



Testimony of
The Honorable Todd J. Zinser
Inspector General

U.S. Department of Commerce

before the
House Committee on Science, Space and Technology
Subcommittee on Investigations and Oversight

***Mismanagement of Funds at the National Weather Service
and the Impact on the Future of Weather Forecasting***

September 12, 2012

Madam Chair, Ranking Member Tonko, and Members of the Subcommittee:

I appreciate the opportunity to testify today about the Department of Commerce's response to National Oceanic and Atmospheric Administration (NOAA) National Weather Service's (NWS') mismanagement of budgetary resources. Our testimony will address three areas:

1. Numerous **whistleblower complaints**, dating back to 2010, many of which have since been validated by multiple reviews of NWS financial mismanagement;
2. Separate **Departmental and NOAA internal inquiries**, resulting in both the Department and NOAA undertaking significant corrective action; and
3. Recent and current **Office of Inspector General (OIG) follow-up reviews**, to measure the sufficiency of the internal inquiries and the resulting corrective actions.

I. Whistleblower Complaints

Between June 2010 and August 2012, OIG received eight complaints concerning unauthorized reprogramming at NWS. In addition, beginning in January 2012, OIG received a series of four complaints alleging contracting improprieties in the NWS Office of the Chief Financial Officer (OCFO), concerning the employment of a consultant who had formerly been a senior OCFO official. We have summarized these complaints chronologically (see below):

- **GAO hotline referral (received June 17, 2010)**—OIG received a mailed letter from GAO's FraudNet, dated May 25, 2010, forwarding an anonymous complaint that NWS OCFO moved appropriated funds from "program to program" to pay for underfunded and underestimated costs. This anonymous complaint listed NOAA's Deputy Under Secretary for Operations, along with OIG and other parties, as being sent copies of the complaint. OIG, having received only the GAO referral, did not take action at the time, filing the complaint for future reference. We later learned that (a) NOAA had previously received this identical complaint, in April 2010 or earlier; (b) NOAA had assigned it to NWS OCFO; and (c) in April 2010, NWS OCFO had drafted a response to NOAA's Deputy Under Secretary for Operations addressing the allegations. We are not aware of NWS OCFO ever having finalized its response.
- **OIG hotline complaint (received October 31, 2010)**—OIG received a second anonymous complaint through an online form, which alleged that NWS was inappropriately reprogramming appropriated funds for the Advanced Weather Interactive Processing System (AWIPS) to pay for other activities. OIG commenced a review of the complaint; on November 18, 2011, we issued a memorandum to the NWS OCFO and other senior NOAA and Department officials, concluding that \$10 million in AWIPS funds were shifted to other accounts without a reprogramming request. (See section III of this testimony for further details.)
- **OIG hotline complaint (received June 14, 2011)**—OIG received another anonymous online complaint, stating that "rumors abound" that NWS OCFO staff were "spending many hours building a cover story" about financial mismanagement. OIG sent this complaint to NOAA for internal inquiry, the results of which were reported in NOAA's November 2011 preliminary report, *AWIPS Funding Investigation Report*:

Response to OIG Referral Number PPC-CI-11-0442-H. This 17-page report (excluding appendixes) found that, over the 2 years examined—fiscal years (FYs) 2010 and 2011—NWS OCFO (a) engaged in a strategy to address NWS budget shortfalls through the reallocation of program funding and (b) because shortfalls were not addressed at the start of the fiscal year, created a need during the year to continually reallocate funds. The report concluded that these actions “created an environment of uncertainty, and lack of transparency that relies on ad hoc budget manipulations during the fiscal year to ensure solvency,” in violation of the FYs 2010 and 2011 appropriations acts.

- **OIG hotline complaint (received November 1, 2011)**—An NWS employee emailed OIG’s hotline alleging an NWS OCFO redirection of FY 2012 Next Generation Weather Radar System (NEXRAD) Operations and Maintenance funds to pay for its Product Improvement Program. OIG sent this complaint to NOAA and requested that the agency consider it along with the June 14 allegations.
- **OIG hotline complaints (received beginning January 11, 2012)**—Beginning on this date, OIG received a series of four anonymous complaints, involving a former senior employee in NWS OCFO, that are the subject of an ongoing OIG investigation. The complaints alleged contract improprieties related to the hiring of this former employee as a consultant for NWS OCFO, including improper payment of lodging. One complaint alleged the consultant attempted to use undue influence in an effort to get a family member a contract position at NWS. Specifically, this complaint alleged that funding sources for their programs would be provided if they agreed to hire the relative. While our investigation is ongoing, we have determined that NOAA provided the contractor housing valued at more than \$52,000 and spent more than \$336,000 in wages for this consultant’s services over a period of one and a half years. We promptly notified NOAA of our preliminary findings concerning the consultant’s efforts to secure a job for the family member; NOAA took swift action to terminate the consultant’s employment with the agency.
- **OIG hotline complaint (received February 4, 2012)**—OIG received an email from an NWS employee who alleged that the agency overspent available funds by more than \$100 million over the past several fiscal years. OIG sent this complaint to the NOAA/Department team conducting the internal inquiry, requesting its inclusion with the existing inquiry.
- **GAO hotline referral (received April 16, 2012)**—OIG received a second GAO Fraudnet complaint, alleging that NWS OCFO was not the only NOAA office that knew of, and was responsible for, the improper reprogramming of funds. The complainant alleged that NWS and NOAA OCFO also had knowledge of the unauthorized reprogramming of funds. OIG sent this complaint to the NOAA/Department team conducting the internal inquiry, requesting its inclusion with the existing inquiry.
- **OIG hotline complaint (received June 11, 2012)**—After the Department and NOAA jointly issued the internal inquiry report responding to the reprogramming allegations, OIG received another anonymous complaint. It contained allegations that, despite the investigation, the unauthorized reprogramming of funds at NWS had continued unabated. The complainant suggested that the unauthorized reprogramming

has been taking place since 2004, when NWS failed in its attempt to restructure as a way to mitigate budget shortfalls. OIG is currently investigating these allegations.

- **OIG hotline complaint (received August 18, 2012)**—OIG received another complaint from a senior NWS employee, who raised concerns about how NWS continues to handle its financial challenges, including the lack of sufficient oversight and appropriate measures to mitigate funding shortfalls. The complainant reported being told specifically to use funds from what the complainant described as “admittedly” not the “right pocket.” We are currently assessing this complaint in conjunction with our ongoing review (see section III of this testimony for further details).

II. Departmental and NOAA Internal Inquiries

The Department’s Internal Inquiry Report (May 11, 2012)

On May 11, 2012, the Department of Commerce issued its *Internal Inquiry into Alleged Mismanagement of Funds Within the National Weather Service*. The Department initiated this executive-level inquiry, jointly with the National Oceanic and Atmospheric Administration (NOAA), following the agency’s preliminary inquiry into OIG hotline and other complaints regarding suspected improper reallocation of expenses within NWS. NOAA’s preliminary inquiry concluded that the NWS OCFO may have engaged in the unauthorized reprogramming of its program funds in FYs 2010 and 2011, in violation of the appropriations acts for those years. The Department carried out its follow-up inquiry to examine the reported issues in greater depth and validate NOAA’s initial findings.

As stated in its May 11, 2012 report, the Department and NOAA jointly:

- Conducted more than 30 interviews of over 20 witnesses;
- Performed financial analyses;
- Consulted with OIG, NOAA OCFO, and the Department’s Office of General Counsel (OGC); and
- Examined large numbers of documents, e-mails, memoranda, and spreadsheets related to the allegations.

In addition to the unauthorized reprogramming of NWS funds in FYs 2010 and 2011, the Department found that significant management, leadership, budget, and financial control problems led to an environment where such activity could occur, including what the Department terms “summary level transfers” (SLT) to reallocate expenses. The Department uses SLTs to provide financial officers flexibility for reassigning accounting codes on past expenses, for reasons including fixing account code errors. For the reprogramming, NWS used SLTs to change accounting codes on expenses previously paid out of the NWS Local Warnings and Forecasts (LWF) base budget to those of other activities, thereby freeing up flexible LWF funds for almost any purpose. The full range of Departmental findings includes:

- The improper use of SLT accounting to facilitate the inappropriate reallocation of expenses;

- An inappropriate assessment of required NWS program office payments for common services;
- NWS OCFO staff ultimately participating in the unlawful reprogramming of funds, despite their objections;
- Failed oversight of and an environment of mistrust at NWS OCFO;
- A lack of timely responsive action from NOAA, the Department, and OIG;
- Possible improprieties in the reallocation of expenses; and
- Financial and management controls that were ineffective at preventing an unlawful reprogramming of funds.

Since the release of the May 11, 2012, report, the Department and NOAA have proceeded with several directives, reviews, and studies focused on Departmental and NWS budget, training, and reporting structure issues. Acting Secretary Rebecca Blank and Under Secretary of Commerce for Oceans and Atmosphere Jane Lubchenco issued separate decision memoranda on May 24, 2012, with specific actions for correcting the conditions leading to the report's findings. These decision memoranda require Departmental action on 20 distinct activities, including audits, organizational reporting adjustments, and changes to budget formulation and execution processes.

Deputy (Acting) Secretary Response to the Internal Inquiry Report (May 24, 2012)

On May 24, 2012, the Deputy Secretary (now Acting Secretary) provided 8 directives requiring:

1. An implementation plan for each of the decisions contained in Under Secretary Lubchenco's memo, with a timetable and milestones;
2. A comprehensive review of all Department SLTs;
3. Examination of the Department's budget formulation and reporting structure;
4. Financial, reprogramming, Anti-Deficiency Act (ADA), and appropriations law training for Department staff;
5. Budget and appropriations law training for Departmental senior executives and political appointees;
6. Complaint handling training for Departmental senior executives and political appointees;
7. A review of Departmental budget allocations for common services; and
8. A review of the Department's line office reporting structure

NOAA Response to the Internal Inquiry Report (May 24, 2012)

Also on May 24, 2012, the Under Secretary of Commerce for Oceans and Atmosphere issued a memorandum summarizing the findings and 14 recommendations made by the inquiry team, and provided the following additional 12 administrator decisions to:

- I. Deliver FY 2012 NWS reprogramming request to Congress;

2. Fully fund NWS headquarters operations, assess NWS common services, and deliver training for NOAA staff on common services assessments;
3. Add the NOAA CFO to the line office budget reporting structure;
4. Expand NOAA CFO responsibility for reviewing SLTs;
5. Ensure input from NWS program officials on budget decisions;
6. Document NWS budget formulation and execution process and include regular briefings;
7. Ensure NOAA financial skills assessment and training;
8. Initiate NWS financial and program audit and address structural deficit;
9. Investigate whether an NWS ADA violation occurred and meet with Congress on reprogramming;
10. Conduct an independent financial audit and address NWS structural deficit and shortfall;
11. Review and recommend changes to NOAA complaint handling; and
12. Review NOAA's line office oversight and reporting structure.

On August 31, 2012, OIG received a Departmental report that intends to fulfill one of its corrective actions. We expect that soon we will receive notice of other outcomes of the Department's and NOAA's corrective actions, many of which had deadlines in July–August 2012. As of September 7, we have not yet concluded our review of these results.

Among the corrective actions is a determination of whether NWS committed a violation of the ADA. The ADA requires the head of an executive agency to report any known violation of that law to the President and the Congress. It is our understanding that a determination is pending with the Department. In cases where a violation was knowing and willful, the Department of Justice (DOJ) will review the matter. DOJ has stated that it will await the Department's determination before proceeding with further review.

III. OIG Follow-Up Reviews

Memorandum to NWS CFO (November 18, 2011)

Concurrent with NOAA's preliminary inquiry, our office commenced a review of NWS reprogramming issues in December 2010. In discussions with our staff, NOAA budget officials asserted that there was not a reprogramming issue and maintained that NWS' actions were proper. Notwithstanding, our team identified continued concerns regarding the reprogramming issues. As a result, OIG issued a November 18, 2011, memorandum to the NWS CFO (with copies going to the NOAA CFO and two Department budget officials) requesting a formal review and response by NOAA and Department budget officials on the appropriateness of these actions. (See appendix for the full memorandum.)

We found that NWS had not submitted any reprogramming requests for the AWIPS program—for which Congress stipulated virtually full funding within its FY 2010 appropriation for the Department. However, in March 2011, we met with officials responsible for managing

the AWIPS program, who reported that a significant diversion (over \$10 million) of AWIPS-appropriated funding occurred during FY 2010. AWIPS management also reported that they did not know the destination or ultimate use of the redirected funds.

Finally, our memorandum further detailed our April 19, 2011, meeting with NWS budget officials, who outlined how over \$10 million in AWIPS funding had been shifted to other accounts, primarily to cover NWS overhead. Based on this meeting and our review of related documentation, we made a preliminary determination that the primary reason for the shift was to fund an NWS budget shortfall—and that this shifting of funds from the AWIPS program to other uses by NWS would likely require Congressional approval (as stipulated in section 505 of Public Law 111-117, the Consolidated Appropriations Act of 2010).

We concluded the memorandum by requesting that NWS confirm with Department officials that the AWIPS funding shift did not violate any applicable appropriations law or regulation, as was asserted to OIG. We did not receive a response from NOAA or the Department but were provided a copy of NOAA's November 28, 2011, report on its preliminary inquiry into these issues.

Current OIG Work

Upon the Department's conducting of its internal inquiry, the Senate Committee on Appropriations asked us to review the reprogramming request. We provided our observations to the staff of the Senate Committee on Appropriations; the House and Senate appropriations committees subsequently approved the reprogramming request.

Our focus has shifted from reviewing the reprogramming request to evaluating the Department's progress in taking corrective action. Upon receiving the Department's May 11, 2012, internal inquiry report concerning these issues, we assessed the report's conditions and findings and how the Department evaluated them.

OIG Review. Our preliminary review of the Department's actions has included:

- Receiving the Department's supporting documentation related to the May 11 internal inquiry report;
- Communicating with House and Senate appropriations staff about the NWS reprogramming request ;
- Discussing NWS reprogramming with financial statement auditors;
- Meeting with NWS budget officials to discuss reprogramming, budget details, budget shortfalls, and OIG access to working papers;
- Receiving a statement of work on a NOAA-contracted audit of structural deficit and shortfalls.

Our objective in reviewing the Department's May 2012 responses to its internal inquiry results is to determine the adequacy of actions taken by the Department and NOAA in addressing the related budget reprogramming issues. The scope of our review includes:

- The Department's audit of budgetary SLTs;
- NOAA's audit of structural deficit and budget shortfalls,
- The FY 2013 operational budget, including fully-funded headquarters operations;
- NOAA's updated budget reporting structure;
- NOAA's updated procedures for common services budget allocations;
- NOAA's updated procedures for OCFO-level SLT review; and
- NWS' updated budget formulation and execution processes.

Our follow-up review is consistent with our emphasis that the Department and its management should be responsible for first addressing management issues of compromised controls when they arise. Generally, when OIG receives a hotline complaint that is administrative in nature and most appropriately addressed by Departmental or agency management, we refer the complaint to the Department or agency for inquiry and any appropriate corrective action. This is common practice across the government. Often, our referrals require a response from the Department or agency. The Department's responses, such as the one issued by the Department and NOAA in May 2012, underscore the Department's responsibility in addressing mismanagement issues.

Investigative Inquiries. Finally, OIG investigators are currently carrying out two NWS-related inquiries received since the conclusion of the Department's inquiry. One complaint, received in June 2012, alleged that (a) NWS' unauthorized reprogramming of appropriated funds also occurred prior to 2010 and (b) senior NWS and NOAA officials were aware of this practice. Accordingly, OIG is currently investigating these issues to determine whether this improper activity began prior to FY 2010 (the earliest timeframe examined in the Department's May 2012 report), as well as to identify senior officials who may have been aware of this activity and when they became aware of it. The second complaint, which we received in August 2012, alleged that NWS reprogramming of appropriated funds is still occurring at NWS; we are assessing this information as part of our ongoing review of this matter. Additionally, we have an open investigation involving allegations of the improper hiring of, and providing of lodging at no cost to, a retired NWS senior executive in the NWS OCFO.

This concludes my prepared statement, and I will be pleased to respond to any questions you or other Subcommittee members may have.

Appendix

Memorandum to NWS CFO (November 18, 2011)



UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

November 18, 2011

MEMORANDUM FOR: Robert J. Byrd
Chief Financial Officer
National Weather Service

FROM: Ann C. Eilers A handwritten signature in blue ink that reads "Ann C. Eilers".
Principal Assistant Inspector General for Audit and Evaluation

SUBJECT: Allegation Concerning Redirection of Appropriated Funds for the Advanced Weather Interactive Processing System

In late 2010, the Office of Inspector General (OIG) received an allegation that substantial funds had been shifted from the Advanced Weather Interactive Processing System (AWIPS) program to other National Weather Service (NWS) activities. Section 505(a)(8) of Public Law 111-117, Consolidated Appropriations Act of 2010, requires agencies to notify the House and Senate Appropriation Committees when reprogramming funds in excess of \$500,000 or 10 percent (whichever is less) between programs, projects, or activities.

OIG staff conducted a limited review of the allegation. As part of our review, we researched basic criteria and departmental guidance governing the movement of appropriated funds, including

- Public Law 111-117, Consolidated Appropriations Act of 2010; Conference Report; and various committee reports concerning 2010 appropriations
- the Government Accountability Office's *Principles of Federal Appropriations Law*
- the Department of Commerce's *Budget, Performance and Program Analysis Handbook*

We also compared NWS' fiscal year (FY) 2010 operating plan and budget to its appropriations for that year. The operating plan and budget request for FY 2010 totaled \$39.346 million for AWIPS operations and maintenance, and \$24.364 million for AWIPS acquisitions. Both amounts included increases over the prior year. The FY 2010 enacted budget, or appropriated amounts, for the two separate AWIPS appropriations related to operations and acquisitions totaled \$39.346 million and \$24.0 million, respectively. Thus, Congress stipulated virtually full funding for the AWIPS program within its FY 2010 appropriation for the Department of Commerce, based on requests and justifications presented by the National Oceanic and Atmospheric Administration (NOAA) for its NWS programs and acquisitions.

To verify recent reprogramming requests submitted by NWS, we met in January 2011 with the Department official responsible for reviewing AWIPS reprogramming requests.¹ We found that NWS did not submit any reprogramming requests for AWIPS during FY 2010. However, in March 2011 we met with officials responsible for managing the AWIPS program and confirmed that a significant diversion (over \$10 million) of AWIPS-appropriated funding occurred during FY 2010. AWIPS management did not know the destination or ultimate use of the redirected funds. In order to trace the movement of the funds, we consulted with you.

During our meeting, you presented a broad overview of NWS and AWIPS budgets, along with a general discussion and documentation of where and how the AWIPS funding shifted. In brief, NWS experienced a serious funding shortfall during FY 2010, and funding for the AWIPS program was used to compensate. You stated that this redirection of funds, which was permanent, did not require reprogramming and indicated that a relationship existed between the final use of the shifted funds and the AWIPS program. However, we could not establish such a relationship based on the documents we reviewed during that discussion. You responded to our concerns by arranging another meeting to discuss the AWIPS funding in more detail with your budget execution staff.

In our April 2011 meeting with the NWS Director of the Budget Execution Accountability Office, accompanied by the Deputy CFO for NWS, your office made an effort to outline how over \$10 million in AWIPS funding was shifted to other accounts, primarily NWS overhead. Based on our understanding of the presentations by your office and our review of related documentation, we made a preliminary determination that the primary reason for the shift was to fund the NWS shortfall, and that this shifting of funds from the AWIPS program to other uses by NWS would likely require congressional approval. Congress continues to underscore its expectation that each department and agency adhere to the procedures provided in the above-cited section 505; the following excerpt from Senate Report 111-229, dated July 2010, emphasizes congressional concerns about reprogramming:

The Committee also expects that any items that are subject to interpretation will be reported. The Committee is concerned that, in some instances, the departments or agencies funded within this appropriations act are not adhering to the Committee's reprogramming guidelines that are clearly set forth in this report and in section 505 of the accompanying bill. The Committee expects that each department and agency funded in the bill will follow these notification policies precisely and will not reallocate resources or reorganize activities prior to submitting the required notifications to the Committee.²

OIG staff concluded that further review of the AWIPS funding allegation was beyond the scope of our inquiry and would require more detailed audit work. However, we offered your staff the

¹ After review by the Department, the requests are submitted to the Office of Management and Budget for the required approval before transmission to congressional committees for final approval.

² Excerpted from Senate Report 111-229: *Departments of Commerce and Justice, Science, and Related Agencies Appropriations Bill 2011* [Online]. <http://thomas.loc.gov/cgi-bin/cpquery/T?&report=sr229&dbname=111&> (accessed July 8, 2011). The full text of the report's section on reprogrammings, reorganizations, and relocations is provided as an attachment to this memorandum.

opportunity to confirm with the Department official responsible for reprogramming requests that the AWIPS funding shift did not violate any applicable appropriations law or regulation.

Your staff has not informed us of the results of a meeting with the Department on this issue. Therefore, we ask that you advise us whether your office has notified the Department's budget office of the nature and extent of the movement of AWIPS funding and, if so, the results of your discussions.

We would appreciate your prompt attention to this matter. If you have any questions, please do not hesitate to contact me at (202) 482-2754.

Attachment

cc: Maureen Wylie, Chief Financial Officer, NOAA
Michael Phelps, Director, Office of Budget
David Socolof, Chief, Technology and Environment Programs Division, Office of Budget

Attachment:

Excerpt from Senate Report 111-229: Departments of Commerce and Justice, Science, and Related Agencies Appropriations Bill 2011

REPROGRAMMINGS, REORGANIZATIONS, AND RELOCATIONS

Section 505 contained in the ‘General Provisions’ of title V provides procedures for the reprogramming of funds. To reprogram is to change the use of funds from the specific purposes provided for in the act and the accompanying report or, in the absence of direction from the Committee on Appropriations, from the specific purposes provided for in the administration’s budget request. Each title of the bill has also traditionally included separate provisions that define permissible transfers of resources between appropriation accounts. These transfer authority provisions are also pursuant to section 505, and were initiated in the early 1990s to provide additional flexibility to the agencies under the subcommittee’s jurisdiction.

The Committee expects each department and agency to closely follow the reprogramming procedures listed in section 505, which are the same as provisions that applied in statute during fiscal year 2010. These procedures apply to funds provided under this act, or provided under previous appropriations acts that remain available for obligation or expenditure in fiscal year 2011, or provided from any accounts in the Treasury available to the agencies funded by this act. Section 505 requires that the Committee on Appropriations be notified by letter, at least 15 days prior to reprogramming of funds, whether permanent or temporary, in excess of \$500,000 or 10 percent, whichever is less, between programs, projects or activities. This provision is also applicable in cases where several activities are involved with each receiving less than \$500,000. In addition, the Committee is to be notified of reprogramming actions which are less than these amounts if such actions would have the effect of: committing the agency to significant funding requirements in future years; increasing funds or personnel by any means for any project or activity for which funds have been previously denied or restricted by Congress; creating new programs, offices, agencies or commissions or substantially augmenting existing programs, offices, agencies or commissions; relocating offices or employees; or reorganizing offices, programs, or activities.

The Committee also expects that any items that are subject to interpretation will be reported. The Committee is concerned that, in some instances, the departments or agencies funded within this appropriations act are not adhering to the Committee’s reprogramming guidelines that are clearly set forth in this report and in section 505 of the accompanying bill. The Committee expects that each department and agency funded in the bill will follow these notification policies precisely and will not reallocate resources or reorganize activities prior to submitting the required notifications to the Committee.

The reprogramming process is based on comity between the Appropriations Committee and the executive branch. The Commerce, Justice, science, and related agencies appropriations bill provides specific program guidance throughout this report and tables accompanying the bill. The process is intended to provide flexibility to meet changing circumstances and emergency requirements of agencies, if there is agreement between the executive branch and the Congress

that such a change is warranted. Reprogramming procedures provide a means to agree on adjustments, if necessary, during a fiscal year, and to ensure that the Committee is kept apprised of instances where nonappropriated resources are used to meet program requirements, such as fee collections and unobligated balances that were not considered in the development of the appropriations legislation.

In the absence of comity and respect for the prerogatives of the Appropriations Committees and Congress in general, the Committee will have no choice but to include specific program limitations and details legislatively. Under these circumstances, programs, projects, and activities become absolutes and the executive branch shall lose the ability to propose changes in the use of appropriated funds through the reprogramming process between programs, projects, and activities without seeking some form of legislative action.

The Committee expects the executive branch departments to manage its programs, projects and activities within the levels appropriated. Reprogramming or transfer requests shall be submitted only in the case of an unforeseen emergency or situation that could not have been anticipated when formulating the budget request for the current fiscal year.