



**U.S. SMALL BUSINESS ADMINISTRATION  
OFFICE OF INSPECTOR GENERAL  
WASHINGTON, D.C. 20416**

<b>AUDIT REPORT</b>
<b>Issue Date: July 28, 2003</b>
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Assistant Inspector General for Auditing

**Subject:** Audit of the National Women's Business Council

Attached is a copy of the subject report. The report contains 5 findings with 2 recommendations to the Administrator, 1 recommendation to the General Counsel, 12 recommendations to the Chief Financial Officer, and 9 recommendations to the National Women's Business Council (NWBC) Executive Director.

The findings in this report are the conclusions of the Office of Inspector General's Auditing Division. The recommendations in this report are subject to review and implementation of corrective action by your offices in accordance with existing Agency procedures for audit follow-up and resolution. Please provide your management decision for each recommendation made to you within 30 days from the date of this report using the attached SBA Forms 1824, Recommendation Action Sheet.

If you have any questions about the issues contained in the report, please contact Robert Hultberg, Director, Business Development Programs Group, at (202) 205-7204.

Attachments

**AUDIT OF THE NATIONAL  
WOMEN'S BUSINESS COUNCIL**

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## EXECUTIVE SUMMARY

The National Women's Business Council (NWBC) serves as an independent source of advice and counsel to the President, Congress, U.S. Small Business Administration (SBA) Administrator, and the Interagency Committee on Women's Business Enterprise. NWBC also develops and promotes policy and program initiatives designed to foster women's business enterprise. One such initiative was the development of venture capital forums for women entrepreneurs referred to as Springboard 2000 or Springboard. NWBC is composed of 15 council members as well as an administrative staff. The council members are non-Government employees serving without pay. NWBC's Executive Director and staff members are SBA employees who manage the daily operations and administrative matters of NWBC.

The audit objective was to determine whether NWBC's expenditures and activities were appropriate and complied with laws and regulations. The audit disclosed the following:

1. The former NWBC Executive Director and Program Manager<sup>1</sup> appear to have violated Government ethics regulations by:
  - continuing to use their NWBC positions to engage in matters related to Springboard forums after they developed financial interests in Springboard 2000 Enterprises, Inc. (SBE), an entity created to take over the Springboard forums;
  - engaging in SBE activities, although such action conflicted with their official Government duties; and
  - using Government equipment and time for SBE activities.
2. NWBC inappropriately entered into agreements for services and failed to follow applicable Federal regulations, including:
  - allowing SBE, in which the Executive Director had a financial interest, and three other women's organizations to receive revenues from the Springboard forums without properly executed contracts. SBE and one other organization received \$579,368 in leftover proceeds from the Springboard forums that were unsupported and appeared unjustified. SBE inappropriately received an additional \$63,000 in leftover proceeds from an NWBC hosted and sponsored forum held prior to SBE's incorporation. NWBC received none of the leftover proceeds even though they co-hosted or hosted several of these forums.
  - awarding sole source contracts based on justifications that did not apply to the contracts.

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<sup>1</sup> The terms "Executive Director" and "Program Manager" in this report refer to the Executive Director employed by NWBC from 11/23/93 to 5/25/01 and the Program Manager employed by NWBC from 7/6/99 to 3/23/01. The term "acting Executive Director" refers to the Director assigned to oversee NWBC operations from 6/4/01 to 9/26/02. The term "current Executive Director" refers to the Executive Director who started employment at NWBC on September 23, 2002.

- entering into co-sponsorship-type arrangements and de-facto grants, although it did not have co-sponsorship and grant authority.
- entering into contracts reserved for small businesses with organizations that were not small businesses.
- paying a contractor although the required deliverables were not received.

Additionally, the Executive Director entered into contracts for NWBC, even though she was not a warranted contracting officer.

3. The Executive Director and NWBC staff violated the Federal Travel Regulations and SBA travel policy. Some of these violations include:
  - using NWBC funds for the Executive Director's daughter to accompany her on travel;
  - using Federal funds for NWBC staff to travel to Las Vegas for a weekend staff meeting that was scheduled to coincide with the wedding of a NWBC staff member;
  - using NWBC funds to travel to a board meeting of a company that the Executive Director incorporated;
  - obtaining hotel lodging in Washington, DC, although the staff's official station was in that same city;
  - neglecting to authorize or post-dating authorizations for travel to attend conferences; and
  - approving lodging in excess of Government rates without justification.
4. NWBC entered into a series of questionable transactions that transferred what should have been appropriated funds into the Business Assistance Trust Fund (BATF), an account used to receive funds from non-appropriated sources, e.g., gifts. Though prohibited by appropriations law, some of these funds were later used to pay some of the costs for a reception given in honor of the Executive Director.
5. Other inappropriate activities identified in the audit include:
  - NWBC staff received improperly authorized cash awards.
  - NWBC's Government purchase card was used for unallowable purchases.
  - NWBC's [ b6 ] and her spouse made numerous personal calls on the Government issued cellular phone.

- NWBC staff engaged in unlawful lobbying activities by drafting and distributing lobbying letters for NWBC members with instructions to sign and forward the letters to pre-selected members of Congress.
- An individual not appointed to NWBC was allowed to serve as an NWBC member for a two-year period.
- NWBC did not prepare the required annual reports to the President and Congress in Fiscal Years (FY) 1999 and 2000. After initiation of this audit, the FY 2000 report was filed late.

SBA's insufficient oversight over NWBC allowed many of these inappropriate activities to occur. Some SBA officials who provided contracting and human resources support did not consider NWBC to be a part of SBA and, as a result, processed paperwork signed by the Executive Director without questioning its propriety. Regardless of whether NWBC is part of SBA, SBA officials should have ensured that Federal regulations were upheld. Also, since the Executive Director did not report to anyone at SBA, she operated without adequate oversight.

We made recommendations to the Administrator, General Counsel, Chief Financial Officer, and current NWBC Executive Director, to correct deficiencies identified in the audit, implement new controls to prevent such occurrences from happening in the future, determine whether some expended funds should be recovered, and recover inappropriately expended funds. We recommended the following funds be recovered:

- \$63,000 from SBE representing the proceeds from the Mid-Atlantic forum it inappropriately received;
- \$50,000 from [b7] for not producing required deliverables;
- \$69,389 from appropriate parties for improperly authorized travel reimbursements;
- \$10,000 from the Program Manager for an inappropriate cash award issued as a consulting fee;
- \$3,081 from the Executive Director for the unallowable Business Assistance Trust Fund (BATF) and NWBC purchase card expenditures;
- Excess airtime charges for personal calls on a Government issued cellular phone from NWBC's [b6]

Additionally, we recommended that the current NWBC Executive Director require SBE and [b4] to provide justification for the \$579,368 in unsupported revenues they received from the Springboard forums and determine whether any income in excess of expenses should be recovered.

SBA Management and the current NWBC Executive Director provided responses to the draft report. They generally agreed with the recommendations presented in the report with a few exceptions. The Executive Director, Program Manager, SBE, <sup>b(4)</sup> generally disagreed with the findings and recommendations presented in the draft audit report. The responses are summarized and analyzed at the end of each finding. NWBC, SBA Management, SBE, and the Executive Director and Program Manager's responses are contained in *Appendices C through F*.

## INTRODUCTION

### A. Background

NWBC serves as an independent source of advice and counsel to the President, Congress, the SBA Administrator, and the Interagency Committee on Women's Business Enterprise. Legislation reauthorizing SBA in 1994 expanded NWBC's mandate beyond its purely advisory role to include developing and promoting policy and program initiatives designed to foster women's business enterprise. NWBC is required to file annual reports to the President and Congress detailing its activities, findings, conclusions, and recommendations. NWBC received \$600,000 in appropriated funds during FYs 1999 and 2000 and \$750,000 in FY 2001.

Many SBA officials did not consider NWBC employees to be SBA employees and treated NWBC as a non-SBA entity. During our audit, SBA determined that NWBC's staff are SBA employees subject to all of the same rules and restrictions placed on any SBA employee.

In 1999, NWBC partnered with a non-profit organization, [redacted] b(4) b(7) to develop a venture capital forum for women entrepreneurs, known as "Springboard 2000: Silicon Valley" (Silicon Valley forum). The Silicon Valley forum, held in January 2000 in California, brought together over 300 venture capital investors with 25 women entrepreneurs seeking equity financing for their small businesses. The Executive Director and staff helped plan and organize the Silicon Valley forum. NWBC provided \$55,000 in Federal funds to support this event through three purchase orders. While the Executive Director was employed by the Federal Government, NWBC sponsored four additional forums in Northern Virginia, Boston, New York, and Chicago, and a second forum in Silicon Valley. NWBC provided \$25,000 to support the forum in Northern Virginia, and tried to provide an additional \$50,000 to support the other forums. The latter \$50,000 request was canceled after SBA employees discovered that the award was intended for an organization in which the Executive Director had a financial interest. Although NWBC did not provide direct funds for the last four forums, NWBC was heavily involved in organizing and managing all six Springboard forums, making these Government events. As a result, the Federal Government had a vested interest in the forums.

On September 15, 2000, the Executive Director and two associates incorporated SBE, a non-profit entity, to take over management of the Springboard forums. The Executive Director and two associates served on SBE's board of directors, and the Executive Director also served as SBE's president. The Program Manager served as SBE's registered agent, secretary and treasurer. Both the Executive Director and Program Manager were NWBC employees when SBE was incorporated, and both continued to receive Government salaries from NWBC until the Spring of 2001, when they resigned from Government service and became full-time paid SBE employees.

This audit was initiated after the Office of Inspector General (OIG) received a referral from the Office of General Counsel (OGC) about questionable NWBC expenditures and activities. The referral was also forwarded to the U.S. Senate Committee on Small Business and

Entrepreneurship and to SBA's former Acting Administrator, who expressed interest in having the OIG conduct an audit.

## **B. Objective and Scope**

The audit objective was to determine whether NWBC's expenditures and activities were appropriate and in compliance with law and Government regulations. We reviewed NWBC's operations and expenditures from October 1, 1999 to May 25, 2001, and NWBC's use of SBA's BATF account from 1996 to 2001. We examined (1) purchase orders, (2) authorizations and expenditures for staff and invitational travel, (3) use of a Government-issued credit card and cellular phone, (4) employee cash awards, and (5) performance of statutory reporting requirements to the President and Congress. We reviewed documents including Government e-mails, notes, Springboard forum brochures, NWBC contracts, minutes from NWBC meetings, correspondence, and financial records from SBE and other organizations that co-hosted various Springboard forums with NWBC. We did not confirm the accuracy of the co-hosts' financial records, i.e., general ledgers and profit and loss statements. We interviewed SBA officials in the Office of Procurement and Grants Management (OPGM), Office of Chief Financial Officer (OCFO), OGC, Office of Human Capital Management (OHCM), and Office of the Chief Information Officer (OCIO); current and former NWBC members and staff; and key individuals from other organizations that played a role at Springboard forums.

We performed fieldwork from September 2001 to January 2003. The fieldwork was performed in Washington, DC, and San Francisco, CA. The audit was conducted in accordance with Government Auditing Standards.



## RESULTS OF AUDIT

### Finding 1: Possible Violations of Government Ethics Regulations <sup>2</sup>

The Executive Director and Program Manager appear to have violated ethics regulations by (1) participating personally and substantially in an official capacity in particular matters which had a direct and predictable effect on the financial interest of an organization with which they were affiliated, (2) engaging in outside activities that conflicted with their official duties, and (3) using Government equipment and time for other than authorized purposes. As Federal Government employees, they were bound by the laws of the United States, and the ethics regulations promulgated by the Office of Government Ethics. As NWBC employees, these two individuals were responsible for organizing and managing Springboard forums (the forums), an initiative started and promoted by NWBC. While having this responsibility:

- The Executive Director incorporated SBE to take over the forums from NWBC. She served as SBE's president and board member, and the Program Manager served as SBE's treasurer, secretary, and registered agent.
- SBE reported to the IRS that both of these individuals would be receiving compensation from SBE.
- The Executive Director and Program Manager engaged in SBE activities which appear to have conflicted with their duties as NWBC employees.

As a result, SBE appears to have been given an unfair competitive advantage, ultimately benefiting both individuals financially.

The Executive Director and Program Manager's fiduciary duty to SBE started no later than September 15, 2000, and possibly started earlier than that. Although we have evidence of discussions between the Executive Director and others regarding the creation of an SBE-type organization as far back as October of 1999, the documents reviewed are incomplete and sketchy at best, making it difficult to determine when the potential for a conflict of interest (or the appearance of a conflict of interest) may first have arisen. It is clear, however, that SBE was incorporated by the Executive Director (in her individual capacity) and two associates on September 15, 2000. The Articles of Incorporation list the Executive Director as a director and an incorporator of SBE and the Program Manager as SBE's registered agent. In addition, SBE's October 24, 2000, application to the IRS requesting Non-Profit Status, lists the Executive Director as SBE's president and the Program Manager as SBE's secretary and treasurer. They were to receive an annual compensation of \$100,000 and \$65,000, respectively, for their services as SBE officers. The Executive Director also served on SBE's Board of Directors. During this time, however, both individuals were still employed by NWBC. They appear to have assumed

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<sup>2</sup> Throughout this finding, we state that the Executive Director and Program Manager "appear" to have violated ethics regulations. While in our opinion there was a violation, within SBA only the Designated Agency Ethics Official or his designee can make determinations of illegality. Determinations in these instances were not made because the Executive Director and Program Manager resigned from Government service prior to the start of the audit.

the SBE positions in their individual capacities and not as part of their official duties as NWBC employees.

As officers and/or directors of SBE, the Executive Director and the Program Manager owed a fiduciary duty to SBE. As a result, the financial interests of SBE are imputed to both the Executive Director and the Program Manager for purposes of the conflict of interest statute, Title 18 United States Code (USC) § 208, and the conflict of interest regulation, Title 5 Code of Federal Regulations (CFR) § 2635.402. Consequently, from the time this fiduciary duty arose, the Executive Director and Program Manager were prohibited from participating personally and substantially in any particular matter that would have had a direct and predictable effect on the financial interests of SBE, including rendering advice, making recommendations, and expressing approval or disapproval regarding the decision to give the forum proceeds to SBE. Each person should have disqualified herself from such particular matters unless she first obtained a waiver. Neither the Executive Director nor the Program Manager obtained a waiver.

Though no waiver was obtained, it appears that both the Executive Director and Program Manager continued to participate personally and substantially in particular matters that had a direct and predictable effect on the financial interests of SBE. Examples include:

- The Mid-Atlantic Springboard 2000 forum (Mid-Atlantic forum) was held on July 11-12, 2000, two months before SBE was incorporated. On September 8, 2000, just seven days before SBE was incorporated, the Program Manager advised the organization that managed the bank account for the Mid-Atlantic forum that (1) she would be taking over "the account management and incoming invoices" from the company engaged to manage the forum, and (2) the Executive Director, who in her official capacity had signature authority for the bank account set up for the Mid-Atlantic forum, would now be co-signing all large checks. She also noted that "they" were in the process of incorporating SBE and would be setting up a bank account for SBE within a few months. On November 1, 2000, the Program Manager e-mailed the organization that managed the bank account for the Mid-Atlantic forum from her Government computer and directed them to execute a \$63,000 check payable to SBE and to send it to her at SBE. The \$63,000 represented the proceeds from the Mid-Atlantic forum. The Executive Director co-signed that check.
- On October 25, 2000, the Executive Director sent an e-mail using her Government title and e-mail address to the co-host of the Midwest forum, stating "1. [SBE] will provide [co-host] with one half of the series sponsorship money raised; and 2. [the co-host] will provide [SBE] . . . with a management fee valued at 10% of the total funds raised for the forum through sponsorships."
- On April 9, 2001, the Executive Director attempted to enter into a contract whereby NWBC would provide \$50,000 to SBE. SBA stopped the contract after learning that the Executive Director was SBE's president and a board member and the Program Manager was listed as an SBE employee on SBE's web page. Government employees are prohibited from engaging in an outside activity that conflicts with their official duties. Pursuant to 5 CFR § 2635.802, an outside activity conflicts with an employee's official

duties if it would require the employee's disqualification from matters so central or critical to the performance of his/her official duties that the employee's ability to perform the duties of his/her position would be materially impaired. One of the Executive Director's justifications for creating SBE was that the forums took up so much of the staff's time that NWBC could either work on the forums or on "everything else." By her own admission, after SBE's incorporation the Executive Director spent a large amount of official time working on the forums, and she stated that the Program Manager spent up to 100 percent of her official time working on the forums. It appears from this that the work the Executive Director and the Program Manager performed relating to the forums was central to the performance of their official duties. As such, if they were disqualified from engaging in particular matters relating to the forums as a result of their affiliation with SBE, it would have materially impaired their ability to perform their official duties in violation of 5 CFR § 2635.802.

It appears that the Executive Director and the Program Manager misused their official positions to provide a benefit to SBE. From the records reviewed, it is difficult to discern when they were acting on behalf of NWBC and when they were acting on behalf of SBE. Work they performed for SBE appears to have been accomplished while on official time and using Government equipment in violation of 5 CFR §§ 2635.704 and 2635.705, which prohibit the use of Government equipment and time for other than authorized purposes. Examples include:

- A large number of documents pertaining to SBE were found on the Government computers used by the Executive Director and Program Manager, including SBE's October 10, 2000, solicitation for a \$1 million grant from a private entity to sponsor and manage the Springboard forums, drafts of licensing agreements between SBE and organizations hosting Springboard forums, and e-mails exploring sponsorship arrangements with various organizations.
- From December 10-12, 2000, the Executive Director and Program Manager attended the SBE Board retreat on Government time and the Executive Director used Government funds for her travel. According to the meeting agenda, the purpose of the meeting was to talk about issues related to SBE. (The travel funds are questioned under Finding 3.)

It is the responsibility of each Government employee to ensure that he/she complies with the laws and regulations governing ethical conduct and to seek ethics advice when needed. During the time period covered by this audit, however, there was confusion within SBA as to the status of NWBC staff. Although the Executive Director considered herself to be a Government employee, she did not consider herself to be an SBA employee. As a result of this uncertainty, no determination was made as to whether the Executive Director and/or the Program Manager should have been required to file annual Confidential Financial Disclosure Reports, and no ethics training was provided. If such reports had been required for the fiscal year ending on September 30, 2000, Agency ethics officials would have discovered that the two women were officers and/or directors of SBE and could have taken appropriate action. It would have been prudent for these individuals to seek ethics advice prior to incorporating SBE. In addition, the Executive Director did not report to and was not under the general supervision of any Government official,

so SBA officials were unaware of her activities involving SBE or the potential conflict they presented with her official duties.

As set forth above, it appears that the Executive Director and Program Manager violated a number of ethics regulations. As a result of their actions, SBE appears to have been given an unfair competitive advantage. The Executive Director's and Program Manager's involvement with Springboard forums as part of their official duties provided them and SBE with a level of expertise in the area of venture capital that they would not have had otherwise. This connection with NWBC lent a certain degree of credibility to SBE and allowed it to take advantage of the publicity NWBC had received for its forums and the connections NWBC had made within the venture capital community. SBE also received \$63,000 generated from a forum in which SBE played no role.

### **Recommendations**

We recommend that the Administrator:

- 1A. Designate a senior SBA official to provide general supervision to the NWBC Executive Director pertaining to administrative matters and have the designated official inform:
  - i) both the Council members and Council staff that the Council staff are SBA employees and are subject to the Federal laws and regulations that apply to any employee and SBA's policies, procedures and rules in the conduct of their duties,
  - ii) Management Board members, SBA administrative offices that provide services to the Council, e.g., OPGM, OCFO, OHCM, and employees in these offices, that the expenditure of NWBC funds must follow the same rules as the expenditure of any SBA appropriated funds.
- 1B. Determine, in consultation with the Designated Agency Ethics Official, whether the duties and the responsibilities of the Executive Director and/or Program Manager are such that they should be required to file confidential financial disclosure reports.

We recommend that the current Executive Director:

- 1C. Ensure that all current and future NWBC employees receive Ethics training.

### ***NWBC and SBA Management's Response:***

NWBC and SBA Management generally agreed with the above recommendations. They claimed that they have already implemented *Recommendations 1B and 1C* in the final report, and as such, these two recommendations should be deleted from the report. Other issues relating to the draft report recommendations were:

- SBA Management did not want to issue a supplemental regulation requiring Agency employees to obtain prior approval before seeking outside employment. In the draft report, we had originally recommended that the Designated Agency Ethics Official

(DAEO) finalize the supplemental regulation requiring agency employees to obtain prior approval before seeking outside employment. They stated that the DAEO has the authority to determine when it's "necessary or desirable" for the Agency to require this and that "It was the experience of the DAEO that the benefits gained from processing, reviewing and responding to such requests did not justify the substantial cost in staff time involved."

- SBA officials believe that notification of NWBC status should be disseminated to Management Board members rather than the entire Agency.
- In response to appointing a senior SBA official to monitor NWBC compliance with laws and regulations pertaining to administrative matters, NWBC stated "that oversight should be administrative in nature and should not interfere with the independent, advisory status of the Council."

NWBC's and SBA Management's responses are included as *Appendices C and D*, respectively.

***OIG Evaluation of NWBC and SBA Management's Response:***

The recommendations that NWBC and SBA Management advised have already been implemented, *Recommendations 1B and 1C*, will remain in the audit report, and will be considered implemented when NWBC and SBA Management provide supporting documentation, e.g., a Procedural Notice stating that NWBC's Executive Director and Program Manager are required to file confidential financial disclosure reports. Based on the statements by the current Executive Director and SBA Management that NWBC employees have received Ethics training and future employees will also receive it, we consider *Recommendation 1C* to be implemented. We deleted the recommendation requiring SBA employees to obtain prior approval before seeking outside employment from the final report. We will leave it to the DAEO's discretion as to whether SBA employees must obtain prior approval before seeking outside employment. We revised *Recommendation 1A* to address the notification of NWBC status to Management Board members and employees in affected offices, rather than recommending that all SBA employees be notified. We included employees in affected offices because we believe that it is important to ensure that these employees are officially notified of NWBC's status, and not assume that Management Board members will inform them. Our recommendation concerning a senior SBA official monitoring NWBC compliance with administrative matters remains limited to administrative matters and, if implemented as written, should not interfere with the independent, advisory status of the Council.

***Executive Director and Program Manager's Response:***

In a joint response, the Executive Director and Program Manager stated that ethics regulations appear not to have applied to them since there was a long-standing understanding, shared by the SBA itself, that NWBC employees were not SBA employees and that NWBC was a non-SBA entity. They stated that even if ethics regulations applied, the audit ignored the interrelationship between the work of the Council and the development, and ultimate launch of Springboard Enterprises as a separate non-profit organization. They noted that NWBC's role is

to develop and promote new initiatives, policies, programs, and plans designed to foster women's business enterprise, and described how the Springboard forums fit this role. They claimed that SBE was not given an unfair competitive advantage. They also claimed that their time working on Springboard forums did not conflict with their official duties, but rather, it was very much part of their official duties. Their response is included as *Appendix F*.

***OIG Evaluation of Executive Director and Program Manager's Response:***

While there was confusion as to whether the Executive Director and Program Manager were SBA employees, it was clear that they were Federal Government employees. The Government Ethics Regulations apply to Federal Government employees, not just SBA employees. To avoid any confusion, we revised the report to emphasize that the Executive Director and Program Manager were Federal Government employees. We disagree that their work on the Springboard forums did not conflict with their official duties, and the finding discusses the details of why we believe that. Although we agree that Springboard forums met the mission of NWBC, it was inappropriate for the Executive Director and Program Manager to work for NWBC and SBE at the same time. The Executive Director and Program Manager had a financial interest in SBE, therefore, they were prohibited from continuing to serve in their NWBC roles since they did not give up their financial interest in SBE. We maintain that SBE, an organization developed and controlled by the Executive Director, received unfair competitive advantage as referenced in the finding. Both the Executive Director and Program Manager found gainful employment at SBE when they decided to leave NWBC.

***SBE's Response:***

The response from SBE explained that as plans were being made to incorporate Springboard Enterprises, Council members were kept informed at every turn and that Council members were encouraging and supportive, providing valuable guidance along the way. The response indicated that SBE was not given an unfair competitive advantage. SBE's response is included as *Appendix E*.

***OIG Evaluation of SBE's Response:***

Even if Council members were kept informed, the former NWBC Executive Director and Program Manager were still bound by Ethics regulations. In addition, we disagree that Council members were kept informed at every turn. The minutes show that Council members were informed of important facts after the fact. For example, the notification about spinning off Springboard surfaced on October 4, 2000, after SBE was already incorporated on September 15, 2000.

## Finding 2: NWBC Entered Into Inappropriate Agreements

NWBC inappropriately entered into numerous agreements and arrangements with external private entities that violated the Federal Acquisition Regulations (FAR), appropriations law, the Small Business Act and the CFR. These violations could have been avoided if OPGM ensured that NWBC procurement awards conformed to applicable procurement regulations. OPGM officials believed that NWBC was not part of SBA and, as a result, did not believe that they were required to ensure compliance with applicable procurement regulations when processing records for NWBC. This resulted in the Government providing financial benefits to individuals and organizations without fair and open competition, in violation of Federal laws. Violations we identified are discussed below (See *Appendix A* for specific details):

Informal Agreements and Co-Hosting Arrangements - NWBC co-hosted six Springboard forums with non-profit organizations without entering into contracts detailing each party's responsibilities and how costs and proceeds were to be shared. Since NWBC (1) co-hosted the forums, (2) allowed its name, appropriated funds, and staff resources to be used to promote and conduct the forums; and (3) engaged in fundraising for some of the forums, the forums were Government sponsored events. Under the Miscellaneous Receipts statute, 31 U.S.C. § 3302 (b), money received for the use of the Government must be deposited in the general funds of the Treasury. NWBC needs to ensure compliance with OMB Circular A-122, *Cost Principles for Non-Profit Organizations*, which states that the Federal Government should bear its fair share of costs. Based on records maintained by NWBC and those submitted by SBE and other co-hosts, SBE received \$323,067<sup>3</sup> from five Springboard forums, \$63,000 of which came from the Mid-Atlantic forum (see next paragraph for discussion). [b(4)] received approximately \$319,301<sup>3</sup> from two Springboard forums. NWBC did not receive any proceeds to offset its costs. Since the Springboard forums were NWBC initiatives and there were no signed contracts between NWBC and the non-profit organizations detailing how revenues and expenses were to be shared, the amounts received by various organizations were unsupported and do not appear justified.

### Proceeds Received by Forum Participants

Forum	SBE	[b(4)]	TOTAL
Silicon Valley I & II	\$24,607	\$319,301	\$343,908
Mid-Atlantic	\$63,000		\$63,000
New England	\$25,000		\$25,000
New York	\$168,775		\$168,775
Mid-West	\$41,685		\$41,685
<b>TOTAL</b>	<b>\$323,067</b>	<b>\$319,301</b>	<b>\$642,368</b>

SBE inappropriately received the \$63,000 in leftover proceeds from the Mid-Atlantic forum, an event SBE did not participate in, as the forum was held two months prior to SBE's incorporation. The Executive Director stated she deposited the \$63,000 with SBE as "seed

<sup>3</sup> The leftover proceeds (revenues less claimed expenses) were calculated using unaudited financial records submitted by SBE and [b(4)] and records maintained by NWBC. Overhead costs incurred by these organizations were not included in this calculation since the information was not developed by these organizations.

money" since SBE would continue the forums, and the Government would not have to pay for future forums. These funds, however, should not have been transferred to SBE since they were ultimately Government funds. The Mid-Atlantic forum was a Government-sponsored event; the proceeds from that event were funds collected for the use of the Government, which should have been deposited in the U.S. Treasury's General Funds as "miscellaneous receipts." Forum proceeds came from contributions made by forum sponsors and registration fees collected from forum presenters and attendees. Consideration was given for sponsor contributions, such as advertising for sponsoring organizations, so the contributions do not meet the definition of a gift and could not be accepted, retained, or used by NWBC or its agent pursuant to NWBC's gift authority. Since NWBC lacks authority to co-sponsor events with other entities, the contributions could not be received, retained, or used based on such authority. As funds were collected from outside sources for the use of the Government, they should have been deposited into the Treasury's "miscellaneous receipts" account. NWBC also lacked the authority to collect, retain, or use registration fees; accordingly, the registration fees should properly have been deposited in that Treasury account.

Improper Sole Source Contracts - NWBC awarded 13 contracts totaling \$320,500, using boiler-plate template justifications for sole source contracts. However, the justifications used did not apply to the contracts, and the required documentation demonstrating that it did apply was not prepared and documented in the contracting files. Listed below are the boiler-template justifications used by NWBC for all of its sole source awards, and why they did not apply:

- "The required items or services are a follow-on contract for the continued development or production of a major system or highly specialized item, including major components thereof and the award to any other source would result in substantial duplication of cost that is not expected to be recovered through competition." The items or services were not follow-on contracts. They were not for the continued development or production of a major system or highly specialized item, but rather they were for such things as research projects and sponsorships for conferences.
- "The acceptance of an unsolicited research proposal for supplies or services that demonstrates a unique and innovative concept, the substance of which . . . is not otherwise available to the Government." There was no indication that any proposals were unsolicited and that the supplies or services were unique and innovative and not otherwise available to the Government. Since many of these were research projects, we believe that they could have been conducted by a multitude of research organizations.
- "The item or service is of an unusual and compelling urgency." If this reason is cited, an explanation of how the Agency would be seriously injured by limiting full and open competition is required. The form states "Lack of advance planning does not allow this exception to be used." Any compelling urgency appears to be due to a lack of planning. The Executive Director claimed that the contracts were considered urgent since the contracts had to be awarded within the fiscal year or the funding would expire.

FAR 3.101 requires Government business to be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with



preferential treatment for none. The general rule is to strictly avoid any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. NWBC violated the FAR by steering contracts to selected organizations without valid sole source justifications, and OPGM routinely processed the contracts without reviewing the details or questioning the appropriateness of the justifications.

On one of the improper sole source contracts, NWBC paid an organization \$10,500 to produce the draft of a handbook, though the real purpose of the payment appears to have been to pay off the remaining debt that organization incurred from sponsoring a conference. Although NWBC did not have a legal liability for the debt, NWBC awarded the \$10,500 sole source contract about one year after the conclusion of the conference, after receiving a letter from the conference center requesting payment of \$10,500 for the debt. NWBC officials were unaware of this draft handbook and no one has inquired about it, making it questionable whether such a handbook was necessary to accomplish the mission of the Agency. Since the Executive Director stated that she received the draft and left it at the NWBC when she resigned, we did not make any recommendation related to this contract.

Improper Co-sponsorship-type Arrangements - NWBC entered into three arrangements which the agreement identified as co-sponsorships, totaling \$55,000 in Government funds, although NWBC does not have co-sponsorship authority. The Small Business Act gives SBA authority to co-sponsor training and counseling programs to assist small business, however, this co-sponsorship authority does not extend to NWBC.

Improper Award of Government Funds Through De Facto Grants - NWBC awarded four de facto grants totaling \$110,000 in Government funds although it did not have grant-making authority. These were de facto grants because they fit the definition of a grant under appropriations law, i.e., the award benefited a public purpose rather than providing goods or services to the Government. In some instances, the term "grant" was used in the award documentation. According to the General Accounting Office (GAO), there is no "inherent authority to give away the Government's money or property, either directly or by the release of vested right, to benefit someone other than the Government."

Contracts Not Set Aside for Small Businesses - NWBC awarded 15 contracts totaling \$355,500 to non-profit organizations. Such contracts, which ranged in size from \$10,000 to \$50,000, should have been reserved for small businesses. FAR 19.502-2 requires contracts valued between \$2,500 and \$100,000 to be reserved exclusively for small business concerns unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. Title 13 CFR §121.105 defines small businesses as business entities organized for profit. The contracting officer did not document that these requirements were followed. The Executive Director stated that she did not know that small businesses did not include non-profit organizations.

Executive Director Improperly Obligated the Government - The Executive Director entered into 12 contracts totaling \$295,500 although she was not a warranted contracting officer. FAR 1.601, stipulates that only authorized contracting officers may enter into and sign contracts on behalf of

the Government. Contracting officers in OPGM later ratified these contracts, but they did so without adhering to the requirements of FAR 1.602.3. In order to properly ratify the unauthorized obligations created by the Executive Director, the contracting officer needed to obtain legal counsel's concurrence, but this approval was by-passed.

In addition to the above, NWBC paid \$25,000 in FY 1999 and another \$25,000 in FY 2000 to [b4] although [b4] did not fully meet the contract requirements for each of these two years. Specifically, [b4] failed to provide the required case studies in both years, although the contracts required the studies. In FY 2001, [b4] submitted a third requisition for \$10,000 to continue the same project. [b4] produced a four-page draft and attempted to collect the \$10,000 from NWBC. By this time, the acting Executive Director was appointed to NWBC. She rejected the deliverable because it did not meet the contract terms and recommended that SBA not pay [b4] the final \$10,000. [b4] has subsequently performed additional work and submitted a report related to the FY 2001 contract, which we did not review as part of the audit.

Most of these violations could have been avoided if OPGM ensured that NWBC awards conformed to applicable procurement regulations. In the past, OPGM entered into an informal agreement with NWBC whereby OPGM would process NWBC's awards. OPGM officials' understanding of the agreement was that since NWBC was not part of SBA, OPGM would simply process the contracts without ensuring conformance with applicable procurement regulations. Regardless of whether NWBC was part of SBA, OPGM contracting officers should have ensured that Federal procurement regulations were followed on every procurement they processed. Contracting officers are responsible for ensuring that awards conform to applicable procurement regulations.

SBE was unjustly enriched by receiving \$63,000 in leftover forum proceeds generated prior to its incorporation. The undocumented arrangements whereby forum co-hosts received leftover proceeds provided the co-hosts financial benefits without sufficient accountability and justification. The Government was denied its fair share of the leftover proceeds despite its considerable contributions to their success. As a result of NWBC's inappropriate agreements, legitimate businesses, including women-owned businesses, were excluded from contracting opportunities.

### **Recommendations**

We recommend that the current Executive Director:

- 2A. Require SBE and [b4] to provide justification for receiving \$579,368 from the Silicon Valley I and II, New England, New York and Mid-West forums based on estimated expenses incurred. After reviewing the justification, determine whether any income in excess of expenses should be recovered. If a determination to seek recovery is made, ensure that the Chief Financial Officer recovers the funds from the responsible party or parties.
- 2B. Ensure that NWBC members and staff receive written guidance and training from OGC on appropriations law dealing with the distinctions between contracts, grants, and

cooperative agreements and notification that NWBC does not have grant and co-sponsorship authority.

We recommend that the Chief Financial Officer:

- 2C. Recover \$50,000 from [b(4)] for not producing the required deliverables in FYs 1999 and 2000.
- 2D. Recover \$63,000 from SBE for the Mid-Atlantic forum proceeds it received.

***NWBC and SBA Management's Response:***

NWBC's Executive Director disagreed that NWBC should seek additional information or justifications from third parties who received leftover proceeds from the various Springboard forums, with the exception of SBE. She stated that NWBC does not have the expertise and, if important, the auditors should have requested that information. NWBC's Executive Director also believed that third parties should not be held accountable for the former Executive Director's misdeeds.

SBA Management stated that it was appropriate for OGC rather than OPGM to provide NWBC written guidance and training on appropriations law. SBA Management also stated that it was appropriate for all recommendations related to recovery of funds to be addressed to OGC rather than the CFO and that decisions to seek recovery were not justified until OGC determines that recovery is legally supportable, SBA reviews its legal options and makes a final determination as to how to proceed.

***OIG Evaluation of NWBC and SBA Management's Response:***

NWBC's Executive Director did not provide a legal basis for disagreeing to require co-hosts to provide justification for taking leftover proceeds. NWBC needs to review the justifications to ensure compliance with OMB Circular A-122. Under this Circular, the Federal Government is to bear its fair share of costs when working with non-profit organizations. We revised *Recommendation 2B* to require NWBC members and staff to receive training on appropriations law from OGC rather than OPGM. We believe that the recommendations related to recovery of funds should be addressed to the CFO since the CFO Act requires the CFO to oversee all financial management activities relating to the programs and operations of the Agency. The CFO may request OGC to review the documentation and help ascertain whether recovery is supportable.

***SBE Response:***

SBE stated that Springboard forums were made possible by efforts of private organizations and that the proceeds from the forums were not Government funds. They claimed that although NWBC had a role in organizing and supporting the Springboard forums, the OIG has misunderstood and overstated NWBC's role. They stated that the forums were not a Government program and the Government did not have a proprietary interest in them just

because NWBC collaborated on them. As such, they took "strong exception" to the assumption that when NWBC provided some funding for a forum, that the forum proceeds were "Government funds." SBE also stated that our assertion that the Government has been "denied its fair share" and that the Government is entitled to a certain portion of the forum proceeds is not supported by citation to legal authority and is wholly inconsistent with NWBC's mission. SBE disagreed that it inappropriately received \$63,000 in leftover proceeds from the Mid-Atlantic forum stating this conclusion rests on the misguided premise that Springboard forums were created by and for NWBC, and that NWBC expected or should have received a financial return on its investment in the Springboard forums. They disagreed that SBE was unjustly enriched by receiving this \$63,000, stating "Although . . . [SBE] was incorporated after the Mid-Atlantic Forum, the transition of responsibility for the Springboard forums to a separate non-profit was simply the next stage in the evolution of the Springboard concept." Lastly, they objected to the suggestion that SBE and other co-hosts should be required to justify their retention of certain proceeds from the Springboard forums. They base this claim on the premise that NWBC has no legitimate claim to these funds.

***OIG Evaluation of SBE Response:***

Although private organizations played a role in funding and providing support for the forums, the Executive Director and Program Manager, both NWBC employees, organized and managed the forums for NWBC. We are not implying that NWBC should make a profit from Springboard forums. Rather, if there were proceeds left over from the forums, it should be used to offset costs, including those incurred by NWBC. We stand by our analysis contained in the body of this finding that the \$63,000 in leftover proceeds from the Mid-Atlantic forum are Government funds, and there is no legal basis for their transfer to SBE. We added references to the Miscellaneous Receipts statute and OMB Circular A-122 in the body of the report to provide legal authority for our conclusion and recommendations.

***Executive Director and Program Manager's Response:***

The response from the Executive Director and Program Manager stated that the second finding suggests that NWBC's core business practices violated numerous procurement regulations and that the audit ignored the fact that many of NWBC's business practices – including co-sponsorship arrangements, grants, and sole-sourced contracts – were consistent with Congress' intent to promote new initiatives, policies, programs, and plans designed to foster women's business enterprise. The response also stated that it was arbitrary and unfair to fault NWBC for its contracting practices since OPGM abdicated responsibility over NWBC contracts.

***OIG Evaluation of Executive Director and Program Manager's Response:***

We don't fault NWBC's efforts to develop and promote new initiatives, policies, programs, and plans designed to foster women's business enterprise. Instead, we fault NWBC for not adhering to Federal procurement regulations. NWBC does not have grant and co-sponsorship authority. Also, sole source contracts can only be awarded with valid justifications. We reported the facts, which were NWBC inappropriately entered into agreements and

arrangements. We also stated that these violations could have been avoided if OPGM ensured that NWBC awards conformed to applicable procurement regulations.

[ b(4) ] Responses:

[ b(4) ] claimed that it has justified its expenses and [ b(4) ] provided additional records to show that its Springboard forum expenses exceeded its revenues. [ b(4) ] also claimed that it met all the contract requirements related to the FY 1999 and FY 2000 contracts, therefore it should not be required to repay NWBC \$50,000.

OIG Evaluation of [ b(4) ] Response:

We re-analyzed information submitted by [ b(4) ] and analyzed the new records submitted by [ b(4) ] related to the costs associated with the activities to carry out the New England and Mid-West Springboard forums, respectively. We determined that their expenses, including overhead, exceeded their revenues. As a result, we deleted the audit finding and recommendation related to [ b(4) ] as it relates to Springboard forums. We still maintain that [ b(4) ] did not meet all the contract requirements related to the FY 1999 and FY 2000 contracts. Specifically, [ b(4) ] failed to provide the required case studies for these two years, and as a result, they should be required to reimburse NWBC.

### **Finding 3: Violations of Federal Travel Regulations and SBA Travel Policy**

NWBC officials violated the Federal Travel Regulations (FTR), SBA travel policy and OMB Circular A-123. Inappropriate vouchers were paid because OCFO officials provided insufficient oversight of NWBC's travel expenses. The Executive Director was allowed to self-authorize her travel without oversight, which contributed to some of the travel abuses. As a result, the Government paid \$70,767.47 [\$1,378.35 (see below under *Daughter's Personal Travel*) + \$69,389.12 (see *Travel Expenses to be Recovered in Appendix B*)] in inappropriate and unallowable travel expenses.<sup>4</sup>

The Executive Director improperly approved or authorized six trips (she approved her own travel and had her subordinate sign as the authorizing official) that were unrelated to accomplishing the mission of the Government. FTR §301-70.1 and §301-71.101 limits the authorization and payment of travel to the amount that is necessary to accomplish the mission of the Government. Also, SBA travel policy (SOP 20 11 4, *Travel*) permits only those travel expenses that are necessary to accomplish the purposes of the Agency. See below for improper authorizations for travel that did not comply with the FTR.

Daughter's Personal Travel - The Executive Director improperly authorized invitational travel for her daughter to accompany her on trips to Paris and San Francisco at Government expense and using Government rates. The total cost to the Government for her daughter's travel was \$1,378.35. The Executive Director's daughter did not have a role in helping NWBC accomplish the mission of NWBC on these two trips. Besides being unrelated to accomplishing the mission of the Agency, the Executive Director did not have authority to authorize foreign travel (see Improper Authorization for Foreign Travel below.) As a result of the OIG questioning these trips, SBA withheld \$1,378.35 from the Executive Director's final paycheck.

Weekend Staff Meeting Held in Las Vegas to Coincide with a Wedding - Three NWBC staff members traveled to Las Vegas, Nevada, to attend a Saturday staff meeting that was purposely planned to coincide with the wedding of a fourth NWBC staff member. This weekend trip cost the Government \$3,000.04. The Federal Managers' Financial Integrity Act of 1982 (FMFIA) and OMB Circular A-123, "Management Accountability and Control," require appropriate measures to ensure that Government funds are safeguarded against such things as waste and mismanagement. NWBC wasted and mismanaged Government funds by having a staff meeting in Las Vegas when the staff's official duty station was in Washington, D.C. This was the only instance where NWBC held a weekend staff meeting as well as the only instance where one was held outside its Washington, D.C. office location. The staff meeting could have been held without traveling to Las Vegas, making the travel unnecessary in accomplishing NWBC's mission.

<sup>4</sup> Although some Government-paid trips violated more than one Federal travel regulation, we are only questioning expenses for those trips once. As such, amounts discussed in the various sections under this finding total more than \$70,767.47.

**SBE Staff Travel** - The Executive Director used \$517.36 in Government funds to attend a "Springboard Enterprise Board Retreat" in Boston. According to the retreat agenda, the purpose of the retreat was to discuss issues related to SBE. Discussing SBE related matters is not official business related to accomplishing the purpose of SBA or NWBC.

NWBC also incurred the following unallowable travel expenses:

**Inappropriate Use of Reduced Government Airfares** - In 15 instances, the Executive Director improperly authorized invitational travel letters for personal travel totaling \$7,297.26. The travelers reimbursed NWBC for the trips, and NWBC deposited them into the BATF (see finding 4). FTR § 301-10.110 prohibits using Government airfares for personal travel.

**Official Station Lodging Expense** - On five occasions, NWBC paid a total of \$5,653.17 for staff lodging at Washington, DC hotels although the staff's official station was in that same city. FTR § 301-11.1 allows payment of per diem or actual expense only when one performs official travel away from one's official station or other areas defined by one's Agency. FTR § 300-3.1 defines the geographic limits of the official station as the corporate limits of the city or town where stationed. On one of these occasions, the Executive Director obtained two nights lodging in a luxury suite in Washington, DC, costing \$2,931.20. In addition to this being a non-travel situation within the geographic limits of one's official station, this charge exceeded the \$115/night maximum lodging rate set forth in the FTR in Washington, DC by \$1,350.60 per night.

**Unallowable Conference Travel** - One hundred travel authorizations to attend conferences, totaling \$68,755.94, were either unsigned by an authorizing official or authorized after completion of the travel. FTR §§ 301-2.1 and 2.5 stipulate that ". . . written or electronic advance authorization is required . . ." to incur travel expenses related to attendance at a conference.

**Lodging Expense in Excess of Per Diem** - From January 1999 through April 2001, NWBC staff incurred 33 lodging expenses that exceeded the maximum amount allowed by the Government by \$12,163.33. According to the FTR and SBA policy, lodging expenses should be within Government maximum lodging allowances as published by the U.S. General Services Administration (for domestic travel) and the U.S. State Department (for foreign travel) unless authorization is obtained to pay actual expenses. No explanations were documented in the files to justify these overcharges or to pay actual expenses.

**Lack of Vouchers for Invitational Travel** - NWBC paid for invitational travel but did not require the travelers to submit travel vouchers and receipts to support the travel. The invitational letter, without any further documentation, served as both the travel authorization and the voucher for claimed expenses. According to the FTR §§301-52.2 to 52.5 and SOP 20 11 4, a voucher is required even when a Government Travel System (GTS) account is used and there is no claim for reimbursement by the traveler. NWBC should have assisted travelers in preparing their vouchers as required. Moreover, the SOP requires that lodging receipts be submitted as supporting documentation. Without the voucher and supporting documentation, it is impossible

to get a breakdown of expenses incurred or to verify that the Government invitational travel actually took place on the date(s) specified. Due to deficiencies in SBA's and NWBC's accounting records for NWBC travel, we could not determine the total dollar amount of NWBC paid invitational travel that lacked supporting documentation and vouchers.

**Improper Authorizations for Foreign Travel** - The Executive Director traveled to three foreign countries and issued invitational travel to her daughter and an NWBC contract employee for their travel to France. None of these trips were authorized by the Administrator, Deputy Administrator, or the Associate Deputy Administrator for Management and Administration, though required by SOP 20 11 4, *Travel*. Instead, the Executive Director's subordinate signed the travel authorizations for the Executive Director's foreign travel, and the Executive Director authorized invitational travel for her daughter and an NWBC contract employee. The Executive Director's trips cost the Government \$7,271.15, and the travel costs of her daughter and the NWBC contract employee amounted to an additional \$2,508.16. SBA withheld the travel costs for the Executive Director's daughter's travel to France from the Executive Director's final paycheck (see Daughter's Personal Travel above). Since the Executive Director was unaware that NWBC staff were SBA employees, we did not question these travel costs based solely on lack of authorization by the Administrator, Deputy Administrator, or the Associate Deputy Administrator for Management and Administration. OGC, however, should determine whether the travelers are liable under these circumstances.

Some of these travel violations could have been avoided if OCFO officials provided adequate oversight over NWBC's travel expenses. Also, the Executive Director self-authorized her travel without oversight, which contributed to some of the above travel abuses. NWBC paid \$70,767.47 in inappropriate and unallowable travel expenses.

### **Recommendations**

We recommend that the current Executive Director:

- 3A. Take the necessary steps to ensure that all NWBC employees are knowledgeable about the relevant travel regulations.
- 3B. Ensure that travel vouchers are completed and supporting documentation maintained to support all future invitational travel.

We recommend that the General Counsel:

- 3C. Determine whether travelers are liable for the cost of their foreign travel if the authorization violates SBA's Travel SOP, but SBA and the travelers mistakenly believed that the travelers did not have to comply with the Travel SOP.

We recommend that the Chief Financial Officer:

- 3D. Recover \$69,389.12 from appropriate parties for improperly authorized travel that has not yet been recovered.



- 3E. Recover from the responsible individual(s) any funds due the Government, based on the determination the General Counsel makes in implementing Recommendation 3C.
- 3F. Incorporate provisions in SBA's travel SOP requiring the current Executive Director to obtain prior written authorization for her travels from the person whom SBA will identify in response to recommendation 1A.

***NWBC and SBA Management's Response:***

NWBC and SBA Management generally agreed with the recommendations under *Finding 3*. NWBC's Executive Director stated that NWBC already implemented *Recommendations 3A* and *3B* and as such, believed these recommendations should not be included in the final report. SBA Management assumed that OIG's reference to "SBA regulations" in *Recommendation 3C* referred to the FTR since SBA does not have its own travel regulations. Management also restated that recommendations related to recovery of funds should be addressed to OGC rather than the CFO.

***OIG Evaluation of NWBC and SBA Management's Response:***

We revised *Recommendation 3C* to read "SBA's Travel SOP" rather than "SBA regulations." The recommendations that Management claimed have already been implemented will remain in the audit report, and will be considered implemented when Management provides supporting documentation. We believe that the recommendations related to recovery of funds should be addressed to the CFO since the CFO Act requires the CFO to oversee all financial management activities relating to the programs and operations of the Agency.

***Executive Director and Program Manager's Response:***

The Executive Director and Program Manager claimed that they know of no legal basis for the OIG to recommend recovering travel reimbursements that have already been processed and paid by SBA. They believe that it is "grossly unfair" for the Government to try to charge them, years after the fact, for incurred travel expenses that advanced NWBC's mission. They stated that it is not clear whether the FTR applies to NWBC, citing the definition of "Executive Agency" contained in 5 U.S.C. §101. They do not believe that they should be required to reimburse NWBC based on SBA travel policy, as distinct from the FTR, since both NWBC and SBA treated NWBC as a non-SBA entity. They believe that the Executive Director's daughter's Government paid travels should not be included in the report since the Executive Director promptly corrected this matter and made full payment to SBA, i.e., the funds were withheld from the Executive Director's final Government paycheck. They stated that the OIG disapproval of the Las Vegas trip ignored the fact that extensive Council business was conducted on that trip, and as such, it was unfair to conclude NWBC "wasted and mismanaged Government funds." They also noted that the OIG unfairly characterized the trip to Massachusetts by placing undue emphasis on the written agenda and disregarding the Executive Director's oral accounting of what transpired at the meeting. They claimed that they were not liable for the overages related to lodging expenses in excess of per diem since they were simply complying with the travel

preferences of the council members. They also objected to the recommendation to recover funds based on post-dated or unauthorized conference travel since they believed these were simply paperwork errors. They stated that they relied on NWBC's [ b(6) ] to know the travel regulations and to submit the appropriate paperwork. They claimed that the [ b(6) ] made paperwork errors. They also faulted SBA for continuing to pay for NWBC's travels over time without questioning its practices.

***OIG Evaluation of Executive Director and Program Manager's Response:***

We based our recommendation to seek recovery using the FTR as our criteria, not SBA's Travel SOP. When we find inappropriate travel that violates the FTR, we report those instances and require the Agency to take action to recover the funds they inappropriately paid the traveler. In questioning whether the FTR applies to NWBC, these individuals cited an incorrect reference, 5 U.S.C. § 101, to define who is covered by the FTR, rather than 5 U.S.C. § 105, which is cited in the FTR. According to 5 U.S.C. § 105, an Executive agency includes an Executive department as well as an independent establishment, which would include NWBC whether or not they were part of SBA. We cite NWBC paying for the Executive Director's daughter's travel since these payments are included within the audit scope and SBA withheld payment from the Executive Director's final paycheck for these expenses as a result of this audit. We did not ignore the Executive Director's assertion that NWBC staff conducted Council business in Las Vegas. We concluded NWBC wasted and mismanaged Government funds by paying for staff that worked in the same Washington, DC suite to fly from Washington to Las Vegas and back again for a Saturday staff meeting, planned to coincide with a co-worker's wedding. The meeting should have been held in Washington, like all the other staff meetings that the office held. As for the Massachusetts trip, we used the meeting agenda, which helped us to understand why these two individuals took the trip. The document clearly showed that the intended purpose of the trip was to attend SBE's Board meeting. We consider it a more accurate description of what was supposed to be covered at the time the reservation was made.

We maintain that the Executive Director and Program Manager are responsible for overages in per diem lodging, as they did not comply with the FTR. While lodging in excess of per diem can be authorized, it was not. Council Members cannot dictate or force Government employees to violate the FTR. The FTR is clear in stating that all conference travel needs to be pre-authorized in advance. Although [ b(6) ] helped prepare the paperwork and submitted it for payment, the traveler is required to ensure all travel expenses are prudent and necessary and submit the expenses in the form of a proper claim.

#### **Finding 4: Improper Use of NWBC's Business Assistance Trust Fund**

NWBC entered into a series of questionable transactions that transferred what should have been appropriated funds into the Business Assistance Trust Fund (BATF), an account used to receive funds from non-appropriated sources, e.g., gifts. Some of these funds were later used to pay for an expense prohibited by appropriations law. This occurred because SBA's internal controls to detect and prevent such abuse were lacking or ineffective. As a result, almost \$1,700 in appropriated funds were used for a prohibited purpose.

Inappropriate Deposit of Funds into the BATF - When travelers reimbursed NWBC \$7,297.26 for personal travel that was paid for by NWBC (see *Inappropriate Use of Reduced Government Airfares* in Finding 3), NWBC deposited the checks into the BATF where some of it was later used to pay for catering expenses at a reception in honor of the Executive Director (see below). The Executive Director issued the invitational travel letters for the personal travel and approved the practice of reimbursing the BATF. NWBC should not have used appropriated funds to pay for personal travel and should not have deposited repayments of appropriated funds into the BATF. NWBC used inappropriate travel transactions to convert appropriated funds into non-appropriated funds where it was reimbursed back into the BATF.

Unallowable reception for the Executive Director - NWBC collected and deposited \$4,700 into the BATF to hold a reception in honor of the Executive Director while she was still serving in her official position as Executive Director. However, the cost of this event totaled \$6,382.30, and NWBC used BATF funds to pay the entire cost of the reception, requiring the BATF to cover the \$1,682.30 deficit. The Executive Director was responsible for depositing travel reimbursements into the BATF and for authorizing expenses from this account. Through travel reimbursement transactions (described above), appropriated funds were deposited into the BATF where they were used for an unallowable expenditure. Generally, appropriated funds are available to carry out the mission of an Agency and, absent specific authority, not for such things as private receptions. NWBC does not have specific authority to use appropriated funds to hold private receptions.

The misuse of the BATF occurred because SBA's internal controls to detect and prevent such abuse were lacking or ineffective. OCFO officials processed all the BATF transactions that were approved by the Executive Director without questioning any transactions. Also, SBA did not provide any official guidance about the proper use of the BATF. SOP 20 14 (Draft), *Funds Received from Non-Appropriated Sources*, which could provide the necessary guidance, has been in draft for several years. The Executive Director stated that she had little or no training on the proper use of the BATF.

#### **Recommendations**

We recommend that the Chief Financial Officer:

- 4A. Transfer the remaining balance of \$2,375.83 from NWBC's BATF account to the appropriate SBA travel account.

- 4B. Recover \$1,682.30 from the Executive Director to cover the shortfall in the BATF resulting from the reception held in her honor.
- 4C. Finalize SOP 20 14, *Funds Received from Non-appropriated Sources*, to provide clear guidance on the proper use of the BATF.
- 4D. Provide training and written guidance to OCFO employee(s) to ensure that BATF transactions are reviewed (both deposits and expenses) for propriety and that any suspicious transactions are reported to his/her supervisor for proper action.

***SBA Management's Response:***

SBA Management generally agreed with the recommendations under *Finding 4*, except that they believed that all recoveries should be addressed to OGC rather than the CFO and that recoveries are not justified until OGC reviews the information. (See Management's response and OIG evaluation under *Finding 2*.)

***OIG Evaluation of SBA Management's Response:***

Management was receptive to the audit finding and recommendations. See *OIG Evaluation of NWBC and SBA Management's Response* under *Finding 2* for discussion on recovery issues.

***Executive Director and Program Manager's Response:***

The response from the Executive Director and Program Manager stated that we double-counted the amount of BATF funds that the Executive Director should remit to SBA and that there is no allegation of misuse of the BATF other than \$1,682.30 of the funds used for the farewell reception. They also claimed that there is no justification for requiring the Executive Director to be personally liable for travel expenses incurred by others and for expenses incurred for her reception. They stated that the Executive Director did not receive training concerning use of the BATF and SBA provided no oversight. Lastly, they claimed that the Executive Director delegated management of the BATF to her subordinates and she believed that the BATF could be used for catering.

***OIG Evaluation of Executive Director and Program Manager's Response:***

We revised the finding and *Recommendation 4B* to correct the double counting, limit the recovery of funds to the farewell reception, and add the Executive Director's statement that she received little or no training on the proper use of the BATF. Although she may not have been familiar with details of BATF operation, she is liable for signing inappropriate Government travel authorizations for personal travel, receiving reimbursement for this personal travel, and allowing it to be deposited into the BATF and used for other purposes. Whether or not she thought catering was appropriate use of the BATF, she is ultimately responsible for misusing the Government's BATF for personal purposes. The report does not allege that the Executive Director misused all of the funds in question. The only OIG conclusion of misuse concerns the funds used to pay for the reception in excess of those funds collected and deposited in the BATF by NWBC.

## **Finding 5: Other Inappropriate Activities**

The Executive Director did not follow and did not ensure that NWBC staff followed applicable laws and Government-wide and SBA regulations. SBA did not ensure NWBC complied with the laws and regulations. Specifically, (1) NWBC employees received cash awards that were either not approved or improperly approved, (2) NWBC used the NWBC purchase card for inappropriate purchases, (3) NWBC's [ b6 ] and her spouse made numerous personal calls on a Government issued cellular phone, (4) an NWBC staff member drafted and distributed lobbying letters, (5) an individual served on NWBC without appointment, and (6) NWBC failed to submit one required annual report to the President and Congress and submitted a second one late. As a result, inappropriate payments were made, and the President and Congress received untimely or no information about NWBC's activities.

**Improper Cash Awards** – The Program Manager improperly received a \$10,000 cash award in the form of a consulting fee. This award was processed outside of the Government's accounting system, thus bypassing Government controls. Additionally, the Executive Director and other NWBC staff received cash awards totaling \$11,400, processed using SBA forms, but not conforming to SBA procedures. NWBC did not have the authority to independently provide cash awards to its employees since it did not have its own awards program. If awarded through the SBA Employee Recognition Program, these awards would still have been inappropriate, since they were not approved by the required approving officials. SBA officials were not able to raise questions about the Program Manager's \$10,000 award since it was not processed through SBA. The OHCM processed the remaining awards to the Executive Director and NWBC staff without ensuring proper approval was obtained because they believed that NWBC was not part of SBA. Regardless of whether NWBC members are bound by SBA procedures, OHCM staff processing cash awards should have ensured that Government-wide regulations were followed.

The Program Manager improperly received \$10,000 from the Springboard Mid-Atlantic forum proceeds. The payment was made based on an invoice for "consulting fees" with a notation that the \$10,000 check be made payable to the Program Manager. According to the Executive Director, representatives from other organizations who also supported the Springboard Mid-Atlantic decided to give the Program Manager the funds to thank her for a job well done. She stated that the Program Manager worked extra hours on evenings and weekends to make the forum a success. Since the forum proceeds were Government funds, this consulting fee was actually a performance award to a Government employee. The Administrator did not approve the award, as required for an award of this magnitude under SBA's award program. This award also was not documented in the Program Manager's official personnel folder, as it should have been according to Title 5 CFR.

The Executive Director determined her own special act or service awards (Cash Awards) and received one improperly approved and two unapproved awards totaling \$5,900. These awards were for \$2,500, \$2,200 and \$1,200. The NWBC Chairwoman, who was not a Government employee, signed the *Recommendation for Cash Award Form* (SBA Form 595) as the Executive Director's supervisor for two of the awards, and as the approving official for the third award. The Executive Director and the NWBC Chairwoman signed the justification for two of the awards.

Three cash awards to NWBC staff for \$1,000 each, and another for \$2,500, should not have been approved by the Executive Director. NWBC does not have its own awards program separate from SBA's Employee Recognition Program and, SBA's program requires awards "up to and including \$3,500" to be approved by the Associate Deputy Administrator for Management and Administration.

Title 5 CFR, Part 451, requires agencies to develop an award program(s) for cash awards and to file award documents in the recipient's official personnel folder. If the above awards had been considered part of the SBA awards program, they would have had to comply with SBA's SOP 34 50, *Employee Recognition Program*, and the following officials would have had to approve them:

AWARD AMOUNT	REQUIRED APPROVING OFFICIAL
\$10,000	Administrator.
\$2,500	Associate Deputy Administrator for Management and Administration.
\$2,200	Associate Deputy Administrator for Management and Administration.
\$1,200	Management Board member.
\$1,000	Management Board member.

**Inappropriate Use of Purchase Card** - NWBC used its credit card to purchase \$1,634.16 in inappropriate gifts and other expenditures that did not go towards fulfilling NWBC's mission. The purchase card, which was issued to an NWBC staff member, was used to purchase (1) gifts of two Palm hand-held organizers and accessories (\$955.57) and a Mont Blanc pen (\$161.94); (2) monthly water service for NWBC's office (\$416.90); and (3) home Internet service for a NWBC staff member (\$99.75). The Executive Director was the approving official for this purchase card. The NWBC staff member stated that the Executive Director approved all credit card purchases. The Executive Director stated she would have and could have approved the Mont Blanc pen, and believed it was appropriate for her office to have the water service. She stated that she had no recollection of the Palm purchases, and could not recall the details concerning the home Internet service. Both the office water service and home Internet service were subsequently cancelled by the acting Executive Director.

According to 68 Comp. Gen. 226 (1989), appropriated funds may not be used for personal gifts. Also, the GAO Redbook, Volume I, Chapter 1B states that Congress appropriates funds and prescribes the conditions governing the use of the funds. The funds appropriated to SBA and earmarked for NWBC are to be used to carry out NWBC's mission. These purchases were not necessary to carry out NWBC's mission.

Since the Executive Director was responsible for approving and reviewing the purchases, we believe she is responsible for all the unallowable purchases, not just those she acknowledged being aware of. When the NWBC Government purchase card was used, the Executive Director did not use or sign the SBA Form 2, *Requisition for Supplies, Services and Federal Assistance*, to approve credit card expenditures, though required by SOP 12 1, *Government Credit Cards*.

She did, however, sign Form 2s for other procurements, showing that she was aware of its use for purchases, and was attempting to follow SBA procurement procedures in some instances. The Executive Director acknowledged that she did not review the credit card statements and reconcile the account, though the Treasury Financial Manual, Volume 1, Part 4, Chapter 4500 requires her, as the approving official, to review the statement at the end of each monthly billing cycle.

**Inappropriate Use of Government Cellular Phone** - NWBC's [ b(6) ] made numerous personal calls on a Government issued cellular phone, and acknowledged that her husband also made personal calls on that phone. Such activity violates 5 CFR, § 2635.704, which states that an employee shall not use Government property, or allow its use, for other than authorized purposes. NWBC did not ensure that the cellular phone was being used for official purposes, despite the fact that OCIO officials stated that they verbally notified NWBC about the overcharges.

Based on the December 2000 billing statement for the phone, 53 percent of the 304 calls made that month were either made weekdays after business hours, i.e., between 6:00 p.m. and 6:00 a.m. (70 calls), or on weekends and holidays (90 calls). When questioned, the [ b(6) ] did not object to auditors assuming these were personal calls. For the period July 2000 through May 2001, SBA paid \$718.85 in excess airtime charges for this cellular phone. At least some of the excess airtime charges were due to personal calls.

After auditors notified the acting Executive Director of the cellular phone abuse, she recovered \$1,073.25 in unauthorized charges from the [ b(6) ] for all usage after May, 2001. The acting Executive Director also discontinued the phone service.

**Employee Drafted Lobbying Letters** - An NWBC staff member drafted and distributed lobbying letters for NWBC members with instructions to sign and forward the letters to pre-selected members of Congress. In the letter, NWBC lobbied Congress to increase the funding for NWBC. Title 18 USC § 1913 prohibits the use of appropriated funds for lobbying. Since NWBC staff are Government employees, they are prohibited from using Government time, computers, and supplies to engage in such lobbying activities.

**Individual Served on NWBC without Appointment** - NWBC identified an individual as a NWBC member, even though this individual was not appointed to serve as a NWBC member, and it allowed her to attend NWBC meetings and other functions at Government expense. This individual was identified as a NWBC member for approximately two years until the acting Executive Director clarified the NWBC's makeup in September 2001. According to Title 15 USC § 7107, only the SBA Administrator can appoint NWBC members. The individual in question was not appointed by the SBA Administrator to be a NWBC member. This individual's organization received several sole source contracts from NWBC despite failing to produce the required deliverables. Also, this individual incorporated SBE with the Executive Director to take over the Springboard forums from NWBC. NWBC members and staff were unfamiliar with the legal requirements for members to serve.

**Required Reports not Submitted or Submitted Late** - NWBC failed to submit its annual report to the President and Congress for FY 1999, and it submitted the FY 2000 report after the statutorily mandated deadline. The purpose of the annual report is to inform the President and Congress about the activities of NWBC and how it is using its appropriated funds. It is also the means by which NWBC provides its recommendations. The reports are required within 90 days after the end of each fiscal year.

The acting Executive Director prepared and submitted the FY 2000 report when she learned that the Executive Director had failed to do so. Although the FY 2000 report was due by December 29, 2000, and the Executive Director resigned on May 25, 2001, the Executive Director neglected to finalize and submit the report.

Since NWBC did not file the FY 1999 report and filed the FY 2000 report late, the President and Congress received untimely or no information about NWBC's activities. NWBC's recommendations were untimely or lacking despite the organization receiving a total of \$1.2 million in appropriated funds over these two years. Although there is no clear reason why the reports were not submitted, the Executive Director and Program Manager appeared to have expended their efforts working on Springboard forums and neglecting other NWBC work, such as producing these reports.

**Recommendations:**

We recommend that the Chief Financial Officer:

- 5A. Recover \$10,000 from the Program Manager for the improper cash award issued as a "consulting fee."
- 5B. Recover \$1,398.95 from the Executive Director for unallowable charges made on the Government-issued purchase card.
- 5C. Recover from [ b(6) ] all non-recovered excess airtime charges billed to her Government cellular phone that are due to personal calls.

We recommend that the current Executive Director:

- 5D. Determine whether SBA should seek recovery for the awards made to the Executive Director and NWBC staff that were improperly approved or not approved. If a determination is made that SBA should seek recovery, ensure that the Chief Financial Officer recovers the funds from the responsible party or parties.
- 5E. Review Title 18 USC §1913 with NWBC members and staff to ensure that everyone understands the lobbying restrictions imposed on Government employees.
- 5F. Review Title 15 USC §7107 with NWBC members and staff to ensure that everyone understands the requirements of NWBC's makeup and how members are to be appointed.



5G. Implement controls to ensure that statutorily required reports are prepared and submitted to appropriate officials in a timely manner.

***NWBC and SBA Management's Response:***

NWBC and SBA Management generally agreed with the recommendations contained in this finding. NWBC's current Executive Director claimed that *Recommendations 5E* and *5F* have already been addressed and could be removed from the final report. SBA Management pointed out that all recovery-related recommendations should be addressed to OGC rather than the CFO and that recoveries are not justified until OGC reviews the information. (See Management's response and OIG evaluation under *Finding 2*). The NWBC Executive Director noted that NWBC also failed to submit its annual report to the President and Congress for FYs 1995, 1996 and 1997.

***OIG Evaluation of NWBC and SBA Management's Response:***

The recommendations that the current NWBC Executive Director claimed have already been implemented will remain in the audit report, and it will be considered implemented when Management provides supporting documentation.

***Executive Director and Program Manager's Response:***

The Executive Director and Program Manager stated it is unfair to hold the Executive Director responsible for purchase card charges that cannot be attributed directly to her. The Executive Director relied on NWBC's <sup>b(6)</sup> to ensure that applicable regulations were followed. They questioned that the charges constituted unallowable "gifts" and "other expenditures that did not go towards fulfilling NWBC's mission," requesting evidence that the Executive Director deliberately used the purchase card for improper purchases. They claimed that the \$10,000 provided to the Program Manager was money given in a good faith gesture by private parties to reward her for her work and that it was not a Government performance award. They reiterated that the funds were not Government funds. Lastly, they claimed that the Executive Director's cash awards should not be questioned since NWBC and SBA believed that NWBC was not part of SBA.

***OIG Evaluation of Executive Director and Program Manager's Response:***

We do not have to prove that purchase card charges are directly attributable to the Executive Director or that she deliberately used the purchase card for improper purchases in order to hold her accountable for inappropriate credit card usage. According to SOP 12 1, *Government Credit Cards* and Treasury Financial Manual, Volume 1, Part 4, Chapter 4500, the Executive Director, as approving official, was responsible for (1) approving all transactions before purchases were made; (2) reviewing the credit card statements to ensure that there were no charges that she did not approve; and (3) ensuring that the purchases were for allowable purposes. As such, the Executive Director was responsible for inappropriate purchases on the card.

The awards given to the Program Manager and the Executive Director had to follow Government regulations since both were Government employees and the awards were Government funds. We maintain that the Mid-Atlantic forum was organized and managed by NWBC, and as such, the funds from this forum belonged to the Government. As such, the \$10,000 in Government funds the Program Manager received from this forum's proceeds to thank her for a job well done is an award. As discussed in the finding, NWBC did not have its own awards program, so could not give out awards. If NWBC provided these awards using SBA's awards program, it would have had to comply with SBA's SOP 34 50, *Employee Recognition Program*, which it did not.