

Department of Health and Human Services  
Fiscal Year 2013 Budget Request Hearing  
Opening Statement of  
The Honorable Denny Rehberg, Chairman  
March 6, 2012

Madam Secretary, Good Afternoon, and welcome back to the House.

Before we begin our discussions about the FY 2013 budget request detail, I want to raise a number of financial management issues related to HHS, including the more than \$1.4 billion Anti-deficiency Act (ADA) violation submitted to Congress last July.

For those in our audience today who may not be familiar with an Anti-deficiency Act (ADA) violation, the Anti-Deficiency Act and related funding statutes “[restrict] in every possible way the expenditures and expenses and liabilities of the government, so far as executive offices are concerned, to the specific appropriations for each fiscal year.” [*Wilder’s Case, 16 Ct. Cl. 528, 543 (1880).*] In general, agencies that violate funding restrictions violate the Anti-Deficiency Act.

On July 14, 2011 HHS notified Congress that it had identified 47 out of 176 contracts ---slightly less than 30 percent---which had an ADA violation. These violations primarily related to a lack of applying general appropriations and contracting principles and laws properly. This small sample identified violations in the HHS General Department Management account, Agency for Healthcare Research and Quality (AHRQ), the Centers for Disease Control (CDC), various components of the National Institutes of

Health (NIH), and the Substance Abuse and Mental Health Services Agency (SAMHSA).

The HHS notice stated "a substantial lack of understanding throughout the Department of the legal limits on federal contracts; in particular, contracts that required effort or deliverables over a period of several years." The Committee consulted with the HHS Office of Inspector General and understands one contributing cause is the lack of legal review of contracts, grants, and similar funding mechanisms throughout HHS. The violations seem to indicate either a fundamental misunderstanding of contract and appropriations principles or deliberate disregard for the law.

Furthermore, a number of other improper HHS financial management concerns have been raised recently. For example, a February 6, 2012 joint letter to the Secretary from the Senate Finance Committee and House Committee on Ways and Means summarizes a number of issues supported by a recent independent audit by Ernst & Young's on HHS's fiscal year 2011 financial statements. Some of the issues highlighted in this letter include Anti-Deficiency Act Violations, so-called Mystery Money, funds that seem to disappear in the 2011 Financial Audit, and HHS processes that date back to 1980's.

These themes are certainly echoed in the July 14, 2011 ADA notice to Congress. We understand the ADA violations date back to as far as 2002, and may go back several Administrations. However, blame is not the issue-- it is accountability and corrective action.

Agencies must report and correct ADA violations. According to Section 1351 of Title 31 of the US Code the agency " shall report immediately to the President and Congress all relevant facts and a statement of actions taken. A copy of each report shall also be transmitted to the

Comptroller General on the same date the report is transmitted to the President and Congress."

The agency must note if they suspected the violation was knowing and willful; provide significant information on the appropriation or fund account for each violation; provide the name and position of the officer(s) or employee(s) responsible for the violation; and include all the facts pertaining to the violation and action taken by, including any new safeguards provided to prevent recurrence of the same type of violation.

The HHS notice from last July, however, asserts it will not make corrective adjustments to these accounts if in HHS's own judgment these corrective adjustments "would have serious programmatic repercussions". A self determination of this magnitude by HHS is a precedent of unparalleled proportions, in my opinion.

The Comptroller General in 1937 once expressed the principle HHS and the Administration should follow as it is equally applicable here: "Where a payment is prohibited by law, the utmost good faith on the part of the officer, either in ignorance of the facts or in disregard of the facts, in purporting to authorize the incurring of an obligation the payment of which is so prohibited, cannot take the case out of the statute, otherwise the purported good faith of an officer could be used to nullify the law." [A-86742, *June 17, 1937*].

We have consulted with GAO on this matter and understand that the GAO advises agencies in these circumstances to adjust their accounts accordingly, and then if they don't have enough budget authority to do so, they should report an ADA violation. Similar, they advise agencies to record an obligation where they neglected to do so, and if they don't have enough budget authority to do so, report an ADA violation.

If the impact of the violation results in programmatic shortfalls, HHS has an avenue to request funds to cover any shortfall through a supplemental or deficiency appropriation request in the notice. Madam Secretary, I call upon HHS to go back and do everything it can lawfully do to correct or mitigate the financial effects of the ADA violations and make the appropriate adjustments. If a supplemental or deficiency appropriation is needed, it should be requested. We cannot ignore the law and due process.

I am frustrated it took more than 2 years to report violations to Congress--this does not meet my definition of immediate. The notice to the Comptroller General was even further delayed. It did not occur until after our Committee contacted GAO to discuss the violations in September.

The requirement of naming the accountable party is not in the notice. It is surprising that HHS's leadership does not hold itself accountable. Our citizens expect federal agencies, especially the one that desires to run the Nation's Health Care system and hold others accountable with mandates-- to stand up and identify an accountable party for each violation.

I was pleased HHS has updated some procedures and implemented one-time training for its contracting, finance, and budget personnel. Given the systematic and cultural entrenchment implied in the notice; however, HHS should ensure all its senior officials get training. Further, I suggest HHS should require all contracts, grants, cooperative agreements and similar actions to receive legal review, as suggested by the HHS OIG, to ensure they do not violate ADA and other funding restrictions. In addition, I believe HHS should have its OIG immediately, and for the next several years, conduct a statistically random sample of all contracts, grants, and similar agreements starting with fiscal year 2010 vehicles to ensure the training is effective and that no ADA or other funding restriction violations continue.

Madam Secretary, I would like an update within 30 days on the implementation status of these suggestions.

Finally, I understand Congress may expect another HHS ADA violation in the near future related to a pay restriction violation; and I do appreciate the advance notice. My understanding is the potential violation primarily impacts NIH, as a limited number of employees were paid more than allowed by law. I look forward to a speedy notice with more details to allow the Committee more understanding on the issue.

I am, however, surprised the budget request does not include a financial management corrective action initiative given the morass of related issues. Therefore, Madam Secretary, I would like you to provide, within 30 days, a detailed 3-year corrective action initiative to rectify the HHS financial system and prevent ADA violations. Please ensure the annual cost per operating division is identified for each year. The Committee must be prepared to take steps to strengthen financial stewardship throughout HHS.

My desire was to start this hearing on a more positive note. Unfortunately, our oversight and stewardship responsibility cannot be ignored. The confidence of the American public's trust does matter.

I yield to my Ranking Member, Rosa DeLauro, for an opening statement.