

---

# Performance Audits

---





---

## 2 Financial Assistance to Businesses Through NSBI and IEF

### Summary

Management of Nova Scotia Business Inc. (NSBI) and the Industrial Expansion Fund (IEF) have refused to provide the information we required to complete our audit of financial assistance to businesses through these organizations. We therefore have denied audit opinions on both NSBI's and IEF's financial and program controls and compliance with legislation, regulations and policies, related to loans, payroll rebates and other financial assistance to businesses.

Denial of an audit opinion is the most severe audit sanction available to us. Withholding information relevant to an audit of public expenditures constitutes disregard for public accountability. In doing so, both NSBI and IEF acted in contravention of the Auditor General Act.

Management informed us that staff at Executive Council Office instructed them to withhold Cabinet submissions and Cabinet-related information. NSBI management and IEF's Department of Justice solicitor also withheld solicitor-client communications.

Ultimately the authority and responsibility for these decisions rests with Cabinet. The Auditor General Act requires that all documents, whether confidential or not, be provided to the Auditor General and does not contain any exemption for Cabinet submissions or solicitor-client communications. We have therefore recommended that Cabinet instruct departments and agencies to comply with the Auditor General Act.

All files requested by audit staff at both NSBI and IEF were withheld until they could be reviewed and documents removed or sections redacted which either NSBI management, IEF management, or Department of Justice solicitors considered to be subject to Cabinet confidentiality or solicitor-client privilege. We have no way of knowing whether all documents removed or sections redacted were, in fact, Cabinet or solicitor-client documents.

NSBI management removed 173 documents from 21 files and redacted information in 32 documents. At IEF, 108 documents were removed from 24 files. In April 2010, IEF's Department of Justice solicitors reconsidered their decision and provided 10 documents for which they had previously claimed solicitor-client privilege. This action calls into question the basis on which these decisions are being made.

There is ample and recent precedent for releasing this type of information to the Auditor General. A previous audit of NSBI in 2004 included full and complete



---

access to documents submitted to Cabinet as well as communications between NSBI and its lawyer. In June 2008, the Executive Council Office provided the Auditor General with access to the cabinet and solicitor-client documents related to the Nova Scotia Nominee Program, although not before the Public Accounts Committee issued subpoenas.

For the limited work we were ultimately able to complete, we made recommendations for improvements at both NSBI and IEF which are detailed in this Chapter.

---

## 2 Financial Assistance to Businesses Through NSBI and IEF

### Background

- 2.1 In Nova Scotia, various departments and agencies are involved in business development through the provision of government financial assistance. Nova Scotia Business Inc. (NSBI) and the Industrial Expansion Fund (IEF) are two organizations from which businesses can access financing and other assistance from the provincial government.
- 2.2 NSBI is a crown corporation, owned by the Province of Nova Scotia and governed by an independent Board of Directors. NSBI is Nova Scotia's business development agency with a primary goal of expanding business in the province.
- 2.3 NSBI assists business development through various means including payroll rebates, loans and venture capital investments. Payroll rebates provide companies with a rebate for a portion of their gross payroll provided they meet certain conditions.
- 2.4 The Industrial Expansion Fund (IEF) is administered through the Department of Economic and Rural Development. IEF helps businesses to get established or expand in Nova Scotia.
- 2.5 IEF provides assistance to businesses through loan financing, loan guarantees and other development incentives. All assistance through IEF is approved by Order-In-Council.
- 2.6 Although IEF is a fund rather than a separate organization, we will refer to it as an organization for purposes of this report.
- 2.7 Total financial assistance and guarantees through IEF in 2009-10 was \$221.7 million (2008-09 – \$61.6 million). Total assistance through NSBI in 2009-10 was \$33.8 million (2008-09 – \$22.8 million). The following tables list assistance totalling \$2 million or greater through both entities in 2008-09 and 2009-10.

FINANCIAL  
ASSISTANCE  
TO BUSINESSES  
THROUGH  
NSBI AND IEF

IEF Financial Assistance, Loans and Guarantees \$2 million or Greater			
OIC #	Company	Amount	Type of Assistance
<b>2009-10</b>			
2010-152	Scanwood Canada Limited	4,750,000	Loan
2010-103	DSME Trenton Ltd.	59,360,500	Loan (\$36.160 M) Shares (\$19.6 M) Forgiveable Loan (\$3.6 M)
2010-90	Northern Timber Nova Scotia Corporation	75,000,000	Loan
2010-87	Irving Shipbuilding Inc.	20,000,000	Loan
2010-1	Irving Shipbuilding Inc.	8,800,000	Incentive (\$6.6 M) Loan (\$2.2 M)
2009-490	D.B. Kenney Fisheries Limited	2,500,000	Guarantee
2009-478	NewPage Port Hawkesbury Corp.	5,000,000	Loan
2009-475	Ligni Bel Ltd.	3,000,000	Guarantee
2009-360	Irving Shipbuilding Inc.	12,200,000	Guarantee
2009-282	Maritime Steel and Foundries Limited	2,000,000	Loan
2009-280	Ka'Le Bay Seafoods Ltd.	3,500,000	Loan
2009-277	Clearwater Seafoods Limited Partnership	15,000,000	Loan
2009-212	G.N. Plastics Company	2,000,000	Loan
<b>2008-09</b>			
2009-136	Northern Pulp Nova Scotia Corporation	15,000,000	Loan
2009-44	Bay Ferries Limited	2,000,000	Contribution
2009-28	Bay Ferries Limited	12,000,000	Contribution
2009-20	Yarmouth International Airport Corporation	2,000,000	Loan
2008-655	Investing in Nova Scotia Enterprises Co-operative Ltd. (Immigrant Small Business Financing)	2,000,000	Loan Guarantee
2008-521	Scotian Gold Co-operative Limited	2,000,000	Loan
2008-490	ACA Co-operative Limited	3,500,000	Loan
2008-370	Bay Ferries Limited	4,400,000	Contribution
2008-351	Composite Sea to Sky Limited	4,545,000	Loan (\$2.9 M) Incentive (\$1.645 M)

NSBI Payroll Rebates, Loans, Guarantees and Venture Capital \$2 million or Greater			
OIC #	Company	Amount	Type of Assistance
<b>2009-10</b>			
2010-132	RSA Canada (ROINS Holding Limited)	2,699,274	Payroll Rebate
2010-102	Tech Link International Entertainment Limited	2,500,000	Venture Capital
2009-376	LED Roadway Lighting Ltd.	6,000,000	Venture Capital
2009-218	Aecon Construction Group (Aecon-Fabco)	2,255,057	Payroll Rebate
2009-217	Unique Solutions Design Ltd.	2,000,000	Venture Capital
N/A	Enlinga Canada	2,420,000	Loan
<b>2008-09</b>			
2008-425	Admiral Insurance Services	2,836,500	Payroll Rebate
N/A	Origin BioMed	2,000,000	Venture Capital

FINANCIAL  
ASSISTANCE  
TO BUSINESSES  
THROUGH  
NSBI AND IEF

## Audit Objectives and Scope

- 2.8 In fall 2009, we conducted a performance audit of financial assistance to business through Nova Scotia Business Inc. and the Industrial Expansion Fund. The audit was conducted in accordance with Section 8 of the Auditor General Act and auditing standards established by the Canadian Institute of Chartered Accountants. NSBI and IEF were also informed that Section 14 of the Auditor General Act applied to this audit.
- 2.9 The objectives for this assignment were to:
- assess IEF's and NSBI's financial and program controls over loans, payroll rebates, development incentives and venture capital investments and compliance with legislation, regulations, and internal policies and procedures in providing these programs; and
  - determine whether IEF and NSBI have adequate processes in place to measure and report on the effectiveness of the assistance to business programs which they each administer.
- 2.10 Generally accepted criteria consistent with the objectives of this audit do not exist. Audit criteria were specifically developed for this assignment. These criteria were discussed with and accepted as appropriate by senior management of the Department and NSBI.
- 2.11 Our planned audit approach included examining documents and reports, interviews with management and staff, and testing certain processes and

procedures. We intended to audit the period from April 1, 2008 to September 30, 2009. However, we encountered a scope limitation when completing our work on the financial and program controls over the assistance to business programs selected for audit. Both NSBI and IEF management reviewed their respective files and removed documents they considered to be privileged and confidential before allowing us to see the files. Department of Justice solicitors also reviewed certain IEF files before those files were provided to us. We denied an opinion on the program and financial controls for both entities as we could not form an audit conclusion.

## Significant Audit Observations

### Information Denied During the Audit

#### Conclusions and summary of observations

Both NSBI and IEF management withheld their files from our staff until they could be reviewed to remove Cabinet submissions and other Cabinet-related documents. They informed us Executive Council Office staff told them Cabinet submissions are confidential and instructed them not to provide these submissions to our Office. NSBI management told us they removed 30 Cabinet submissions from 12 files and redacted Cabinet-related information in three documents from these same 12 files before providing these to our staff. IEF management told us they removed 76 Cabinet submissions from 24 files before giving the files to our staff. NSBI management also removed 143 documents from 16 files and redacted sections in 29 documents because they deemed the information subject to solicitor-client privilege. IEF's Department of Justice solicitor also removed 32 documents from 11 files related to IEF. IEF management were not aware this occurred. Subsequently, in April 2010, the Justice solicitor provided 10 of those documents to our Office indicating they were not actually subject to solicitor-client privilege. Reviewing files and other documents prior to providing information to the Auditor General represents unwarranted interference with the audit process and contravenes the Auditor General Act. The Auditor General, not the auditee, has the right and responsibility to determine what information is necessary to express an opinion and conclusion on the audit objectives. We do not know what information was withheld, what impact it might have had on our work, or whether all documents were, in fact, Cabinet submissions or related to solicitor-client communications. In the case of IEF, the Department of Justice solicitor initially deemed documents were solicitor-client privileged and later decided certain of these documents were not subject to privilege. Since we were not given the information we needed to conduct the audit, we were required to deny an audit opinion on NSBI's and IEF's financial and program controls, and their compliance with legislation, regulations and policies, related to payroll rebates, loans and other financial assistance.



- 2.12 *Files withheld and documents removed* – All files were withheld from our staff until they could be reviewed to remove Cabinet submissions and other Cabinet-related documents. We were informed that Executive Council Office staff told NSBI and IEF management that the documents were confidential and should not be provided to our staff. NSBI management also reviewed files and removed documents which they deemed to be subject to solicitor-client privilege. Additionally NSBI management withheld all staff reports until they could be reviewed and information removed which referred to documents which they believed to be privileged. IEF’s Department of Justice solicitor also reviewed files and removed solicitor-client communications before giving our staff the files.
- 2.13 We asked both entities to provide a list of documents removed from the files or documents with sections deleted.
- 2.14 Initially IEF management informed us they deleted 76 Cabinet submissions from 24 files before giving our staff these files. We confirmed with IEF management that no solicitor-client communications had been removed from the files. Subsequently, our staff found information in one of the files which suggested solicitor-client communications had been removed. In following up this matter, we discovered that IEF’s Department of Justice solicitors had custody of IEF’s legal files. The solicitors reviewed all these files and removed solicitor-client communications before providing the files to our staff. IEF management were not aware this had occurred. We asked the solicitors to provide a list of documents which were removed. The solicitors informed us 32 documents were initially removed from 11 files. However 10 of those documents were subsequently provided to our Office in April 2010 because the solicitors reconsidered their decision, noting “*on reflection, it is our view that some documents are not subject to solicitor-client privilege.*” This action puts in question the basis on which these decisions are being made.
- 2.15 NSBI management told us that they removed 30 Cabinet submissions from 12 files and redacted information in three documents from the same 12 files because they related to Cabinet submissions. NSBI management also told us that they removed 143 documents and redacted sections from 29 documents in 16 files because they considered the information subject to solicitor-client privilege.
- 2.16 We cannot be certain these lists are complete. We do not know what information was withheld, for what reasons, what impact it might have had on our work, or whether all documents were, in fact, related to Cabinet submissions or solicitor-client communications. This practice constitutes an unwarranted interference with the audit process. It represents poor accountability to the House of Assembly.

- 
- 2.17 Management informed us of the restrictions on the information the entities were prepared to provide at the start of this audit and referred us to Executive Council. The Auditor General wrote to the Premier on October 30, 2009 to request that our staff be provided with the documents we required to complete our work at IEF and NSBI.
- 2.18 Senior management at the Executive Council Office then told us they intended to discuss a means to provide us with the information we needed. We proceeded with the audit, anticipating a timely resolution of the issues. Subsequently, the Deputy to the Premier/Clerk of Executive Council Office wrote the Auditor General and stated we would not be allowed to see the documents we requested.
- 2.19 Initially, NSBI management indicated a willingness to discuss our access to solicitor-client documents. However, NSBI management eventually informed us they were not willing to provide us with solicitor-client communications which they considered subject to solicitor-client privilege.
- 2.20 We were not informed that access to solicitor-client communications for IEF files might be restricted until late in the audit process, when OAG staff discovered this to be an issue.
- 2.21 Once we concluded that restrictions on Cabinet-related documents and submissions, and solicitor-client communications would not be resolved during the audit, we limited the scope of our remaining audit procedures and then concluded the audit. If a similar situation occurs during a future audit we will immediately withdraw from the audit and report the restrictions to the House.
- 2.22 *Documents submitted to cabinet* – In government, when recommendations are forwarded to Cabinet for a decision, all related information is generally included in a Cabinet submission called a Report and Recommendation (R&R). R&Rs generally include background information and analysis of the issue, a list of alternatives and staff recommendations, and a communications plan.
- 2.23 NSBI and IEF management informed us that senior management staff at the Executive Council Office told them all documents submitted to Cabinet are confidential. Further, Executive Council Office staff told NSBI and IEF management that they were not permitted to provide Cabinet submissions or other Cabinet-related documents to our Office even though these documents contained information significant to our audit. NSBI and IEF followed these instructions.
- 2.24 *Solicitor-client documents* – Certain, but not all, communications and documents between a solicitor and his or her client may be privileged.

This means the solicitor cannot be compelled to release those documents. However the client can choose to release the documents. In certain instances, releasing the documents would mean the client had waived the privilege associated with those documents – meaning that the documents are no longer confidential. However, providing documents subject to solicitor-client privilege to the Auditor General does not constitute a waiver of privilege. The Auditor General has the right to examine documents to determine whether they are subject to solicitor-client privilege. If the documents are determined to be privileged, we would maintain their confidentiality and not disclose the contents.

- 2.25 NSBI management claimed our Office does not have the right to examine what they believe to be solicitor-client privileged documents. They informed us they withheld certain documents sent to or from their Department of Justice lawyer as well as certain information in reports related to actual or potential legal matters.
- 2.26 IEF uses the same government lawyer as NSBI. As noted above, IEF management initially informed us no solicitor-client communications had been removed from the files we examined. Subsequently, we found IEF's Department of Justice solicitor had removed solicitor-client communications without management's knowledge before we were permitted to see the files.
- 2.27 *Why we have the right to examine all documents* – The Auditor General Act requires that all documents, whether confidential or not, be provided to the Auditor General and does not contain any exemption for Cabinet submissions or solicitor-client privileged documents. Section 10(1) of the Auditor General Act states: “*Notwithstanding the provisions of any other Act, every officer, clerk or employee of an agency of government shall provide the Auditor General with such information and explanation as the Auditor General requires...*” Further, section 14 notes “*The Auditor General shall have, in the performance of his duties, the same powers, privileges and immunities as a Commissioner appointed under the Public Inquiries Act.*” These sections together give the Auditor General the authority to compel production of information.
- 2.28 *Why we need this information* – When making conclusions, auditors draw audit evidence from a variety of sources including examination of documents, testing transactions and assessment of key controls. We require sufficient, appropriate audit evidence to form an audit conclusion.
- 2.29 Initially, all NSBI assistance requests are reviewed at the Board's Investment Committee. This Committee can approve loans provided the total owed by the applicant as a result of the loan will not exceed \$1.25 million. The Board of Directors approves loans where the total owed by the applicant

will be between \$1.25 million and \$3 million. NSBI regulations require OIC approval for any loans or venture capital where the total amount of the assistance will exceed \$3 million. The Provincial Finance Act requires Minister of Finance approval, or at the Minister's discretion, OIC approval, for any payroll rebate financial obligation. Therefore documents on all these assistance requests are forwarded to Cabinet in the form of an R&R prepared by NSBI. These R&Rs are supposed to include information on the applicant, analysis of alternatives, and the terms and conditions of the proposed assistance, and are a key program control. The R&R is reviewed by Cabinet which determines whether or not to grant the assistance. If Cabinet approves the R&R, an OIC is issued approving the terms and conditions attached to the R&R.

- 2.30 IEF uses a similar process. However in the case of IEF, all assistance is approved by Cabinet. There is no prior approval by any other group. Approval of the R&Rs is the primary internal control for IEF assistance.
- 2.31 *What it means when information is not provided* – When an auditor cannot obtain the information he or she planned to collect, the auditor must determine whether alternative procedures can be applied and, if this is not possible, what impact the lack of information has on the audit opinion or conclusion.
- 2.32 At NSBI, we were able to examine some of the information provided to the Investment Committee of the Board as well as certain supporting documentation in assistance files. However because R&Rs were removed before we were allowed to examine the files, we have no way to know whether the information which went to Cabinet accurately reflected all information gathered on the company, the results of risk analysis and other information. Without this, we cannot know whether Cabinet was provided everything necessary to make a decision. There were no alternative procedures to allow us to gather the audit evidence needed to conclude on this matter.
- 2.33 At IEF, there is no file documentation to support the loan analysis and recommendation. Although files may contain some information received from the business requesting the loan, there was no evidence of IEF management's review and analysis of this information. Similarly, there was no risk analysis indicating whether IEF should proceed with the financial assistance. IEF management informed us this is included in the R&R to Cabinet. Since we were not permitted to examine any of this information, we cannot conclude whether IEF management completed a thorough analysis of companies requesting assistance or whether Cabinet was given everything it needed to make an informed decision. As with NSBI, there were no alternative audit procedures which we could carry out that would give us the audit evidence necessary to conclude on the appropriateness

---

or effectiveness of controls or compliance with legislation, regulations, policies and procedures.

- 2.34 *Who determines what information is required for an audit* – The Auditor General, not the auditee, has the right and the responsibility to determine what information is needed to express an opinion on the audit objectives. At the end of an audit, the Auditor General should be confident that he has reviewed all relevant documentation. When documents are removed from files and the Auditor General is denied information, this is not possible.
- 2.35 When the Auditor General cannot obtain all the information needed during an audit and alternative procedures are not possible, he must decide the impact on the audit. This could involve qualifying an opinion – a situation in which an auditor expresses an opinion on most aspects of an audit but cannot conclude in certain areas. However, when auditors are not provided significant information required to conclude, the only alternative is to deny an audit opinion – the most severe option available to the auditor.
- 2.36 We do not know what impact, if any, the information that was removed from the files would have had on our audit opinion had it been provided. As a result, we must deny an audit opinion on the appropriateness and effectiveness of NSBI’s and IEF’s financial and program controls and their compliance with legislation, regulations and policies related to loans, payroll rebates, venture capital investments and other financial assistance to businesses.
- 2.37 The failure to provide information that this Office requires contravenes the Auditor General Act, constitutes an undue interference with the Auditor General’s mandate and his responsibility to report to the House of Assembly, and represents poor public accountability.
- 2.38 *Responsibility for denial of information* – In the December 2004 Report of the Auditor General, we reported the results of a performance audit of the payroll rebate program at NSBI. Our work on that audit included file testing. We were given full access to NSBI’s files. Management did not review the files before OAG staff examined them. We had full access to all file documents and staff reports, regardless of whether these included communications between NSBI and its Department of Justice solicitor. Since all payroll rebates are approved by Cabinet, files routinely included Cabinet submissions which OAG staff reviewed as part of our fieldwork.
- 2.39 Problems with denial of information are also noted in Chapter Four (Mental Health Services) of this Report. Similar issues were reported in the June 2008 Special Report of the Auditor General – Office of Immigration Economic Stream of the Nova Scotia Nominee Program. After the release of the June 2008 Special Report, the Public Accounts Committee of the

---

House subpoenaed the Premier and several Cabinet Ministers requiring them to produce all documents which this Office had been refused. Shortly afterwards, we were contacted by Executive Council Office and were allowed to view the documents which had been previously denied based on claims they were confidential Cabinet documents or subject to solicitor-client privilege.

- 2.40 Both NSBI and IEF management claimed during the current audit that senior management at Executive Council Office instructed them to withhold information related to Cabinet submissions. As well, NSBI management decided not to provide our staff with certain communications with their solicitor. They told us they believed this would waive solicitor-client privilege. As discussed earlier in this Chapter, IEF management were not aware their Department of Justice solicitor had reviewed files and removed solicitor-client communications prior to providing these files to OAG staff.
- 2.41 We have been informed that the decision to withhold Cabinet submissions and other Cabinet-related documents was made at Executive Council Office by the Deputy to the Premier/Clerk to the Executive Council.
- 2.42 In the absence of direction from Cabinet regarding Cabinet documents, it is within the authority of the Deputy Minister, CEO and Board of Directors to provide those documents. Executive Council Office staff do not have the authority to tell NSBI or IEF whether or not they can provide information to the Auditor General. It is also within the authority of the Deputy Minister, CEO and Board of Directors to provide solicitor-client communications as the privilege belongs to the client, not the solicitor. Accordingly, the responsibility for interference with the audit rests with the Deputy Minister, CEO and Board of Directors. Cabinet, however, has the authority to direct management to provide the information to this Office.

#### Recommendation 2.1

We recommend that Cabinet instruct all departments and agencies of government to comply with all terms of the Auditor General Act and the Public Inquiries Act, cooperate fully with the Office of the Auditor General, and provide the Auditor General with timely and unrestricted access to all information in their possession.

## Areas In Need Of Improvement Identified

---

### Conclusions and summary of observations

Although we were unable to express an opinion on NSBI's and IEF's financial and program controls, we did identify areas in need of improvement. NSBI needs to



---

update policies and procedures to include all processes related to payroll rebates. IEF should prepare written policies and procedures and certain processes need to be strengthened. For instance, IEF and NSBI cannot produce a complete and accurate list of loans in arrears.

---

2.43 Although we were unable to express an opinion on NSBI's and IEF's program and financial controls, and compliance with legislation, regulations and policies related to payroll rebates, loans and other financial assistance through these entities we did find areas where improvements are required.

2.44 *NSBI* – Payroll rebate applications are processed by one of two divisions within NSBI depending upon the type of assistance requested. One of the divisions does not always require applicants to submit all required documentation. Management informed us there are some instances when they believe certain information is not required. If this is the case, policies and procedures should reflect which documents must always be obtained versus those which are optional.

FINANCIAL  
ASSISTANCE  
TO BUSINESSES  
THROUGH  
NSBI AND IEF

#### Recommendation 2.2

Nova Scotia Business Inc. should ensure that all practices for both types of payroll rebates are accurately reflected in documented policies and procedures. Policies and procedures should be followed in the review of information and awarding of payroll rebates.

2.45 *IEF* – We identified a number of deficiencies in IEF's processes to review and approve financial assistance.

- There are no written policies and procedures regarding the receipt, assessment, approval and payment of loans and development assistance.
- Standard loan application forms are not used to obtain information on applicants.
- There is no listing of documents that applicants are required to submit
- Although we were informed a risk assessment is performed, we were unable to determine the adequacy of the analysis because the assessment is not formally documented outside the R&R to Cabinet, which we were not permitted to see.

2.46 IEF may provide assistance to applicants who cannot obtain financing elsewhere. This strengthens the need for documented policies and procedures, formal risk analysis and other steps. Under the current system, applicants may not be evaluated consistently, decisions may be made based upon incomplete information, or assistance could be given to applicants who should be denied assistance.

### Recommendation 2.3

The Department of Economic and Rural Development should formally document its policies and procedures for the Industrial Expansion Fund. These should include establishing standard application forms, developing a checklist of documents which should be considered and performing a formal risk assessment.

2.47 We also reviewed the systems and processes used to monitor the status of loans. While we were unable to express an audit opinion, we did identify areas for improvement.

- IEF has no written policies and procedures for processing loan repayments and monitoring the recipient's ongoing compliance with the terms and conditions contained in the loan agreements.
- IEF has no formal processes to ensure loan repayments are made on time, identify loans in arrears and collect overdue amounts owing.
- We were informed there is an annual review of each IEF loan account. There is no standard format for documenting the results of the annual review and there are no guidelines concerning what information should be documented.

2.48 We are concerned that collection activities may not begin on a timely basis. Year-end reviews may be based upon incomplete information or may not be consistently performed.

### Recommendation 2.4

The Department of Economic and Rural Development should develop formally documented policies and procedures to process loan repayments and for ongoing monitoring of recipients for the Industrial Expansion Fund.

2.49 NSBI and IEF use a common accounting system to record loans and other assistance. This system does not produce a complete and accurate arrears listing. NSBI has to manually review its arrears because the system doesn't include loans with principal in arrears or loans which have only been partially disbursed. Whenever there are manual processes, the risk of errors is increased. We identified minor errors in the manual adjustments to the arrears listing. IEF can only produce an arrears listing if staff consider each file and develop the list manually. At the time we completed our audit, there was no current arrears listing for IEF.



### Recommendation 2.5

The Department of Economic and Rural Development and Nova Scotia Business Inc. should ensure the accounting system used for loans and other assistance at the Industrial Expansion Fund and Nova Scotia Business Inc. can produce a complete and accurate listing of accounts in arrears and an aged accounts receivable listing.

## Measuring and Reporting On Performance

FINANCIAL  
ASSISTANCE  
TO BUSINESSES  
THROUGH  
NSBI AND IEF

### Conclusions and summary of observations

NSBI has systems in place to measure and report on the performance of its financial assistance programs. NSBI developed performance indicators, including annual targets, and includes this information in its annual report. Additionally, NSBI had a consultant review the impact of its programs over the past several years. While the Department of Economic and Rural Development also had a consultant review the impact of the Industrial Expansion Fund, in order to truly measure program effectiveness, the Department must establish targets for IEF's performance indicators and report progress annually.

- 2.50 *Background* – In order to assess the effectiveness of a program, an entity must establish goals and objectives and assess whether these are being met. Typically, goals, objectives and related performance targets are documented in a strategic plan and annual business plans. Corrective action should be taken when performance targets are not met.
- 2.51 *Information required for this section of the audit* – We were provided with all information we requested to complete this section of the audit. As a result, we were able to form a conclusion.
- 2.52 *IEF* – There is no strategic plan or business plan for the Industrial Expansion Fund. The Department of Economic and Rural Development, which has administrative responsibility for IEF, leads the cross-government implementation of Opportunities for Sustainable Prosperity – government's long-term economic growth strategy. IEF provides funding for certain initiatives outlined in the strategy. Although Opportunities for Sustainable Prosperity refers to using IEF to make capital available to businesses, it does not provide specific plans or targets detailing how IEF is to be used.
- 2.53 The Department of Economic and Rural Development contracted with a consulting firm to prepare an economic impact analysis of IEF and its clients over a six-year period ended March 31, 2007 as well as the expected impact by 2012. The report showed a positive return to government from money

invested through IEF – \$5 return to government for every \$1 invested. We did not audit these statistics and express no opinion on their accuracy.

- 2.54 Although the consultant’s report is positive, to truly measure program effectiveness, we believe that the Department of Economic and Rural Development should establish annual targets for IEF and report whether the Fund achieves these targets. While IEF has performance indicators – jobs created or maintained, new annual salary and wages, and annual tax revenue from new jobs – no targets have been established. Similarly, IEF produces an annual report but there is no reporting against targets. Without targets, it is difficult to assess whether the Fund is meeting its goals and objectives.

**Recommendation 2.6**

The Department of Economic and Rural Development should establish annual targets which will help assess the effectiveness of financial assistance through the Industrial Expansion Fund. Once established, results against targets should be reported annually.

- 2.55 *NSBI* – NSBI has a strategic plan covering the period from 2007 to 2012. NSBI has established strategic goals and objectives and performance indicators. The overall performance indicator is total new and retained payroll. All performance indicators have yearly targets and results are published in NSBI’s annual report.
- 2.56 NSBI also contracted with a consulting firm to prepare an economic impact analysis of the impact of NSBI and its clients on Nova Scotia’s economy. The report considered impacts from NSBI’s inception in 2001 to 2007 and included projections through to 2012. The consultant concluded NSBI achieved its short term goal of 18,000 private sector jobs created or retained over the five year period covered by the strategic plan. The consultant also concluded NSBI will be able to achieve its long term goal of returning \$2 to government for every \$1 invested over a ten year period. We did not audit the information in the consultant report and express no opinion on its accuracy.

---

### Response: Executive Council Office

The Executive Council Office appreciates the opportunity to respond to the 2010 Auditor General's Report on Financial Assistance to Businesses Through NSBI and IEF (the Audits).

The Province continues to take the position that it is not a contravention of the Auditor General Act to protect privileged documents by not disclosing them to the Auditor General.

With respect to solicitor-client privileged documents, the Auditor General's power to compel the production of documents is not absolute and is subject to the Province's right to protect solicitor-client privileged information. This protection from disclosure is based on preservation of the solicitor-client relationship which is fundamental to the proper functioning of the legal system.

With respect to Cabinet privileged documents, when the staff of the Auditor General made requests in the Audits for documents that had been submitted to the Executive Council (Cabinet), they were properly referred to the Clerk/Secretary of the Executive Council/Executive Council Office as the holder of these documents. As in the past, the decision in regard to what Cabinet privileged documents would be released to the Auditor General was based on long-standing parliamentary traditions in protecting the confidentiality of Cabinet deliberations and was communicated in writing by the Clerk/Secretary of the Executive Council to the Auditor General. Executive Council Office provided the Auditor General with records of decisions (Orders in Council) and any schedules referred to therein, outlining the terms and conditions of the financial assistance that were the subject of the Audits.

Unlike several other Canadian jurisdictions, there is no provision in the current Auditor General Act to allow for a limited waiver of privileged documents to the Auditor General. A limited waiver means that privileged documents provided to the Auditor General are still considered privileged and cannot be disclosed to third parties. Since there is no limited waiver provision in the Nova Scotia Auditor General Act, disclosure to the Auditor General may be considered a full waiver of privilege and could, therefore, result in the loss of protection against disclosure to third-parties.

There have been ongoing discussions between the Auditor General and government staff regarding the Auditor General's authority to access privileged documents and whether amendments to the Auditor General Act would assist in striking a balance between preservation of solicitor-client and Cabinet privilege and access to documents by the Auditor General for audit purposes. We anticipate that these discussions will continue.

RESPONSE:  
EXECUTIVE  
COUNCIL OFFICE

Response: Department of Economic and Rural Development for Industrial Expansion Fund

***Recommendation 2.3***

***The Department of Economic and Rural Development should formally document its policies and procedures for the Industrial Expansion Fund. These should include establishing standard application forms, developing a checklist of documents which should be considered and performing a formal risk assessment.***

The government is committed to improving the accountability and the transparency of the Industrial Expansion Fund. In this regard, an improved governance mechanism is being put in place which will be communicated in the near future.

The policies and procedures of the operations of the Industrial Expansion Fund will be formally documented.

***Recommendation 2.4***

***The Department of Economic and Rural Development should develop formally documented policies and procedures to process loan repayments and for ongoing monitoring of recipients for the Industrial Expansion Fund.***

The policies and procedures to process loan repayment and for ongoing monitoring of recipients will be formally documented.

***Recommendation 2.5***

***The Department of Economic and Rural Development and Nova Scotia Business Inc. should ensure the accounting system used for loans and other assistance at the Industrial Expansion Fund and Nova Scotia Business Inc. can produce a complete and accurate listing of accounts in arrears and an aged accounts receivable listing.***

Most transactions within the IEF contain business specific terms and conditions for the financial assistance provided. In many cases, the terms and conditions are not standard compared with a residential mortgage, for example. The accounting system currently used is derived from a system designed to account for residential mortgages. Consequently, the system does not produce accurate arrears reports.

A manual system, and good compensating controls, will be formally instituted to compensate for this deficiency in the computer system.

---

**Recommendation 2.6**

***The Department of Economic and Rural Development should establish annual targets which will help assess the effectiveness of financial assistance through the Industrial Expansion Fund. Once established, results against targets should be reported annually.***

Responsibility for the establishment of annual goals and targets rests within the framework of government.

RESPONSE:  
DEPARTMENT  
OF ECONOMIC  
AND RURAL  
DEVELOPMENT

**Response: Nova Scotia Business Inc.**

Thank you for the opportunity to comment on the 2010 Auditor General's Report on Assistance to Business.

Nova Scotia Business Inc. (NSBI) would first like to acknowledge the role and responsibility of the Auditor General, the Office of the Auditor General and the Auditor General Act. It is NSBI's position, as supported by the response of the Executive Council Office, that its actions did comply with the Auditor General Act.

With respect to solicitor-client privileged documents NSBI agrees with the Auditor General that it is within NSBI's authority to provide such documents. NSBI also agrees with the Auditor General that for solicitor-client privileged documents the privilege belongs to NSBI, as the client. NSBI's position, after careful consideration, including the consideration of input from legal counsel, is that solicitor-client privilege may not be maintained if documents are provided to the Auditor General. As a result NSBI has taken the position to not waive privilege by providing such documents.

NSBI referred all requests for Cabinet documents to the Executive Council Office. Cabinet document privilege belongs to Cabinet, not NSBI. NSBI must defer to Executive Council/Executive Council Office on such matters.

***Recommendation 2.2***

***Nova Scotia Business Inc. should ensure that all practices for both types of payroll rebates are accurately reflected in documented policies and procedures. Policies and procedures should be followed in the review of information and awarding of payroll rebates.***

NSBI agrees that the policies and procedures should accurately reflect the practices being followed. The type of assistance and the nature of the project being undertaken impacts the type and nature of the documents required to do a proper analysis. NSBI shall undertake to review the documented policies and procedures.

***Recommendation 2.5***

***The Department of Economic and Rural Development and Nova Scotia Business Inc. should ensure the accounting system used for loans and other assistance at the Industrial Expansion Fund and Nova Scotia Business Inc. can produce a complete and accurate listing of accounts in arrears and an aged accounts receivable listing.***

NSBI agrees a system that does not require a manual review of arrears listings is the ideal solution. NSBI is in the initial stages of assessing options. This assessment

---

must address the reality that most automated systems are built for traditional banking portfolios. The NSBI portfolio and loan characteristics do not match this. NSBI also has approximately 100 accounts, a relatively small number. Since the requirements will be relatively complex and portfolio is small, the assessment must also consider the appropriate use of public funds.

While using the current system NSBI will continue with manual checks and balances. There is a monthly review by administrative and account management staff. Reports are provided to management, the Investment Committee, the Audit Committee and the full Board of Directors. The arrears listing is an important aspect of the detailed portfolio valuation process. This process ensures an accurate financial representation in the financial statements and is subject to yearly audit by the financial statement auditor. We remain confident that the public funds used to finance the portfolio are appropriately managed and being subjected to detailed scrutiny throughout the process.

RESPONSE:  
NOVA SCOTIA  
BUSINESS INC.