

From: Theresa
Speake

To: Liz.

The Office of Minority Economic Impact (MI) was established in Fiscal Year 1979 pursuant to Section 641 Title VI, Part 3 of the National Energy Conservation Policy Act (Public Law 95-619), dated November 9, 1978. The following is MI's legislative mandate.

PART 3 - - MINORITY ECONOMIC IMPACT

SEC. 641. MINORITY ECONOMIC IMPACT.

"(a) Establishment of Office of Minority Economic Impact -- Title II of the Department of Energy Organization Act (42 U.S.C. 7131 - - 7139) is amended by adding at the end thereof the following new section:

"OFFICE OF MINORITY ECONOMIC IMPACT

"Sec. 211(a) There shall be established within the Department an Office of Minority Economic Impact. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(b) The Director shall have the duty and responsibility to advise the Secretary on the effect of energy policies, regulations, and other actions of the Department and its components on minorities and minority business enterprises and on ways to insure that minorities are afforded an opportunity to participate fully in the energy programs of the Department.

"(c) The Director shall conduct an ongoing research program, with the assistance of the Administrator of the Energy Information Administration, and such other Federal agencies as the Director determines appropriate, to determine the effects (including the socio-economic and environmental effects) of national energy programs, policies, and regulations of the Department on minorities. In conducting such program, the Director shall, from time to time, develop and recommend to the Secretary policies to assist, where appropriate, such minorities and minority business enterprises concerning such effects. In addition, the Director shall, to the greatest extent practicable --

"(1) determine the average energy consumption and use patterns of minorities relative to other population categories;

"(2) evaluate the percentage of disposable income spent on energy by minorities relative to other population categories; and

"(3) determines how programs, policies, and actions of the Department and its components affect such consumption and use patterns and such income.

"(d) The Director may provide the management and technical assistance he considers appropriate to minority educational institutions and minority business enterprises to enable these enterprises and institutions to participate in the research, development, demonstration, and contract activities of the Department. In carrying out his functions under this section, the Director may enter into contracts, in accordance with section 646 of this Act and other applicable provisions of law, with



Department of Energy

Washington, DC 20585

JAN 18 2008

MEMORANDUM TO: THERESA ALIVILLAR SPEAKE
DIRECTOR
OFFICE OF ECONOMIC IMPACT & DIVERSITY

FROM: SUSAN F. BEARD 
ASSISTANT GENERAL COUNSEL FOR GENERAL LAW

SUBJECT: Petroleum Violation Escrow Account and Minority Bank Deposit
Financial Assistance Program

ISSUE: You inquired about the ability to continue investing the excess petroleum violation escrow (PVE) funds with minority banking institutions once the last distribution has been made.

BACKGROUND: Funds in the PVE account came from fines paid by oil companies for violations of the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. § 751 *et seq.*, which, in part, established Federal oil price caps between 1973 to 1981. The Economic Stabilization Act of 1970 (ESA), 12 U.S.C. § 1904 note, provided authority for the Department of Energy (DOE) to collect restitution for individuals that suffered a loss due to the violation of the EPAA.¹ These funds are being distributed to individual claimants and states for the purpose of carrying out energy efficient and renewable energy programs and research.

In 1980, an agreement between DOE and Treasury established an account for the deposit of money collected in connection with such restitution payments. *See also* 15 U.S.C. § 4501(d) (requiring funds collected pursuant to EPAA, ESA, and regulations issues thereunder be held in escrow by the Secretary of Energy through accounts administered by the Secretary of Treasury). Money in this account was invested in either U.S. Government securities or minority/women-owned banking institutions. Currently, there is approximately \$200 million in PVE funds invested in six-month certificates of deposits at 93 minority/women-owned banks. These investments are currently managed by DOE's Office of Economic Impact and Diversity (ED) and the Office of the Chief Financial Officer (CFO).

The Office of Hearings and Appeals anticipates that all distributions from the PVE account could be paid by the end of the 2008 fiscal year. After all distributions have been made, excess money will remain in the PVE account. All DOE money invested at minority/women-owned banks represents excess PVE funds. Therefore, 93 minority/women-owned banks are facing withdraw of funds totaling \$200 million.

¹ The authorities set forth in the EPAA and ESA expired on September 30, 1981, and June 30, 1982, respectively.

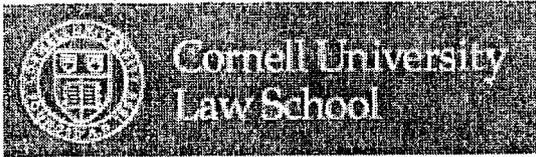


ANALYSIS: In 1969, an Executive Order (E.O.) 11458 was issued giving Treasury the authority to create the Minority Bank Deposit Program. The purpose of this program was to promote the development of minority-owned business enterprises by increasing Federal and private sector use of minority banks. This Executive Order was later superseded by E.O. 11625, which expanded the minority enterprise program. Consistent with E.O. 11625, the Petroleum Overcharge Distribution and Restitution Act mandated that funds collected pursuant to the EPAA and ESA as restitution for violations of these Acts, be held in escrow accounts and be invested in U.S. Government securities or minority-owned bank investments. 15 U.S.C. § 4501(d) & (e). DOE's Office of Hearing and Appeals is responsible for making restitution through disbursement of funds from the escrow accounts. *See* 15 U.S.C. § 4502.

Between October 1986 and October 1998, a portion or the entire amount in excess needed to make restitution payments to persons or classes of persons in a fiscal year was provided for use in energy conservation programs. 15 U.S.C. § 4502(c)-(d), repealed Oct. 1998. As set forth in 15 U.S.C. § 4503, the amount remaining in excess after all distributions for energy conservation programs have been made, must be deposited into the general fund of Treasury. Further, 90 days after the Secretary of Energy determines that all restitutionary amounts have been collected and disbursed in accordance with the Petroleum Overcharge Distribution and Restitution Act and submits the final report to Congress, the provisions of this act terminate. 15 U.S.C. § 4506.

All restitution payments to injured persons and to states for energy conservation programs may be made by the end of the 2008 fiscal year. After such payments are made from PVE funds, it's anticipated that approximately \$200 million will remain in excess. Currently, this money is invested in minority/women-owned banks. In accordance with 15 U.S.C. §§ 4503 and 4506, and absent additional authority, this money must be deposited into the general fund of Treasury because it will be considered excess after all distributions are made and there is no existing authority to maintain the escrow accounts provided for in 15 U.S.C. § 4501(d).

CONCLUSION: Section 4503 provides that after all restitution has been paid to injured parties and states for energy conservation programs the excess must be deposited into the general fund of Treasury. Therefore, as set forth in 15 U.S.C. §§ 4503 and 4506, the money invested in minority/women-owned banks must be withdrawn and deposited into the general fund of Treasury 90 days after the Secretary of Energy determines that all restitutionary amounts have been collected and distributed in accordance with the Petroleum Overcharge Distribution and Restitution Act and he submits the final report to Congress.



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TITLE 15 > CHAPTER 71 > § 4503

§ 4503. Deposit of remainder of excess amount into Treasury as indirect restitution

after all disbursements have been made for a fiscal year under section 4502 (d) ^[1] of this title shall be deposited by the Secretary of the Treasury into the general fund of the Treasury.

The amount that remains from the excess amount described in section 4502 (c) ^[1] of this title

> c & d
have
been
repeal

[1] See References in Text note below.

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TITLE 15 > CHAPTER 71 > § 4506

§ 4506. Termination

(a) In general

(1) Except as provided in

subsection (b) of this section, the provisions of this chapter (other than section 4504 of this title) shall terminate 90 days after the Secretary—

(A) determines that all of the restitutionary amounts to which section 4501 (a) of this title applies have been collected and disbursed as provided in this chapter; and

(B) submits to Congress the final report required by section 4505 of this title.

(2) Such final report shall include the determination (and the justification thereof) described in paragraph (1)(A). Such report shall also be published in the Federal Register.

(b) Exception

The requirements of section 4502 (d) ^[1] of this title shall continue to be applicable to the use of restitutionary amounts received under this chapter as long as such funds remain available.

[1] See References in Text note below.

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Department of Energy
Washington, DC 20585

June 18, 2008

**MEMORANDUM TO: THERESA ALVILLAR-SPEAKE
DIRECTOR
OFFICE OF ECONOMIC IMPACT AND DIVERSITY**

**FROM: WILLIAM A. LEWIS, JR.
DEPUTY DIRECTOR
OFFICE OF CIVIL RIGHTS AND DIVERSITY**

RE: MINORITY BANKING ISSUES

Per your request, the Office of Civil Rights and Diversity has reviewed the pertinent documents regarding the issue of whether the Department of Energy is required to return to the Department of the Treasury monies that have been used in the Minority Banking Program. This review included Susan Beard's memorandum dated January 18, 2008, as well as 15 U.S.C. Sections 4503-4506.

First, the DOE/Treasury Agreement from 1980 is inconsistent on this question. In Paragraph 4, it states that any remaining funds at the termination of the program would be deposited by DOE in the miscellaneous receipts fund of United States Treasury Department. Under this provision DOE would no longer be able to invest the funds in its minority banking program as it has for the past two decades once the funds have been distributed and the program has ended.

On the other hand, Paragraph 7 of the Agreement states that "[t]his agreement shall remain in effect until five years from the date of its execution unless terminated, amended or extended by mutual agreement of DOE and Treasury. Upon expiration or termination of this agreement, any and all funds remaining in the account shall be refunded to DOE for such disposition as DOE, in its sole discretion, determines is authorized". Clearly, in light of the number of years this agreement has been in effect *by mutual agreement*, this provision seems to give DOE a great deal of discretion in how the funds can be used.

It is true, as noted by Susan Beard in OGC that under 15 U.S.C. section 4506, Chapter 71 that absent an additional authorization, the excess money in escrow "must be deposited into the general fund of Treasury" *within 90 days after the Secretary (1) determines that all restitutionary amounts have been collected and distributed and (2) submits the final report to Congress.*" While the DOE/Treasury Agreement is not consistent on the issue of where the monies should be – either with DOE or Treasury – the United States Code would take precedence over the agreement.

As a practical matter, it is uncertain how long it would take for these steps to take place, i.e., to complete the distribution AND to submit the final report to Congress. Only when



those two conditions are met is the 90 day requirement [to return the monies to Treasury] started. This would likely push the issue well into the start of the next Administration, which may well see the benefits of continuing this program, which has provided countless minority communities all over the country with a welcome source of loans over decades – with the support of the banking community – and reflected well on the efforts of the Department of Energy.



Department of Energy
Washington, DC 20585

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MEMORANDUM

FOR: Heads of Departmental Elements

FROM: 
Rita Franklin
Acting Chief Human Capital Officer
Office of Human Capital Management


Poli A. Marmolejos
Director
Office of Hearings and Appeals

SUBJECT: Realignment of Headquarters EEO and Diversity Functions

This memorandum is to notify you of the pending realignment of DOE Corporate functions relating to equal employment opportunity (EEO) and diversity.

Headquarters EEO and diversity functions were formerly housed in the Office of Civil Rights and Diversity, within the Office of Economic Impact and Diversity. Effective Tuesday, October 14, the individuals performing these functions were detailed to the offices shown below, pending formal realignment. Formal realignment will take place on passage of the FY 2009 budget.

Please note that this action affects only the Headquarters EEO and diversity functions; there is no planned realignment of EEO and diversity functions at any field site, at this time.

- **Headquarters Equal Employment Opportunity (EEO) Functions** are being realigned to the DOE Office of Hearings and Appeals. These functions include EEO complaint processing, Title VI and Title IX compliance, the Employee Concerns program, and Limited English Proficiency, as well as the DOE corporate oversight and guidance functions. For information or assistance, please contact Neil Schuldenfrei, Attorney Advisor, at 202/586-5687.
- **Headquarters Diversity Functions** are being realigned to the DOE Office of Human Capital Management. These functions include Headquarters Special Emphasis Programs, and a variety of diversity-related initiatives and reports. For information or



assistance, please contact Thomasina Mathews, Program Manager, at 202/586-2657.

Please be assured that there should be no disruption in service to your organization, as a result of this pending realignment. Further information will be provided at a later date. In the interim, we stand ready to assist you, and look forward to working closely with you in promoting equal employment opportunity and diversity at DOE.