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April 29, 1982

B-205270



The Honorable Wendell H. Ford  
Committee on Energy and Natural  
Resources  
United States Senate

Dear Senator Ford:

This responds to the request you made to GAO staff on October 16, 1981, during hearings on energy block grants. You asked that we determine whether there had been an unreported impoundment of funds for energy conservation, and that we provide data on State funding of energy offices and conservation. Subsequent to your request, the GAO and Committee staff have had a number of conversations concerning the specific information needed by the Committee. Based on those conversations we have addressed the following questions:

- I. What is the impact of Office of Management and Budget (OMB) Bulletin 82-1, October 7, 1981, which provides instructions for apportionments under continuing resolutions, and how does it relate to the Impoundment Control Act?
- II. Did the \$14 million deferred in D82-106, reported by the President's third special message (October 23, 1981), represent the entire amount of budget authority for energy conservation withheld by OMB?
- III. Did the treatment of the apportioned budget authority during the first quarter by Department of Energy (DOE) officials constitute an unreported impoundment because the budget authority was not obligated during this time?
- IV. Is the impoundment process being used to insure that agency obligations during fiscal year 1982 are consistent with the President's budget request?

Our responses to these questions are set out below.

I. OMB Bulletin 82-1

On October 7, 1981, the Director of OMB issued OMB Bulletin 82-1. The Bulletin provided instructions to agencies for requesting apportionments of amounts appropriated under the

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first continuing resolution for fiscal year 1982, Pub. L. No. 97-51 (October 1, 1981). The Bulletin also provided guidance for withholding funds from obligation and for the submission of deferral proposals to the Congress under the Impoundment Control Act. By its terms, the Bulletin expired on November 20, 1981. Section 4 of the Bulletin states that supplemental guidance on extensions of Pub. L. No. 97-51 will be issued as necessary. Supplemental instructions were issued in OMB Memorandum M-82-1, December 3, 1981.

The Bulletin was based on the premise that a continuing resolution is intended to provide only temporary funding until Congress completes its deliberations on the appropriate funding levels for programs. Section 3 of the Bulletin explains that:

"\* \* \* The Congress has stated on many occasions that rates of operation under continuing resolutions are to be interpreted as ceilings not as mandatory spending levels. The Congress and the President expect departments and agencies to avoid the obligation of funds under continuing resolutions at rates that would impinge on discretionary decisions otherwise available to the Congress while the Congress is considering its options \* \* \*."

Section 3 also references the House report on the first continuing resolution for fiscal year 1982 which instructs agencies to carefully avoid obligating funds for programs which congressional committees have criticized, and to take only the limited action necessary for orderly continuation of projects and activities. H. R. Rep. No. 97-223, p. 3 (September 14, 1981). The stated purpose of these instructions is to preserve to the maximum extent possible the flexibility of Congress in arriving at final decisions during the regular authorization and appropriation process.

Continuing resolutions appropriate a sum of money rather than a program level. 58 Comp. Gen. 530, 533 (1979); B-194362, May 1, 1979; B-152554, December 6, 1968. Further, regardless of their duration, they appropriate the full annual amount of the appropriation. See B-152554, November 4, 1974. Therefore, the entire amount of an appropriation under a continuing resolution is legally available for obligation on the first day the resolution is effective. As an administrative matter, OMB

considered 14 percent of the amounts appropriated by the first continuing resolution for 1982 as automatically apportioned during the 14 percent of the fiscal year covered by that continuing resolution. Section 5a of the Bulletin. However, OMB instructed agencies that in two specific cases "automatic apportionment" would not occur and formal apportionment would be required.

First, section 5(a)(1) requires formal apportionment when the agency believes that funding the normal rate of operations for the program involved would require more than 14 percent of the appropriation. In such cases, agencies were instructed to seek an apportionment from OMB providing for more than the 14 percent.

Second, sections 5a(2) and 5c require formal apportionment when OMB's policy of generally allowing agencies to receive 14 percent of the President's budget request would result in a deferral of budget authority. That is, if 14 percent of the President's budget request was less than 14 percent of the continuing resolution amount, agencies were instructed to submit an apportionment form showing the difference as deferred. Relief from this policy was provided if the agency submitted a justification for the greater amount. Section 5c provided guidance on what would constitute adequate justification.

The result of the policy announced in OMB Bulletin 82-1 and continued in OMB Memorandum M-82-1 has been a massive submission of deferrals. In the first quarter of fiscal year 1982, six special messages containing 218 deferrals were submitted to the Congress. Approximately 176 of these deferrals were submitted on the basis that the amounts provided in the continuing resolution exceeded the President's budget. After passage of the third continuing resolution, Pub. L. No. 97-92 (December 15, 1981), OMB released the funds previously withheld under the 176 deferrals.

## II. Budget Authority for Energy Conservation Withheld by the Office of Management and Budget

On October 23, 1981, the President submitted the third special message for fiscal year 1982. This message contained a deferral of \$14,007,000 for the Energy Conservation account, Department of Energy (D82-106).

Deferral D82-106 referenced two types of budget authority provided for energy conservation. New budget authority, i.e., fiscal year 1982 appropriations under the first continuing

resolution, Pub. L. No. 97-51, amounted to \$28,545,000. 1/ Other budgetary resources, i.e., unobligated balances carried forward from fiscal year 1981, amounted to \$125,659,000. The latter figure was derived from two sources: \$67,762,000 deferred for fiscal year 1981 by the Congress in the Supplemental Appropriations and Rescission Act, 1981, Pub. L. No. 97-12, 95 Stat. 47 (June 5, 1981), and the remaining \$57,897,000 which was available, but not obligated, in fiscal year 1981. The \$57,897,000 represented an estimate of the unobligated balance as of October 23, 1981.

A review of OMB apportionment forms shows that, except for the funds deferred in D82-106, OMB timely apportioned all available resources to DOE. A September 10, 1981, apportionment form shows that the estimated unobligated balance of \$57,897,000 was apportioned for use in fiscal year 1982. Upon expiration of the legislative deferral contained in Pub. L. No. 97-12, OMB apportioned the additional \$67,762,000 on September 30, 1981, for use in fiscal year 1982. On October 20, 1981, OMB apportioned \$14,538,000 of the \$28,545,000 that was recognized by OMB as available for apportionment under Pub. L. No. 97-51, and deferred the remaining \$14,007,000. This brought the total amount apportioned during the time of the first continuing resolution to \$140,197,000. We found no funds being withheld by OMB other than those reported in D82-106.

The funds deferred in D82-106 were released to DOE after passage of the third continuing resolution for fiscal year 1982, Pub. L. No. 97-92 (December 15, 1981).

### III. Treatment of Apportioned Budget Authority by DOE Officials

As previously discussed, \$140,197,000 was apportioned to DOE energy conservation during the period covered by the first

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1/ The first continuing resolution for fiscal year 1982, Pub. L. No. 97-51 (October 1, 1981), was in effect until November 20, 1981, or for 14 percent of the fiscal year. Under section 101(a)(4) of Pub. L. No. 97-51, the reference bill for determining the appropriation for energy conservation was the Department of Interior and Related Agencies Appropriation Bill, 1982 (H.R. 4035), as passed by the House of Representatives on July 22, 1981. That bill provided for an appropriation of \$203,890,000, of which \$28,545,000 or 14 percent represents the amount of the appropriation recognized by OMB as available for apportionment.

continuing resolution (October 1 - November 20, 1981). However, during this time, only approximately \$22,101,120 was specifically allotted to energy conservation programs. An additional \$2,270,000 also was allotted for industrial programs under DOE's emergency allotment procedures, discussed below.

The small amount of the apportionment that was used by program officials stemmed, in part, from procedures instituted by DOE. Under these procedures, special emergency allotment requests and official verification of unobligated balances carried forward from fiscal year 1981 were required before program officials would obligate these funds in the first quarter of fiscal year 1981. A description of the procedures instituted by DOE follows.

A. Confusion Over Amounts to be Allotted Under the First Continuing Resolution

Department officials told us that one reason why a larger amount of the apportioned funds was not allotted to specific programs was because of confusion over how Congress wanted the funds to be allocated. The Department, not having an appropriation bill and operating under the continuing resolution, was faced with conflicting directives from the Senate and House Committees on Appropriations, neither of which was consistent with the Administration's proposals.

Normally, funds that are carried forward from a previous fiscal year are reallocated in the succeeding fiscal year to the same programs to which they previously applied. However, both the House and Senate Committees on Appropriations, in their reports on the Department of Interior and Related Agencies Appropriation Bill, 1982 (H.R. 4035), reallocated the \$67,762,000 that had been deferred in fiscal year 1981 to various programs. The Committees differed in their treatment of these funds.

The House Committee on Appropriations provided in H.R. Rep. No. 97-163, pp. 68-72 (1981), for a total program level of \$440,260,000. This was comprised of a new appropriation of \$272,890,000, a transfer of \$99,608,000 from the Fossil Energy Construction account, and the \$67,762,000 deferral from the previous fiscal year. <sup>2/</sup> The House report specifically indicated

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<sup>2/</sup> The new appropriation level eventually passed by the House on July 22, 1981, was \$203,890,000, plus a transfer of \$168,608,000 from the Fossil Energy Construction account.

that the funds deferred in fiscal year 1981 should be used to offset fiscal year 1982 program requirements. The House report did not address the estimated unobligated carryover balance of \$57,897,000 which had not been deferred.

The Senate Committee on Appropriations provided in S. Rep. No. 97-166, pp. 66-71 (1981), for a total program level of \$371,110,000. This was comprised of a new appropriation of \$130,340,000, a transfer of \$172,608,000 from the Fossil Energy Construction account, a transfer of \$400,000 from the Energy Production, Demonstration, and Distribution account, and the \$67,762,000 deferral from the previous fiscal year. The Senate report likewise did not address the estimated \$57,897,000 carryover which had not been deferred.

An example of the differences in the guidance provided to DOE in these reports can be found in the weatherization program. The Administration did not request any funds for weatherization. The House report referenced \$150 million and the Senate report referenced \$18.5 million for weatherization. Another example is the industrial waste energy reduction program for which the Administration requested no funding. The House report referenced \$12.4 million for this program. The Senate report referenced \$10 million, with such funds to be derived either from funds deferred in fiscal year 1981 or from funds transferred from other accounts.

#### B. DOE Allotment Instructions

On October 1, 1981, the DOE Controller issued a memorandum containing instructions for initial fiscal year 1982 allotments and approved funding programs. Among the principal instructions in the memo were:

- Funding must not exceed the lower of (1) the amount provided in House-passed appropriation bill for FY 1982 or (2) the current rate of operations during FY 1981.
- Unobligated balances for listed appropriations (including Energy Conservation) were automatically reallocated. No Advice of Allotment would be issued for these balances at this time, but program officials were authorized to obligate these funds to the extent the actual unobligated balances were reflected in the official accounting records.

Concerning the automatic reallocation of the estimated unobligated carryover of \$125,659,000 (enclosure I), an official of the Controller's office informed us that this is a practice developed by DOE to insure that no programs are unnecessarily hampered or delayed due to lack of funds on October 1. It usually takes several weeks into the new fiscal year before final accounting reports on the past year are published permitting the inclusion of final unobligated balances on the Advice of Allotment. In order to bridge this period of time, each allottee is authorized to obligate these carryover funds to the extent that they are reflected in the allottee's own accounting records.

In a memorandum of October 16, 1981, the DOE Controller stated that if a project or activity was not funded in the Administration's revised budget but was provided funding in the continuing resolution, the project or activity was to be maintained for the duration of the continuing resolution. The memorandum further stated that since the overall funding level would be limited to the Administration's revised budget, continuation of these projects or activities had to be effected within available allotments. Finally, the memorandum stated that requests for allotment increases would be considered on a case-by-case basis.

### C. DOE's System for Obligating Funds

Although the Controller's October 1 memorandum stated that unobligated carryover funds were automatically allotted, we were told that some accounting officials would not treat the unobligated carryover as available for obligation until the Advice of Allotment document was issued by the Controller's office.

Before program officials in DOE headquarters can obligate funds, DOE's fund-tracking system must verify that sufficient funds are contained in the individual program account from which the obligation will be funded. Account balances are established by means of Advice of Allotment documents issued by DOE's Budget Office. Until FY 1981 unobligated fund balances were verified by final FY 1981 accounting information, those amounts would not be included in the Advice of Allotment documents. Because the October 1 memorandum from the Controller did not automatically reallocate the carryover funds for purposes of DOE's fund-tracking system, all of these funds were not actually made available to program officials for obligation until included in an Advice of Allotment. A program official informed us that for the unobligated funds to be placed in the system and for program officials

to be able to obligate those funds for programs for which a zero allotment had been requested, special emergency allotment requests for those funds had to be made and approved.

#### D. Allotment of Energy Conservation Funds

As previously discussed, energy conservation programs were apportioned a total of \$140,197,000, consisting of \$14,538,000 in new authority and \$125,659,000 of estimated unobligated carryover. During the period of the first continuing resolution, \$22,101,120 was made available for obligation under DOE's fund-tracking system. These funds consisted of \$14,538,000 in new budget authority and \$7,563,120 of unobligated carryover funds.

The financial plans for the energy conservation appropriation were prepared in August and revised in October of 1981. Funding allotment requests contained in the plans for energy conservation programs were based on the most restrictive budget figures from among the FY 1981 current rate, the FY 1982 House allowance, and the Administration's amended FY 1982 budget request. For the programs that the Administration's budget proposed to terminate, this generally resulted in a zero allotment request in the financial plans. Allotments were not requested for 17 of the 35 energy conservation subprograms (see enclosure II).

An official in DOE's Office of Budget stated that program officials were instructed that, although OMB had deferred fiscal year 1982 funds for those programs which would be terminated under the Administration's revised budget request, special emergency allotments could be requested if funds were needed to maintain those programs during this period. Such an allotment was subsequently requested for the industrial conservation program.

The Industrial Programs Office was allotted funds only for overall program direction and no funds were allotted to the several industrial conservation subprograms. Except for a small amount for overall program direction, the Administration's budget proposed termination of industrial conservation programs. These industrial conservation programs had an estimated unobligated fiscal year 1981 carryover balance of \$37,384,000; however, because the unobligated funds had not been allotted at the program level, no procurement actions could be initiated.

On November 18, 1981, energy conservation program officials requested an emergency allotment of \$2,270,000 from unobligated balances for the Industrial Programs Office to maintain current projects, meet contractual commitments, avoid program termination costs, and maintain congressional prerogatives. This allotment was approved on December 11, 1981.



In December 1981, energy conservation program officials informed us that although the final unobligated balance carry-over for conservation programs had recently been verified, those funds would not be reallocated until revised financial plans were approved in January 1982. Until that time, the funds would continue to be available only through special requests. An energy conservation budget official stated that special requests for allotments could have been made for conservation programs for which no allotments were requested. He indicated that, with the exception of the industrial conservation program previously mentioned, program officials did not request emergency allotments.

E. Impoundment of Funds Carried Forward from Fiscal Year 1981

The issue of whether funds, other than those deferred in D82-106, were deferred during the first quarter of fiscal year 1982 now is academic. We have been informed by the DOE Controller's office that after passage of the third continuing resolution for fiscal year 1982, Pub. L. No. 97-92 (December 15, 1981), all of the budget authority available for energy conservation was allotted to programs.

The Controller's office told us that while all the funds previously were not allotted to programs, program officials were advised that they could request additional funds, if needed, and it was not aware of any programs that suffered as a result of this procedure. The Controller's office further stated that since no special requests were submitted, except for the industrial conservation program, funds were not withheld and, therefore, no deferral existed.

Various documents from DOE confirm that some funds were not made available to the program officials for obligation. The Under Secretary of DOE stated in letters to various members of Congress, dated December 15, 1981, that prior year unobligated balances which had not been deferred in fiscal year 1981 (\$57,897,000) were reallocated. He also stated that the unobligated funds deferred in fiscal year 1981 (\$67,762,200) were not specifically allotted, but were available on specific request. Of this amount, only \$7,563,000 was allotted in response to specific requests through November 20, 1981. Therefore, based on the information contained in the Under Secretary's letter, \$60,199,200 of the unobligated funds were neither allotted nor reported as deferred.

We examined a DOE fiscal year 1982 funding data table for conservation and renewable energy programs during the period

of October 1 through November 20, which also reveals that a substantial amount of funds available to DOE were not made available to program officials. This table shows a larger amount of funds that were neither allotted nor reported as deferred than the amount from the Under Secretary's letter. It shows that \$24,371,000 represented the funding ceiling allotted for energy conservation programs. The amount of budget authority available to DOE during this period, according to the table, was \$28,545,000 in fiscal year 1982 funds and \$130,167,000 in unobligated funds from fiscal year 1981. <sup>3/</sup> Of these amounts, \$14,007,000 was deferred in deferral D82-106. Based on the information contained in the table, only \$24,371,000 was allotted, and \$120,334,000 was neither allotted nor reported as deferred. <sup>4/</sup> DOE's report of budget execution (SF 133) submitted to OMB for the period through January 1982 shows that \$21.2 million has been obligated. Of that amount, \$13 million was obligated in January 1982. We understand that approximately \$10 million has been estimated as obligated in February 1982.

The relevant factor in determining whether funds were deferred is whether they were available for obligation, not whether they were, in fact, obligated. See 31 U.S.C. 1401(1), which defines a deferral of budget authority in terms of executive action or inaction which effectively precludes obligation.

It is true that the accounting system established by DOE for the energy conservation program had the practical effect of not allotting to program officials all the funds carried forward from fiscal year 1981. These funds were not included in Advice of Allotment forms, and their availability was subject to verification through DOE's funds tracking system. Since some accounting officials would not treat these funds as available until

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<sup>3/</sup> We previously have referred to the amount of unobligated funds from fiscal year 1981 as totalling \$125,659,000. That figure represented the original estimate used by the agency and OMB at the end of fiscal year 1981 for purposes of apportionment. That estimate continues to change. The official DOE accounting reports now show the actual unobligated balance to be \$137,007,000, according to the Under Secretary's December 15 letter.

<sup>4/</sup> Based on data from DOE's Office of Budget and Management Conservation and Renewable Energy, \$22,101,120 was allotted (enclosure III). Taking into account the \$14,007,000 deferral and an estimated unobligated fund balance of \$125,659,000, \$118,095,880 was neither allotted nor reported as deferred.

verified and included in an Advice of Allotment, they were not automatically made available to program officials. Furthermore, based on conversations with some program officials, it appears that they were not consulted on the funding levels needed for their programs. Program officials were instructed to submit special allotment requests, consistent with the Controller's instructions, if additional funds were needed.

We do not address the position taken by DOE officials that it was prudent management not to allot and obligate these funds until the discrepancies between the funding levels proposed by the President, Senate, and House were resolved. But if funding of the Energy Conservation Program was withheld until that time in order to preclude the obligation of budget authority, the effect of which was to delay program implementation, then we believe that this would be exactly the type of situation in which a deferral proposal was required.

However, we have not been able to determine that funds not allotted could properly have been used during the first quarter, or that programs were adversely affected by the funding procedures instituted by DOE. Some program officials told us that the additional funds that could be obtained under the special allotment procedures would not have maintained their program unless the entire annual amount was provided. This is because many of these programs are grant programs for which a partial allotment would not be used. This may explain why there was only one special allotment request for additional funds. However, this does not mean that the funds were withheld from availability for obligation. We found no instances of a request for funds having been denied. Furthermore, a number of the programs normally are funded in the third quarter and we were not able to determine that the funding procedures instituted by DOE adversely affected their implementation. For these reasons, we do not conclude that the failure to formally allot the funds during the first quarter constituted a deferral.

#### IV. Use of the Impoundment Process

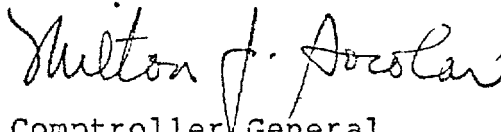
During October 1981, the President submitted four special messages containing 208 deferrals. Approximately 176 of these deferrals represented actions taken to provide minimal and temporary funding during the first continuing resolution in order to restrain spending during congressional consideration of regular appropriations bills. In most cases, the amounts deferred represented the difference between that provided in the continuing resolution and that requested by the President in his budget.

Consequently, these deferrals necessarily had the effect of restricting the amount of obligations that could be incurred by the affected agencies during the time the deferrals were outstanding.

The funds deferred in October were released by the Office of Management and Budget after passage of the third continuing resolution on December 15, 1981. Additional deferrals and rescissions have been submitted in subsequent special messages. The justifications given for these impoundments are different than that for the 176 deferrals discussed above.

We hope this satisfies your request.

Sincerely yours,

*for*   
Comptroller General  
of the United States

Enclosures

DOE Energy Conservation Programs  
 Estimate of Unobligated Carryover from  
 Fiscal Year 1981

Programs and subprograms	Estimated unobligated carryover (thousands)
<u>Building and Community Systems</u>	
Building systems	\$ 12,255
Residential Conservation Service	2,690
Community systems	3,692
Urban waste	800
Small business	100
Technology and consumer products	8,130
Appliance standards	2,558
Analysis and technology transfer	600
Federal Energy Management transfer	100
Program direction	1,500
Capital equipment	200
	<u>\$ 32,625</u>
<u>Industrial</u>	
Waste energy reduction	\$ 11,916
Process efficiency	10,090
Implementation and commercialization	5,141
Cogeneration	10,234
Program direction	0
Capital equipment	3
	<u>\$ 37,384</u>
<u>Transportation</u>	
Vehicle propulsion R&D	\$ 8,700
Electric and hybrid vehicles	7,000
Transportation system utilization	2,500
Alternate fuel utilization	500
Program direction	200
Capital Equipment	200
	<u>\$ 19,100</u>

Programs and subprograms	Estimated unobligated carryover (thousands)
<u>State and Local</u>	
State Energy Conservation Program	\$ 750
Schools and Hospitals Program	15,000
Low-income Weatherization	15,000
Energy Extension Service	100
Emergency Energy Conservation Act	0
Program direction	0
Local government buildings	<u>4,000</u>
	<u>\$ 34,850</u>
<u>Multi-Sector</u>	
Appropriate technology	\$ 500
Inventors Program	500
Energy conversion technology	700
Program direction	0
Capital equipment	<u>0</u>
Totals	<u>\$125,659</u> <u>1/</u>

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1/ Consists of \$67,762,000 in fiscal year 1981 funds deferred by the Congress for spending in fiscal year 1982 and an estimated \$57,897,000 of unobligated fiscal year 1981 funds.

Source: Office of Budget, DOE.

DOE Energy Conservation Programs  
 Allotments Requested Under the Continuing  
 Resolution for the Period from October 1, 1981,  
 through November 20, 1981

Programs and subprograms	Conservation program allotments (thousands)
	<u>Requested 1/</u>
<u>Building and Community Systems</u>	
Building systems	\$ 2,126
Residential Conservation Service	0
Community systems	700
Urban waste	0
Small business	0
Technology and consumer products	0
Appliance standards	0
Analysis and technology transfer	0
Federal Energy Management Program	60
Program direction	434
Capital Equipment	<u>63</u>
	<u>\$ 3,383</u>
<u>Industrial</u>	
Waste energy reduction	\$ 0
Process efficiency	0
Implementation and commercialization	0
Cogeneration	0
Program direction	135
Capital equipment	<u>0</u>
	<u>\$ 135</u>
<u>Transportation</u>	
Vehicle propulsion R&D	\$ 4,872
Electric and hybrid vehicles	2,400
Transportation system utilization	70
Alternate fuel utilization	592
Program direction	179
Capital equipment	<u>35</u>
	<u>\$ 8,148</u>

Programs and subprograms	Conservation program allotments (thousands)
	<u>Requested</u> <sup>1/</sup>
<u>State and Local</u>	
State Energy Conservation Program	\$ 0
Schools and Hospitals Program	7,000
Low-income Weatherization	0
Energy Extension Service	0
Emergency Energy Conservation Act	0
Local government buildings	0
Program direction	<u>1,412</u>
	<u>\$ 8,412</u>
<u>Multi-Sector</u>	
Appropriate Technology	\$ 0
Inventors Program	667
Energy conversion technology	1,449
Program direction	27
Capital equipment	<u>0.14</u>
	<u>\$ 2,143.14</u>
Totals	<u>\$22,221.14</u>

<sup>1/</sup> Data obtained from Office of Budget and Management, Conservation and Renewable Energy. Actual allotments for energy conservation program were made to various DOE organizational units and totaled \$22,101,120 (\$120,020 less than the amount requested). These allotment documents did not indicate the programs and subprograms.