by the State's electorate for staggered four-year terms. The Board is led by a chairperson and a vice chairperson. OHA trustees have fiduciary responsibilities, including a duty of prudence (to exercise reasonable care, skill, and caution); duty of loyalty (to act solely in the best interests of beneficiaries); duty of impartiality (to be impartial with respect to the various beneficiaries, in consideration of the diverse interests of present and future beneficiaries); and duty with respect to co-trustees (using reasonable care to prevent co-trustees from committing a breach of trust and to obtain redress if a breach occurs).

The Chief Executive Officer (CEO) of OHA is appointed by a majority of the Board to lead OHA's operations, including its executive team and staff (collectively, the Administration). At the time of our 2018 audit, the CEO was assisted by a Chief Operating Officer (COO) and the directors of five divisions – (1) Advocacy, (2) Community Engagement, (3) Research, (4) Resource Management: Financial Assets, and (5) Resource Management: Land Assets. During our follow-up review, OHA's executive team consisted of its CEO, COO, Chief Financial Officer (CFO), Human Resources Director, Senior Legal Counsel and the directors of Advocacy, Community Engagement, Research, Resource Management: Land Assets and Systems Office. The Information Technology and Operations Directors are also part of the executive team; those positions, however, are not currently filled with permanent hires.

Why we did the audit in 2018

In 2018, we conducted a performance audit of OHA pursuant to section 10-14.55, Hawai'i Revised Statutes (HRS), which requires the Office of the Auditor to audit OHA at least once every four years.¹ We issued two reports about mechanisms used by OHA to provide monetary support to organizations and individuals. Report No. 18-03 evaluated OHA policies and actions regarding its non-competitive grants (Kūlia Initiatives and CEO Sponsorships) and the use of its Fiscal Reserve and Trustee Allowances. Report No. 18-08 evaluated OHA policies and actions regarding its competitive grants. A follow-up on OHA's implementation of the audit recommendations contained in Report No. 18-08 was issued separately.

¹ The 2018 report was our seventh audit pursuant to this mandate.

What we found in 2018

In Report No. 18-03, *Audit of the Office of Hawaiian Affairs*, we reviewed OHA policies and actions regarding use of its Kūlia Initiatives, Fiscal Reserve, CEO Sponsorships, and Trustee Allowances. We found that, over time, OHA had created alternate funding processes to direct more money toward programs, projects, and individuals. Initially, those funding opportunities appeared to be guided by policies, procedures, and guidelines designed to ensure that funds were distributed fairly and equitably. We found those expenditures and other forms of discretionary spending did not undergo the rigorous vetting, monitoring, and reporting requirements of OHA's formal grant process. Some were approved by the Administration without the Board's approval or even knowledge.

In fiscal years 2015 and 2016, we found OHA spent nearly twice as much on non-competitive discretionary disbursements (\$14 million) as it did on grants that were planned, budgeted, publicized, vetted, and monitored (\$7.7 million). To fund these unplanned expenditures, OHA realigned its budget by \$8 million, moving moneys budgeted for other purposes, and drawing \$6 million from its Fiscal Reserve. Report No. 18-03 found OHA lacked a clear policy guiding use of its Fiscal Reserve, which had been spent down rapidly.

The report also found OHA had used its Fiscal Reserve (which, when established in 2000, was referred to as a “rainy day fund”) to pay for such things as retirement benefits for a former trustee (\$56,300), a trip to New Zealand for a group that included trustees and members of the Administration to pick up a Hawaiian feathered cape and helmet (\$100,000), and costs associated with an international conservation convention (\$500,000).

We also found CEO Sponsorships were subject to minimal oversight and, despite written guidelines, were often approved based on the then-CEO's personal discretion. According to OHA's *Grants Program Standard Operating Procedures*, CEO Sponsorships, which had a maximum award amount of \$25,000, provided funding support to eligible organizations whose missions aligned with OHA's vision and strategic plan, whose programs and services benefitted the Native Hawaiian community, and whose events offered OHA valuable public relations and recognition benefits. However, we found that vague rules guiding discretionary spending by OHA were broadly interpreted, arbitrarily enforced, and at times, disregarded. For instance, we reported several occasions in which OHA's then-CEO ignored “do not fund” recommendations by Administration personnel and funded CEO Sponsorships, contrary to written guidelines.

Finally, we found significant irregularities in and abuse of OHA's Trustee Allowance process. Allowances were originally established to cover incidental expenses incurred by trustees to develop and maintain ongoing communication with beneficiaries and the general public, but had evolved to allow a broad range of expenditures. We reported OHA's rules governing Trustee Allowances were loosely and arbitrarily enforced, leading to many instances of questionable spending. We found trustees had used their discretionary allowances to pay for things that appeared inconsistent with OHA's mission and their fiduciary duties to Native Hawaiians, such as political donations and activities (\$554), a beneficiary's rent (\$1,000), another beneficiary's funeral-related clothing expenses (\$1,000), and a trustee's personal legal expenses (\$1,500).

What we found in 2021

In response to Report No. 18-03, OHA instituted specific policies and actions related to its use of Kūlia Initiatives, Fiscal Reserve, CEO Sponsorships, and Trustee Allowances.

Kūlia Initiatives

Kūlia Initiatives were awards to organizations for programmatic services that did not qualify for Community Grants or CEO Sponsorships. These disbursements were neither solicited nor publicized and could only be requested by trustees or the Administration on behalf of a recipient. Report No. 18-03 found these non-competitive awards did not undergo the rigorous vetting, monitoring, and reporting requirements of OHA's formal grant process. Furthermore, OHA regularly funded these unplanned expenditures by realigning its budget and drawing from its Fiscal Reserve.

In response to Report No. 18-03, OHA discontinued the use of Kūlia Initiatives.

Fiscal Reserve

On October 31, 2000, the Board of Trustees amended the *Native Hawaiian Trust Fund Spending Policy* to establish the Fiscal Reserve, which it defined as "any funds available but not spent in previous fiscal years, held within the Native Hawaiian Trust Fund." Report No. 18-03 found Fiscal Reserve Withdrawal Guidelines were broad and allowed OHA to withdraw from the Fiscal Reserve for several reasons, including budget stabilization, unpredicted one-time payments, capital acquisitions not earmarked in OHA's budget, and special circumstances.

In response to Report No. 18-03, *Audit of the Office of Hawaiian Affairs*, OHA placed a moratorium on the use of Fiscal Reserve funds until specific policy changes could be approved by the Board. In 2019, the Board eliminated the Fiscal Reserve Withdrawal Guidelines, established a new Fiscal Stabilization Fund, and adopted a Fiscal Stabilization Policy. According to OHA, the new Fiscal Stabilization Policy is a temporary measure that was instituted to address the audit findings while OHA reconciles its objectives with its policies. According to OHA, new policies will include identifying whether the agency needs a reserve (rainy day) fund and, if so, the type of reserve fund needed.

The new Fiscal Stabilization Fund was established as a separate fund through an initial, one-time appropriation of \$1.5 million and, unlike the Fiscal Reserve, is not included as part of the Native Hawaiian Trust Fund. Pursuant to the Fiscal Stabilization Policy, the Board of Trustees has the discretion to transfer up to \$3 million from the Native Hawaiian Trust Fund to the Fiscal Stabilization Fund each fiscal year. The Fiscal Stabilization Fund balance, however, cannot exceed \$10 million, and the maximum withdrawals from the Fiscal Stabilization Fund for any given fiscal year – for any combination of authorized uses – are limited to \$3 million, and no more than \$750,000 per quarter, regardless of the total balance of the fund. Authorized uses include budget stabilization, emergencies, “[activating] previously designated reserves,” and “contingencies.”

While the interim policy restricts how the Fiscal Stabilization Fund may be used, expenditures from that fund are not included when calculating the annual spending withdrawal amount in the fiscal year in which moneys are expended. That potentially allows OHA to exceed the 5 percent spending limit established in OHA’s Native Hawaiian Trust Fund Spending Policy.

CEO Sponsorships

CEO Sponsorships provided funding support to organizations whose missions aligned with OHA’s vision and strategic plan, whose programs and services benefitted the Native Hawaiian community, and whose events offered OHA valuable public relations and recognition benefits. CEO Sponsorships, however, were subject to minimal oversight and were often, despite written guidelines, approved based on the then-CEO’s personal discretion.

In response to Report No. 18-03, OHA placed a moratorium on the use of CEO Sponsorships, effective February 2018. However, the use of CEO Sponsorships has not been permanently discontinued. According to the CEO, the moratorium on the use of CEO Sponsorships would

Definition of Terms

WE DEEM recommendations:

Implemented

where the department or agency provided sufficient and appropriate evidence to support all elements of the recommendation;

Partially Implemented

where some evidence was provided but not all elements of the recommendation were addressed;

Not Implemented

where evidence did not support meaningful movement towards implementation, and/or where no evidence was provided;

Not Implemented - N/A

where circumstances changed to make a recommendation not applicable; and

Not Implemented - Disagree

where the department or agency disagreed with the recommendation, did not intend to implement, and no further action will be reported.

continue ‘subject to the outcomes’ of the Board’s Ad Hoc Committee on Grants and Sponsorships.

Trustee Sponsorship and Allowance Fund

Allowable expenditures from the Trustee Sponsorship and Annual Allowance Fund (Trustee Allowance) included such things as “support for beneficiaries in their personal quest for self-improvement” and “compassionate assistance...for emergencies/times of need including funeral services, vision/hearing aids, dentures, personal care items, wheelchairs.” Each trustee received \$22,200 at the beginning of each fiscal year and submitted quarterly expenditure reports to the CEO. Trustees were required to return the unused balance to OHA at the end of the fiscal year.

In response to Report No. 18-03, OHA placed a moratorium on the use of the Trustee Allowance and required the immediate return of the unused balance of each trustee’s allowance to OHA.

In May 2019, the Board voted to rename the Trustee Allowance to the Trustee Protocol Allowance² “to match the statutory language contained in Hawai‘i Revised Statutes § 10-9.” The Board also voted to revert to the original purpose of the Trustee Allowance – establishing a communication network and promoting a broader understanding and participation in the resolution of Native Hawaiian issues (see below).

The Board also approved a new Trustee Protocol Allowance Policy. According to OHA, new criteria and procedures incorporated in the Trustee Protocol Allowance comply with OHA’s mission and policies, trustees’ fiduciary duties, and applicable state law.

The purpose of the Trustee Protocol Allowance is to:

- Develop and maintain an ongoing communication network with beneficiaries and the general public;
- Promote a broader understanding of Native Hawaiian issues within the Native Hawaiian community and among the general public; and
- Encourage participation in the resolution of those issues, provided that such communications comply with applicable laws and OHA policies.

² In 1993, a trustee protocol allowance was added to section 10-9, HRS, which read: “[Members of the OHA board:] (4) Shall be allowed a protocol allowance to cover expenses incurred in the course of a member’s duties and responsibilities.”

Corresponding and conforming changes have been made to both the Board of Trustees Executive Policy Manual and the Board of Trustees Operations Manual.

The Trustee Protocol Allowance Policy is subject to OHA's "Code of Conduct and Sanctions for Violations of the Code of Conduct," adopted by the Board in 2016, which frames the trustees' fiduciary responsibilities, executive policies, and laws applicable to trustee conduct.

OHA retains the moneys budgeted for the Trustee Protocol Allowance in the Trustee Protocol Allowance Fund and, rather than advancing the annual Trustee Protocol Allowance, disburses funds as needed to reimburse trustees for allowable expenditures; each trustee's allowance is fixed at \$7,200 per fiscal year. Allowances cannot be used to benefit individuals as allowed under the prior policy. Questionable expenditures are reviewed by the Accounting Manager, Controller, CFO, and CEO as needed. In the event an expenditure is deemed impermissible, trustees may appeal the determination, in writing, to the Board of Trustees Chairperson. Within 30 days of the end of each quarter, the Administration compiles a quarterly report of expenditures made by each trustee and submits the Trustee Quarterly Protocol Allowance Expenditure Report to the Board before posting it on OHA's public website.

OHA's Overarching Board Governance Framework

Following the issuance of Report Nos. 18-03 and 18-08, OHA stated it has taken several specific actions, including implementation of a new governance framework and an organization-wide quality assurance function.

In April 2019, the Board adopted a Board Governance Framework comprised of five elements: (1) Identity; (2) Values; (3) Statutory Basis; (4) Policies; and (5) Supporting Documents and Practices (Operations). The framework is notable for placing OHA's identity as a Lāhui, or people, above its state agency and trust identities.

According to OHA, it is working to ensure processes, practices, and policies align with the elements of this governance framework and is currently working on the fourth element – policies.

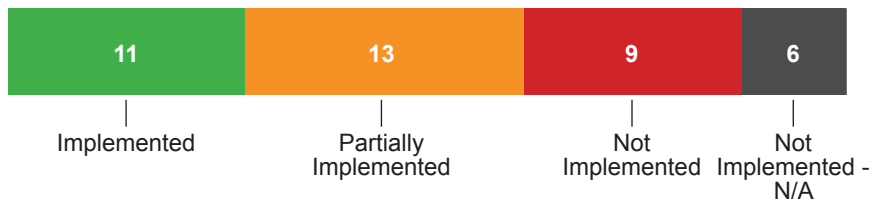
Board Governance Framework Element	Description
1. Identity	A state agency with the responsibility to manage a trust that identifies and operates more similarly to Ali'i Trusts with a Lāhui mindset in improving the well-being of the Lāhui.
2. Values	Acknowledge the surrounding intangible yet invaluable role of values in governance. Effecting the operating values begins with trustees and board work as exemplars for Administration and the Organization as a whole.
3. Statutory Basis	Established under the Hawai'i Constitution, OHA is meant to address the needs of the Native Hawaiian people.
4. Policies	<p>Organize three levels of policies:</p> <ul style="list-style-type: none"> • Lāhui Level – Policies would articulate the Hawaiian cultural foundation of the organization as a basis for the heavy weight or significant responsibility to normalize Hawaiian language, and to protect and exercise native rights. • Trustee Level – Policies would articulate broad, systemic, strategic, overarching policies that are attributed to OHA's trustee role as a result of the Constitution and Chapter 10 purposes and duties (e.g., fiduciary, care, obedience, code of ethics). • CEO Level – Policies would guide and direct operations such as compensation, recruitment, procurement, contracting, data retention, asset protection, risk management, etc.
5. Supporting Documents and Practices (Operations)	Policy development, alignment, implementation, maintenance, and monitoring by developed and "operationalized" documents (e.g., Board of Trustees Executive Policy Manual, Board of Trustees Operations Manual, standard operating procedures, guidelines, operating manuals) and consistent practices.

Audit recommendations by status

We determined that OHA has implemented 11 and partially implemented 13 of the 39 recommendations made in Report No. 18-03, Audit of the Office of Hawaiian Affairs. An additional nine recommendations were not implemented and we determined six to be not applicable.

Exhibit 1

Audit Recommendations by Status



Source: Office of the Auditor

Recommendations and their status

Our follow-up efforts were limited to reviewing and reporting the implementation status of our audit recommendations. We did not explore new issues or revisit old ones that did not relate to the original recommendations. The following details the audit recommendations made and the current implementation status of each recommendation based on our review of information and documents provided by OHA and other publicly available information.

OHA Board of Trustees

Recommendation 1a

OHA Board of Trustees should, in general, require trustees and trustee staff to attend regular training that includes, but is not limited to:

- i. Fiduciary duties and other responsibilities of trustees;**
- ii. State Ethics Code, Chapter 84, HRS;**
- iii. Sunshine Law, part I of Chapter 92, HRS; and**
- iv. Uniform Information Practices Act (Modified), Chapter 92F, HRS.**

Partially Implemented

Comments

This recommendation was intended to address the numerous issues that we reported about OHA's use of the Native Hawaiian Trust Fund. More specifically, we reported that trustees had approved Kūlia Initiatives awards, including a number that were funded using the Fiscal Reserve, and had used their Trustee Allowances for purposes that did not appear to be for the betterment of the conditions and well-being of Native Hawaiians, which is OHA's primary mission. For instance, using the Native Hawaiian Trust Fund and the Trustee Allowance, trustees approved a grant to a former trustee who was ineligible for state retirement benefits, paid personal legal expenses, made donations to political and religious organizations, purchased gift cards, and paid a beneficiary's medical expenses, another beneficiary's travel expenses, and yet another beneficiary's rent. Moreover, trustees said that they approved certain projects to "save face" because the Administration had already committed to funding the requests and admitted voting in favor of certain requests because funds had been verbally committed or because the project was considered to be a "good one."

Training is not currently required by the Board's policies and procedures. OHA represented, as part of its regular practice, that trustees and trustee staff are required to attend training that includes fiduciary duties and other responsibilities of trustees; the State Ethics Code; the Sunshine Law; and Uniform Information Practices Act. During orientation of new trustees and executives, counsel for the Board and OHA's in-house counsel provide training on trustees' fiduciary duties and other responsibilities, OHA's mandates and duties, and the State Ethics Code. The Administration has also provided training to trustees and their staff on the Sunshine Law and Uniform Information Practices Act and OHA provided us with copies of new training presentations provided after 2018.

According to OHA, the Board is in the process of establishing an overarching governance framework that should include a written policy that requires regular training for trustees, trustees' staff, and OHA's administrators, managers, and staff on (i) trustees' fiduciary duties and other responsibilities; (ii) the State Ethics Code; (iii) the Sunshine Law; and (iv) Uniform Information Practices Act. We acknowledge that OHA appears to be providing training; however, that practice is not documented, and for that reason, we consider the recommendation to be only partially implemented.

Recommendation 1b

OHA Board of Trustees should, in general, ensure that OHA policies and procedures, applicable to trustees and the Administration, align and are consistent with OHA's mission, trustees' fiduciary duties, and State laws.

Partially Implemented

Comments

OHA states it is working to ensure OHA policies and procedures, applicable to trustees and the Administration, align with and are consistent with OHA's mission, trustees' fiduciary duties, and State laws.

As noted previously, OHA is in the process of establishing a new governance framework. As part of that process, it is working to ensure processes, practices, and policies align with the elements of the governance framework.

For example, in September 2020, the Board approved the formation of a Permitted Interaction Group to investigate certain aspects of a governance framework, specifically the development of fiscal policies. The goal and purpose of this group was to create a unified framework of the Board's fiscal policies to ensure the long-term viability of the Native Hawaiian Trust Fund. Among other things, the group investigated the alignment of existing trustee policies on investment, debt, spending, Kaka'ako Makai, and endowment; worked to establish a consistent format for policies, update parameters, mechanisms, and processes; reviewed policy implementation; determined the scope of the trustee policies including delegation of policies to the CEO; and worked to integrate the trustee policies and related documents into the governance framework. The group also recommended policies and procedures be developed relating to spending, debt, investment, land assets, and economic development. The group presented a report on trustee policies to the Board in October 2020. The group's recommendations are under review.

Recommendation 1c

OHA Board of Trustees should, in general, develop a clearly defined process by which trustees must hold each other individually accountable for actions that are inconsistent with their collective fiduciary duties and responsibilities to trust beneficiaries and for violations of State laws.

Partially Implemented

Comments

According to OHA, the 2016 Code of Conduct details a seven-step process for addressing violations by a trustee within OHA. If a trustee believes that another trustee has violated the Code of Conduct, the trustee must send an official complaint letter to the Board Chairperson within 30 days of the alleged event. Following receipt of a formal complaint, the Chairperson must review the allegation and discuss the matter with the Vice Chairperson and subject trustee to seek a mutually agreeable resolution. Should the trustee continue to violate the Code of Conduct, the Chairperson will raise the violation to the Board of Trustees in executive session, and should the conduct continue, the Chairperson will consult with Board Counsel and place the matter on the agenda for appropriate action by the Board for discussion in executive session. The Board may, by majority vote, censure or sanction the offending trustee. Penalties include, but are not limited to, removing the trustee from Board committees and suspending Trustee Allowances. The Board may, in its sole discretion, make its findings public at a special or regular Board meeting or refer criminal conduct to appropriate law enforcement authorities.

According to OHA, the Code of Conduct remains incomplete as OHA addresses concerns regarding Sunshine Law requirements. The Code of Conduct and the Executive Policy Manual will be part of the governance framework.

Recommendation 1d

OHA Board of Trustees should, in general, provide greater transparency into OHA's administration of trust assets, including OHA's fiscal year budgets and actual expenditures, specific information regarding the Grants, Sponsorships, and other funding awarded by OHA, OHA's investment portfolio holdings and returns, and expenditures by trustees using Trustee Allowances. Consider posting such information on OHA's website or some other similarly accessible public portal.

Implemented

Comments

OHA's website now includes a section called "Financial Transparency" where the public can access information, including but not limited to grants and sponsorships awarded by OHA (e.g., organization name, purpose, location, and award amount); expenditures by trustees using Trustee Allowances; annual reports; financial audit reports; and financial statements. OHA's annual reports include a summary of the approved fiscal year budget and spending limit. Where biennium budget, budget alignment, and funding allocation requests are submitted to and approved by the Board through an action item and when quarterly updates regarding OHA's investment portfolio are presented to the Board in public meetings, the budget and financial information and investment updates provided to the Board for the meeting and/or meeting minutes are posted on a section of OHA's website specific to the Board or committee at <https://www.oha.org>.

OHA states documents provided to the Board for action items with budget, financial, and investment update information and/or meeting minutes are made available to the public "when reasonably available." We note the Board and OHA must provide information as required by Hawai'i's open meetings and public records laws, codified at part I of Chapter 92 and Chapter 92F, HRS, respectively, not only when information is reasonably available. OHA's policies and practice must comply with state laws, including those requiring transparency and public access.

Recommendation 1e

OHA Board of Trustees should, in general, consider requiring board approval of all Grants, Sponsorships, and other funding awarded by OHA and/or that use Native Hawaiian Trust Fund assets.

Partially Implemented

Comments

Effective July 1, 2021, a Board policy requiring Board approval for all grants and sponsorships went into effect. Prior to that, the CEO was authorized to approve grant requests up to \$25,000 and requests more than \$25,000 required board approval.

According to OHA, the Board approves grants through its budget approval process. The Board reviews and approves the biennium budget which includes some grants and disbursements as budget line items, including but not limited to, Community Grants, grants to Native Hawaiian Focused Public Charter Schools, and a grant to the Department of Hawaiian Home Lands. OHA represents the majority of grants are approved through the budget approval process.

As a matter of practice, the Administration provides trustees with a memorandum including a preliminary analysis of a requested grant two weeks prior to requiring the Board's action on the item. The analysis also includes a profile of individuals on the requesting organization's Board of Directors and Executive Leadership to identify conflicts of interest, if any. Subsequently, OHA's Grants Department prepares the action item for Board approval. In 2018, the Board also approved the Kūlia Grants Guidelines and Process, which additionally requires Board approval of Kūlia Grants. This vetting process distinguishes Kūlia Grants from the discontinued Kūlia Initiatives, which were non-competitive awards that could only be requested by the members of the Board or Administration on behalf on a recipient.

The CEO's budget adjustment authority was amended and is now limited to the lesser of \$100,000 or 5 percent for each program. Under the amendment, any CEO-initiated budget adjustments involving grants and sponsorships also require Board approval, regardless of the amount. Requiring these fiscal decisions be made in open public meetings subject to the Sunshine Law would increase transparency and accountability; however, the effective date of the amendment has been deferred until submittal of the FY2022-2023 biennium budget to allow the Administration time to implement.

Recommendation 1f

OHA Board of Trustees should, in general, require the Administration to develop a master list of all OHA Grants, Sponsorships, and other funding awarded, including the name of the individual, group, or organization receiving the funds, the amount of the award, and the approving or granting entity within OHA (such as the board, CEO, or line of business).

Not Implemented

Comments

While the Board of Trustees has not required the Administration to develop a master list of all OHA grants, sponsorships and other funding awarded, according to OHA, it has developed an information database system that ensures grants are monitored and evaluated consistently. OHA's Grants Portal serves as an electronic filing system for grant solicitations, applications, awarded contracts, and grantee reporting documents; documents are tracked throughout the granting process, enabling OHA to electronically track pre-award, award, and post-award documents. The system generates a master list of all grants, including the name and island location of the applicant; OHA's strategic priority (e.g., culture, water, education); the purpose of the project; the grant process; contract number; award amount; quarterly payment amounts; payment dates; and the funding balances. OHA represents its practice is to run a quarterly report for all grants and contracts, which is documented in OHA's financial reporting, including variances and budget adjustment parameters for each quarter. The master list provided by OHA in March 2021 included 36 active grants, 26 closed grants, and 11 pending grants and is updated on a weekly and quarterly basis.

The master list does not include sponsorships and other funding awarded by OHA, and no information about the approving or granting entity within OHA (such as the Board, CEO, or line of business) is included. In its policies and procedures, the Board should document the requirement that the Administration develop a master list of *all* OHA grants, sponsorships, and other funding awarded, including the name of the individual, group, or organization receiving the funds, the amount of the award, and the approving or granting entity within OHA (such as the Board, CEO, or line of business). A documented policy would clarify the process and allow the Board and the Administration to hold staff accountable for performing the required procedure.

Recommendation 1g

OHA Board of Trustees should, in general, consider developing policies regarding the maximum number and maximum total dollar amounts of Grants, Sponsorships, and other funding awarded to the same individual, group, or organization during a fiscal year or other determined period.

Partially Implemented

Comments

The Board has not considered developing policies regarding the maximum number and maximum total dollar amounts of grants, sponsorships, and other funding awarded to the same individual, group, or organization during a fiscal year or other determined period. However, we deem this recommendation partially implemented because OHA cited significant changes to specific policies for trustee allowances, grants, sponsorships, and other awards that prevent multiple awards to the same individual, group, or organization during a fiscal year. In February 2021, the Administration held a joint meeting with the Beneficiary Advocacy Empowerment Committee and the Resource Management Committee to discuss the elements for a trustee policy on strategic granting. The Administration will take trustee comments discussed during the meeting to formulate a grants policy for Board approval. According to OHA, the Administration is in the process of developing new organization-wide grant, including sponsorship, processes.

Recommendation 2a

OHA Board of Trustees should, with respect to Kūlia Initiatives, determine and clearly define the purpose of Kūlia Initiatives.

Not Implemented - N/A

Comments

Kūlia Initiatives provided non-competitive funding support to eligible organizations whose programs aligned with OHA's mission and benefitted the Native Hawaiian community, and could only be requested by trustees or the Administration on behalf of a recipient. The 2018 report found OHA regularly funded these unplanned expenditures by realigning its budget and drawing from its Fiscal Reserve, which had been spent down rapidly.

In response to Report No. 18-03, *Audit of the Office of Hawaiian Affairs*, OHA discontinued the use of Kūlia Initiatives.

Recommendation 2b

OHA Board of Trustees should, with respect to Kūlia Initiatives, review, update, and amend policies related to Kūlia Initiatives, as needed, to align with the defined purposes of Kūlia Initiatives. Such policies and procedures should clearly describe the types of spending for which Kūlia Initiatives are appropriate (as opposed to the purposes of other OHA funding support mechanisms, such as Community and ‘Ahahui Grants).

Not Implemented - N/A

Comments

Kūlia Initiatives provided non-competitive funding support to eligible organizations whose programs aligned with OHA’s mission and benefitted the Native Hawaiian community, and could only be requested by trustees or the Administration on behalf of a recipient. The 2018 report found OHA regularly funded these unplanned expenditures by realigning its budget and drawing from its Fiscal Reserve, which had been spent down rapidly.

In response to Report No. 18-03, *Audit of the Office of Hawaiian Affairs*, OHA discontinued the use of Kūlia Initiatives.

Recommendation 2c

OHA Board of Trustees should, with respect to Kūlia Initiatives, consider including in OHA’s annual budget a board-determined amount to fund Kūlia Initiatives.

Not Implemented - N/A

Comments

Kūlia Initiatives provided non-competitive funding support to eligible organizations whose programs aligned with OHA’s mission and benefitted the Native Hawaiian community, and could only be requested by trustees or the Administration on behalf of a recipient. The 2018 report found OHA regularly funded these unplanned expenditures by realigning its budget and drawing from its Fiscal Reserve, which had been spent down rapidly.

In response to Report No. 18-03, *Audit of the Office of Hawaiian Affairs*, OHA discontinued the use of Kūlia Initiatives.

Recommendation 2d

OHA Board of Trustees should, with respect to Kūlia Initiatives, ensure that the purpose and use of Kūlia Initiatives aligns and is consistent with: (a) OHA's mission; (b) OHA's policies and procedures; (c) trustees' fiduciary duties; and (d) State laws.

Not Implemented - N/A

Comments

Kūlia Initiatives provided non-competitive funding support to eligible organizations whose programs aligned with OHA's mission and benefitted the Native Hawaiian community, and could only be requested by trustees or the Administration on behalf of a recipient. The 2018 report found OHA regularly funded these unplanned expenditures by realigning its budget and drawing from its Fiscal Reserve, which had been spent down rapidly.

In response to Report No. 18-03, *Audit of the Office of Hawaiian Affairs*, OHA discontinued the use of Kūlia Initiatives.

Recommendation 3a

OHA Board of Trustees should, with respect to the Fiscal Reserve, determine and clearly define the purpose of the Fiscal Reserve, considering the original intent of the reserve, as well as the board's current intent for maintaining a reserve.

Partially Implemented

Comments

While we acknowledge OHA has made progress in this area, the Fiscal Stabilization Policy (see discussion page 4) is still a temporary policy and will be revisited once Board policies are completed. According to OHA, the policies being developed will include identifying whether the agency needs a reserve (rainy day) fund and, if so, the type of reserve fund needed. Until a new, permanent policy is adopted, we are unable to assess whether the recommendation has been fully implemented.

Recommendation 3b

OHA Board of Trustees should, with respect to the Fiscal Reserve, review, update, and amend policies and procedures related to the Fiscal Reserve, including OHA's Spending Policy and Fiscal Reserve Guidelines, as needed, to align with the defined purpose of the Fiscal Reserve. Such policies and procedures should clearly describe the circumstances in and purposes for which the Fiscal Reserve can be used.

Partially Implemented

Comments

While we acknowledge OHA has made progress in this area, the Fiscal Stabilization Policy (see discussion page 4) is still a temporary policy and will be revisited once Board policies are completed. According to OHA, the policies being developed will include identifying whether the agency needs a reserve (rainy day) fund and, if so, the type of reserve fund needed. Until a new, permanent policy is adopted, we are unable to assess whether the recommendation has been fully implemented.

Recommendation 3c

OHA Board of Trustees should, with respect to the Fiscal Reserve, clarify and clearly define the purpose of the 5 percent spending limit, and determine whether it is necessary to establish a withdrawal rate limit to ensure the health and sustainability of the Native Hawaiian Trust Fund.

Not Implemented

Comments

While we acknowledge OHA has made progress in this area, the Fiscal Stabilization Policy (see discussion page 4) is still a temporary policy and will be revisited once Board policies are completed. According to OHA, the policies being developed will include identifying whether the agency needs a reserve (rainy day) fund and, if so, the type of reserve fund needed.

We note while the interim policy restricts how the Fiscal Stabilization Fund may be used, expenditures from that fund are not included when calculating the annual spending withdrawal amount in the fiscal year in which moneys are expended. That potentially allows OHA to exceed the 5 percent spending limit established in OHA's Native Hawaiian Trust Fund Spending Policy.

Recommendation 3d

OHA Board of Trustees should, with respect to the Fiscal Reserve, work with the Administration, including OHA's Investment Management staff, to determine and obtain the financial information necessary for the board to assess the short- and long-term impacts to the Native Hawaiian Trust Fund when considering use of the Fiscal Reserve.

Not Implemented

Comments

In Report No. 18-03, we noted OHA was not considering the impacts to the Native Hawaiian Trust Fund when approving grants and other types of expenditures. The then-acting CFO told us that the Fiscal Office monitored expenditures to ensure compliance with OHA's budget and spending policy, but that the office did not track the withdrawal rate from the Native Hawaiian Trust Fund. However, we reported that OHA's annual expenditures had exceeded the five percent spending cap from the Native Hawaiian Trust Fund since FY2011, partly because of OHA's use of the Fiscal Reserve. Moreover, OHA's Investment Management Staff had projected a steady decline in OHA's largest revenue source over the next several years.

Currently, the Fiscal Stabilization Policy, as approved by the Board in September 2019 and which replaced the Fiscal Reserve Guidelines, does not require that specific information such as the Native Hawaiian Trust Fund balance, projected revenue, or impact to the trust fund, be provided as part of the action item seeking board approval of a funding request from the Fiscal Stabilization Fund. However, according to OHA, funding request procedures for use of the Fiscal Stabilization Fund require, among other things, an explanation of the reason the request is an authorized use of the fund together with supporting documentation, and OHA states that its Investment Manager and investment consultants regularly engage with the Board, and workshops are provided to the Board, as a matter of practice.

According to OHA, while the Administration does not provide the Board with any information regarding the impacts to the Native Hawaiian Trust Fund when considering use of the Fiscal Reserve, it may be included in the governance framework which is pending OHA's completion.

The intent of this recommendation was that the Board assess impacts to the Native Hawaiian Trust Fund and OHA's ability to serve its beneficiaries, current and future, when considering use of the Fiscal Reserve. While the Fiscal Stabilization Fund was created purportedly in response to Report No. 18-03 (and therefore did not exist at the

time of the audit), the recommendation is applicable to the Board's use of the Fiscal Stabilization Fund. Trustees very likely have the same fiduciary duties to OHA's beneficiaries in their use of the Native Hawaiian Trust Fund and the Fiscal Stabilization Fund. Under the new Fiscal Stabilization Policy, it is our understanding that the Board can transfer up to \$3 million annually from the Native Hawaiian Trust Fund to the Fiscal Stabilization Fund. Any withdrawal from the Native Hawaiian Trust Fund can have short- and long-term impacts to the Native Hawaiian Trust Fund, and Trustees should determine and require the Administration to provide them with the financial information necessary for them to make informed decisions about those impacts to the fund.

Recommendation 3e

OHA Board of Trustees should, with respect to the Fiscal Reserve, for each action item considering use of the Fiscal Reserve, ensure the Administration clearly includes the specific information as required by the Fiscal Reserve Guidelines and necessary for the board's decision-making.

Partially Implemented

Comments

In September 2019, the Board approved a new Fiscal Stabilization Fund and Fiscal Stabilization Policy to replace the Fiscal Reserve and the associated Fiscal Reserve Guidelines. Under the current Fiscal Stabilization Policy, which is still a temporary policy, funding request procedures for use of the Fiscal Stabilization Fund require, among other things, an explanation of the reason the request is an authorized use of the fund together with supporting documentation.

According to OHA, the procedure for funding requests for use of the Fiscal Stabilization Fund must, at a minimum, include the following:

- (1) Originator of the request;
- (2) Clear explanation of the reasons the request qualifies as an authorized fund use and address:
 - a. The reasons the request cannot be accommodated with other available means of financing or why it cannot be budgeted in the next fiscal biennium.
 - b. An explanation of the urgency of the request and its impact on OHA or its beneficiaries if the request is denied or the decision is delayed.

- c. Certification by the CFO that the funds are available for the request, and that the maximum withdrawal restrictions will not be violated if the request is granted; and

- (3) All supporting documentation that justifies the funding request.

The requirements above set forth the minimum information required to be provided in an action item for a funding request from the Fiscal Stabilization Fund. The Administration can provide additional information, including but not limited to the Native Hawaiian Trust Fund balance, projected revenue, impact to the trust fund, and any other information that would be relevant and necessary for the Board to make an informed decision.

While we acknowledge OHA has made progress in this area, the Fiscal Stabilization Policy (see discussion page 4) is still a temporary policy and will be revisited once Board policies are completed. According to OHA, the policies being developed will include identifying whether the agency needs a reserve (rainy day) fund and, if so, the type of reserve fund needed. Until a new, permanent policy is adopted, we are unable to assess whether the recommendation has been implemented.

Recommendation 3f

OHA Board of Trustees should, with respect to the Fiscal Reserve, ensure that the purpose and use of the Fiscal Reserve aligns and is consistent with: (a) OHA's mission; (b) OHA's policies and procedures; (c) trustees' fiduciary duties; and (d) State laws.

Partially Implemented

Comments

In September 2019, the Board approved a new Fiscal Stabilization Fund and Fiscal Stabilization Policy to replace the Fiscal Reserve and the associated Fiscal Reserve Guidelines. Under the current Fiscal Stabilization Policy, which is still a temporary policy, funding request procedures for use of the Fiscal Stabilization Fund require, among other things, an explanation of the reason the request is an authorized use of the fund together with supporting documentation. (See comments regarding Recommendation 3e above.)

While we acknowledge OHA has made progress in this area, the Fiscal Stabilization Policy (see discussion page 4) is still a temporary policy and will be revisited once Board policies are completed. According to OHA, the policies being developed will include identifying whether

the agency needs a reserve (rainy day) fund and, if so, the type of reserve fund needed. Until a new, permanent policy is adopted, we are unable to assess whether the recommendation has been implemented.

Recommendation 4a

OHA Board of Trustees should, with respect to CEO Sponsorships, determine and clearly define the purpose of CEO Sponsorships.

Not Implemented

Comments

CEO Sponsorships provided funding to organizations whose missions aligned with OHA's vision and strategic plan, whose programs and services benefited the Native Hawaiian community, and whose events offered OHA valuable public relations and recognition. CEO Sponsorships did not require a formal application in response to a solicitation, and requests were considered throughout the year and approved by the CEO.

On February 27, 2018, the Board placed a moratorium on the use of CEO Sponsorships but has not permanently discontinued the CEO Sponsorships. According to the CEO, the Board's Ad Hoc Committee on Grants and Sponsorships will consider the future use of CEO Sponsorships.

Accordingly, while there continues to be a moratorium on the CEO Sponsorships, OHA has not taken any other action to address the recommendation and, given that the program has not been discontinued, we consider this recommendation to be not implemented.

Recommendation 4b

OHA Board of Trustees should, with respect to CEO Sponsorships, review, update, and amend policies and procedures related to CEO Sponsorships, as needed, to align with the defined purpose of CEO Sponsorships. Such policies and procedures should clearly describe the circumstances in and purposes for which CEO Sponsorships can be used.

Not Implemented

Comments

CEO Sponsorships provided funding to organizations whose missions aligned with OHA's vision and strategic plan, whose programs and services benefited the Native Hawaiian community, and whose events offered OHA valuable public relations and recognition. CEO Sponsorships did not require a formal application in response to a solicitation, and requests were considered throughout the year and approved by the CEO.

On February 27, 2018, the Board placed a moratorium on the use of CEO Sponsorships but has not permanently discontinued the CEO Sponsorships. According to the CEO, the Board's Ad Hoc Committee on Grants and Sponsorships will consider the future use of CEO Sponsorships.

Accordingly, while there continues to be a moratorium on the CEO Sponsorships, OHA has not taken any other action to address the recommendation and, given that the program has not been discontinued, we consider this recommendation to be not implemented.

Recommendation 4c

OHA Board of Trustees should, with respect to CEO Sponsorships, consider restricting the Administration's ability to independently adjust the fiscal year budget, once approved by the board, to fund or otherwise support CEO Sponsorships.

Not Implemented

Comments

CEO Sponsorships provided funding to organizations whose missions aligned with OHA's vision and strategic plan, whose programs and services benefited the Native Hawaiian community, and whose events offered OHA valuable public relations and recognition. CEO

Sponsorships did not require a formal application in response to a solicitation, and requests were considered throughout the year and approved by the CEO.

On February 27, 2018, the Board placed a moratorium on the use of CEO Sponsorships but has not permanently discontinued the CEO Sponsorships. According to the CEO, the Board's Ad Hoc Committee on Grants and Sponsorships will consider the future use of CEO Sponsorships.

Accordingly, while there continues to be a moratorium on the CEO Sponsorships, OHA has not taken any other action to address the recommendation and, given that the program has not been discontinued, we consider this recommendation to be not implemented.

Recommendation 4d

OHA Board of Trustees should, with respect to CEO Sponsorships, ensure that the purpose and use of CEO Sponsorships aligns and is consistent with: (a) OHA's mission; (b) OHA's policies and procedures; (c) trustees' fiduciary duties; and (d) State laws.

Not Implemented

Comments

CEO Sponsorships provided funding to organizations whose missions aligned with OHA's vision and strategic plan, whose programs and services benefited the Native Hawaiian community, and whose events offered OHA valuable public relations and recognition. CEO Sponsorships did not require a formal application in response to a solicitation, and requests were considered throughout the year and approved by the CEO.

On February 27, 2018, the Board placed a moratorium on the use of CEO Sponsorships but has not permanently discontinued the CEO Sponsorships. According to the CEO, the Board's Ad Hoc Committee on Grants and Sponsorships will consider the future use of CEO Sponsorships.

Accordingly, while there continues to be a moratorium on the CEO Sponsorships, OHA has not taken any other action to address the recommendation and, given that the program has not been discontinued, we consider this recommendation to be not implemented.

Recommendation 5a

OHA Board of Trustees should, with respect to Trustee Allowances, amend the Trustee Allowances policy to restrict the use of Trustee Allowances to expenses incurred by trustees relating to their communication with beneficiaries and the public, as was the original purpose of the Trustee Allowances, and reduce the Trustee Allowances to an amount determined by the board to be reasonably necessary for that purpose.

Implemented

Comments

The Trustee Allowances were originally created in 1991 to cover incidental costs that trustees incurred to develop and maintain ongoing communications with beneficiaries and the general public, as well as to promote a broader understanding of Native Hawaiian issues and to encourage participation in the resolution of those issues. The annual allowance amount of \$7,200 per trustee was issued semi-annually from OHA's special funds. In 2013, OHA established the Trustees' Sponsorship and Annual Allowance Fund (TSAAF) which combined two trustee discretionary spending funds (Trustee Sponsorships and Trustee Allowances) with total funding set at \$22,200 per trustee. Under the TSAAF, each trustee received an advance in the full amount of the trustee's allowance (i.e., \$22,200) at the beginning of each fiscal year and were required to return the unspent balance at the end of the fiscal year.

In February 2018, in response to Report No. 18-03, *Audit of the Office of Hawaiian Affairs*, the Board placed an immediate moratorium on the use of the TSAAF and required the immediate return of the unused balance of each trustee's portion to OHA.

In May 2019, the Board adopted a Trustee Protocol Allowance (TPA) to establish new criteria and procedures that align with OHA's mission and policies, trustees' fiduciary duties, and applicable state law. With the adoption of the TPA, the moratorium on Trustee Allowances was lifted while the moratorium on trustee sponsorships remains in effect until the Board determines how to disburse those remaining sponsorship funds.

The TPA Policy is subject to OHA's "Code of Conduct and Sanctions for Violations of the Code of Conduct," adopted by the Board in 2016. The TPA Fund is a reimbursable fund in which OHA retains all TPA moneys; each trustee's fiscal year allowance is fixed at \$7,200.

The purpose of the TPA is to:

- Develop and maintain an ongoing communication network with beneficiaries and the general public;
- Promote a broader understanding of Native Hawaiian issues within the Native Hawaiian community and among the general public; and
- Encourage participation in the resolution of those issues, provided that such communications comply with applicable laws and OHA policies.

TPA Internal Guidelines and Procedures define the Administration's role in administering and monitoring the use of the fund to ensure trustee expenditures comply with policy. Trustees are allowed to use the allowance to cover expenses reasonably related to their official duties and responsibilities that are consistent with OHA's mission to better the conditions of Native Hawaiians and that comply with applicable policies and laws.

Procedures require trustees to complete and submit a "Trustee Protocol Allowance Disbursement Form." Trustees must show that the primary purpose of the expenditure is in support of, or a result of, an official trustee duty consistent with the purpose of the TPA and is an allowable expense. The trustee is required to certify that the claimed reimbursement or advance is true and correct and that it complies with applicable laws and OHA policies. Requests for reimbursements require trustees to provide an original receipt or proof of payment that includes a detailed itemization of the purchase. Requests for an advancement of TPA funds require trustees to provide an original itemized invoice and a completed W-9 form for the vendor; advanced funds are payable directly to a merchant or vendor.

Procedures state trustees should provide supporting details for a claimed reimbursement or advance on the TPA Disbursement Form and that the Administration may request additional information necessary to determine compliance of a claimed expenditure with applicable laws and OHA policies. Expenditures that are contrary to OHA's mission to better the conditions of Native Hawaiians or contravene OHA policies or the law are disallowed. Allowances cannot be used to benefit individuals as previously allowed under the prior policy. Questionable expenditures are reviewed by the Accounting Manager, Controller, CFO, and CEO as needed. In the event an expenditure is deemed impermissible by the Administration, trustees may appeal the determination, in writing, to the Board of Trustees Chairperson. Within 7 business days of receipt of the written appeal, the Chairperson must render a written decision on the appeal, which will be final.

Within 30 days after the end of each quarter, the Administration compiles a quarterly report of expenditures made by each trustee and submits the Trustee Quarterly Protocol Allowance Expenditure Report to the Board before posting it on OHA's public website.

Recommendation 5b

OHA Board of Trustees should, with respect to Trustee Allowances, prohibit the use of Trustee Allowances to provide financial support, direct or otherwise, to individuals, groups, or organizations. Require requests for financial support by individuals, groups, or organizations to be approved by the board and funded through a program other than Trustee Allowances.

Implemented

Comments

The new TPA Policy (see discussion page 26) prohibits the use of Trustee Allowances to provide financial support, direct or otherwise, to individuals, groups, or organizations, and requires such requests to be approved by the Board and funded through a program other than Trustee Allowances.

Recommendation 5c

OHA Board of Trustees should, with respect to Trustee Allowances, work with the Administration to more clearly define procedures related to the use and administration of Trustee Allowances.

Implemented

Comments

The new TPA Policy (see discussion page 26) established criteria and procedures that align with OHA's mission and policies, trustees' fiduciary duties, and applicable state law. TPA Policy is subject to OHA's "Code of Conduct and Sanctions for Violations of the Code of Conduct," adopted by the Board in 2016, which frame the trustees' fiduciary responsibilities, executive policies, and laws applicable to their conduct. TPA Internal Guidelines and Procedures define the Administration's role in administering and monitoring the use of the fund to ensure trustee expenditures comply with policy. Trustees are allowed to use the allowance to cover expenses reasonably related to their official duties and responsibilities that are consistent with OHA's mission to better the conditions of Native Hawaiians and that comply with applicable policies and laws.

Recommendation 5d

OHA Board of Trustees should, with respect to Trustee Allowances, require trustees to seek reimbursement of expenses; do not disburse the total amount of Trustee Allowances to trustees at the beginning of the fiscal year or otherwise advance any funds to trustees.

Implemented

Comments

Under the new TPA Policy (see discussion page 26), trustees are reimbursed allowable expenses from their respective Trustee Protocol Allowance in accordance with TPA Internal Guidelines and Procedures, and the TPA guidelines define the Administration's role in administering and monitoring the use of the fund to ensure trustee expenditures comply with policy. Procedures require trustees to complete and submit a "Trustee Protocol Allowance Disbursement Form." Trustees must show that the primary purpose of the expenditure is in support of, or a result of, an official trustee duty consistent with the purpose of the TPA and is an allowable expense. The trustee is required to certify that the claimed reimbursement or advance is true and correct and that it complies with applicable laws and OHA policies. Requests for reimbursements require trustees to provide an original receipt or proof of payment that includes a detailed itemization of the purchase. Requests for an advancement of TPA funds require trustees to provide an original itemized invoice and a completed W-9 form for the vendor; advanced funds are payable directly to a merchant or vendor.

Procedures state trustees should provide supporting details for a claimed reimbursement or advance on the TPA Disbursement Form and the Administration may request additional information necessary to determine compliance of a claimed expenditure with applicable laws and OHA policies.

Recommendation 5e

OHA Board of Trustees should, with respect to Trustee Allowances, review and amend, as needed, the sanctions established in the Code of Conduct for violations of Trustee Allowance policies and procedures and establish a process to ensure enforcement of sanctions to appropriately address such violations.

Partially Implemented

Comments

The Board is in the process of reviewing and amending, as needed, the sanctions established in the Code of Conduct for violations of Trustee Allowance policies and procedures and establishing a process to ensure enforcement of sanctions to appropriately address such violations.

The Trustee Protocol Allowance Policy is subject to OHA's "Code of Conduct and Sanctions for Violations of the Code of Conduct," which is an executive board policy consisting of fiduciary responsibilities, trustees' executive policies, and applicable laws. The Code of Conduct requires each trustee to prudently expend allowance and sponsorship funds in an impartial manner for beneficiaries and to ensure that any personal judgement exercised is consistent with the trustees' fiduciary responsibilities and complies with OHA's policies and procedures.

The sanctions for violations of the Code of Conduct include referring criminal behavior to appropriate law enforcement authorities without undue delay. A trustee who believes that a co-trustee has violated the Code of Conduct may seek resolution of the matter through appropriate conciliatory measures prior to commencing an official complaint under the Code of Conduct, a detailed seven-step process. A trustee or OHA's CEO who wishes to officially file a complaint must do so with a letter to the Board Chairperson within 30 days of the alleged event. The Chairperson will review the allegation and discuss the matter with the Vice Chairperson and trustee to seek a mutually agreeable resolution. Should the trustee continue to violate the Code of Conduct, the Chairperson shall bring information about the violation to the Board of Trustees in executive session. Should the trustee continue to violate the Code of Conduct, the Chairperson will consult with Board Counsel and place the matter on the agenda for appropriate action by the Board for discussion in executive session. The Board may, by majority vote, censure or sanction the offending trustee including but not limited to removing the offending trustee from board committees or disabling the trustee's use of his or her allowance. The Board may, in its sole discretion, make its findings public at a special or regular board meeting.

It is our understanding that *each* trustee has fiduciary responsibilities to Native Hawaiians who are the beneficiaries of the Native Hawaiian Trust Fund, and simply because a majority may approve an expenditure, using trust funds does not mean that the expenditure is consistent with those fiduciary duties. The Code of Conduct allows a majority of trustees to be the arbiter of a minority trustee's concerns that an expenditure or other action by another trustee violates that trustee's fiduciary duties.

According to OHA, the agency has had long discussions regarding trustee accountability and sanctions that continue to be worked on by the Administration, subject to Board approval. The Administration is reviewing the language regarding sanctions provided for in the Board of Trustees' Executive Policy Manual and the Code of Conduct as part of OHA's Board Governance Framework. The Board and the Administration continue to work to update trustee-level policies to align with trustees' fiduciary duties and state laws, including Trustee Allowances. Until a new, permanent policy is adopted, we are unable to address whether the recommendation has been fully implemented.

Recommendation 5f

OHA Board of Trustees should, with respect to Trustee Allowances, ensure that the purpose and use of Trustee Allowances aligns and is consistent with: (a) OHA's mission; (b) OHA's policies and procedures; (c) trustees' fiduciary duties; and (d) State laws.

Implemented

Comments

The new TPA Policy (see discussion page 26) established criteria and procedures to comply with OHA's mission and policies, trustees' fiduciary duties, and applicable state law

We note that, while the Code of Conduct includes procedures for reporting of violations of the Code of Conduct relating to a trustee's breach of his or her fiduciary duties (or violation of state law), these are not matters over which the Board has the ultimate authority to decide. Each trustee – not the Board – has direct fiduciary responsibilities to OHA's beneficiaries. Accordingly, we question whether the Board, by majority vote, should be the final arbiter of a complaint about a trustee's alleged breach of his or her fiduciary duty or violation of his or her legal obligations. We suggest the Board consider providing a trustee with independent legal counsel, if needed, to fulfill his or her fiduciary or legal duties, which may include among other things action to address other trustees' breaches of fiduciary or legal duties.

OHA Administration

Recommendation 1a

OHA Administration should, in general, require the Administration to attend regular training that includes, but is not limited to:

- i. Fiduciary duties and other responsibilities of trustees;**
- ii. State Ethics Code, Chapter 84, HRS;**
- iii. Sunshine Law, part I of Chapter 92, HRS; and**
- iv. Uniform Information Practices Act (Modified), Chapter 92F, HRS.**

Partially Implemented

Comments

The Administration does not formally require regular training for its staff, but represents it is an ongoing practice. During orientation of new trustees and executives, the Board's external and in-house legal counsel provide training on trustees' fiduciary duties and other responsibilities, OHA's mandates and duties, and the State Ethics Code.

According to OHA, the Board is in the process of establishing an overarching governance framework that should include a written policy that requires regular training for trustees, trustees' staff, and OHA's administrators, managers, and staff on (i) trustees' fiduciary duties and other responsibilities; (ii) the State Ethics Code; (iii) the Sunshine Law; and (iv) Uniform Information Practices Act. We acknowledge that OHA appears to be providing training; however, that practice is not documented, and for that reason, we consider the recommendation to be only partially implemented.

Recommendation 1b

OHA Administration should, in general, support trustees in performing their fiduciary duties and other responsibilities by, among other things, providing financial documents and other information in a timely manner as requested by individual trustees.

Implemented

Comments

OHA Administration states it supports trustees in performing their fiduciary duties and other responsibilities by, among other things, providing financial documents and other information in a timely manner as requested by an individual trustee. OHA's intra-web has a reporting site, accessible by trustees, where the Administration periodically provides reports, updates, and other information, including quarterly reports from investment managers and quarterly budget variances. OHA's investment manager presents the quarterly investment reports of the Native Hawaiian Trust Fund before the Resource Management Committee or the committee's Chairperson and Vice Chairperson. In 2020, OHA's Oracle Fusion implementation of financials went "live," and when staff teleworked during the pandemic caused by COVID-19, the quarterly investment reports and budget variances were emailed to trustees. OHA's grants information database system monitors, tracks, and generates reports on the status and outcomes of grant applications, including a master list of all grants and sponsorships, as well as related approval and award information made available by the Administration to trustees, as requested.

While we deem this recommendation to be implemented, we recommend that OHA document its responsibility to provide information requested by the Board as well as individual trustees in the appropriate policies and procedures.

Recommendation 2a

OHA Administration should, with respect to Kūlia Initiatives, ensure that the board and the Administration adhere to and comply with the board-adopted policies and procedures for Kūlia Initiatives.

Not Implemented - N/A

Comments

Kūlia Initiatives provided non-competitive funding support to eligible organizations whose programs aligned with OHA's mission and benefitted the Native Hawaiian community, and could only be requested by trustees or the Administration on behalf of a recipient. The 2018 report found OHA regularly funded these unplanned expenditures by realigning its budget and drawing from its Fiscal Reserve, which had been spent down rapidly.

In response to Report No. 18-03, *Audit of the Office of Hawaiian Affairs*, OHA discontinued the use of Kūlia Initiatives.

Recommendation 2b

OHA Administration should, with respect to Kūlia Initiatives, ensure that OHA's use of Kūlia Initiatives aligns and is consistent with: (a) OHA's mission; (b) OHA's policies and procedures; (c) trustees' fiduciary duties; and (d) State laws.

Not Implemented - N/A

Comments

Kūlia Initiatives provided non-competitive funding support to eligible organizations whose programs aligned with OHA's mission and benefitted the Native Hawaiian community, and could only be requested by trustees or the Administration on behalf of a recipient. The 2018 report found OHA regularly funded these unplanned expenditures by realigning its budget and drawing from its Fiscal Reserve, which had been spent down rapidly.

In response to Report No. 18-03, *Audit of the Office of Hawaiian Affairs*, OHA discontinued the use of Kūlia Initiatives.

Recommendation 3a

OHA Administration should, with respect to the Fiscal Reserve, ensure each proposed use of the Fiscal Reserve is consistent with the Fiscal Reserve Guidelines and the board-stated purpose of the Fiscal Reserve.

Partially Implemented

Comments

In September 2019, the Board approved a new Fiscal Stabilization Fund and Fiscal Stabilization Policy to replace the Fiscal Reserve and the associated Fiscal Reserve Guidelines. Under the current Fiscal Stabilization Policy, which is still a temporary policy, funding request procedures for use of the Fiscal Stabilization Fund require, among other things, an explanation of the reason the request is an authorized use of the fund together with supporting documentation. (See comments regarding the recommendation for OHA Board of Trustees 3e beginning on page 21.)

According to the Fiscal Stabilization Policy, funding requests for the use of the Fiscal Stabilization Fund must be submitted as an action item. The CEO initiates the action item requesting funding, and the CFO is responsible for reviewing the action item, the release of funds, and any documentation in relation to disbursements. Any action item that does not comply with the requirements of the Fiscal Stabilization Policy will not be considered by the Board.

While we acknowledge OHA has made progress in this area, the Fiscal Stabilization Policy (see discussion page 4) is still a temporary policy and will be revisited once board policies are completed. According to OHA, the policies being developed will include identifying whether the agency needs a reserve (rainy day) fund and, if so, the type of reserve fund needed. Until a new, permanent policy is adopted, we are unable to assess whether the recommendation has been fully implemented.

Recommendation 3b

OHA Administration should, with respect to the Fiscal Reserve, for each requested use of the Fiscal Reserve, provide the board with specific information and recommendations as to whether the board's or the Administration's proposed use of the Fiscal Reserve is consistent with the Fiscal Reserve Guidelines and the purpose of the Fiscal Reserve. Such information may include, but is not limited to, specific financial information regarding the Native Hawaiian Trust Fund balance, projected revenue for the fiscal year, and impact to the Native Hawaiian Trust Fund resulting from the requested use of the Fiscal Reserve.

Partially Implemented

Comments

According to OHA, its new Fiscal Stabilization Policy was instituted to address the audit findings while OHA reconciles its objectives with its policies, including a determination of whether the agency needs a reserve (rainy day) fund and, if so, the type of reserve fund needed.

OHA states the funding request procedures for use of the Fiscal Stabilization Fund require, among other things, an explanation of the reason the request is an authorized use of the fund together with supporting documentation. The Administration can provide additional information, including but not limited to the Native Hawaiian Trust Fund balance, projected revenue, impact to the trust fund, and any other information that would be relevant and necessary for the Board to make an informed decision.

If trustees have questions or need further information about a request, the Board has the authority to defer voting on the action item until the Administration provides the requested information. Pursuant to the Fiscal Stabilization Policy, any action item that does not comply with the requirements of the policy shall not be considered by the Board. Any non-compliant action item approved by the Board shall be considered void. The Administration uses appropriation codes to ensure each proposed use of the Fiscal Reserve is consistent with the guidelines and purpose of the Fiscal Reserve.

While we acknowledge OHA has made progress in this area, the Fiscal Stabilization Policy (see discussion page 4) is still a temporary policy and will be revisited once board policies are completed. According to OHA, the policies being developed will include identifying whether the agency needs a reserve (rainy day) fund and, if so, the type of reserve fund needed. Until a new, permanent policy is adopted, we are unable to assess whether the recommendation has been fully implemented.

Recommendation 4a

OHA Administration should, with respect to CEO Sponsorships, adhere to Grants Staff recommendations regarding the Administration's requests to fund CEO Sponsorships.

Not Implemented

Comments

CEO Sponsorships provided funding to organizations whose missions aligned with OHA's vision and strategic plan, whose programs and services benefited the Native Hawaiian community, and whose events offered OHA valuable public relations and recognition. CEO Sponsorships did not require a formal application in response to a solicitation, and requests were considered throughout the year and approved by the CEO.

On February 27, 2018, the Board placed a moratorium on the use of CEO Sponsorships but has not permanently discontinued CEO Sponsorships. According to the CEO, the Board's Ad Hoc Committee on Grants and Sponsorships will consider the future use of CEO Sponsorships.

Accordingly, while there continues to be a moratorium on CEO Sponsorships, OHA has not taken any other action to address the recommendation and, given that the program has not been discontinued, we consider this recommendation to be not implemented.

Recommendation 4b

OHA Administration should, with respect to CEO Sponsorships, if the Administration is allowed to adjust the budget to fund Sponsorships, obtain board approval before doing so, and provide the board with specific information about the proposed funding request to inform trustees' decision-making.

Not Implemented

Comments

CEO Sponsorships provided funding to organizations whose missions aligned with OHA's vision and strategic plan, whose programs and services benefited the Native Hawaiian community, and whose events offered OHA valuable public relations and recognition. CEO Sponsorships did not require a formal application in response to a solicitation, and requests were considered throughout the year and approved by the CEO.

On February 27, 2018, the Board placed a moratorium on the use of CEO Sponsorships but has not permanently discontinued CEO Sponsorships. According to the CEO, the Board's Ad Hoc Committee on Grants and Sponsorships will consider the future use of CEO Sponsorships.

Accordingly, while there continues to be a moratorium on CEO Sponsorships, OHA has not taken any other action to address the recommendation and, given that the program has not been discontinued, we consider this recommendation to be not implemented.

Recommendation 5a

OHA Administration should, with respect to Trustee Allowances, monitor and review trustees' use of Trustee Allowances and ensure expenditures using Trustee Allowances comply with the Trustee Allowances policy.

Implemented

Comments

In May 2019, OHA established new criteria and procedures for Trustee Protocol Allowances that, according to OHA, complies with OHA's mission, OHA's policies, trustees' fiduciary duties, and applicable state law. The TPA Policy is subject to OHA's "Code of Conduct and Sanctions for Violations of the Code of Conduct," adopted by the Board in 2016, which frame the trustees' fiduciary responsibilities, executive policies, and laws applicable to their conduct. Internal Guidelines and Procedures define the Administration's role in administering and monitoring spending to ensure trustee expenditures comply with policy. Trustees are allowed to use the allowance to cover expenses reasonably related to their official duties and responsibilities that are consistent with OHA's mission to better the conditions of Native Hawaiians and that comply with applicable policies and laws.

Procedures require trustees to complete and submit a "Trustee Protocol Allowance Disbursement Form." Trustees must show that the primary purpose of the expenditure is in support of, or a result of, an official trustee duty consistent with the purpose of the TPA and is an allowable expense. The trustee is required to certify that the claimed reimbursement or advance is true and correct and that it complies with applicable laws and OHA policies. Requests for reimbursements require trustees to provide an original receipt or proof of payment that includes a detailed itemization of the purchase. Requests for an advancement of TPA funds require trustees to provide an original itemized invoice and a completed W-9 form for the vendor; advanced funds are payable directly to a merchant or vendor.

Trustees should provide supporting details for a claimed reimbursement or advance on the TPA Disbursement Form. The Administration may request additional information necessary to determine compliance of a claimed expenditure with applicable laws and OHA policies. Expenditures that are contrary to OHA's mission to better the conditions of Native Hawaiians or contravene OHA policies or the law are disallowed. Allowances cannot be used to benefit individuals as previously allowed under the prior policy. Questionable expenditures are reviewed by the Accounting Manager, Controller, CFO, and CEO as needed. In the event an expenditure is deemed impermissible by the Administration, trustees may appeal the determination, in writing, to the Board of Trustees Chairperson. Within 7 business days of receipt of the written appeal, the Chairperson must render a written decision on the appeal, which will be final.

Within 30 days after the end of each quarter, the Administration compiles a quarterly report of expenditures made by each trustee and submits the Trustee Quarterly Protocol Allowance Expenditure Report to the Board before posting it on OHA's public website.

Recommendation 5b

OHA Administration should, with respect to Trustee Allowances, establish procedures to more clearly define the Administration's role and procedures for administering and monitoring the use of Trustee Allowances.

Implemented

Comments

We were provided a copy of a document titled, "Trustee Protocol Allowance Internal Guidelines and Procedures" dated July 2019. OHA states these guidelines and procedures define the Administration's role in administering and monitoring spending to ensure trustee expenditures comply with policy. Procedures require trustees to complete and submit a "Trustee Protocol Allowance Disbursement Form." Trustees must show that the primary purpose of the expenditure is in support of, or a result of, an official trustee duty consistent with the purpose of the TPA and is an allowable expense. The trustee is required to certify that the claimed reimbursement or advance is true and correct and that it complies with applicable laws and OHA policies. Trustees should provide supporting details for a claimed reimbursement or advance on the TPA Disbursement Form. The Administration may request additional information necessary to determine compliance of a claimed expenditure with applicable laws and OHA policies. Expenditures that are contrary

to OHA's mission to better the conditions of Native Hawaiians or contravene OHA policies or the law are disallowed. Allowances cannot be used to benefit individuals as previously allowed under the prior policy. Questionable expenditures are reviewed by the Accounting Manager, Controller, CFO, and CEO as needed. In the event an expenditure is deemed impermissible by the Administration, trustees may appeal the determination, in writing, to the Board of Trustees Chairperson. Within 7 business days of receipt of the written appeal, the Chairperson must render a written decision on the appeal, which will be final. Within 30 days after the end of each quarter, the Administration compiles a quarterly report of expenditures made by each trustee and submits the Trustee Quarterly Protocol Allowance Expenditure Report to the Board before posting it on OHA's public website.

Recommendation 5c

OHA Administration should, with respect to Trustee Allowances, report to the board the specific expenditures approved and reimbursed to each trustee using Trustee Allowances.

Implemented

Comments

Trustee Protocol Allowance Internal Guidelines and Procedures require the Administration to compile and transmit a quarterly report of expenditures made by each trustee. Within 30 days after the end of each quarter, the Administration compiles a quarterly report of expenditures made by each trustee and submits the Trustee Quarterly Protocol Allowance Expenditure Report to the Board before posting it on OHA's public website.

Procedures for approval require trustees to complete and submit a "Trustee Protocol Allowance Disbursement Form." Trustees must show that the primary purpose of the expenditure is in support of, or a result of, an official trustee duty consistent with the purpose of the TPA and is an allowable expense. The trustee is required to certify that the claimed reimbursement or advance is true and correct and that it complies with applicable laws and OHA policies. Expenditures that are contrary to OHA's mission to better the conditions of Native Hawaiians or contravene OHA policies or the law are disallowed. Allowances cannot be used to benefit individuals as previously allowed under the prior policy. Questionable expenditures are reviewed by the Accounting Manager, Controller, CFO, and CEO as needed.

Recommendation 5d

OHA Administration should, with respect to Trustee Allowances, create a formal appeal process for trustees to request a second determination of whether they are entitled to reimbursement of expenses using Trustee Allowances, for instance, through staff whose regular duties do not involve review and approval of Trustee Allowances.

Implemented

Comments

Expenditures that are contrary to OHA's mission to better the conditions of Native Hawaiians or that contravene OHA policies or the law are disallowed. Questionable expenditures are reviewed by the Accounting Manager, Controller, CFO, and CEO as needed. In the event an expenditure is deemed impermissible by the Administration, trustees may appeal the determination, in writing, to the Board of Trustees Chairperson. Within 7 business days of receipt of the written appeal, the Chairperson must render a written decision on the appeal, which will be final.

These provisions are included in the Trustee Protocol Allowance that was adopted by OHA in 2019.

