United States General Accounting Office

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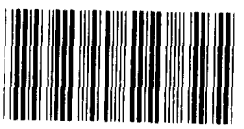
Report to the Ranking Minority Member, Committee on the Budget, U.S. Senate

February 1988

ENERGY CONSERVATION

States' Use of Interest Earned on Oil Overcharge Funds



GAO/RCED-88-51

GAO

United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-226517

February 4, 1988

The Honorable Pete V. Domenici
Ranking Minority Member
Committee on the Budget
United States Senate

Dear Senator Domenici:

As requested in your September 17, 1986, letter, and in subsequent discussions with your office, we are reviewing states' and territories' (hereinafter referred to as states) use of funds made available through congressional appropriations and the distribution of oil overcharge funds under the Warner Amendment (Warner funds) for energy assistance programs. As part of that request and as agreed with your office, this report follows up on the Department of Energy's (DOE's) implementation of a recommendation that we made in an earlier report aimed at ensuring that interest earned on oil overcharge funds made available by the Warner Amendment is used only for energy assistance programs.

In our February 14, 1985, report entitled The Department of Energy Should Improve Its Management of Oil Overcharge Funds (GAO/RCED-85-46), we concluded that DOE was unaware that some states were not using interest earned on the oil overcharge funds made available by the Warner Amendment in accordance with DOE's policy. We therefore recommended that DOE require states to report on the interest earned on Warner funds and certify that the interest would be used for authorized energy assistance programs.

Generally, our latest review determined that although DOE has (1) since reaffirmed in internal documents its policy on the use of interest earned on Warner funds and (2) obtained information from the states on how they use earned interest, DOE has not ensured that its policy is being implemented. In arriving at this conclusion, we contacted officials from eight states and reviewed the results of a 1985 DOE survey which indicates the extent of compliance with this policy by other states. We found that the eight states we contacted were not informed by DOE of its policy and that four of these eight are not currently using interest earned on Warner funds for energy assistance programs. The results of the DOE survey indicate that other states may also not be using interest earned on Warner funds for energy assistance programs.

Warner Amendment Funds

On December 21, 1982, the Congress enacted Public Law 97-377, providing further continuing appropriations for fiscal year 1983. Section 155 (known as the Warner Amendment) directed the Secretary of Energy to disburse to the states up to $200 million out of petroleum overcharge collections held in DOE's interest bearing oil overcharge escrow account. The states were directed to use this money in any or all of four specified DOE energy assistance programs and the Department of Health and Human Services' low-income home energy assistance program. The money was distributed to the states in February 1983.

GAO's 1985 Report and DOE's Policy on Use of Earned Interest

In our February 14, 1985, report to the Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, we stated that DOE did not know how much interest the states had earned on Warner funds or how they had used it. We reported that four of the nine states that we had visited considered the interest earned on the Warner funds (over $4,000,000 at that time) to be general revenue. We also reported that DOE had analyzed section 155's legislative history and determined that, although it did not contain anything specifically directed to the question of interest accrued by states pending utilization of the funds, DOE determined that it was fair to presume from the history of the amendment, as a whole, that the Congress recognized that the funds would be deposited in interest-bearing accounts. Since it did not require the states to return this interest to the escrow account, DOE determined that the Congress expected the states to retain the interest as provided for under the Intergovernmental Cooperation Act of 1968, Public Law No. 90-577, 82 Stat. 1103, 31 U.S.C. 6501 et seq.

DOE concluded that the intent of the Congress was that the funds be applied only to purposes and programs likely to benefit parties injured by the oil overcharges. Since the Congress selected energy assistance programs as the programs it believed would benefit these persons, DOE concluded that the Congress must have intended that the interest also be used only for these programs. This analysis and DOE's conclusions were set forth in a June 23, 1983, memorandum to the Director, Office of State and Local Assistance Programs (OSLAP), entitled How States May Use Interest Accrued on Section 155 Funds from the DOE Assistant General Counsel for Conservation and Renewable Energy.

We agreed with this analysis of legislative intent and with DOE's conclusions in our report and in subsequent testimony before the Subcommittee on February 24, 1986. We therefore recommended in our report that

DOE require the states to report on the interest earned on Warner funds and certify that it was used for authorized energy assistance programs.

DOE subsequently reaffirmed its position in two documents. In a January 27, 1987, memorandum to Operations Office Managers entitled Policy Guidance on Use of Exxon Funds, the Director of OSLAP stated that interest accrued on Exxon oil overcharge funds distributed to the states will be used in accordance with the provisions of Warner Amendment funds; that is, states may retain the interest earned on Warner funds but may use that interest only in the same manner as they may use the Warner funds themselves. In a July 8, 1987, letter to the Assistant Secretary, Conservation and Renewable Energy, entitled Use of Interest Accrued on Warner Amendment Funds by the State of Iowa, the Assistant General Counsel, Conservation and Regulations, cited the above policy on the use of interest.

Some States Are Still Not Using Interest From Warner Funds in Accordance With DOE's Policy

Despite DOE's repeated statements since 1983 on the proper use of this interest and our 1985 recommendation that DOE more effectively implement its policy, a number of states are still using earned interest for purposes other than energy assistance programs. By letter dated May 14, 1985, DOE asked the state officials to report whether interest was earned on Warner funds and any actual or anticipated expenditures made utilizing interest from the funds. The letter stated that DOE was especially interested in determining whether interest had been used for any purposes other than the five programs identified in the legislation. The letter was a request for information and did not include any guidance on the use of interest.

About half (29) of the responding states and territories (56) said that they were using interest for the same purposes as the Warner funds. Fourteen responses said that they credited interest earned to the state's general fund rather than to the Warner-funded programs. However, 6 of these 14 gave assurances that interest earned on Warner funds would be used for Warner-funded programs. The remaining 13 responses either said Warner funds earned no interest or were not clear on how interest was handled. Two of these 13 indicated that future interest earned on any remaining Warner funds would be used for Warner-funded programs.

During our recent visits to California, Arizona, and Illinois, we inquired how these states were using interest earned on Warner funds. Their

responses were the same as those given in response to the 1985 DOE letter. Specifically, we found that it was Arizona's and Illinois' state policy to use the interest earned on Warner funds for the energy assistance programs but that California was not using the interest for the same purposes as the Warner funds. The Assistant Bureau Chief, California State Controller's Office, and the Principle Budget Analyst, California Department of Finance, said that the Warner funds were deposited in the general fund and were earning interest. However, this interest was not being used for the Warner-funded energy assistance programs. The Department of Finance official was not aware of the requirement to use the interest only for the Warner-funded programs. California received $18.9 million in Warner funds and in our 1985 report, we estimated that the state may have earned up to $2 million in interest on these funds. Since California still had about $5.4 million left of the Warner funds as of June 30, 1987, the amount of interest earned by the state would have increased. The California State Controller's Office official told us that he could not readily determine how much interest California earned on Warner funds. According to this official, it would require a considerable effort to make this determination.

The Acting Director, OSLAP, and other DOE officials told us that they were unaware that California was not using earned interest for energy assistance programs. They also said that DOE had not followed up on the responses sent in by the states because they assumed that the states, after receiving DOE's May 14, 1985, letter, would take necessary actions to assure that interest would be properly used.

To obtain an indication of the extent of this problem, during our field work in Illinois, we discussed this matter with State and Local Assistance Programs Division officials in DOE's Chicago Operations Office. They said that they did not notify the states in their region to use interest earned on Warner funds only for the five energy assistance programs. These officials added that they were not directed to do so by headquarters. The Acting Director and other officials from DOE's OSLAP told us that the June 23, 1983, internal memorandum from the Assistant General Counsel constituted DOE's guidance to its field offices and the states through its field structure. It did not, however, tell the field offices how the guidance should be implemented.

We contacted officials of five states under the Chicago Operations Office—Indiana, Michigan, Minnesota, Ohio, and Wisconsin—to determine how they were treating earned interest. State officials in Michigan, Minnesota, and Wisconsin said that they had not applied interest earned

on Warner funds to the five energy assistance programs because they were unaware of DOE's policy. An Ohio state official said that the state began accruing and tracking interest earned on Warner funds after becoming aware of our 1985 report. The Indiana state official said the Warner funds were deposited in a separate interest-bearing account and the interest earned was used for the one energy assistance program funded by the Warner funds.

Conclusions

Although DOE has stated its policy on the use of interest earned on Warner funds in three internal documents, none of the eight states that we contacted had been informed of this policy by DOE. Of the eight states, four are not using interest earned on Warner funds for the energy assistance programs. Although we did not discuss this matter with officials of other DOE operations offices and states under those offices, we believe there is potential for other states to also be improperly using interest earned on Warner funds.

We continue to believe that DOE should ensure that all states use interest earned on Warner funds for the authorized energy assistance programs. To do this, DOE needs to better communicate its policy on the use of such interest to the states and require the states to report the interest to DOE and certify its use for energy assistance programs.

Recommendation

We recommend that the Secretary of Energy formally notify the states that interest earned on Warner funds must be used for the authorized energy assistance programs. As part of this notification, the Secretary should require the states to (1) report the interest earned on Warner funds and (2) certify that this interest has been or will be used for the authorized energy assistance programs.

Agency Comments

In comments on a draft of this report, DOE stated that it was apparent that some states were not complying with its policy on the use of interest earned on Warner funds. Accordingly, DOE said that it will issue formal notices to states clearly stating its policy and require states to certify that the policy is and will be carried out (see app. II).

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days from the date of issuance. At that time, we will send copies of this report to

the Secretary of Energy and will make copies available to others upon request.

This work was done under the direction of Flora H. Milans, Associate Director. Major contributors are listed in appendix IV.

Sincerely yours,

J. Dexter Peach
Assistant Comptroller General

Contents

Abbreviations

DOE	Department of Energy
GAO	General Accounting Office
OSLAP	Office of State and Local Assistance Programs
RCED	Resources, Community and Economic Development Division

Objective, Scope, and Methodology

Our objective was to determine the adequacy of DOE's actions to implement our recommendation that DOE take steps to ensure that states use interest earned on Warner funds for the authorized energy assistance programs.

We reviewed pertinent DOE documents and interviewed DOE officials to determine the actions taken by DOE to implement our recommendation. We reviewed DOE policy memorandums on the use of interest earned on Warner funds and DOE's request for information from the states on the use of interest earned on Warner funds and the states' responses. We discussed DOE's actions to implement our recommendation and to inform the states of DOE's policy on the use of earned interest with DOE headquarters and Chicago Operations Office officials. We also discussed states' use of interest earned on Warner funds with California, Arizona, and Illinois state officials during our visits to these states. In addition, we contacted officials of five additional states under the Chicago Operations Office—Indiana, Michigan, Minnesota, Ohio, and Wisconsin—to discuss their use of interest earned on Warner funds.

We performed our review in accordance with generally accepted government auditing standards. We conducted our work between December 1986 and September 1987.

Comments From the Department of Energy

Department of Energy
Washington, DC 20585

DEC 17 1987

Mr. J. Dexter Peach
Assistant Comptroller General
Resources, Community, and Economic
Development Division
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Peach:

The Department of Energy (DOE) appreciates the opportunity to review and comment on the U. S. General Accounting Office (GAO) draft report entitled "States Use of Interest Earned on Oil Overcharge Funds." This report addresses the use of interest earned on funds distributed pursuant to the Warner Amendment ("Section 155").

After DOE received an earlier (1985) GAO report on the same subject, it issued a letter dated May 14, 1985, from Mr. Rayburn Hanzlik, Administrator, Economic Regulatory Administration, to each of the Governors. That letter requested certain information in an effort to ensure that the Warner funds distributed to each State were being expended "consistent with legal requirements." The letter further stated that DOE was "especially interested in determining whether interest earned on Section 155 funds has been used for any purposes other than the five programs identified in the legislation."

It seems apparent from the findings of the current draft GAO report that the distribution of that letter failed to elicit comprehensive compliance. Accordingly, DOE will proceed to issue another formal notice to all the States, similar to the notice concerning use of interest on Exxon overcharge funds. The DOE notice will clearly state its policy that States may use interest earned on Warner funds, as well as other funds subject to Warner specifications, only in the same manner as they may use the Warner funds themselves, and will request certification from the States that such is their practice and intent.

It is worth noting that DOE relies upon grant audits to determine whether there have been, and the nature and degree of, any misexpenditures and takes appropriate corrective action. States can even be required to reimburse the funds in question. This offers a further incentive to any States which have evidently failed to apply funds or interest to the legislated energy conservation programs as originally intended by Congress.

Celebrating the U.S. Constitution Bicentennial — 1787-1987

DOE hopes that these comments will be helpful to GAO in the preparation of the final report.

Sincerely,

Lawrence F. Davenport
Assistant Secretary
Management and Administration

Related GAO Products

The Department of Energy Should Improve Its Management of Oil Overcharge Funds, GAO/RCED-85-46, February 14, 1985.

Testimony on the Department of Energy's administration of entitlement and oil overcharge funds, February 24, 1986.

Energy Conservation: Funding State Energy Assistance Programs, GAO/RCED-87-114FS, March 31, 1987.

Major Contributors to This Report

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