

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**FISCAL YEAR 2018 AND 2019
BIOMEDICAL ADVANCED RESEARCH
AND DEVELOPMENT AUTHORITY
APPROPRIATIONS MAY NOT HAVE
BEEN USED FOR THEIR INTENDED
PURPOSE IN ACCORDANCE WITH
FEDERAL REQUIREMENTS**

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April 2024
A-03-20-03002

Office of Inspector General

<https://oig.hhs.gov>

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OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

Report in Brief

Date: April 2024

Report No. A-03-20-03002

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Audit

The Administration for Strategic Preparedness and Response's (ASPR's) mission is to assist the country in preparing for, responding to, and recovering from public health emergencies and disasters. Within ASPR, the Biomedical Advanced Research and Development Authority (BARDA) promotes the advanced development of medical countermeasures to protect Americans and respond to 21st century health security threats. A previous OIG investigation found issues with ASPR's accounting for Congressional appropriations intended for BARDA's use in responding to public health emergencies like Ebola, Zika, and other outbreaks.

Our objective was to determine whether ASPR used BARDA FY 2018 and 2019 appropriations for their intended purpose in accordance with Federal requirements.

How OIG Did This Audit

Our audit covered all 19 joint funding arrangements (JFAs) and salary expenditures for 30 employees, totaling \$4.7 million, made using BARDA FY 2018 and FY 2019 appropriations. To determine whether the expenditures complied with the Purpose Statute at 31 U.S.C. section 1301(a), we focused on analyzing the purposes for which the BARDA appropriations were expended.

Fiscal Year 2018 and 2019 Biomedical Advanced Research and Development Authority Appropriations May Not Have Been Used for Their Intended Purpose in Accordance With Federal Requirements

What OIG Found

ASPR may not have used BARDA FY 2018 and FY 2019 appropriations for their intended purpose in accordance with Federal requirements. Specifically, ASPR allocated JFA expenses to BARDA appropriations based on individual program office budgets instead of actual usage. In addition, although the 20 employees we were able to interview informed us that they remembered performing work for BARDA, ASPR was unable to provide any documentation to support that any of the 30 employees we sampled performed work for BARDA.

ASPR may have violated the Purpose Statute if the allocated JFA expenses and the employees' salary expenses served to augment other ASPR offices' funding. Therefore, ASPR potentially violated the Antideficiency Act.

What OIG Recommends and ASPR Comments

We made several recommendations to ASPR, including that it establish policies and procedures for the JFA process and review the JFA allocation methodologies used for FY 2018 and FY 2019 and subsequent FYs. We also recommended ASPR document the work performed by employees paid using BARDA funds and review the 10 sampled employees who we could not interview. Finally, we recommended that ASPR report any Antideficiency Act violations. The full recommendations are in the report.

In written comments on our draft report, ASPR concurred with our third recommendation to document the work performed by employees paid using BARDA funds. ASPR did not indicate whether it concurred with our remaining recommendations, but stated that it considers them closed and provided general comments and actions it has taken to address them. The actions taken include developing JFA cost allocation methodologies based on usage, where feasible, and providing mandatory training on principles of appropriation law and ASPR appropriation accounts for all managers and supervisors. While ASPR identified actions it has taken to address the recommendations, we do not believe the actions are sufficient to ensure that BARDA appropriations are used for their intended purpose in accordance with Federal requirements. We maintain that our recommendations should be fully implemented.

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INTRODUCTION

WHY WE DID THIS AUDIT

The Department of Health and Human Services' (HHS's) Administration for Strategic Preparedness and Response's (ASPR's) mission is to assist the country in preparing for, responding to, and recovering from public health emergencies and disasters.¹ Within ASPR, the Biomedical Advanced Research and Development Authority (BARDA) promotes the advanced development of medical countermeasures to protect Americans and respond to 21st century health security threats. A previous Office of Inspector General investigation found issues with ASPR's accounting for Congressional appropriations intended for BARDA's use in responding to public health emergencies like Ebola, Zika, and other outbreaks.² We initiated this audit of expenditures charged by ASPR to fiscal year (FY) 2018 and FY 2019 BARDA appropriations to assess whether the appropriations were used for their intended purpose.

OBJECTIVE

Our objective was to determine whether ASPR used BARDA FY 2018 and FY 2019 appropriations for their intended purpose in accordance with Federal requirements.

BACKGROUND

Administration for Strategic Preparedness and Response

ASPR leads the Nation's medical and public health preparedness for, response to, and recovery from disasters and public health emergencies. ASPR collaborates with hospitals, health care coalitions, biotech firms, community members, State, local, Tribal, and territorial governments, and other industry partners across the country to improve readiness and response capabilities. ASPR is funded through appropriations to the Public Health and Social Services Emergency Fund (PHSSEF). Within ASPR, the Office of Management Finance and Human Capital manages the financial and human resources needed to fulfill ASPR's mission, including accounting for funds that Congress intended for BARDA's use.

Biomedical Advanced Research and Development Authority

BARDA provides an integrated, systematic approach to the development of the necessary vaccines, drugs, therapies, and diagnostic tools for public health medical emergencies such as chemical, biological, radiological, and nuclear accidents, incidents, and attacks; pandemic influenza; and emerging infectious diseases. BARDA receives funding through an earmark included in the PHSSEF that flows through ASPR and is made available to BARDA for expenses

¹ ASPR was formerly the Office of the Assistant Secretary for Preparedness and Response.

² *Report of Investigation Regarding the Assistant Secretary for Preparedness and Response* ([DI-16-3098](#)), issued May 2020.

necessary to support advanced research and development, pursuant to section 319L of the Public Health Service Act, and other administrative expenses of BARDA.³

The Antideficiency Act and Purpose Statute

Congress determines the amount of funding available to an agency by enacting appropriations to cover programs, projects, purchases, and services needed by the agency during the period for which the funds are made available. Agencies are given reasonable discretion regarding how to use their appropriations. Even if a particular expenditure is not specifically allowed by an appropriation, it may be permitted under the “Necessary Expense Rule” if it is necessary and incident to the proper execution of the general purpose of the appropriation.⁴

An agency may expend appropriations for goods and services when: (1) the purpose of the obligation or expenditure is authorized, (2) the obligation occurs within the time for which the appropriation is available, and (3) the obligation or expenditure is within the amounts that Congress has established. These are referred to as the main tenets of appropriations law requirements: purpose, time, and amount.⁵

The Antideficiency Act prohibits an agency from obligating or expending funds in advance of or in excess of an appropriation unless specifically authorized by law.⁶ To avoid violating the Antideficiency Act, an agency must use funds that are legally available for a given obligation or expenditure. An obligation or expenditure that exceeds the amount of the appropriation, the apportionment, or the allotment violates the Antideficiency Act.

As stated in the Principles of Federal Appropriations Law, “an agency may not augment its appropriations from outside sources without specific statutory authority.” Although no individual statute prohibits the augmentation of appropriated funds, this rule against augmentation is nevertheless based on statutes, including the Purpose Statute, which states that appropriated funds may only be used for the purposes for which they were appropriated. Prohibited augmentation includes transfers between appropriations without specific statutory authority. The rule against augmentation effectively restricts executive spending to the amounts appropriated by Congress and is designed “to prevent a government agency from undercutting the congressional power of the purse.”⁷

³ An earmark is any portion of a lump-sum amount designated for a particular purpose by means of legislative language.

⁴ Principles of Federal Appropriations Law, Third Edition, GAO-04-261SP, Volume I, 2004 Revision, pg. 4-20.

⁵ Codified at 31 U.S.C. §§ 1301(a), 1502(a), and 1341(a); Principles of Federal Appropriations Law, Fourth Edition, GAO-17-797SP, 2017 Revision, pg. 3-9.

⁶ Codified at 31 U.S.C. § 1341(a), with additional provisions also found in §§ 1342 and 1517(a).

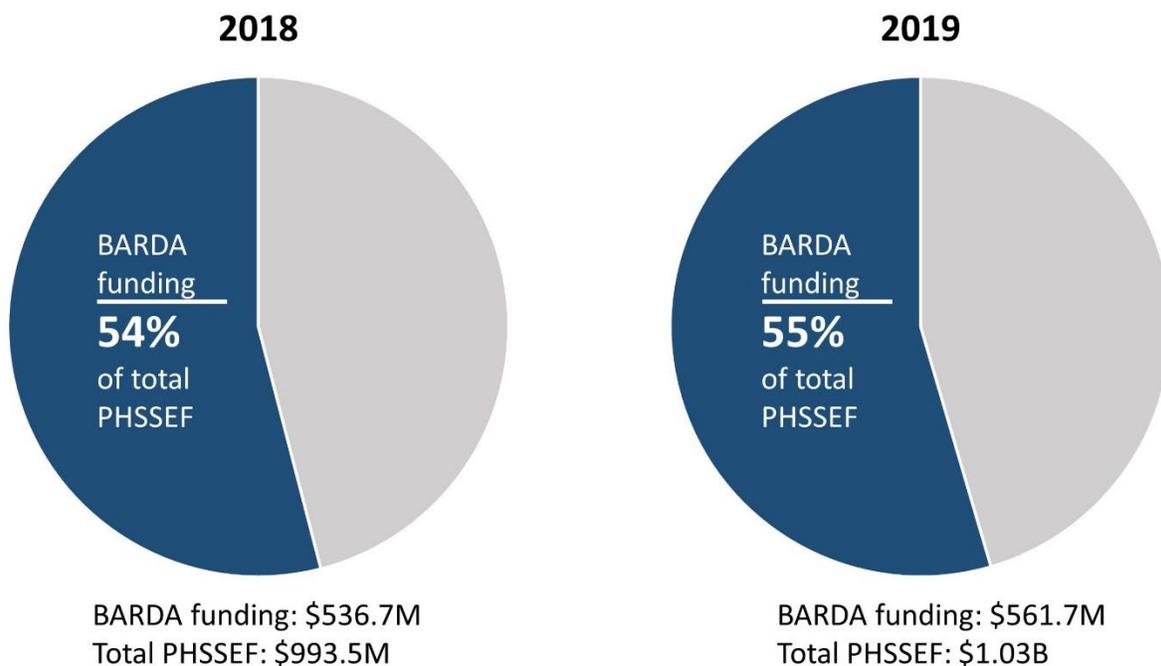
⁷ Principles of Federal Appropriations Law, Third Edition, GAO-06-382SP, Volume II, 2006 Revision, pg. 6-162 - 163.

Violations of the Purpose Statute may result in violations of the Antideficiency Act if there are insufficient funds in the correct appropriation to cover the funds improperly charged to another appropriation.

ASPR and BARDA Appropriated Funding

ASPR is funded through appropriations to the PHSSEF.⁸ As shown in the figure below, in FYs 2018 and 2019, the PHSSEF was appropriated \$993.5 million and \$1.03 billion, respectively. Of those amounts, \$536.7 million for FY 2018 and \$561.7 million for FY 2019 were earmarked to be used “for expenses necessary to support advanced research and development pursuant to section 319L of the [Public Health Service] Act, and other administrative expenses of the Biomedical Advanced Research and Development Authority.”⁹

Figure: BARDA Funding Earmarks Included in the Overall PHSSEF Appropriations



Further clarifying the purpose of this earmark, section 319L of the Public Health Service Act is entitled, “Biomedical Advanced Research and Development Authority.” In addition, according to the Pandemic and All-Hazards Preparedness Act, which established ASPR and BARDA, the term “advanced research and development” means “with respect to a product that is or may

⁸ In FY 2018 and FY 2019, the PHSSEF supported ASPR, pandemic influenza preparedness, the HHS cybersecurity program, and the Office of Security and Strategic Information. See <https://www.hhs.gov/sites/default/files/fy-2018-phisef-cj.pdf> (FY 2018), and <https://www.hhs.gov/sites/default/files/fy-2019-phisef-cj.pdf> (FY 2019), last accessed on Sept. 15, 2021.

⁹ Consolidated Appropriations Act, 2018, P.L. No. 115-141 and Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, P.L. 115-245.

become a qualified countermeasure or a qualified pandemic or epidemic product, activities that predominantly are conducted after basic research and preclinical development of the product and are related to manufacturing the product on a commercial scale and in a form that satisfies the regulatory requirements under the Federal Food, Drug, and Cosmetic Act” ((21 U.S.C. § 301 et. seq.) or 42 U.S.C. § 262 (regulation of biological products)).¹⁰

Once appropriated, PHSEF funding flows from the HHS Office of the Assistant Secretary for Financial Resources (ASFR) through to the ASPR Office of Management Finance and Human Capital. BARDA does not receive a lump-sum appropriation from ASFR; instead, ASPR allocates to BARDA the funding earmarked by Congress for its use.¹¹

A transfer of appropriations is allowed up to a certain amount provided Congress is notified in advance.¹²

SEC. 205. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985) which are appropriated for the current fiscal year for HHS in this Act may be transferred between appropriations, but no such appropriation shall be increased by more than 3 percent by any such transfer: Provided, That the transfer authority granted by this section shall not be used to create any new program or to fund any project or activity for which no funds are provided in this Act: Provided further, That the Committees on Appropriations of the House of Representatives and the Senate are notified at least 15 days in advance of any transfer.

HOW WE CONDUCTED THIS AUDIT

Our audit covered all 19 joint funding arrangements (JFAs)¹³ and salary expenditures for 30 employees, totaling \$4.7 million, made using BARDA FY 2018 and FY 2019 appropriations.¹⁴ To

¹⁰ 42 U.S.C. § 247d-7e(a)(6).

¹¹ The Office of Management and Budget (OMB) is responsible for apportioning appropriated amounts to the executive branch agencies, thereby making funds in appropriation accounts available for obligation. Once OMB apportions funds, it is the agency’s responsibility to allocate the funds in accordance with its funds control system and regulations. The purpose of the funds control system and regulations is: (1) to prevent overobligations and overexpenditures and (2) to fix accountability for obligations or expenditures. An obligation or expenditure that exceeds the amount of the appropriation, the apportionment, or the allotment violates the Antideficiency Act. For a more detailed explanation, see OMB Circular No. A-11, part 4, Instructions on Budget Execution (https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/a11_current_year/a11_2016.pdf).

¹² Consolidated Appropriations Act, 2018, P.L. No. 115-141, Division H, Title II, General Provisions § 205 and Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, P.L. No. 115-245, Division B, Title II, General Provisions § 205.

¹³ ASPR used JFAs to support specific projects or services that are managed by one office but utilized by multiple, if not all, ASPR offices.

¹⁴ FYs 2018 and 2019 were the two most recent FYs at the start of our audit.

determine whether the expenditures complied with the Purpose Statute at 31 U.S.C. section 1301(a), we focused on analyzing the purposes for which the BARDA appropriations were expended.

In FYs 2018 and 2019, 185 and 259 ASPR employees' salaries, respectively, were charged to BARDA appropriations. We judgmentally selected 30 employees (15 employees each from 1 pay period in FY 2018 and 1 pay period in FY 2019) who were paid using BARDA appropriations, as indicated by ASPR's payroll system. For these 30 employees, we requested that ASPR provide documentation about the work each employee performed during that pay period to confirm that the employee performed work related to BARDA. ASPR was not able to provide this documentation for the 30 employees. We also requested and, when possible, conducted interviews with each employee to determine whether the employee performed work related to BARDA.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

See Appendix A for the details of our audit scope and methodology.

FINDINGS

ASPR may not have used BARDA FY 2018 and FY 2019 appropriations for their intended purpose in accordance with Federal requirements. Specifically, ASPR allocated JFA expenses to BARDA appropriations based on individual program office budgets instead of actual usage. In addition, although the 20 employees we were able to interview informed us that they remembered performing work for BARDA, ASPR was unable to provide any documentation to support that any of the 30 employees we sampled performed work for BARDA.

ASPR may have violated the Purpose Statute if the allocated JFA expenses and the employees' salary expenses served to augment other ASPR offices' funding. Therefore, ASPR potentially violated the Antideficiency Act.

ASPR IMPROPERLY ALLOCATED EXPENSES TO BARDA APPROPRIATIONS

Federal Requirements

As stated in the Purpose Statute, appropriated funds may only be used for the purposes for which they were appropriated and charging authorized items to the wrong appropriation and making unauthorized charges to an appropriation are both prohibited. According to the Principles of Federal Appropriations Law, "absent a clear indication to the contrary, the common meaning of the words in the appropriation act and the program legislation it funds

governs the purposes to which the appropriation may be applied.”¹⁵ Federal agencies are given reasonable discretion regarding how to use their appropriations as it would be impossible for Congress to identify every allowable expenditure in an appropriations act. Consequently, even when the language of an appropriation does not explicitly allow for a named expenditure, it may still be permitted under the “Necessary Expense Rule” if it is necessary and incident to the proper execution of the general purpose of the appropriation.¹⁶

An agency may not augment its appropriations from outside sources without specific statutory authority because when Congress makes an appropriation, it also establishes an authorized program level. By making that appropriation, Congress is telling the agency that it cannot operate beyond the level that it can finance under its appropriation. Therefore, the rule against augmentation of appropriations exists to prevent a Government agency from indirectly exceeding the amount Congress has appropriated for that activity.¹⁷ In essence, the augmentation rule effectively limits Federal agency spending to the amounts appropriated by Congress. As such, it is a logical complement to the Antideficiency Act.¹⁸

The rule against augmentation comes up in varied contexts.¹⁹ One application is the prohibition of transfers between appropriations without specific statutory authority. An unauthorized transfer is an improper augmentation of the receiving appropriation (e.g., 23 Comp. Gen. 694 (1944); B-206668, Mar. 15, 1982). Both the “pooling” of appropriated funds within an agency and the unauthorized transfer of funds from one appropriation made to an

¹⁵ Principles of Federal Appropriations Law, Fourth Edition, GAO-17-797SP, 2017 Revision, pg. 3-11.

¹⁶ Principles of Federal Appropriations Law, Third Edition, GAO-04-261SP, Volume I, 2004 Revision, pg. 4-21 – 22 provides that the Government Accountability Office applies a three-part test to determine whether an expenditure is a “necessary expense” of a particular appropriation. To be considered a “necessary expense,” an expenditure must meet three requirements: (1) it must bear a logical relationship to the appropriation sought to be charged, (2) it must not be prohibited by law, and (3) it must not be otherwise provided for in another appropriation or statutory funding scheme.

¹⁷ Principles of Federal Appropriations Law, Third Edition, GAO-06-382SP, Volume II, 2006 Revision, pg. 6-162 - 163.

¹⁸ *Id.* at 6-164.

¹⁹ *Id.* at 6-163. The Comptroller General decisions noted in this paragraph concluded that basing cost allocations on anything other than actual usage is inherently problematic, as agencies are required to identify, calculate, and assign costs using a supportable, reasonable methodology. While the developed methodology may be administratively burdensome, if an agency cannot determine actual usage or demonstrate that the amount charged to an appropriation is commensurate with the value received, then the improper allocation methodology may result in a Purpose Statute violation and a potential Antideficiency Act violation.

agency to another appropriation made to the same agency violate the rule against augmentation.²⁰

For FYs 2018 and 2019, BARDA's earmarked funding was to be used "for expenses necessary to support advanced research and development pursuant to section 319L of the PHS [Public Health Service] Act, and other administrative expenses of the Biomedical Advanced Research and Development Authority." According to the Pandemic and All-Hazards Preparedness Act, the term "advanced research and development" means "with respect to a product that is or may become a qualified countermeasure or a qualified pandemic or epidemic product, activities that predominantly are conducted after basic research and preclinical development of the product and are related to manufacturing the product on a commercial scale and in a form that satisfies the regulatory requirements under the Federal Food, Drug, and Cosmetic Act" (21 U.S.C. § 301 et. seq.; 42 U.S.C. § 262).²¹

For these annual appropriations, the Department was authorized to transfer no more than one percent of any discretionary funds between appropriations, and any transfer was also required to not increase any appropriation by more than three percent. In addition, the transfer authority could not be used to create any new program or to fund any project or activity for which no funds were provided in the appropriation act. Finally, the appropriation language specified that the Committees on Appropriations of the House of Representatives and the Senate must be notified at least 15 days in advance of any transfer.²²

ASPR Improperly Allocated Expenses for Services Used by Multiple Offices

ASPR used three methods for allocating administrative costs when using JFAs:²³ actual usage (which is appropriate based on Federal requirements) and percentage of individual program office budget and modified percentage of individual program office budget (both of which are

²⁰ For example, an agency received a General Administration appropriation and separate appropriations for the administration of its component bureaus. The Comptroller General found that an unauthorized transfer of funds from the bureau appropriations to the General Administration appropriation was held to be an improper augmentation of the latter appropriation (B-206668, Mar. 15, 1982). Similarly, another agency was found to have illegally augmented its departmental management account by "pooling" funds from component appropriations to purchase computer equipment where the components' costs far exceeded the value of the equipment they received (70 Comp. Gen. 592 (1991)). The Comptroller General rejected the agency's characterization of this transaction as a "reprogramming," determining instead that it was an unauthorized transfer among appropriations.

²¹ 42 U.S.C. § 247d-7e(a)(6).

²² Consolidated Appropriations Act, 2018, P.L. No. 115-141, Division H, Title II, General Provisions § 205 and Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, P.L. No. 115-245, Division B, Title II, General Provisions § 205.

²³ In a June 27, 2011, joint funding arrangements decisional memo, ASPR describes joint funding arrangements as agreements to fund the costs for initiatives through multiple offices and allows the burden to be shared amongst the program offices that receive the benefit of the service. See Appendix B for a list of joint funding arrangements used to allocate expenses to BARDA.

inappropriate based on Federal requirements). For 4 of the 19 JFAs we reviewed, totaling \$741,269, ASPR appropriately allocated costs to program offices based on actual usage data. However, for 11 of the 19 JFAs we reviewed, totaling \$3.6 million, ASPR incorrectly used a percentage of individual program offices' budgets to allocate expenses to BARDA (and other ASPR program offices). Specifically, the costs were allocated to each program office based on the office's budget as a percentage of ASPR's total budget. Expenditures from another 4 of the 19 JFAs, totaling \$230,900, were incorrectly allocated based on a modified percentage of individual program office budget methodology. The modified budget methodology used the individual program offices' budgets and other factors, such as additional funding from the ASPR program office responsible for managing the JFA.²⁴

ASPR incorrectly allocated JFA costs to BARDA because it did not have formal written policies and procedures for JFAs and therefore did not require allocation methodologies to accurately reflect the benefiting offices' use of the product or services. The instructions ASPR sent to its individual program offices each FY to prepare JFA proposals state that the allocation methodologies should consider each office's budget and be reflected as a percentage of ASPR's total budget. ASPR officials reviewed and approved the FY 2018 and FY 2019 allocation methodologies for the 11 JFAs that used a percentage of individual office budgets and the 4 JFAs that used the modified percentage of individual office budget. ASPR personnel stated that they believe that allocating costs based on individual office budgets is an appropriate method of allocating costs among benefiting ASPR program offices if actual usage data is not available.

ASPR personnel also stated that, in most cases, they do not believe it is reasonable and economical to track actual usage but did not provide a more detailed explanation. The ASPR officials stated that they are undertaking a comprehensive review of all allocations and have revised methodologies when practical. For example, before FY 2021, ASPR allocated the Correspondence Control Management Service costs based on the percentage of budget methodology, but in FY 2021, ASPR updated the methodology to reflect the actual number of tasks completed in the prior year for each office. As a result, the amount BARDA paid decreased from roughly 49 percent (\$91,041) of the total expense in FY 2019 to roughly 35 percent (\$50,292) of the total expense in FY 2021.

ASPR's use of a percentage of individual program office budgets is not an appropriate methodology because it does not accurately demonstrate that each office was charged an amount commensurate with the value it received. By not charging BARDA actual costs, ASPR could have augmented the appropriations of other ASPR offices.²⁵ Consequently, ASPR

²⁴ In addition, when using a budget-based methodology, ASPR may not have always used the most current budget figures available. For example, in FY 2018, ASPR used FY 2013 budget figures to determine the cost allocation for each individual program office charged for a service. Budget figures can change significantly from year to year. Therefore, FY 2013 budget figures used in FY 2018 JFAs may not reflect current budget levels for each office.

²⁵ See 70 Comp. Gen. 592 (1991).

potentially used BARDA's appropriation for purposes other than the appropriated purpose, which would violate the Purpose Statute and possibly cause an Antideficiency Act violation.

ASPR COULD NOT SUPPORT THAT EMPLOYEES WHOSE SALARIES WERE PAID WITH BARDA APPROPRIATIONS PERFORMED WORK THAT SUPPORTED BARDA'S MISSION

Federal Requirements

In FYs 2018 and 2019, BARDA was funded through an earmark included in the appropriations to the PHSSEF.²⁶ BARDA's funding was to be used "for expenses necessary to support advanced research and development pursuant to section 319L of the PHS [Public Health Service] Act, and other administrative expenses of the Biomedical Advanced Research and Development Authority."

Federal regulations at 31 U.S.C. section 1301(a) stipulate that appropriations must be applied only to the objects for which the appropriations were made, except as otherwise provided by law. In addition, 31 U.S.C. section 1341(a) states that the Antideficiency Act prohibits an agency from obligating or expending funds in advance of or in excess of an appropriation unless specifically authorized by law.²⁷

According to 31 U.S.C. section 1532, transfers of funds between agency appropriation accounts are prohibited except when authorized by law.

ASPR Could Not Identify the Type of Work That ASPR Employees Performed

ASPR was not able to provide documentation of the work performed by 30 employees whose salaries were charged to BARDA FY 2018 and FY 2019 appropriations.²⁸ ASPR's payroll system identified that these 30 employees were paid using BARDA funds, but when we requested support for the work the 30 employees performed, ASPR personnel informed us that there was no documentation available to respond to our request. Because ASPR was unable to provide documentation, we attempted to interview the 30 employees to determine whether they performed work related to BARDA in FY 2018 or FY 2019. We were able to interview 20

²⁶ Consolidated Appropriations Act, 2018, P.L. No. 115-141 and Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, P.L. 115-245.

²⁷ Additional provisions can also be found in 31 U.S.C. §§ 1342 and 1517(a).

²⁸ The 30 employees were judgmentally selected, 15 from 1 pay period in FY 2018 and 15 from 1 pay period in FY 2019.

employees whose salaries were paid from BARDA funds.²⁹ and, based on their own statements, we determined that:

- 9 employees recalled working directly for BARDA;
- 1 employee recalled performing work that was overseen by BARDA; and
- 10 employees recalled working for offices other than BARDA, but all 10 recalled that they performed work for BARDA during the sampled pay period.

Because ASPR does not maintain records or a system that identifies labor distribution by project to document the work performed by employees, BARDA appropriations could be charged for work performed that does not benefit BARDA. Charging BARDA appropriations for such work would circumvent the purpose of the appropriation and thereby violate the Purpose Statute and, if BARDA appropriations were used to augment non-BARDA funding, may result in an Antideficiency Act violation.

RECOMMENDATIONS

We recommend that the Administration for Strategic Preparedness and Response:

- develop internal written policies and procedures for the JFA process that align with Federal requirements and include the use of allocation methodologies that accurately reflect the benefiting offices' use of the product or service;
- review the FY 2018 and 2019 JFA allocation methodologies along with the methodologies used during subsequent FYs to determine whether the costs were allocated to each office based on appropriate methodologies, and correct any improper allocations to avoid potential Antideficiency Act violations;
- maintain documentation of the work performed by employees whose salaries are paid using BARDA funds to ensure that appropriations are used for their intended purposes in accordance with Federal requirements;
- review the 10 remaining sampled employees that we could not interview to determine whether any salaries were improperly charged to BARDA appropriations and identify potential Antideficiency Act violations; and
- report any Antideficiency Act violations identified.

²⁹ The remaining 10 employees could not be reached to verify the type of work performed due to staff turnover and, in one case, military deployment.

ASPR COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, ASPR concurred with our third recommendation that it maintain documentation of the work performed by employees whose salaries are paid using BARDA funds. ASPR stated that its managers and supervisors monitor the work performed by these employees to ensure their salaries and expenses are financed by funds with intended purposes consistent with employee work performed. ASPR did not provide details about how the managers and supervisors would document their monitoring efforts.

ASPR did not indicate concurrence or nonconcurrence with our first, second, fourth, and fifth recommendations and stated that it considers these recommendations closed. ASPR provided general comments and described actions it has taken to address our recommendations.

After reviewing ASPR's comments, we maintain that our findings, conclusions, and recommendations are valid. We are pleased that ASPR concurred with our third recommendation. While ASPR identified actions it has taken to address the remaining recommendations, we do not believe that these actions are sufficient to ensure that BARDA appropriations are used for their intended purpose in accordance with Federal requirements. We maintain that our recommendations should be fully implemented.

ASPR provided technical comments which we addressed, as appropriate. ASPR's comments, excluding the technical comments, are included as Appendix C.

JOINT FUNDING ARRANGEMENTS AND POTENTIAL ANTIDEFICIENCY ACT VIOLATIONS

ASPR Comments

In response to our first and fifth recommendations, ASPR stated that ASFR previously conducted a comprehensive review of ASPR's use of JFAs and that ASFR's review did not identify any findings of misuse of BARDA funds.

ASFR's review included an independent accounting firm analysis that, according to ASPR, "was designed to inform HHS's review of whether ASPR violated appropriations statutes, rather than to draw a conclusion regarding whether or not it did." ASFR's review concluded that ASPR did not violate appropriation statutes but recommended that policies and procedures for ASPR's JFA process should include the JFA's managing office recommending a cost allocation method based on each individual program office's usage. ASFR's review clarified that costs should be allocated based on the percentage of each individual program office's budget only in cases in which costs cannot be allocated based on usage.

Further, in response to our second recommendation, ASPR referred to ASFR's review and accompanying independent accounting firm's report, stating that, "consistent with the *FASAB [Federal Accounting Standards Advisory Board] Handbook, Statement of Federal Financial Accounting Standard (SFFAS) 4: Managerial Cost Accounting Standards and Concepts*, 'ASPR, when available, used utilization of services for cost allocation. In the absence of either actual

utilization data, or an approximation provided by the requestor, ASPR used an appropriated level (i.e., based on each office's budget allocation as a percent of the ASPR's total budget) as the baseline for pro rata allocation.'" ASPR added that the FASAB guidance makes clear that a cost allocation methodology based on usage is preferable, wherever economically feasible. However, a consistent and reasonable cost allocation is also acceptable. ASPR stated that it consistently applied a cost allocation method based on a percentage of each individual program office's budget and determined that this methodology also was reasonable given that actual usage data was not available, or it would not be economically feasible to provide.

ASPR also outlined steps it has taken in response to our recommendations. Specifically, ASPR developed training on the principles of appropriations law and ASPR's appropriation accounts, and the training is mandatory for all managers and supervisors. In addition, ASPR's FY 2023 guidance for developing JFA requests states that requests must include a recommended cost allocation method that should be based on actual usage if available. The guidance includes the FASAB handbook principles and ASPR's response stated that cost allocation methodologies are to be documented throughout the JFA approval process. ASPR also stated that, beginning in FY 2023, ASPR conducted a comprehensive review and analysis to further develop cost allocation methodologies based on usage of shared services and presented the allocation methods to a leadership council of ASPR Deputy Assistant Secretaries. ASPR stated that the allocation methods are in place for FY 2024 and will be refined based on service usage and cost drivers.

Office of Inspector General Response

We commend ASPR for developing guidance stating that JFA requests must include a recommended cost allocation method based on actual usage where available and refining allocation methods based on service usage and cost. We also appreciate ASPR conducting a comprehensive review and analysis to further develop allocation methods based on usage and developing a mandatory training on the principles of appropriations law and on its appropriation accounts.

However, while ASPR believes that allocating costs based on the percentage of each individual program office's budget meets FASAB requirements, we maintain that this method does not accurately demonstrate that each office was charged an amount commensurate with the value it received. In fact, the Comptroller General decisions noted in our report concluded that basing cost allocations on anything other than actual usage is inherently problematic.

With respect to the analysis performed by the independent accounting firm, we note that this analysis was an agreed-upon procedures engagement, not an audit examination or an attestation review engagement. Further, the firm did not express an opinion or conclusion and stated that, had it performed additional procedures, other matters might have come to its attention. The independent accounting firm's report states that the procedures performed during the analysis were appropriate to gain an understanding of ASPR's processes specific to FYs 2017, 2018, and 2019, and the report may not be suitable for any other purpose.

While we commend ASPR for updating the cost allocation methodology for one of its JFAs in FY 2021 to reflect actual usage, we note that ASPR's comments do not state whether ASPR reviewed the 11 JFAs that allocated costs to BARDA based on a percentage of the individual program office budget methodology and the 4 JFAs that allocated costs based on a modified percentage of the individual program office budget methodology during FY 2018 and FY 2019. In addition, ASPR's comments did not indicate whether it reviewed the methodologies used during subsequent FYs to determine whether they resulted in an appropriate allocation of costs to each office.

We maintain that ASPR potentially violated the Antideficiency Act and should report that potential violation as required. We further maintain that allocating costs based on the percentage of each individual program office's budget does not result in costs being charged to each office in proportion to the value the office received, and ASPR should review its methodologies for the reviewed JFAs and subsequent FYs and correct any improper allocations to avoid potential Antideficiency Act violations.

SALARIES FOR EMPLOYEES NOT AVAILABLE FOR OUR INTERVIEWS

ASPR Comments

Regarding our fourth recommendation, ASPR stated it reviewed the 30 sampled employees and determined that 29 were employed to provide BARDA program management or BARDA contracting services. ASPR identified one employee that served as a medical officer who provided support across ASPR. ASPR stated that it "realigned this position with a funding account that will enable and support these broader responsibilities."

Office of Inspector General Response

We appreciate ASPR reviewing the 30 employees that we reviewed, including the 10 who could not be reached for our interviews. However, we are concerned that the employee ASPR identified who provided support across the agency may have been paid with BARDA appropriations for work that did not benefit BARDA. We maintain that ASPR should quantify the dollar value of the employee's salary that was paid with BARDA funds but did not benefit BARDA and, if the improper use of BARDA funds cannot be corrected, report it as an Antideficiency Act violation.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered all 19 JFA and salary expenditures for 30 employees, totaling \$4,734,569, paid using BARDA FY 2018³⁰ and FY 2019³¹ appropriations.

We reviewed FY 2018 and 2019 expenses totaling \$1,634,239 and \$2,945,100, respectively, that were allocated to BARDA through JFAs. We also judgmentally selected 30 employees who were paid \$155,230 using BARDA appropriations, as indicated by ASPR's payroll system, to determine whether they performed BARDA-related work.

We reviewed FY 2018 and 2019 Final Statement of Assurance decision memos and related documents to determine whether ASPR identified any internal control weaknesses.³² We interviewed ASPR and ASFR officials to obtain an understanding of the process for allocating expenses using JFAs and obtained and reviewed a document that described the JFA process. We interviewed ASPR and ASFR officials to determine whether ASPR had controls in place to ensure that funds used for BARDA payroll expenses were used for their intended purpose.

We conducted our audit from July 2020 through October 2023.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- reviewed ASPR's FY 2018 and 2019 guidance for preparing JFAs, which was provided to the offices that managed these expenses, along with the approved JFA allocation decisions for both FYs;
- interviewed officials from ASPR and ASFR to obtain an understanding of the JFA expense allocation process, and to determine whether ASPR had controls in place to ensure that funds used for BARDA payroll expenses were used for their intended purpose;

³⁰ Consolidated Appropriations Act, 2018, P.L. No. 115-141.

³¹ Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, P.L. 115-245.

³² Statements of Assurance decision memos report the results of ASPR's annual review to determine whether its internal controls met the objectives of the Federal Managers' Financial Integrity Act of 1982 and Office of Management and Budget Circular A-123, Management's Responsibility for Enterprise Risk Management and Internal Control.

- reviewed ASPR’s processes, including JFA allocation methodologies and their supporting calculations, for incurring and recording expenditures including JFA expenses and salaries;
- reviewed obligation and expenditure data recorded in the Unified Financial Management System (UFMS) for expenditures charged to FY 2018 and 2019 BARDA appropriations;³³
- reviewed expenditures charged to FY 2018 and 2019 appropriations, including JFA expenses and salaries, to determine whether the funds were used for their intended purposes;
- judgmentally selected 15 employees from 1 pay period in FY 2018 and 15 employees from 1 pay period in FY 2019 who were paid a total of \$155,230 for that pay period (from a total of 185 employees in FY 2018 and 259 employees in FY 2019 who were paid a total of \$62,657,394 in ASPR salaries using BARDA appropriations in FYs 2018 and 2019);
- requested that ASPR provide documentation about the work each sampled employee performed to confirm that the employee performed work related to BARDA;
- requested and, when possible, conducted interviews with each sampled employee to determine whether they performed work related to BARDA; and³⁴
- discussed the results of our audit with ASPR and ASFR officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

³³ UFMS is a core accounting system that supports all HHS operating and staff divisions except the Centers for Medicare & Medicaid Services and the National Institutes of Health. Our review allowed us to establish reasonable assurance of the authenticity and accuracy of the data obtained from UFMS.

³⁴ Ten employees could not be reached to verify the type of work performed due to staff turnover and, in one case, military deployment.

APPENDIX B: AUDITED JOINT FUNDING ARRANGEMENTS

Joint Funding Arrangement Name	Amount Allocated to BARDA for 2018	2018 Allocation Method	Amount Allocated to BARDA for 2019	2019 Allocation Method
ASPR Knowledgebase, PHE.gov Website, & Failover*	\$779,700	Percentage of Budget	\$857,353	Percentage of Budget
Centralization of ASPR Property Management Functions (FY 2018 Only)	180,000	Percentage of Budget	N/A	N/A
PRISM Licenses and Training	166,691	Actual Usage	212,748	Actual Usage
Financial System - O&M	99,000	Percentage of Budget	99,000	Modified Budget†
Management Assurance	50,000	Modified Budget‡	50,000	Modified Budget‡
Increase for Financial System (FY 2018 Only)	31,900	Modified Budget**	N/A	N/A
Facility Help Desk Support for the O'Neil Bldg††	26,641	Percentage of Budget	228,798	Percentage of Budget
Correspondence Control Management System	137,446	Percentage of Budget	91,041	Percentage of Budget
NIH Library Services Agreement	162,861	Actual Usage	198,969	Actual Usage
Intelligence Support (FY 2019 Only)	N/A	N/A	636,568	Percentage of Budget
Konica Print Services (FY 2019 Only)	N/A	N/A	309,706	Percentage of Budget
IT Security Services Contract (FY 2019 Only)	N/A	N/A	260,917	Percentage of Budget
Totals	\$1,634,239		\$2,945,100	

*In FY 2019, the name of this JFA changed to ASPR Web JFA.

†ASPR used the budget methodology in FY 2018 and allocated the same dollar amount to the service in FY 2019.

‡ASPR used a modified version of the budget methodology for this service. The total cost for the service was \$150,000. BARDA and another office paid \$50,000 each (33 percent), and the requesting office paid the additional \$50,000.

**ASPR used a modified version of the budget methodology for this service. The total cost for the service was \$135,900. BARDA paid \$31,900, another office paid \$4,000, and the requesting office paid the remaining \$100,000.

††In FY 2019, the name of this JFA changed to Property Management and Facilities.

APPENDIX C: ASPR COMMENTS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for Strategic
Preparedness and Response

Assistant Secretary for
Preparedness and Response
Washington, D.C. 20201

TO: Amy J. Frontz
Deputy Inspector General for Audit Services

FROM: Dawn O'Connell
Assistant Secretary for Preparedness and Response

SUBJECT: Office of the Inspector General Draft Report: *Fiscal Year 2018 and 2019 Biomedical Advanced Research and Development Authority Appropriations May Not Have Been Used for Their Intended Purpose in Accordance With Federal Requirements, A-03-20-03002*

DATE: December 15, 2023

The Administration for Strategic Preparedness and Response (ASPR) acknowledges the findings and recommendations included in the report issued by the HHS Office of the Inspector General (OIG) reviewing the expenditures charged by ASPR to fiscal year (FY) 2018 and FY 2019 Biomedical Advanced Research and Development Authority (BARDA) appropriations to assess whether ASPR used the appropriations for their intended purpose. Understanding OIG began this audit in 2020, ASPR would like to highlight some actions that have been implemented since this review started that have already worked towards addressing some of the recommendations issued in this report.

- **Recommendation 01:** Develop internal written policies and procedures for the joint funding agreement (JFA) process that align with Federal requirements and include the use of allocation methodologies that accurately reflect the benefiting offices' use of the product or service.
 - *ASPR considers this recommendation closed.*
 - **General Comments:**
 - In 2022, the HHS Office of the Assistant Secretary for Financial Resources (ASFR) conducted a comprehensive review of ASPR's use of JFAs. ASFR's review included an analysis by the independent accounting firm Ernst & Young (EY) (*see* "Report of Independent Accountant on Applying Specified Procedures" and Memo: DECISION – ASFR Response to Whistleblower Allegations per OSC File No. DI-16-3098 in the attachments).
 - EY's analysis was designed to inform HHS's review of whether ASPR violated appropriations statutes, rather than to draw a conclusion regarding whether or not it did.
 - After considering the information presented by EY, as well as research on applicable appropriations law, GAO guidance, and ASPR supporting documentation, the ASFR concluded that ASPR did not violate appropriation statutes.
 - The review recommended that policies and procedures guiding ASPR's JFA process should include a provider-recommended cost allocation based on utilization; and, in cases where such allocations cannot be identified, the allocation contribution be based on the pro rata percentage of budget.
 - **Actions:**
 - ASPR's annual spending plan guidance includes process steps for development of JFA requests. The guidance includes the requirement for a service provider-recommended cost allocation based on utilization as identified in the EY analysis

(see the Memo: Fiscal Year 2023 Integrated Strategic Resource Plan (ISRP) Guidance and the FY2023 ISRP Data Collection Tool spreadsheet in the attachments).

- Beginning in FY2023, ASPR conducted a comprehensive review and analysis to further develop cost allocation methodologies based on service utilization of shared services and to inform JFAs.
 - These utilization methodology models were presented to and approved by a leadership council comprised of ASPR Deputy Assistant Secretaries and chaired by the Principal Deputy Assistant Secretary.
 - These utilization methodology models are in place for FY 2024 and will continue to be refined based on service usage and cost drivers.
- **Recommendation 02:** Review the FY 2018 and 2019 JFA allocation methodologies along with the methodologies used during subsequent FYs to determine whether the costs were allocated to each office based on appropriate methodologies and correct any improper allocations to avoid potential Antideficiency Act violations.
 - *ASPR considers this recommendation closed.*
 - General Comments:
 - As noted in the response to Recommendation 1, the ASFR and EY analysis documented on page 8 of the report states that consistent with the *FASAB Handbook, Statement of Federal Financial Accounting Standard (SFFAS) 4: Managerial Cost Accounting Standards and Concepts*, “ASPR, when available, used utilization of services for cost allocation. In the absence of either actual utilization data, or an approximation provided by the requestor, ASPR used an appropriated level (i.e., based on each office’s budget allocation as a percent of the ASPR’s total budget) as the baseline for pro rata allocation.”
 - Further, the FASAB Handbook guidance on cost allocation methodology states on page 38 the following –
“*In principle, costs should be assigned to outputs in one of the methods listed below in the order of preference:*
(a) *Directly tracing costs wherever economically feasible;*
(b) *Assigning costs on a cause-and-effect basis; and*
(c) *Allocating costs on a reasonable and consistent basis.*”¹
 - Actions:
 - The FASAB guidance makes clear that a cost allocation methodology based on utilization is preferable, wherever economically feasible. However, a consistent and reasonable cost allocation is also acceptable. ASPR applied a cost allocation based on a pro rata of budget on a consistent basis and determined that this methodology also was reasonable given that actual utilization data was not available or would not be economically feasible to provide.
 - **Recommendation 03:** Maintain documentation of the work performed by employees whose salaries are paid using BARDA funds to ensure that appropriations are used for their intended purposes in accordance with Federal requirements.
 - *ASPR concurs with this recommendation and considers it open.*

¹ The FASAB Handbook providing information on cost allocation methodologies can be found here: [handbook_sffas_4.pdf \(fasab.gov\)](https://www.fasab.gov/handbook_sffas_4.pdf).

- General Comments:
 - ASPR managers and supervisors monitor work performed by employees and ensure that employee salaries and expenses are financed by funds with intended purposes consistent with employee work performed.
- **Recommendation 04:** Review the 10 remaining sampled employees that we could not interview to determine whether any salaries were improperly charged to BARDA appropriations and identify potential Anti-deficiency Act violations.
 - *ASPR considers this recommendation closed.*
 - Actions:
 - ASPR has completed its review of the payroll sample used in the OIG report, which was shared with OIG via email on August 4, 2023. Of the 30 personnel in the sample, 29 of 30 were employed to provide BARDA program management or BARDA contracting services.
 - In this review, ASPR identified one staff member that served as a medical officer providing support across ASPR. ASPR realigned this position with a funding account that will enable and support these broader responsibilities.
- **Recommendation 05:** Report any Antideficiency Act violations identified.
 - *ASPR considers this recommendation closed.*
 - General Comments:
 - As noted in the response to Recommendations 1 and 2, the ASFR and EY analysis determined that there were no findings of misuse of BARDA funds.
 - On page 233 of H.R. 8295, the FY 2023 report from the House Appropriations Labor/HHS Subcommittee, acknowledged the conclusion from the ASFR review; this report was previously shared with OIG via email on May 8, 2023.
 - Actions:
 - ASPR has developed training on the principles of appropriations law and on its appropriation accounts. This training is mandatory for all managers and supervisors.
 - ASPR's annual guidance to JFA requestors does include the FASAB handbook principles. In addition, cost allocation methodologies are documented throughout the JFA approval process.



Dawn O'Connell
Assistant Secretary for Preparedness and Response

Attachments:

1. Technical Comments on the Draft Report
2. Ernest & Young Report of Independent Accountant on Applying Specified Procedures
3. Memo: DECISION – ASFR Response to Whistleblower Allegations per OSC File No. DI-16-3098
4. Memo: Fiscal Year 2023 Integrated Strategic Resource Plan (ISRP) Guidance
5. FY2023 ISRP Data Collection Tool spreadsheet