



---

441 G St. N.W.  
Washington, DC 20548

## Decision

**Matter of:** Department of Energy—Application of the Purpose Statute and Antideficiency Act to Agency Use of Funds under a Continuing Resolution

**File:** B-337838

**Date:** June 4, 2026

---

### DIGEST

The Department of Energy’s (DOE) Fiscal Year (FY) 2026 congressional budget justification reported FY 2025 “enacted” amounts that were different from amounts appropriated to DOE in FY 2024. Because the FY 2025 continuing resolution appropriated amounts to DOE at the same levels and pursuant to the same authorities and conditions as enacted in DOE’s FY 2024 appropriation, with the exception of certain defense-related accounts, we conclude that the FY 2025 “enacted” amounts reflected in the congressional budget justification for all other accounts should have been the same as those appropriated in FY 2024. To the extent that DOE obligated or expended FY 2025 funds in excess of appropriated amounts—that is the FY 2024 levels described above—DOE should report an Antideficiency Act violation.

---

### DECISION

We received a congressional request to provide a legal decision determining whether the Department of Energy’s (DOE) use of fiscal year (FY) 2025 funds complied with the purpose statute and the Antideficiency Act (ADA).<sup>1</sup> Specifically, we were asked to opine on the application of these statutes in light of discrepancies between the amounts that Congress appropriated to DOE for FY 2025 and the amounts that DOE’s FY 2026 congressional budget justification represents as having been “enacted” for FY 2025.

---

<sup>1</sup> Letter from Representative Kaptur and Senator Murray to Comptroller General (July 25, 2025).

Our practice when rendering decisions is to contact the relevant agencies to seek factual information and their legal views.<sup>2</sup> Accordingly, we reached out to DOE to obtain the agency’s factual and legal views on this matter and requested a response from the agency by December 15, 2025.<sup>3</sup> Additionally, we reached out to the Office of Management and Budget (OMB) seeking their factual and legal views.<sup>4</sup> At present, we have not received a response from either DOE or OMB.

## BACKGROUND

In FY 2025, Congress passed a continuing resolution that generally funded agencies, including DOE, at the same levels and pursuant to the same authorities and conditions as were enacted in the FY 2024 Consolidated Appropriations Act.<sup>5</sup> In addition, the FY 2025 continuing resolution brought forward the same authority and conditions as provided in “The Energy and Water Development and Related Agencies Appropriations Act, 2024 (division D of Public Law 118-42)” (FY 2024 E&W appropriation).<sup>6</sup> The FY 2024 E&W appropriation included a general provision indicating that:

Except as provided . . . the amounts made available by this title shall be expended as authorized by law for the programs, projects, and activities specified in the “Final Bill” column in the “Department of Energy” table included under the heading “Title III—Department of Energy” *in the explanatory statement described in section 4.*<sup>7</sup>

---

<sup>2</sup> GAO, *GAO’s Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 21, 2024), available at <https://www.gao.gov/products/gao-24-107329>.

<sup>3</sup> Letter from Assistant General Counsel for Appropriations Law, GAO, to Acting General Counsel and Principal Deputy General Counsel, DOE (Nov. 17, 2025).

<sup>4</sup> Email from Managing Associate General Counsel for Appropriations Law, GAO, to Deputy General Counsel, OMB, *Subject: Seeking OMB Input on a Congressional Request* (Feb. 19, 2026).

<sup>5</sup> See Full-Year Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119-4, div. A, title I, §§ 1101(a), 1105, 139 Stat. 9, 10, 12 (Mar. 15, 2025) (appropriating funds to federal agencies “at the level” specified in agencies’ FY 2024 appropriations, and “under the authority and conditions” specified in such prior appropriations).

<sup>6</sup> Pub. L. No. 119-4, § 1101(a)(4), 139 Stat. at 11.

<sup>7</sup> Consolidated Appropriations Act, 2024, Pub. L. No. 118-42, div. D, title III, § 301(d), 138 Stat. 25, 206 (Mar. 9, 2024) (emphasis added).

Section 4 references “the explanatory statement printed in the Senate section of the Congressional Record on or about March 5, 2024” (explanatory statement).<sup>8</sup> The explanatory statement included tables that set specific amounts for various congressional control points<sup>9</sup> within DOE’s appropriations.<sup>10</sup>

DOE’s congressional budget justification<sup>11</sup> for FY 2026 included a table showing the FY 2025 “enacted” funding levels for various DOE appropriations accounts, with congressional control points corresponding to those in the FY 2024 explanatory statement.<sup>12</sup> However, the amounts listed in the “FY 2025 Enacted” column of the funding-level table in DOE’s budget justification do not completely align with the amounts set by the “Final Bill” column of the FY 2024 explanatory statement. Discrepancies appear within various congressional control points for six appropriations accounts: “Energy Efficient and Renewable Energy,” “Nuclear Energy,” “Fossil Energy,” “Uranium Enrichment Decontamination and Decommissioning,” “Non-Defense Environmental Cleanup,” and “Science.” For example, within the “Energy Efficiency and Renewable Energy” (EERE) appropriation account, DOE’s budget justification lists \$487,909,000 as the amount “enacted” in FY 2025 for “Geothermal Technologies,” but the FY 2024 explanatory statement only directed \$118,000,000 to that activity.<sup>13</sup> Within the six appropriations

---

<sup>8</sup> Pub. L. No. 118-42, § 4, 138 Stat. at 26; see 170 Cong. Rec. S1286 (daily ed. Mar. 5, 2024) (containing text of explanatory statement).

<sup>9</sup> Congressional control points are line-items found in appropriations acts and related legislative history materials that may reflect requested and/or enacted amounts Congress has provided to implement certain programs, projects, and activities.

<sup>10</sup> 170 Cong. Rec. at S1286, S1581–S1627.

<sup>11</sup> “[T]he term ‘budget justification . . .’ means the annual budget justification materials of a Federal agency, or a component of a Federal agency, that are submitted, in conjunction with the budget of the United States Government submitted under section 1105(a) of title 31, United States Code.” Congressional Budget Justification Transparency Act of 2021, Pub. L. No. 117-40, 135 Stat. 337, 338 (Sept. 24, 2021). Also see OMB Circular A-11.

<sup>12</sup> See Department of Energy, “*Appropriation Detail: FY 2026*,” available at <https://www.energy.gov/sites/default/files/2025-07/doe-fy-2026-budget-approps-congressional-control-v5.pdf> (last visited May 5, 2026)(DOE FY 2026 Budget Justification).

<sup>13</sup> *Id.*

accounts, several additional congressional control points also reflect discrepancies between DOE's budget justification and the explanatory statement.

## DISCUSSION

At issue here is whether DOE's use of FY 2025 funds complied with the purpose statute and ADA, in light of the discrepancies between the amounts that Congress appropriated to DOE for FY 2025 and the amounts that DOE's FY 2026 congressional budget justification represents as having been "enacted" for FY 2025.

### *FY 2025 Continuing Resolution Carried Forward FY 2024 Explanatory Statement Requirements*

As a starting point in examining the discrepancies between DOE's budget justification and the explanatory statement, we must establish the legal effect of the explanatory statement. Legislative history, such as the explanatory statement, is not legislation, and therefore generally does not carry the binding effect of law.<sup>14</sup> However, through a well-accepted legislative tool known as incorporation by reference, Congress can give extra-statutory material such binding effect.<sup>15</sup> Where the language of a statute expresses clear congressional intent to incorporate outside materials, and where those referenced materials are specifically ascertainable from the face of the legislative language, those outside materials have been held as having the same binding effect as the underlying legislation.<sup>16</sup>

Our precedent has also applied this interpretation of incorporation by reference. For example, in one opinion, we considered the legal effect of seven appropriations provisions in a Consolidated Appropriations Act that referenced specified passages of an explanatory statement of the House Committee on Appropriations.<sup>17</sup> This explanatory statement contained more specific allocations for the agencies affected

---

<sup>14</sup> See *Tennessee Valley Authority v. Hill*, 437 U.S. at 151, 191 (1978) ("Expressions of committees dealing with requests for appropriations cannot be equated with statutes enacted by Congress."); *Shannon v. United States*, 512 U.S. 573, 583 (1994); *Lincoln v. Vigil*, 508 U.S. 182, 192 (1993); *Thompson v. Cherokee Nation of Oklahoma*, 334 F.3d 1075 (Fed. Cir. 2003).

<sup>15</sup> See *Tennessee v. Lane*, 541 U.S. 509, 517 (2004); *United States v. Sharpnack*, 355 U.S. 286, 293 (1958); *In re Heath*, 144 U.S. 92, 94 (1892); see also *Hershey Foods Corp. v. U.S. Department of Agriculture*, 158 F. Supp. 2d 37 (D.D.C. 2001), *aff'd*, 293 F.3d 520 (D.C. Cir. 2002).

<sup>16</sup> *Id.*

<sup>17</sup> B-316010, Feb. 25, 2008.

than the appropriations provisions themselves.<sup>18</sup> After reviewing the language of the appropriations provisions, we determined that

[b]ecause the language of the seven provisions clearly and unambiguously expresses an intent to appropriate amounts as allocated in the explanatory statement and because reference to the explanatory statement permits the agencies and others to ascertain with certainty the amounts and purposes for which these appropriations are available, these provisions establish the referenced allocations contained in the explanatory statement as legally binding restrictions on the agencies' appropriations.<sup>19</sup>

In that opinion, we concluded that the affected agencies were legally required to obligate and expend the amounts appropriated in accordance with the referenced allocations in the explanatory statement.<sup>20</sup>

Here, we conclude that the FY 2024 E&W appropriation incorporated by reference the "Final Bill" amounts from the DOE table in the explanatory statement, giving those amounts the force of law for FY 2024. The FY 2024 E&W appropriation included a provision that stated that "the amounts made available by this title shall be expended as authorized by law for the programs, projects, and activities specified in the 'Final Bill' column in the 'Department of Energy' table included under the heading 'Title III—Department of Energy' in the explanatory statement described in section 4."<sup>21</sup> Section 4 of the FY 2024 appropriation in turn specified that the explanatory statement was the one "printed in the Senate section of the Congressional Record on or about March 5, 2024." This language, taken together, clearly and unambiguously expresses Congress' intent for DOE's FY 2024 appropriations to be governed according to the explanatory statement. Additionally, by specifically referencing the "Final Bill" amounts in the explanatory statement's DOE table, others are able to ascertain with certainty the amount and purposes for which the FY 2024 appropriations are available. Therefore, these "Final Bill" amounts have been incorporated by reference into the FY 2024 E&W Appropriation and are treated as having an equally binding effect as the appropriation.

Furthermore, for FY 2025, we find that the "Final Bill" amounts from the FY 2024 explanatory statement DOE table are still binding due to the language in the FY 2025 continuing resolution. The FY 2025 continuing resolution appropriated funds

---

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 8.

<sup>20</sup> *Id.*

<sup>21</sup> Pub. L. No. 118-42, div. D, title III, § 301(d), 138 Stat. at 206.

“at the level” specified in agencies’ FY 2024 appropriations, and “under the authority and conditions provided” in the FY 2024 appropriations acts, including the FY 2024 E&W appropriation. While the FY 2025 continuing resolution carved out three DOE appropriations accounts from the FY 2024 explanatory statement requirements,<sup>22</sup> no provision in the continuing resolution created an exception for the remainder of the DOE appropriations accounts. Therefore, DOE is required to obligate and expend its FY 2025 appropriations in accordance with the referenced congressional control point amounts in the FY 2024 explanatory statement.

*Application of the Purpose Statute and the Antideficiency Act to Discrepancies between DOE’s Budget Justification and FY 2024 Explanatory Statement*

In DOE’s FY 2026 budget justification, some of DOE’s representations of the FY 2025 “enacted” amounts for various congressional control points exceeded the corresponding amounts set forth by the FY 2024 explanatory statement. Consequently, we consider whether these discrepancies implicate the purpose statute or ADA. The purpose statute requires that appropriations be applied only to the objects for which the appropriations were made.<sup>23</sup> When an agency obligates a line-item appropriation for purposes other than that line item, that agency has violated the purpose statute, even if those purposes might have been authorized under the lump-sum appropriation containing the line item.<sup>24</sup> Here, the “Final Bill” column in the explanatory statement acts similarly to a line-item appropriation in that it sets a binding limit on how much DOE can obligate and expend for more specific purposes.

Additionally, the ADA prohibits agencies from obligating or expending funds in excess of their appropriations.<sup>25</sup> Here, since the congressional control point

---

<sup>22</sup> FY 2025 CR Section 1505 carves out only these accounts from the explanatory statement requirements: “Atomic Energy Defense Activities–National Nuclear Security Administration–Weapons Activities”, “Atomic Energy Defense Activities–National Nuclear Security Administration–Defense Nuclear Nonproliferation”, and “Environmental and Other Defense Activities–Defense Environmental Cleanup.” Pub. L No. 119-4, § 1505, 139 Stat. at 25. None of these appropriation accounts are at issue here.

<sup>23</sup> 31 U.S.C. § 1301(a).

<sup>24</sup> B-328323, Feb 28, 2017 (finding that the U.S. Forest Service violated the purpose statute when it obligated a line-item appropriation for the acquisition of aircraft for other purposes of the lump-sum appropriation containing the line-item, and that if the U.S. Forest Service did not have sufficient available budget authority to correct its obligations, then the agency would incur an ADA violation as well).

<sup>25</sup> 31 U.S.C. § 1341(a).

amounts in the “Final Bill” column of the explanatory statement were incorporated by reference into the FY 2024 E&W appropriation and carried forward by the FY 2025 continuing resolution, an obligation or expenditure in excess of those amounts may be an ADA violation.<sup>26</sup>

To comply with the purpose statute and ADA for the six appropriations accounts at issue, DOE must obligate and expend the funds appropriated to those accounts for the purposes set forth by the explanatory statement and may not exceed the congressional control point ceiling amounts from the explanatory statement. It is worth noting that violations of both the purpose statute and ADA are assessed at the point of obligation and expenditure. An agency simply administratively reserving amounts in excess of what is available does not violate these statutes. Rather, it is the actual improper obligation or expenditure of funds that does.<sup>27</sup> Here, if DOE has obligated or expended FY 2025 funds in excess of the ceilings set forth by the explanatory statement, then DOE has violated one or both of these fiscal laws.

An agency’s budget justification materials are a vital part of the government’s annual budget planning process, but they do not necessarily reflect actual agency obligations and expenditures. The FY 2025 “enacted” funding amounts from DOE’s FY 2026 budget justification reflect what DOE itself reported were the amounts available for each congressional control point for FY 2025. As stated above, for many of these congressional control points, DOE should have reported different “enacted” amounts in accordance with the FY 2024 explanatory statement, but these discrepancies do not automatically rise to a purpose statute or ADA violation because the amounts reflected in the budget justification do not show what DOE actually obligated and expended.

In addition to evaluating actual obligation and expenditure data, we would also need to evaluate whether additional sources of available funding were used before determining that a purpose statute or ADA violation has occurred. Through other work performed by GAO, we obtained obligation data from DOE, and it appears that for various congressional control points under five of the six appropriation accounts, DOE has made obligations that exceed the congressionally-set ceiling amounts from the FY 2024 explanatory statement. These appropriations include the “Energy Efficient and Renewable Energy,” “Nuclear Energy,” “Fossil Energy,” “Non-Defense Environmental Cleanup,” and “Science” accounts. On its face, DOE’s obligations in comparison to the congressionally-set ceiling amounts from the FY 2024 explanatory statement suggest that DOE may have violated the purpose statute and the ADA. However, it may be possible that DOE’s seeming over-obligations stem from other available funding sources, such as carry-over no-year appropriations from prior

---

<sup>26</sup> B-328323, Feb 28, 2017.

<sup>27</sup> See 31 U.S.C. §§ 1341; B-331888; June 11, 2020.

years or transfer authority.<sup>28</sup> DOE has not provided us with adequate information about its funding sources to determine whether a purpose statute or an ADA violation has occurred. To the extent that DOE exceeded the relevant congressional control point limits by obligating or expending FY 2025 funds in excess of the amounts available, DOE should report an ADA violation.

## CONCLUSION

The FY 2024 E&W appropriation incorporated by reference the “Final Bill” column of the explanatory statement, which established several binding congressional control points under various appropriations. The FY 2025 continuing resolution brought forward these binding requirements, so DOE should have reflected the “Final Bill” amounts from the FY 2024 explanatory statement in its FY 2025 “enacted” column in its budget justification.

Discrepancies that appear between the explanatory statement and the budget justification do not automatically rise to a violation of the purpose statute or ADA, however. Violations of both statutes occur at the point of obligation or expenditure, and the budget justification, as a budget planning document, is insufficient evidence to show actual agency obligations or expenditures. Separate obligation data we received suggests that DOE exceeded the explanatory statement ceiling limits for certain congressional control points. However, DOE has not provided adequate information or an explanation concerning the source of funds to enable a determination. To the extent that DOE used FY 2025 appropriations in excess of the congressional control points, DOE should report an ADA violation.



Edda Emmanuelli Perez  
General Counsel

---

<sup>28</sup> For example, in FY 2024, Congress directed that the appropriations in the six accounts at issue were to “remain available until expended,” meaning that they were equally available in FY 2025 (subject to the same congressional control point limitations from the FY 2024 explanatory statement). Similarly, in FY 2023, FY 2022, FY 2021, and FY 2020, Congress appropriated funds to these six accounts without time limitation, making any remaining funds from those years also available in FY 2025 for approved purposes. Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 4459, 4632 (Dec. 29, 2022); Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, 136 Stat. 49, 222 (Mar. 15, 2022); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, 1363 (Dec. 27, 2020); Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, 133 Stat. 2534, 2669 (Dec. 20, 2019).