

NOV 21 2012



**THE SECRETARY OF COMMERCE**  
Washington, D.C. 20230

The Honorable Gene L. Dodaro  
Comptroller General of the United States  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Dodaro:

This letter is to report a series of violations of the Antideficiency Act, as required by section 1351 of Title 31, United States Code.

The National Weather Service (NWS), a line office of the National Oceanic and Atmospheric Administration (NOAA), violated 31 U.S.C. § 1341(a) by reprogramming funds in fiscal years 2010 and 2011 without providing advance notification to Congress as required by law, thereby incurring obligations in excess of available appropriations. These violations occurred in NOAA's Operations, Research, and Facilities (ORF) and Procurement, Acquisition, and Construction (PAC) accounts, Treasury Account Symbols 13 10/11 1450, 13 11/12 1450, 13 10/11 1460, and 13 11/12 1460.

During fiscal years 2010 and 2011, NWS's Office of the Chief Financial Officer (OCFO) engaged in practices designed to alleviate shortfalls in the NWS budget. The perceived shortfalls appear to be the result of two causes. First, to pay for the cost of common services across NWS, its OCFO applied an algorithm to assess the costs across the various NWS programs, projects or activities (PPAs) within the ORF and PAC appropriations. However, in formulating this algorithm, OCFO did not assess the full cost of the common services, leaving a budget gap of approximately \$10 million in each fiscal year. Moreover, OCFO did not apply the algorithm to all PPAs on a legitimate basis in proportion to the costs reasonably attributable to each PPA. Instead, one ORF PPA, Local Warnings and Forecasts, was charged a set amount. Two others, PAC's Weather & Climate Supercomputing and ORF's Central Forecast Guidance, were not assessed any costs for common services because the OCFO concluded that doing so would cripple mission performance, necessarily meaning that other PPAs would bear the costs of services related to these two PPAs. Second, NWS had in recent years needed to accommodate increases in labor costs without concomitant increases in budget authority from Congress.

NWS's OCFO handled these perceived shortfalls by using instruments known as "Summary Level Transfers" (SLTs). SLTs are a legitimate tool used to correct errors in how expenses are charged by allowing financial officers the ability to change the accounting codes of past expenses. In this instance, however, OCFO used SLTs to change the accounting codes of expenses appropriately charged to a PPA experiencing a shortfall to instead reflect the cost as an expense of a PPA that OCFO perceived to have more funds than needed. By doing so, additional funds were made available in the original PPA so that it could incur additional expenses. Moreover, the justifications for the movement of such expenses were not contemporaneously documented in a proper manner. As a result, and because SLTs are used to move expenses in batch rather than in relation to individual transactions, we cannot retroactively determine the exact extent to which expenses were moved, and, therefore, reprogrammed, from one PPA to another. Nevertheless, as much as \$9.3 million from the Advanced Weather Interactive Processing System (AWIPS) ORF PPA was, in effect, reprogrammed in fiscal year 2010 to cover Local Warnings and Forecasts (LWF) ORF PPA

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expenses. As much as \$5.5 million of AWIPS funds were, in effect, reprogrammed to cover LWF expenses in fiscal year 2011. Moreover, as much as \$4.6 million from the Complete and Sustain NOAA Weather Radio PAC PPA was used to cover expenses of the LWF ORF PPA in fiscal year 2011, freeing up funds that were then used to cover expenses related to the Next Generation Weather Radar ORF PPA in the same year.

The use of funds from one ORF PPA to cover expenses attributable to another ORF PPA constitutes a reprogramming of funds. Further, the use of funds from a PAC PPA to cover the expenses of an ORF PPA constitutes a transfer of funds from one appropriation account to another. While the Department had limited authority under section 103 of the Commerce, Justice, Science, and Related Appropriations Act of 2010 (Pub. L. No. 111-117, Div. B) to transfer funds from one appropriation account to another, that section requires that any such transfer also be treated as a reprogramming of funds. Section 505 of that Act prohibits the reprogramming of funds of the amount described above absent advance notice being given to the appropriations committees of each house of Congress. No such notice was given in this case.

The Antideficiency Act prohibits agencies from incurring obligations in excess of available appropriations. Under Section 505 of the 2010 appropriations act, reprogrammed funds are not available for any purpose until the requisite notice is provided. Because of this restriction, where, as here, an agency incurs obligations against reprogrammed funds where proper notice was not provided, it has incurred obligations in excess of available appropriations. Moreover, the requirements of Sections 103 and 505 of the 2010 appropriations act were carried forward into fiscal year 2011 through operation of that year's Full-Year Continuing Appropriations Act (Pub. L. No. 112-10, Div. B). Accordingly, by reprogramming funds in fiscal years 2010 and 2011 without giving proper notice, NWS incurred obligations in excess of available appropriations in violation of the Antideficiency Act.

Unfortunately, NWS's practices continued, in part, because of a lack of internal NOAA and NWS oversight of the NWS OCFO. Specifically, while the NWS Assistant Administrator directly supervised the NWS CFO, the Assistant Administrator had little knowledge of the manner in which NWS's budget was handled. The NWS Deputy Assistant Administrator played no direct role in the CFO's supervision. Meanwhile, the NOAA CFO had no direct supervisory authority over anyone within the NWS, including the NWS CFO.

John L. Hayes, NOAA Assistant Administrator for NWS (SES), Robert Byrd, NWS's Chief Financial Officer (SES), Barbara Macneill, NWS's Deputy Chief Financial Officer and Chief Administrative Officer (GS-15), and Herbert Callands, NWS's Director of Budget Execution and Accountability (GS-15) were responsible for these violations. The two senior executives, Mr. Hayes and Mr. Byrd, were primarily responsible. Mr. Callands and Ms. Macneill reported to Mr. Byrd. Subsequent to the beginning of the investigation, Mr. Hayes and Mr. Byrd retired and are no longer employed in the Federal service. Mr. Callands was suspended for 5 days without pay. Ms. Macneill was suspended for 2 days without pay. Further, the Department's Office of the Inspector General (OIG) has determined that there are sufficient facts to suspect that these violations were knowing and willful. Consequently, all information currently available has been submitted to the U.S. Department of Justice for determination of whether further action is needed.

The Department and NOAA are taking corrective actions to prevent future violations of this nature. These actions are outlined in the attached Decision Memoranda dated May 24, 2012, from myself and Dr. Jane Lubchenco, Undersecretary for Oceans and Atmosphere and

Administrator of NOAA. Among other things, these corrective actions include conducting a comprehensive review of how SLTs are used across the Department to ensure that there are adequate administrative controls for their use; ensuring the costs of common services are appropriately assessed; changing the supervisory structure of NWS and other NOAA line offices such that line office CFOs are supervised by the NOAA CFO in addition to the line office assistant administrators; and, instituting a training program for key personnel across the Department that addresses core appropriations law concepts, including reprogramming, the Antideficiency Act, and the appropriate use of SLTs.

Identical reports are being submitted to the President, the President of the Senate, and the Speaker of the House of Representatives.

Respectfully,

A handwritten signature in black ink that reads "Rebecca Blank". The signature is written in a cursive, flowing style. The first name "Rebecca" is written in a larger, more prominent script, and "Blank" follows in a similar but slightly smaller script. The signature is positioned to the right of the typed name and title.

Rebecca Blank  
Acting Secretary