

**U.S. DEPARTMENT OF COMMERCE**  
**Office of Inspector General**

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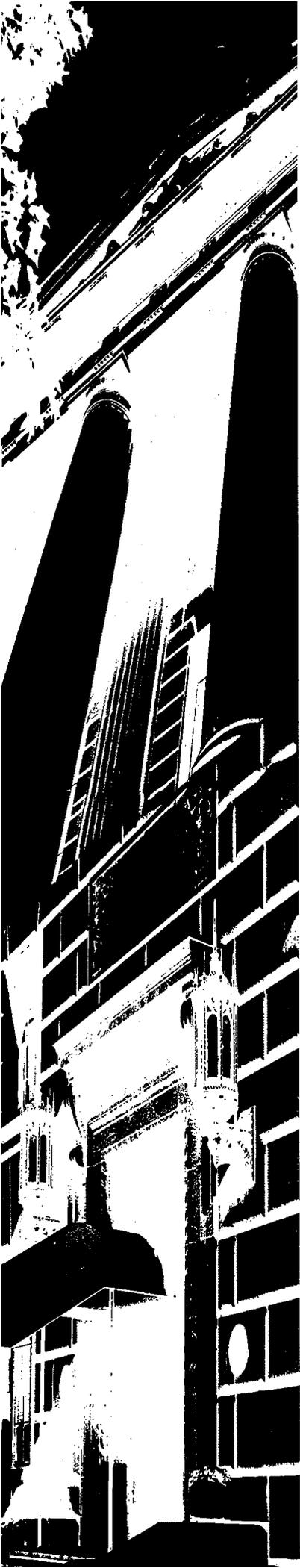
**NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION**

***Environmental Technology Laboratory  
Needs to Improve Internal Controls  
For Accounting and Funds Management***

*Report No. BTD-14852-3-0001 /September 2003*

**PUBLIC RELEASE**

*Office of Audits, Business and Trade Audits Division*



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## EXECUTIVE SUMMARY

The Office of Inspector General conducted a performance audit of the Environmental Technology Laboratory (ETL) to (1) evaluate ETL's compliance with applicable laws, regulations, policies, and procedures; (2) assess its internal controls; (3) examine its administration, management, and oversight of activities for which it receives reimbursement; and (4) determine whether it properly identifies, records, and recovers costs of reimbursable activities. The audit was prompted by a Department of Defense Office of Inspector General review, which concluded that ETL had inappropriately charged \$1.6 million of unrelated or unsupported costs to the DOD/ETL Advanced Sensor Applications Program Joint Project during fiscal years 1998, 1999 and 2000.<sup>1</sup>

Our audit primarily examined ETL operations and activities that occurred during fiscal years 2000, 2001, and through May 2002. We also obtained additional updates and conducted limited follow-up and analysis through May 2003.

The Environmental Technology Laboratory in Boulder, Colorado, develops remote sensing instrumentation that allows meteorologists and oceanographers to peer inside the Earth's atmosphere and oceans. ETL works with a variety of organizations—local, federal, and international agencies, as well as universities and private corporations—to improve understanding of the atmospheric and oceanic processes that govern our weather and climate, and to develop new remote sensing systems.

We found that ETL (1) did not comply with the Economy Act, 31 U.S.C. 1535, which requires payment or adjustment of amounts paid on the basis of the actual cost of goods or services provided, or Department and NOAA policies and procedures for full cost recovery of reimbursable work, and (2) inappropriately transferred expenditures between unrelated reimbursable tasks and between appropriated-funds tasks and reimbursable tasks.<sup>2</sup> Also, ETL did not submit the 2002 Memorandum of Understanding governing its work for DOD for legal review, despite NOAA requirements and Departmental guidance to do so. We recommend that the Under Secretary of Commerce for Oceans and Atmosphere direct the Assistant Administrator of the Office of Oceanic and Atmospheric Research (OAR) to ensure that:

1. The Director of ETL ensures that the full cost of providing services for others is recovered;
2. The Director of ETL ensures that the reasons for accounting transactions, used to transfer expenditures or obligations related to reimbursable tasks, are fully documented in ETL's accounting records;

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<sup>1</sup> Department of Defense Office of Inspector General, November 23, 2001, *Advanced Sensor Applications Program Joint Project*, Report No. D-2002-017, p. i.

<sup>2</sup> For this report, "appropriated-funds task" refers to an activity that was funded through NOAA direct appropriation. "Reimbursable task" refers to an activity that was paid for with non-NOAA funds.

3. OAR's Chief Financial Officer, in consultation with NOAA's and the Department's Chief Financial Officers and the Department's Assistant General Counsel for Administration, reviews the appropriateness of OAR's practice of utilizing current fiscal year appropriations to satisfy obligations or expenditures incurred in prior years; and
4. Compliance with requirements for legal review of agreements, as contained in NOAA's *Reimbursable Task Planning Handbook* is achieved. (See page 10.)

Our audit also identified significant instances of noncompliance with Department and NOAA policies and procedures for administrative control of funds. We found that in fiscal year 2000, ETL inappropriately transferred expenditures from a NOAA task performed during fiscal years 1995-97 to a reimbursable task that was terminated in December 1997. NOAA also inappropriately transferred expenditures and obligations among NOAA programs in fiscal years 2000 and 2001. We recommend that the Under Secretary of Commerce for Oceans and Atmosphere require the Assistant Administrator of OAR to ensure that:

1. OAR's Chief Financial Officer, in consultation with NOAA's and the Department's Chief Financial Officers and the Department's Assistant General Counsel for Administration, reviews the appropriateness of OAR's retroactive transfer of prior fiscal-year expenditures from a NOAA task to a reimbursable task.
2. Department and NOAA policies and procedures for administrative control of funds are followed;
3. The Director of ETL ensures that the reasons for all accounting transactions, used to transfer expenditures or obligations related to appropriated-funds tasks, are fully supported by documentation in ETL's accounting records; and
4. The Director of ETL ensures that obligations of appropriations are fully documented in ETL's accounting records. (See page 15.)

In addition, our audit found that ETL's over-reliance on reimbursable work to support its staff places the lab at significant financial risk. Reimbursable activities are a major source of funding for ETL. For example, the lab's total obligations for fiscal year 2000 were approximately \$19 million, 54 percent of which was attributable to reimbursable projects. For fiscal year 2001, ETL's total obligations were \$15.5 million, 43 percent of which came from reimbursable work. In fiscal year 2002, ETL's total obligations were \$12.9 million, 35 percent of which came from reimbursable work.

In addition to our own concerns about ETL's over-reliance on reimbursable funding and related problems, we are aware that in an April 2002 memo, OAR's former Assistant Administrator recognized many of the same issues and directed ETL to refocus its mission on NOAA objectives, bring staff levels into balance with its base funding, and increase its vigilance over accounting procedures. While these actions are commendable, more remains to be done. We recommend that the Under Secretary for Oceans and Atmosphere direct the Assistant

Administrator of OAR to ensure that ETL develops a business plan that is consistent with NOAA's mission and funding realities and reduces reliance on reimbursable work. (See page 19.)

Finally, we found two instances of apparent reprogramming without prior Congressional notification. In the first instance in June 2001, ETL transferred \$536,000 of expenditures from a DOD reimbursable program to a NOAA program without Congressional notification. Commenting on this transfer, an e-mail from the Department's Office of General Counsel to a NOAA budget official noted that it appeared that a reprogramming of funds occurred when NOAA funds that were not intended to pay costs of the DOD program were expended for that purpose. If, in fact, the transfer was a reprogramming, the required Congressional notification was never made. In another instance, the notification for a transfer of \$2 million in funds between ETL and OAR in December 2001 was not made until late September 2002. We recommend that the Under Secretary of Commerce for Oceans and Atmosphere:

1. Request an opinion from the Department's Office of General Counsel on whether the shifting of \$536,000 in expenditures from the FY 2000 DOD task to NOAA's Atmospheric Program was also an instance of reprogramming and requires notification to Congress; and
2. Ensure Congress is properly and timely notified before any future reprogramming occurs. (See page 22.)

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In responding to our draft report, NOAA concurred with our recommendations and described actions either already taken or planned to tighten fiscal controls within ETL such as: (1) establishing a panel to examine the role and future of ETL with respect to science priorities and partnerships; (2) establishing deputy chief positions within each division to monitor and project division needs more regularly; (3) creating new management documents to assist with financial management; (4) convening a panel of senior managers to conduct a fiscal and operational assessment; (5) instituting a hiring freeze; and (6) directing that the staff be reduced from 60 to 40 by fiscal year 2005. While we believe that these are steps in the right direction, we expect additional planned actions that specifically address each report recommendation to be described in NOAA's audit action plan. NOAA's response in its entirety is attached as Appendix I.

## INTRODUCTION

The National Oceanic and Atmospheric Administration (NOAA) is charged with assessing and predicting changes in the Earth's environment and protecting marine and coastal resources. The primary center for NOAA research and development is the Office of Oceanic and Atmospheric Research (OAR). OAR consists of 12 laboratories and research centers, whose principal role is to integrate new insights and discoveries from their respective fields into NOAA operations for the benefit of the nation.

One of those centers, the Environmental Technology Laboratory (ETL) in Boulder, Colorado, develops remote sensing instrumentation that allows meteorologists and oceanographers to peer inside the Earth's atmosphere and oceans. The lab was formed in 1967 as the Wave Propagation Laboratory, and was renamed in 1992. ETL works with a variety of organizations—local, federal, and international agencies, as well as universities and private corporations—to improve understanding of the atmospheric and oceanic processes that govern our weather and climate, and to develop new remote sensing systems. ETL staff is a mix of federal employees, technical and support contractors, and scientists from research institutes jointly sponsored by NOAA and two universities.

## OBJECTIVES, SCOPE, AND METHODOLOGY

In 2000-2001, the Department of Defense's Office of Inspector General conducted an audit of the DOD/ETL Advanced Sensor Applications Program (ASAP) Joint Project. The DOD OIG audit concluded that from fiscal years 1998 through 2000, ETL inappropriately charged \$1.6 million of unrelated or unsupported costs to the joint project.<sup>3</sup> The DOD OIG audit examined only DOD funds related to its ASAP project at ETL.

Prompted by the DOD OIG audit of its ASAP project at ETL, we subsequently conducted a performance audit of ETL operations and activities to (1) evaluate ETL's compliance with applicable laws, regulations, policies, and procedures; (2) assess its internal controls; (3) examine its administration, management, and oversight of activities for which it receives reimbursement; and (4) determine whether it properly identifies, records, and recovers reimbursable costs. The audit examined ETL operations and activities that occurred during fiscal years 2000, 2001, and through May of 2002. We also obtained additional updates and conducted limited follow-up and financial analysis through May 2003.

To ascertain ETL's performance in these four areas, we reviewed applicable laws, regulations, policies, procedures, and practices; and examined documentation submitted by NOAA officials, including management reports and accounting records. We also interviewed key officials at ETL in Boulder, Colorado, OAR headquarters, and NOAA's Office of Finance and Administration.

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<sup>3</sup> Department of Defense Office of Inspector General, November 2001, *Advanced Sensor Applications Program Joint Project*, Report No. D-2002-017. Arlington, VA: U.S. Department of Defense.

Because ETL makes extensive use of accounting adjustments to transfer expenditures and obligations from one task to another, we initially asked NOAA's Finance Office to provide documentation of ETL accounting adjustments of \$50,000 or more made in FY 2000-01. However, because the Finance Office processes these accounting adjustments in batches that combine various dollar amounts, we examined all ETL accounting adjustments in the batches we received, including those under \$50,000.

As reported in our audit reports of NOAA and the Department's financial management systems for fiscal years 2000 through 2002, an independent public accounting firm reviewed NOAA's financial statements for those fiscal years and reported that NOAA's financial management system did not prevent over-obligations at the obligation line-item level, and line-item reporting of obligations was not reliable. Specifically, the system did not have automated procedures or controls within it to prevent an over-obligation. Instead, NOAA used a manual process, relying on its budget officers and program managers to monitor and control the obligational activity against the operating plan.

Since NOAA's data reliability could not be established, we did not test the reliability of its computer-generated data that was used during our audit. However, such data was relied on and used by NOAA managers. For this reason, we believe that it was reasonable for us to use this data in meeting the objectives of our audit. In addition, other documentary and testimonial evidence obtained during the course of our audit supported the conclusions and recommendations based on our examination of our sample of ETL's accounting adjustments in FY 2000-01. These conditions are discussed in greater detail in later sections of this report.

Our audit was conducted in accordance with generally accepted government auditing standards and was performed under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated May 22, 1980, as amended.

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## FINDINGS AND RECOMMENDATIONS

Our audit of ETL identified four major problems with ETL financial accounting and management practices:

1. **Significant noncompliance with the Economy Act, 31 U.S.C. 1535. The Economy Act requires that payments or adjustments of amounts paid be based on the actual cost of goods or services provided. However, in many instances ETL did not recover the full cost of providing services to other agencies.** The resulting budgetary shortfalls prompted ETL to inappropriately adjust accounting records by shifting expenditures among unrelated reimbursable tasks and among appropriated-funds tasks and reimbursable tasks.<sup>4</sup>
2. **Significant noncompliance with Department and NOAA policies and procedures for adequate funds management and administration.** After overspending on certain research programs, ETL inappropriately adjusted its accounting records to transfer prior-year expenditures between a NOAA task and a reimbursable task and inappropriately transferred expenditures and obligations among NOAA programs without proper supporting documentation.
3. **Overreliance on reimbursable work to cover staffing costs.** For fiscal years 2000-2003, an average of 45 percent of the lab's total obligations were attributable to reimbursable tasks. ETL reports that funding from DOD alone has accounted for 20 percent of its annual funding in recent years. However, in fiscal year 2000, the lab experienced a \$2.2 million overrun when DOD unexpectedly withheld program funding. Relying so heavily on non-NOAA sources of funding leaves ETL financially vulnerable because it has more employees than its budget can support.
4. **Failure by NOAA to notify Congress that appropriated funds had been reprogrammed.** Recent appropriations laws have required 15-day advance notice of NOAA's intention to reprogram funds beyond allowable levels stipulated in its appropriation act. NOAA failed to provide such notification in fiscal year 2001, when ETL transferred \$536,000 of expenditures from a DOD reimbursable task to a NOAA program -- a transfer that appears to have been a reprogramming. Also in 2001 (December), NOAA reprogrammed \$2 million to cover amounts transferred among programs in prior years, but did not notify Congress until September 27, 2002—just 3 days before the end of the fiscal year. By circumventing the advance notification requirement, NOAA precluded Congressional consideration and approval of the transfers.

The details of our findings and recommendations follow.

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<sup>4</sup> For this report, "appropriated-funds task" refers to an activity that was funded through NOAA direct appropriation. "Reimbursable task" refers to an activity that was paid for with non-NOAA funds.

## I. ETL Needs to Improve Full Cost Recovery for Reimbursable Tasks

Federal law, federal policy, Departmental standards, and NOAA policy all require agencies to recover the full cost of providing reimbursable services to other agencies. Regarding an order by an agency with another agency for goods or services, the Economy Act, 31 USC 1535, states, "Payment may be in advance or on providing the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the agency or unit filling the order ... ."

The Office of Management and Budget's (OMB) Circular A-25, User Charges, establishes federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources. According to OMB Circular A-25, "It is the objective of the United States Government to ... ensure that each service, sale, or use of Government goods or resources provided by an agency to specific recipients be self-sustaining ... ."

The Department's *Accounting Principles and Standards Handbook*<sup>5</sup> states, "The cost of activities performed will be determined in accordance with Chapter 12, Section 5.0-Full Cost, of this *Handbook*. Accordingly, the accounting records shall be the official source of such cost determinations." Section 5 of Chapter 12 defines full, direct, and indirect costs.

NOAA's *Budget Office Reimbursable Task Plan Handbook (RTP Handbook)* states, "It is NOAA's policy to recover full costs, both direct and indirect, for performance of services for others." The *RTP Handbook* also states, "If the sponsor does not pay for the cost overrun within 120 days, this portion of the bill will be charged to the program office's direct funds."

Our review of a sample of ETL accounting records from FY 2000-01 revealed that:

- In fiscal year 2000, ETL inappropriately used funds from one reimbursable task to finance cost overruns incurred in prior years by unrelated reimbursable tasks to make it appear that full costs had been recovered in those tasks.
- In fiscal year 2001, ETL inappropriately transferred expenditures from a fiscal year 2000 reimbursable task with a cost overrun to a FY 2001 appropriated-funds task.

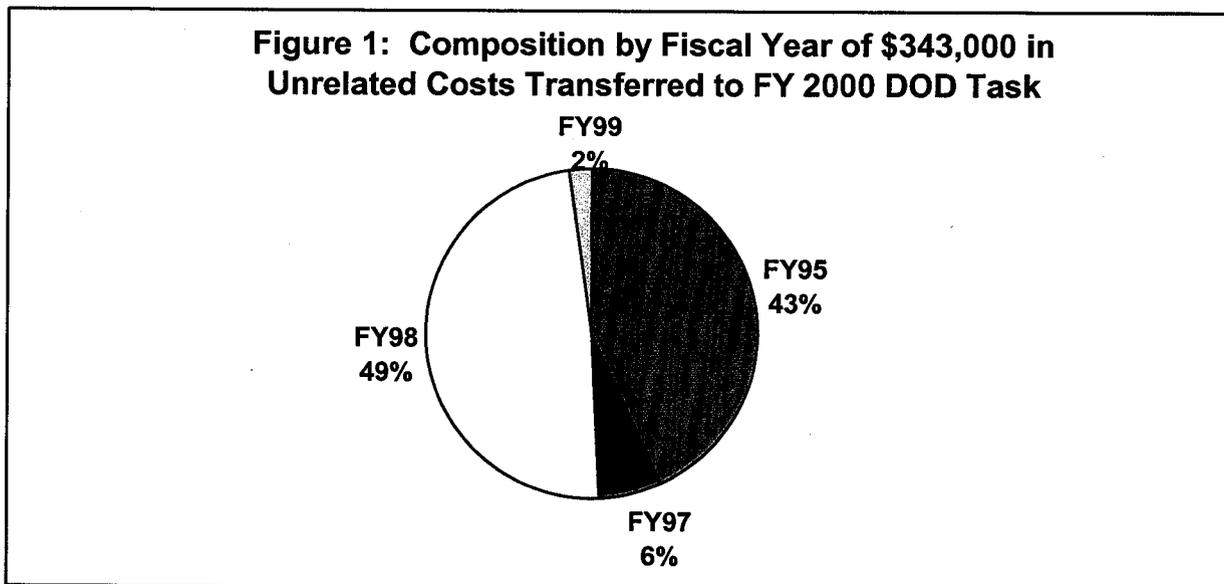
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<sup>5</sup> Chapter 11, Fees and Revenues, Section 4, User Fees, p. 11-9. Department Administrative Order (DAO) 200-0 states that each existing or future handbook or manual authorized by this Order will have the status and effect of a DAO. The *Accounting Principles and Standards Handbook* prescribes accounting principles and standards to be followed by the Department in the design and operation of an accounting system(s) and provides specific accounting principles and standards against which financial management and accounting system(s) can be evaluated and improved.

**A. ETL improperly charged expenditures from unrelated reimbursable tasks to DOD's task**

To the extent that full costs are not recovered on reimbursable tasks, NOAA guidelines stipulate that direct appropriations be used to finance reimbursable cost overruns. However, in fiscal year 2000, ETL used funds provided by DOD to finance a number of cost overruns on unrelated reimbursable tasks from prior fiscal years, and the resulting accounting records incorrectly indicated that ETL had recovered full cost for those tasks.

In April 2000, DOD provided \$3.5 million to ETL for a major reimbursable task. In June and July 2000, ETL transferred expenditures, totaling more than \$343,000 from unrelated reimbursable tasks conducted in fiscal years 1995 through 1999, to the DOD task. Most of the \$343,000 was used to finance cost overruns in tasks conducted in fiscal year 1995 (43 percent) and in fiscal year 1998 (49 percent). The remaining funds were applied to overruns in tasks completed in fiscal years 1997 and 1999 (see figure 1). The task numbers for these prior-year tasks were no longer active in fiscal year 2000, but reportedly had not been closed by NOAA's Finance Office because they had outstanding unpaid costs.



**Source:** NOAA Finance Office

According to NOAA Finance Office officials, task numbers can only be closed on tasks that have had no activity in the past year and have neither undelivered orders (unliquidated obligations) nor outstanding unpaid costs. ETL's administrative officer at the time signed the NOAA documents approving the transfers and OAR's supervisory budget analyst signed as a reviewer.

Written comments accompanying the expenditure transfers stated that the transfers were an effort to "move costs to clean up cost overruns" and "move cost overruns." However, ETL could not provide documentary evidence to support the appropriateness of these adjustments. The authorizing ETL administrative officer confirmed that the availability of the \$3.5 million was

viewed as an opportunity to remove the outstanding balances from the old task orders and thus close these numbers. The administrative officer stated that the reimbursable funds were thought to be available for those purposes since the objective of the DOD task, as stated in the reimbursable agreement, was consistent with NOAA's mission.

It is our conclusion that ETL treated all funds as one pot of money and did not consider the systematic recording and tracking of costs associated with individual tasks to be necessary procedures. ETL's lack of a system for the administrative control of its funds is discussed further in Section II of the report.

***B. ETL inappropriately transferred expenditures from a reimbursable task to an appropriated-funds task***

ETL failed to comply with policies and procedures for using acceptable and consistent cost accounting methods, identifying accumulated costs with appropriate tasks, and recording and documenting transactions. Moreover, OAR failed to establish necessary controls to preclude ETL's repeated significant cost overruns.

In FY 2000, ETL incurred a \$2.2 million cost overrun for DOD's task because DOD withheld funding for its program with the lab, pending the program's restructuring. However, ETL had not anticipated the reduced funding level, so in order to offset some of the overrun, ETL deobligated \$358,000 it had committed to the task but not spent. Then in June 2001, ETL transferred \$536,000 of expenditures from the cost overrun to a task being performed under its Atmospheric Programs, Weather Research account, with the notation, "Per our agreement, transfers being made to clear up 2M overrun on [FY 2000 DOD reimbursable task]." No documentary evidence supporting these retroactive adjustments accompanied the transfers, nor was ETL able to provide supporting documentation during our audit. Together, the deobligation and the transfer of expenditures reduced the total unbilled task costs for FY 2000 to approximately \$1.3 million, which OAR carried into fiscal year 2002.

The transfer of an expenditure or obligation incurred in one fiscal year to an appropriation not available at the time of the expenditure or obligation raises the possibility that ETL obligated funds in advance of an appropriation. Such an action raises the possibility that appropriation law may have been violated.

In addition, the transfer of \$536,000 in expenditures from the cost overrun, along with the lack of documentation to support the transfer, indicates noncompliance by ETL and OAR with NOAA's *RTP Handbook* requirements that task managers anticipate cost overruns and get written approval for them from the project's sponsor, and that line offices (in this case, OAR) determine the validity of adjustments to prior-year obligations (specifically, whether ETL's transfer of \$536,000 in reimbursable expenditures from DOD's task to an appropriated-funds task was permissible).

The transfer of expenditures and lack of documentation also indicate noncompliance by ETL with Department policy requiring that agencies record the full cost of performing work for

others, regardless of the amount of reimbursement involved. The Department's *Accounting Principles and Standards Handbook* states, "Full cost of performing work for others shall be recorded for each project regardless of agreements made as to the amount of reimbursement. This is done so that costs will be known on a historical basis for negotiation of future agreements."<sup>6</sup> In addition, the Department's *Accounting Principles and Standards Handbook* requires that all transactions be fully documented so that a clear audit trail is established. Prescribing accounting control activities, the Department's handbook states, "All transactions ... are to be fully documented so that a clear audit trail is established."<sup>7</sup>

The transfer of \$536,000 in expenditures from the cost overrun and the lack of supporting documentation also indicate noncompliance by ETL with OMB's Circular A-25, concerning federal policy regarding fees assessed for Government services, and with 31 U.S.C. 1535(b), which states that payment under the Economy Act must be based on the actual cost of goods or services provided.

Subsection (a) of 31 USC 1501 states, "An amount shall be recorded as an obligation of the United States Government only when supported by documentary evidence of ... ." and lists nine criteria for recording obligations.<sup>8</sup> The statute requires documentary evidence to support the recording in each instance. Chapter 7 of Volume II of GAO's *Principles of Federal Appropriations Law* states, "Retroactive adjustments to recorded obligations, like the initial recordings themselves, must be supported by documentary evidence."<sup>9</sup>

We asked officials at NOAA's Office of Finance and Administration and OAR why they did not question the ETL cost transfers. NOAA budget officials said that such transfers and other obligation data are outside their purview, while NOAA finance officials said they do not question cost transfers that have been approved in writing by a duly authorized agency representative.

OAR officials stated that staff turnover at headquarters and inadequate monthly financial reports from NOAA hamper the office's ability to monitor ETL transactions closely, but noted that the \$536,000 transfer was in accordance with guidance in the *NOAA RTP Handbook*. The handbook, revised October 2000, states, "If the sponsor does not pay for the cost overrun within 120 days, this portion of the bill will be charged to the program office's direct funds." However, what OAR officials failed to note was that the handbook also states that task managers are responsible for ensuring that costs do not overrun agreement amounts, without prior written approval of the sponsoring agency, and line offices are responsible for establishing necessary controls in their Financial Management Centers to preclude cost overruns on tasks under their cognizance.

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<sup>6</sup> Chapter 12, Managerial Cost Accounting, Section 6, Work for Others, p. 12-12.

<sup>7</sup> Chapter 6, Internal Controls, Section 6, Accounting Control Activities, p. 6-7.

<sup>8</sup> United States General Accounting Office, *Principles of Federal Appropriations Law*, Second Edition, Volume II, GAO/OCG-92-13, December 1992, Chapter 7, Obligation of Appropriations, p. 7-6.

<sup>9</sup> *Ibid.*, p. 7-7.

**C. Inappropriate use of expenditure transfers suggests a cost recovery problem that OAR has been slow to address**

ETL's repeated use of inappropriate expenditure transfers indicate a disregard for (1) NOAA, Department, and federal guidelines regarding internal controls and (2) the development and reporting of cost information, including the recording of full costs of performing work for others.

In the summer of 2000, an OAR team reviewed ETL's management controls and concluded that: "ETL had overspent by a significant amount of reimbursable funding, necessitating borrowing from OAR headquarters to close their books. This overspending caused some funds having to be paid back out of FY01 funds, which just perpetuated the funding problem. Potential overruns on other FY00 projects are still to be determined."<sup>10</sup>

We believe that OAR's practice of allowing ETL to utilize current fiscal year appropriations to satisfy obligations or expenditures incurred in prior years should be reviewed by OAR's Chief Financial Officer, in consultation with NOAA's and the Department's Chief Financial Officers and the Department's Assistant General Counsel for Administration.

According to OAR data, ETL had 131 active reimbursable projects in fiscal year 2000. Thirty-two of these operated within budget during FY 1999, with no carryover of funds into 2000. Forty-five had negative carryover amounts (overruns) of \$2.7 million. Fifty-four projects had positive carryover amounts totaling more than \$4.7 million, thereby offsetting the overruns and giving ETL a positive carryover from FY 1999 of \$2 million for all 131 reimbursable projects (see table 1).

In FY 2001 ETL had 148 active reimbursable projects, of which 54 operated within budget. Thirty eight had negative obligation carryovers, totaling more than \$5.3 million. (Approximately \$2.2 million of this amount was the overrun ETL incurred when DOD withheld FY 2000 funding—see page 6.) Fifty-six had positive obligation carryovers, totaling more than \$5.2 million, leaving a deficit of approximately \$57,000 (see table 1).

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<sup>10</sup>NOAA Office of Oceanic and Atmospheric Research, 2000. *Management Control Review Report on Environmental Technology Laboratory*. Washington, DC: U.S. Department of Commerce, p. 4.

Table 1: Beginning Balances of ETL Reimbursable Tasks in FY 2000-01 (\$000)					
	FY 2000			FY 2001	
	No. of Tasks	Obligation Carryover Amounts		No. of Tasks	Obligation Carryover Amounts
Tasks with no Obligation Carryover	32	\$0		54	\$0
Tasks with Negative Obligation Carryover	45	(\$2,730)		38	(\$5,324)
Tasks with Positive Obligation Carryover	54	\$4,746		56	\$5,267
Net Amount for All Active Tasks	131	\$2,016		148	(\$57)

Although NOAA's current policy allows the cost overruns to be transferred to direct appropriations, we believe that this policy is not consistent with sound management practices that would properly identify accumulated costs with their corresponding tasks. Nor is NOAA's current policy consistent with the Department's *Accounting Principles and Standards Handbook*, which states, "Deliberately charging the wrong account for purposes of expediency or administrative convenience, with the expectation of rectifying the situation by a subsequent transfer, violates 31 U.S.C. sec. 1301(a). The transferred funds would be used for a purpose other than that for which they were originally appropriated."<sup>11</sup>

**D. Letters of intent do not protect ETL against funding shortfalls**

OAR's first notable attempt to deal with negative obligation carryovers was a May 2000 memorandum from the budget office recommending that laboratories request a letter of intent from sponsor agencies before obligating funds. It was NOAA's belief that a letter of intent signed by the sponsor agency essentially authorized the laboratory to obligate the funding and ensured that the funding would be forthcoming.

In fiscal year 2002, for example, DOD's FY 2002 letter of intent, dated October 1, 2001, committed a total of \$2.88 million for the project, including funding for an independent contractor. However, DOD made its first disbursement of funds (\$1.6 million) in April 2002 for FY 2002 work that had been under way since October 2001 and covered by NOAA resources in the interim.

Although we acknowledge OAR's attempt to strengthen its internal control on funding by recommending the use of letters of intent, we believe the action does not provide protection against significant financial risk. GAO guidance describes a letter of intent as a preliminary document that may or may not constitute an obligation<sup>12</sup>; such a letter, therefore, does not adequately protect ETL against funding shortfalls.

<sup>11</sup> Chapter 7, Administrative Control of Funds, Section 6, Actions Prohibited, p. 7-11.

**E. Critical MOU did not receive required Office of General Counsel legal review**

In April 2002, NOAA and DOD signed a new MOU, under authority of the Economy Act, to continue the program initiated under a 1993 agreement.<sup>13</sup> OAR submitted the memorandum of understanding to NOAA's Office of General Counsel. However, it was told by that office to submit the agreement to the Department's Office of General Counsel for approval. OAR neither submitted the agreement to the Department's Office of General Counsel, nor obtained a waiver for the review.

NOAA's *RTP Handbook* states that all proposed agreements should be reviewed and cleared by the Department's Office of General Counsel unless the requirement is waived by that office in writing. Departmental guidance regarding Memoranda of Understanding was issued by the General Counsel of the Department in April 1994, and addressed to Secretarial Officers, Heads of Operating Units, Assistant General Counsels, Chief Counsels, and Bureau Counsels. This memo from the Department's General Counsel stated that all responsible Department officials should seek prior legal advice and review from the Office of General Counsel when a relationship with an outside organization was contemplated. It specified that Department officials contemplating a relationship reflecting a joint project or an Economy Act transaction should contact the Assistant General Counsel for Administration.

In addition, although the Office of Executive Budgeting and Assistance Management reported that there are no written Department directives for managing "interagency and other special agreements," or IOSAs (which include memorandums of understanding), draft Department IOSA Handbooks, issued in September 2001 and April 2003, stated that all agreements entered into under the Economy Act must be cleared by the Office of the Assistant General Counsel for Administration prior to signature, unless specifically exempted by that office.

**F. Recommendations**

We recommend that the Under Secretary of Commerce for Oceans and Atmosphere direct the Assistant Administrator of OAR to ensure that:

1. The Director of ETL ensures that the full cost of providing services for others is recovered;

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<sup>12</sup> U.S. General Accounting Office, December 1992. *Principles of Federal Appropriations Law*, Volume II, 2<sup>nd</sup> ed., GAO/OGC-92-13, Chapter 7, Obligation of Appropriations, pp. 7-10.

<sup>13</sup> The 1993 agreement did not have a specific termination date, stating only that it may be terminated at any time by mutual agreement between the parties or upon three months written notification by either party. The agreement was not subject to periodic review. In a September 2000 report on interagency agreements, we wrote that agreements should have a defined performance period, or the agreement should have a provision for a periodic review and amendment by mutual consent of the parties (Inspection Report No. IPE-9460, *Improvements Are Needed in Commerce Agencies' Implementation and Oversight of Interagency and Other Special Agreements*).

2. The Director of ETL ensures that the reasons for accounting transactions, used to transfer expenditures or obligations related to reimbursable tasks, are fully documented in ETL's accounting records;
3. OAR's Chief Financial Officer, in consultation with NOAA's and the Department's Chief Financial Officers and the Department's Assistant General Counsel for Administration, reviews the appropriateness of OAR's practice of utilizing current fiscal year appropriations to satisfy obligations or expenditures incurred in prior years; and
4. Compliance with requirements for legal review of agreements, as contained in NOAA's *Reimbursable Task Planning Handbook*, is achieved.

#### **G. NOAA's Response to Recommendations**

In responding to the draft report, NOAA concurred with the four proposed recommendations. NOAA also described actions already taken to tighten fiscal controls at ETL, such as convening a panel of senior managers to conduct a fiscal and operational assessment of ETL and establishing deputy chief positions within each division to monitor and project division needs on a regular basis. NOAA's response in its entirety is attached as Appendix I.

#### **H. OIG Comments**

We commend NOAA for actions already taken to tighten fiscal controls within ETL. However, while we believe that these are steps in the right direction, we expect additional planned actions that specifically address each recommendation to be described in NOAA's audit action plan.

## **II. ETL Needs to Improve Internal Controls for Accounting and Funds Management**

The Department's *Accounting Principles and Standards Handbook* establishes policy and prescribes a system for the administrative control of all funds in Departmental offices and operating units. According to NOAA's *Budget Handbook*, for appropriations and funds that are entirely within a Line Office, primary responsibility for fund control resides with that Assistant Administrator.<sup>14</sup> For ETL, primary responsibility for fund control resides with the Assistant Administrator of the Office of Oceanic and Atmospheric Research.

According to the Department's Handbook, the Departmental accounting system must provide timely disclosure of total valid obligations incurred to date and total budgetary resources available for obligations within each apportionment, allotment, or other administrative subdivision.<sup>15</sup> The Department's Handbook also prescribes that for bureau and subsidiary

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<sup>14</sup> NOAA Budget Handbook, Chapter 2, Budget Execution, Section 2, Budget Execution Policies and Procedures, a. Administrative Control of Funds, p. 16.

<sup>15</sup> Chapter 7, Administrative Control of Funds, Section 9, Relationship of Accounting and Fund Control Systems, pp. 7-17 - 7-18.

accounting systems, all transactions are to be fully documented so that a clear audit trail is established.<sup>16</sup>

With regard to obligations of appropriations, the *NOAA Budget Handbook* refers to the conditions set forth in 31 U.S.C. 1501, which states that amounts recorded as obligations of the U.S. government must be supported by documentary evidence. Although 31 USC 1501 does not discuss transfers of obligations, guidance in Chapter 7 of Volume II of GAO's *Principles of Federal Appropriations Law* also requires documentary evidence for retroactive adjustments to recorded obligations.

As reported in our audit reports of NOAA and the Department's financial management systems for fiscal years 2000 through 2002, an independent public accounting firm reviewed NOAA's financial statements for those fiscal years and reported that NOAA's financial management system did not prevent over-obligations at the obligation line-item level, and line-item reporting of obligations was not reliable. Specifically, the system did not have automated procedures or controls within it to prevent an over-obligation. Instead, NOAA used a manual process, relying on its budget officers and program managers to monitor and control the obligational activity against the operating plan.

Our review of a sample of ETL accounting records from FY 2000-01 revealed that:

- In fiscal year 2000, ETL inappropriately and retroactively transferred expenditures<sup>17</sup> for fiscal years 1995-97 from a NOAA-funded task to a reimbursable task completed in 1997.
- In fiscal years 2000 and 2001, ETL inappropriately transferred expenditures and obligations<sup>18</sup> between NOAA programs.

***A. ETL improperly transferred expenditures from a NOAA task to a reimbursable task***

Neither ETL nor OAR officials could provide documentation to support the validity of almost \$84,000 in retroactive adjustments. In April 2000, ETL moved expenditures of almost \$84,000 from a NOAA-funded task performed during fiscal years 1995-97 and charged these expenditures to an unrelated reimbursable task that was terminated in December 1997.

One OAR budget official speculated that the transferred expenditures might have been charged initially to the NOAA project because the funds for the reimbursable task were not yet available, and that the transfer took place once those funds were received from the sponsor. However, in the absence of supporting documentation, this explanation is counter-intuitive, given the timing

<sup>16</sup> Chapter 6, Internal Controls, Section 6, Accounting Control Activities, p. 6-7.

<sup>17</sup> With respect to provisions of the Antideficiency Act (31 U.S.C. 1513-1514), a term that has the same definition as outlay, i.e., the issuance of checks, disbursement of cash, or electronic transfer of funds made to liquidate a federal obligation.

<sup>18</sup> Obligations incurred, i.e., amounts of orders placed, contracts awarded, services received, and similar transactions during a given period that will require payments during the same or a future period.

of the transfer—April 2000—to a reimbursable task that had been completed more than 2 years earlier.

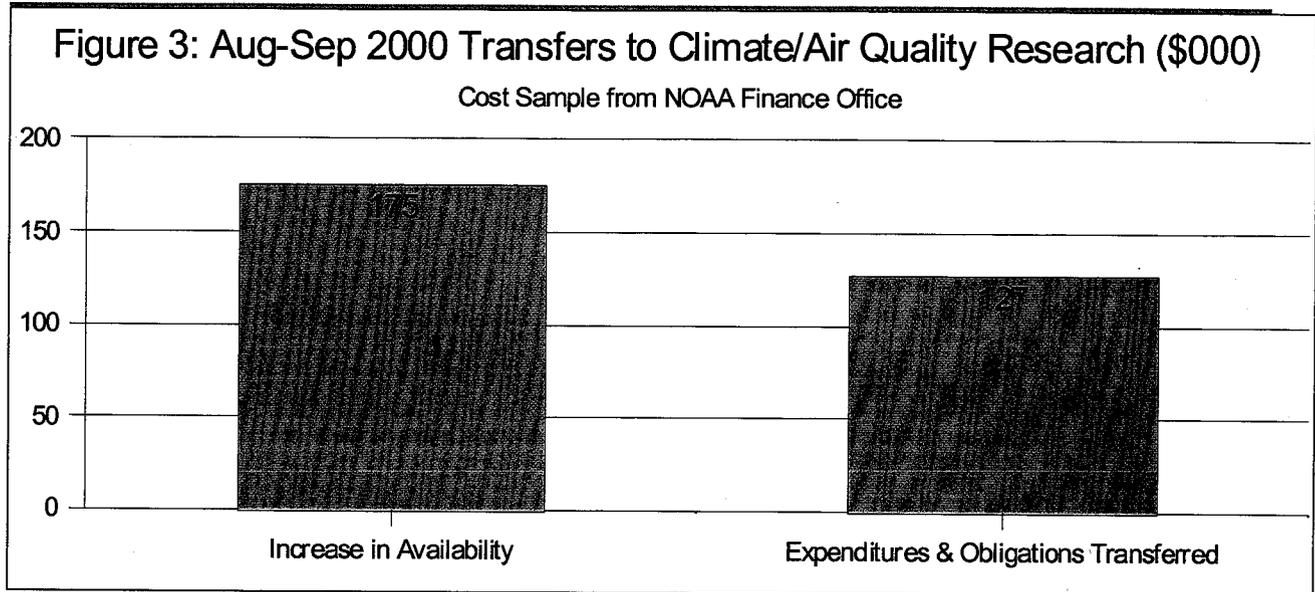
The undocumented transfer of prior fiscal-year expenditures from a NOAA task to a reimbursable task indicates noncompliance with guidance in Chapter 7 of Volume II of GAO's *Principles of Federal Appropriations Law*, which states that retroactive adjustments to recorded obligations must be supported by documentary evidence. ETL could not provide sufficient documentation or a credible explanation for the \$84,000 transfer to confirm that all appropriate laws and regulations were complied with.

We believe that OAR's Chief Financial Officer, in consultation with NOAA's and the Department's Chief Financial Officers and the Department's Assistant General Counsel for Administration, should review the appropriateness of these transfers.

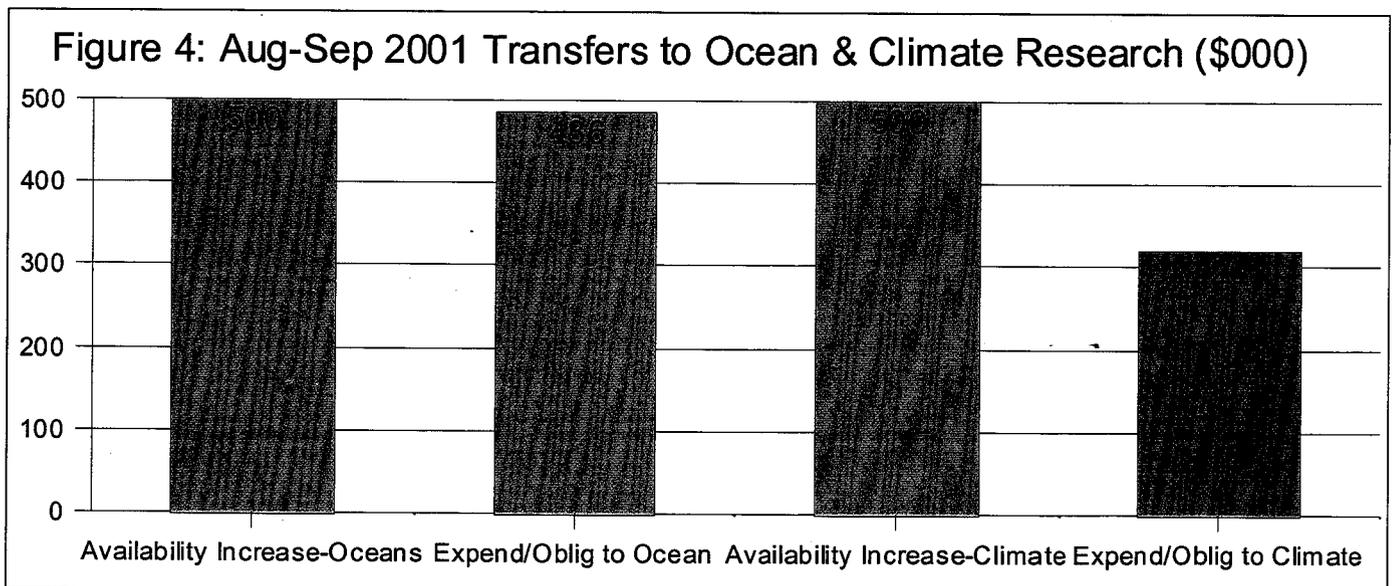
***B. ETL inappropriately transferred expenditures and obligations among NOAA programs in fiscal years 2000 and 2001***

In FY 2000, a transfer of expenditures and obligations was made without any documentation to support its validity, and ETL was unable to provide such documentation during our audit. In August 2000, OAR headquarters increased the availability of funds to ETL for NOAA Climate and Air Quality Research, Interannual and Seasonal Climate Research, by \$175,000. The source of these appropriated funds was the OAR Director's Discretionary Funds. In September 2000, ETL transferred approximately \$127,000 in expenditures and obligations from tasks under NOAA's Atmospheric Programs, Weather Research, to a task under NOAA's Climate and Air Quality Research, Interannual and Seasonal Climate Research, citing "cost transfer to appropriate task #" as justification (see figure 3).

According to an ETL official asked to explain the FY 2000 transfer, "funds were received very late, and cost overruns needed to be zeroed out to balance [for] NOAA's fiscal year closeout." In our opinion, it appeared that ETL transferred expenditures and obligations from over-obligated tasks under Atmospheric Programs, Weather Research, to use the increase in available funds in Climate and Air Quality Research.



During our audit, we also found that no supporting documentation could be produced to justify two transfers of expenditures and obligations made in FY 2001. In August 2001, OAR headquarters increased the availability of funds to ETL by \$1 million—\$500,000 for NOAA’s Ocean and Great Lakes Programs, Marine Prediction Research, and \$500,000 for NOAA’s Climate and Air Quality Research, Interannual and Seasonal Climate Research. The source of these appropriated funds was the OAR Director’s Discretionary Funds. In September 2001, ETL transferred approximately \$486,000 in expenditures and obligations from tasks under NOAA’s Atmospheric Programs, Weather Research, to a task under NOAA’s Ocean and Great Lakes Programs, Marine Prediction Research, and \$320,000 to a task under NOAA’s Climate and Air Quality Research, Interannual and Seasonal Climate Research (see figure 4). Again, ETL noted “charged to incorrect task #” as the reason for the adjustments.



According to an ETL official, the lab made the accounting adjustments to move expenditures and obligations from projects that ETL had overspent on, to projects funded in line items<sup>19</sup> to which OAR had transferred funds to the lab. E-mail messages in August 2001 between OAR and ETL indicated that the lab made the accounting adjustments to take advantage of available OAR allocations of appropriated funds. In one message, an ETL official asked, "Any idea on where you are going to put the allocation for the borrow so we can start doing our cost transfers? Is there any way we can just move allocation money instead of doing cost transfers? ... This would also leave costs in their proper place for audit purposes." An OAR official responded that in order for OAR to transfer \$2 million to ETL, several line items would have to be used. The official also wrote that because NOAA expected that any line item not vary by more than 1 percent, accounting adjustments to transfer costs must be made.

In our opinion, it appeared that ETL transferred costs from over-obligated tasks under Atmospheric Programs, Weather Research, to use the increase in available funds in Ocean and Great Lakes Programs and Climate and Air Quality Research. The e-mail exchanges support our opinion that ETL transferred costs from over-obligated tasks to use the increase in available funds received from OAR, transferring the costs to whatever appropriated-fund program for which the availability of funds for ETL was being increased by OAR. It is also possible that ETL's record keeping was too disorganized for the lab to attribute task costs accurately.

ETL's transfers of \$127,000 in FY 2000 expenditures and obligations and \$806,000 in FY 2001 expenditures and obligations between NOAA tasks indicate noncompliance with Department and NOAA policies and procedures for (1) administrative control of funds and (2) fully documenting all accounting transactions to establish a clear audit trail.

### **C. Recommendations**

We recommend that the Under Secretary of Commerce for Oceans and Atmosphere require the Assistant Administrator of OAR to ensure that:

1. OAR's Chief Financial Officer, in consultation with NOAA's and the Department's Chief Financial Officers and the Department's Assistant General Counsel for Administration, reviews the appropriateness of OAR's retroactive transfer of prior fiscal-year expenditures from a NOAA task to a reimbursable task;
2. Department and NOAA policies and procedures for administrative control of funds are followed;
3. The Director of ETL ensures that reasons for all accounting transactions, used to transfer expenditures or obligations related to appropriated-funds tasks, are fully supported by documentation in ETL's accounting records; and

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<sup>19</sup> In appropriations acts, a line item usually refers to an individual account or part of an account for which a specific amount is available.

4. The Director of ETL ensures that obligations of appropriations are fully documented in ETL's accounting records.

**D. NOAA's Response to Recommendations**

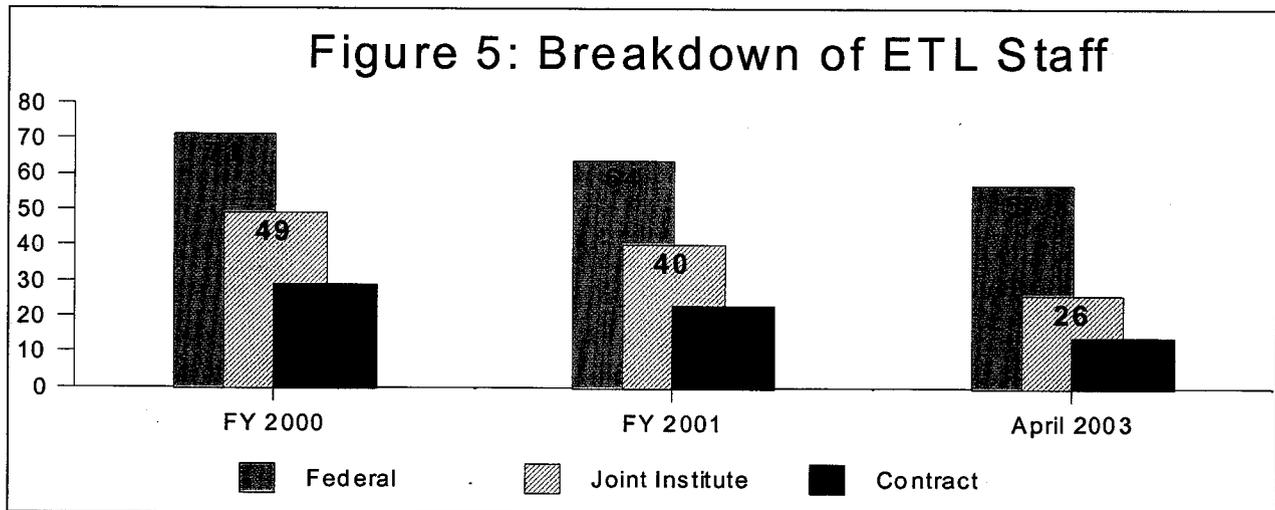
In responding to the draft report, NOAA concurred with the four proposed recommendations. NOAA also described actions already taken to tighten fiscal controls at ETL, such as creating new management documents to assist with financial management. NOAA's response in its entirety is attached as Appendix I.

**E. OIG Comments**

We commend NOAA for actions already taken to tighten fiscal controls within ETL. However, while we believe that these are steps in the right direction, we expect additional planned actions that specifically address each recommendation to be described in NOAA's audit action plan.

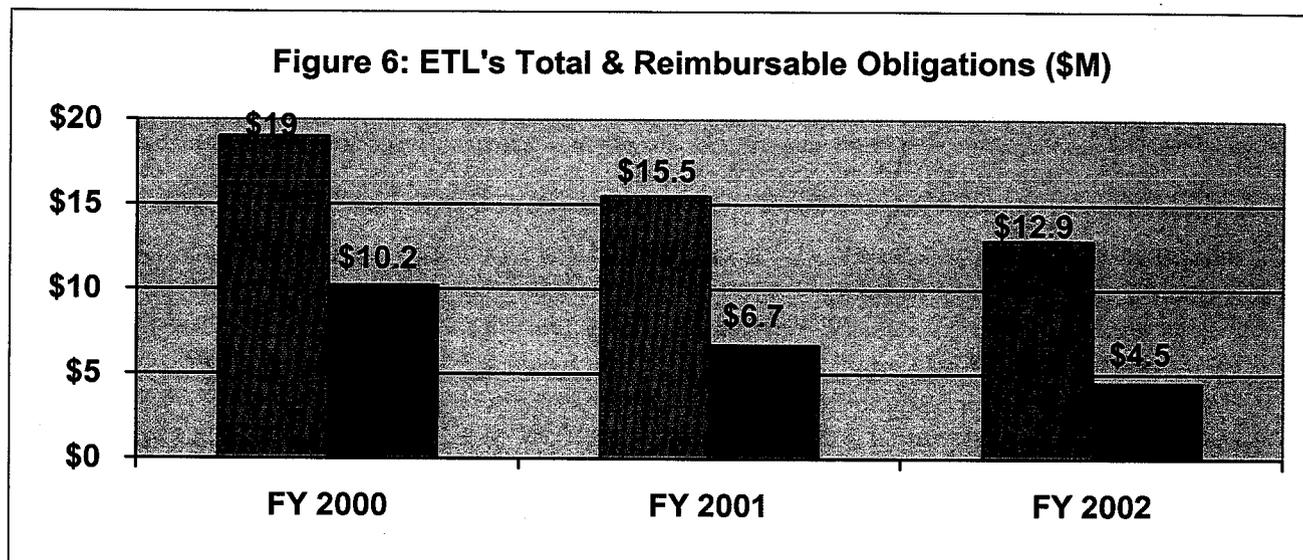
**III. ETL Should Decrease Its Reliance on Reimbursable Funds to Support Staff**

Total staffing has decreased by almost 35 percent since the end of fiscal year 2000—from 149 in September 2000 to 97 in April 2003 (see figure 5).



Reimbursable activities are a major source of funding for ETL, and the lab still places substantial reliance on reimbursable work to support its staff. Relying so heavily on non-NOAA sources of funding leaves ETL financially vulnerable because it has more employees than its budget can support. For fiscal years 2000-02, an average of 45 percent of the lab's total obligations were attributable to reimbursable tasks. For fiscal year 2000, the lab's total obligations were approximately \$19 million, 54 percent of which was attributable to reimbursable projects. For

fiscal year 2001, ETL's total obligations were \$15.5 million, 43 percent of which was related to its reimbursable work. For fiscal year 2002, 35 percent of ETL's total obligations of \$12.9 million were due to its reimbursable work (see figure 6). Although there is a downward trend in ETL's obligations for reimbursable work, we believe that ETL's continuing reliance on non-NOAA sources of funding places the lab at significant financial risk, and a business plan consistent with NOAA's mission and funding realities should be developed.



**A. Over-reliance on DOD for significant funding is risky**

ETL reports that funding from DOD alone has accounted for 20 percent of its annual funding in recent years. In its relationship with DOD, we believe the lab faces significant financial risk from the continued late receipt of funding and the uncertainty of future funding.

Typically, DOD has disbursed funds to ETL at the midpoint or end of each fiscal year. In the interim, ETL has used NOAA resources to cover program costs. According to the current *NOAA RTP Handbook*, using NOAA funding to cover costs while awaiting sponsor reimbursement is permissible. In a November 2000 e-mail, an ETL official justified this practice to OAR headquarters: "If we had waited for the [DOD's program] funding to arrive, most of the staff associated with this important program would have been on furlough for 3 or 4 months each year."

In FY 2000, the lab experienced a \$2.2 million overrun when DOD unexpectedly withheld program funding. Because ETL did not anticipate the reduced funding, it finished the year with cost overruns of almost \$2.2 million, which DOD refused to pay. To help ETL cover expenses, in FY 2001 OAR shifted \$2 million of appropriated funds to ETL "for FY01 year end to be repaid in FY02." According to an OAR budget official, the shift was directly driven by the reduction in funding for DOD's program, and ETL's indication that it needed the \$2 million in NOAA funds to cover salaries associated with DOD's project and to cover prior-year cost obligations. Data from the NOAA Finance Office showed that as of April 2002, DOD's task

from fiscal year 2000 still had approximately \$1.3 million in unbilled costs. Relying on one source of funding for so large a portion of its budget is inherently risky to ETL's overall financial stability.

***B. ETL and OAR need NOAA support to implement a business plan consistent with NOAA's mission and funding realities***

In addition to our own concerns about ETL's over-reliance on reimbursable funding and related problems, we are aware that in an April 2002 memo to ETL, OAR's former assistant administrator wrote that the most important issue facing ETL was refocusing its mission on NOAA objectives, and that ETL's severe financial problems must be addressed in the current and future fiscal years. He directed that ETL decrease reimbursable funding from sources external to NOAA until such reimbursable funding makes up no more than 30 percent of ETL's budget, which he felt should occur in fiscal year 2004. The goal for fiscal year 2003 was that reimbursable funding from sources outside NOAA account for no more than 40 percent of ETL's budget. He also directed ETL to bring its staff levels into balance with its base funding and increase its vigilance over accounting procedures. The former assistant administrator required three immediate actions:

- A hiring freeze for all federal, joint institute, and contract personnel;
- Briefings for lab employees on the recently approved Voluntary Early-Out Retirement Authority; and
- The submission to OAR of a copy of ETL procedures for avoiding over-expenditure of appropriated and reimbursable funds. Beginning June 1, 2002, ETL was to file quarterly spending reports on appropriated funds and full-time equivalents to OAR.

ETL's acting director executed those actions, and also implemented the following additional actions:

- Instituted new procedures to minimize travel costs;
- Implemented new procedures to limit purchases of equipment and other items, including purchases using credit cards;
- Called for new performance plans, which will reflect NOAA-relevant milestones; and
- Required all proposals for reimbursable work to be approved by the director at the pre-proposal stage.

In April 2003, ETL provided us with an update on its financial and organizational status. According to ETL, it is committed to reducing its reliance on reimbursable funds by raising its NOAA funding levels and reducing its reliance on reimbursable funds. However, ETL officials also said that significantly raising NOAA base funding levels is a multi-year endeavor. For

fiscal year 2003, ETL expects that its reimbursable funds will account for 44 percent of its FY 2003 budget, more than OAR's goal of 40 percent.

OAR's April 2002 memo called for reducing the number of Federal employees to 50 by the start of FY 2004 and to 40 by the start of FY 2005. ETL hopes to reduce its Federal staff through attrition and the possible authorization of early retirements, but does not expect to meet the Federal staff goals called for by OAR.

NOAA and OAR recently finalized their strategic plans. In response to NOAA and OAR efforts, ETL began its own strategic planning process in January 2003. ETL's effort is focused on identifying a mission unique to NOAA and better integrating its efforts into NOAA and OAR priorities. ETL expects to complete its strategic planning process by the end of FY 2003.

While we commend ETL and OAR for the reported actions taken thus far, considerable challenges remain if ETL is to bring federal staff level into balance with its base funding. In addition to refocusing its mission on NOAA objectives, a business plan for the management of ETL's financial and human capital resources and promotion of its services will enable ETL to better plan the allocation of its resources under existing and future limits.

#### ***C. Recommendation***

We recommend that the Under Secretary of Commerce for Oceans and Atmosphere direct the Assistant Administrator of OAR to ensure that ETL develops a business plan that is consistent with NOAA's mission and funding realities and reduces reliance on reimbursable work.

#### ***D. NOAA's Response to Recommendation***

In responding to the draft report, NOAA concurred with the recommendation. NOAA also described actions already taken to tighten fiscal controls at ETL, such as instituting a hiring freeze and directing that staff be reduced from 60 to 40 by fiscal year 2005. NOAA's response in its entirety is attached as Appendix I.

#### ***E. OIG Comments***

We commend NOAA for actions already taken to tighten fiscal controls within ETL. However, while we believe that these are steps in the right direction, we expect additional planned actions that specifically address the recommendation to be described in NOAA's audit action plan.

### **IV. More Timely Congressional Notification for Reprogramming Is Needed**

NOAA has not always provided the required prior notice to its Congressional appropriations committees before reprogramming funds. Congress has regulated reprogramming at the Department of Commerce by statute (namely, Section 605(b) in Public Laws 106-553 and 107-77). Public Laws 106-553 and 107-77--the FY 2001 and 2002 appropriations acts for the

Department of Commerce and other agencies--require that when agencies plan to reprogram funds in excess of \$500,000 or 10 percent,<sup>20</sup> whichever is less, they must notify the appropriations committees of both houses of Congress 15 days before the reprogramming occurs.<sup>21</sup>

During the audit, we identified the following two instances in which timely Congressional notification for reprogramming was not provided.

**FY 2001.** It appears that ETL's use of NOAA's appropriated funds to pay \$536,000 of reimbursable expenditures in FY 2001 was a shifting of resources that exceeded the threshold for which Congressional notification is required. ETL shifted to NOAA's Atmospheric Programs expenditures of \$536,000 that had originally been charged to a FY 2000 reimbursable task conducted for DOD. ETL's shifting of \$536,000 in expenditures from the FY 2000 DOD task to NOAA's Atmospheric Programs was never reported to the appropriate Congressional committees.

Our view that this transfer was a reprogramming is shared by others in the Department. This view was expressed in an e-mail from an attorney in the Department's Office of General Counsel, sent in November 2001 to a NOAA budget official, which said, "... as we discussed, it appears that a reprogramming of funds already occurred at that point in time when NOAA funds which were not intended to pay costs of the DOD program were expended for that purpose due to DOD's decision not to provide reimbursement."

Department Administrative Order 203-13, *Reprogramming of Budgetary and Personnel Resources*, defines reprogramming as the shifting of resources within an appropriations account from one program, project, or activity<sup>22</sup> to another, for purposes other than those outlined in the budget justifications or expressed as Congressional intent in the enacted appropriations bill and related committee reports.

**FY 2002.** In December 2001 of FY 2002, ETL shifted \$2 million from its Weather and Air Quality Research program to OAR headquarters, explaining the \$2 million shift as "repayment of FY01 funds." ETL shifted the \$2 million to repay OAR for funds that OAR had made available in fiscal year 2001 to help the lab cover a shortfall in operating funds that occurred in FY 2000, when DOD withheld its funding while it restructured its program at ETL.

A conference agreement between the House and Senate<sup>23</sup> set FY 2002 appropriations for Commerce. The *Congressional Record*<sup>24</sup> shows FY 2002 appropriations for NOAA, provided in

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<sup>20</sup> Referring to funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2001 (P.L. 106-553) or 2002 (P.L. 107-77)

<sup>21</sup> See Public Law 106-553 and 107-77, Section 605(b), Title VI, "General Provisions."

<sup>22</sup> For the purposes of reprogramming, DAO 203-13 defines a program, project, or activity as "the most specific budget item identified in the Congressional budget justifications; the enacted appropriation bill; and the House, Senate, and conference reports and explanatory statements associated with the appropriation bill."

<sup>23</sup> U.S. House. *Conference Report on H.R. 2500*, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., November 09, 2001, H. Rept. 7986.

<sup>24</sup> *Congressional Record*. 2001. 107<sup>th</sup> Cong., 1<sup>st</sup> sess. Vol. 147, pt. 155, H8018-H8023.

the conference agreement, for each OAR laboratory. The amounts appropriated for ETL are shown in the table below.

<b>FY 2002 Appropriations for ETL, by NOAA Program (\$000)</b>	
Climate Research	243
Weather and Air Quality Research	6,864
Ocean, Coastal and Great Lakes Research	445
Total	7,552

The amount of \$6.864 million was specifically reserved in the conference agreement for ETL's Weather and Air Quality Research program. A \$2 million shifting of resources exceeded the reprogramming threshold specified in Section 605(b) of Public Law 107-77.

According to GAO guidance, reprogramming is the utilization of funds in an appropriation account for purposes other than those contemplated at the time of appropriation, i.e., it is the shifting of funds from one object to another within an appropriation.<sup>25</sup> Reprogramming procedures provide some Congressional control over spending flexibility without resorting to the full legislative process.<sup>26</sup>

In September 2002, the Department's CFO proposed to the Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, Committee on Appropriations, U.S. House of Representatives, a reprogramming within NOAA's appropriation that included funds to pay \$1.2 million of the FY 2000 cost overrun on ETL's DOD reimbursable project and to repay \$2 million in ETL funds to OAR for the funds that had been used to cover ETL's over-expenditure in FY 2001.

In a letter dated October 1, 2002, the subcommittee chairman responded to the Department's CFO and asked why it took the Department 2 years to notify the appropriations committee of the cost overrun on the DOD reimbursable program. He also noted that the proposed option redirects funding from projects the committee intended to fund to a project the committee did not agree to fund. The chairman wrote that the timing of the CFO's request—3 days before the end of fiscal year 2002—precluded the committee's consideration of the matter. He also wrote that there appears to be a trend that the Department may be diminishing the committee's efforts to fulfill its role in overseeing the operations of the Department.

While the Department's request covered the remaining unbilled costs from the DOD project (see page 6 and page 17) and repayment of the funds OAR used to cover ETL's \$2 million overexpenditure (see page 20), Congressional notification in September 2002 occurred after ETL had shifted the \$2 million to OAR in December 2001.

<sup>25</sup> U.S. General Accounting Office, December 1992. *Principles of Federal Appropriations Law*, Volume I, 2<sup>nd</sup> ed., GAO/OGC-91-5, Chapter 2, The Legal Framework, p. 2-25.

<sup>26</sup> *Ibid.*, p. 2-28.

We believe that while the shifting of \$536,000 of expenditures in fiscal year 2001 and the reprogramming of \$2 million in fiscal year 2002 are matters of serious concern, they are symptoms of the more serious underlying cause—OAR and ETL's non-compliance with the Department's and NOAA's policies and procedures for administrative control of funds.

**A. Recommendations**

We recommend that the Under Secretary of Commerce for Oceans and Atmosphere:

1. Request an opinion from the Department's Office of General Counsel on whether the shifting of \$536,000 in expenditures from the FY 2000 DOD task to NOAA's Atmospheric Programs was also an instance of reprogramming, and requires notification to Congress; and
2. Ensure Congress is properly and timely notified before any future reprogramming occurs.

**B. NOAA's Response to Recommendations**

In responding to the draft report, NOAA concurred with the recommendations, but did not provide any specific action for addressing the recommendations. NOAA's response in its entirety is attached as Appendix I.

**C. OIG Comments**

NOAA's audit action plan should describe the specific actions to be taken to address the recommendations.



SEP 30 2003

MEMORANDUM FOR: Michael Sears  
Assistant Inspector General for Auditing

FROM:   
William Broglie  
Chief Administrative Officer

SUBJECT: *Environmental Technology Laboratory Needs to Improve  
Internal Controls for Accounting and Funds Management  
Draft Audit Report No. BTD-14852-3/August 2003*

We appreciate the opportunity to respond to your draft audit report on internal controls for accounting and funds management at NOAA Research's Environmental Technology Laboratory (ETL). NOAA concurs with all 12 proposed recommendations.

NOAA Research agrees with the basic findings outlined in the draft audit report covering ETL reimbursable activities. The report appears fair and balanced and looks beyond individual problems to identify the underlying causes behind the difficulties cited. Since the initial work of the audit, 24 months ago, NOAA Research has taken the following steps to tighten fiscal controls within ETL:

- 5/24/01 – Dave Evans, Assistant Administrator for OAR, formed an ETL Millennium Panel to examine the role and future of ETL with respect to science priorities and partnerships in light of the imminent retirement of the ETL Director and several senior ETL management officials. The panel was chaired by David Rogers of OAR.
- 8/5/01 – A preliminary financial analysis by NOAA Research prior to the formal FY01 closeout revealed that ETL would overrun appropriated funds by \$2M due, in part, to a shortfall in a major reimbursable program.
- 8/20/01- The Rogers Millennium Panel report was released. The report noted that, although the caliber of research performed at ETL is very high, the reliance on reimbursable funds to sustain operations was a concern.



- Sept./Dec. 02 - ETL took a number of steps to tighten fiscal controls within the laboratory. Deputy Chief positions were established within each division. These individuals, together with the ETL Budget Officer, were tasked with carefully monitoring and projecting division needs on a monthly basis, and then on a biweekly basis towards the end of the fiscal year. New management documents were created to help with the financial management. Projecting potential new funds, Resource Allocation Chart showing distribution of types of funds and a Base Tracking Chart showing all current and projected charge.
- 9/26/01 – Assistant Administrator Evans convened a panel of NOAA Research senior managers to conduct a fiscal and operational assessment of ETL. The panel was chaired by Dan Albritton, Director of the NOAA Research Aeronomy Laboratory.
- 12/24/01 – Albritton Assessment Panel outlined two options for ETL’s future: (1) dissolving ETL and combining components with existing NOAA Research entities, or (2) working towards a smaller, more NOAA-focused laboratory.
- 2/15/02 – Acting Director Neff for ETL, released a memo to all staff outlining NOAA Research concerns and actions that need to be taken within ETL to monitor and control spending and better realign laboratory efforts with NOAA priorities.
- 3/8/02 - NOAA Research instituted an ETL hiring freeze.
- 4/22/02 – Assistant Administrator Evans provided guidance for a smaller, more NOAA-focused ETL based on recommendations from the Albritton Assessment panel. The Directive required that ETL base funds constitute 50% or more of the laboratory budget by FY05, and that federal staff be reduced from 60 to 40 by FY05, consistent with current ETL base funds.

Since the issuance of the guidance memorandum from the Assistant Administrator of NOAA Research to ETL, ETL has reduced their Federal staff from 63 to 56 employees. They will be offering Voluntary Separation Incentive Payments in FY 2004 to employees if authority is granted from the Office of Personnel Management as a tool to help them reduce their staffing in accordance with that memorandum.