TESTIMONY

BEFORE THE SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, AND INTERNATIONAL SECURITY
UNITED STATES SENATE

STATEMENT BY

THE HONORABLE CHARLES E. JOHNSON

ASSISTANT SECRETARY FOR BUDGET,
TECHNOLOGY AND FINANCE
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

For release on
Thursday, May 18, 2006
at 2:30 P.M

Good afternoon, Mr. Chairman and Members of the Subcommittee. Thank you for inviting me here today. It is a pleasure and honor for me to have the opportunity to represent Secretary Leavitt and to discuss with you how the Department uses its unobligated balances.

As the Chief Financial Officer for the Department of Health and Human Services (HHS), I have a responsibility to ensure that our Department follows the principles of appropriations law. We appreciate and welcome your desire to explore possibilities for flexibility in the use of unobligated balances, which would need to be consistent with these principles and with the need for accountability.

Congress appropriates funds for different periods of availability. These periods of availability can either be fixed; that is, for one or two years (or more) -- or indefinite. For example, traditionally the language appropriating HHS administrative expenses has made these types of resources available for only one fiscal year ("annual" accounts) such as our Salaries and Expenses account for the Food and Drug Administration. Activities that take more than one year to accomplish, but can be time-limited ("multi-year" accounts) -- such as the White House Conference on Aging or Global AIDS funding for international organizations -- receive appropriations that last two or three years. In contrast, since the construction of buildings and facilities takes a much longer period of time, the language appropriating funds for these purposes (such as Indian Health Facilities) has traditionally made these types of resources available indefinitely or "until expended" ("no-year" or "X" accounts).

Annual and multi-year appropriations expire at the end of their period of availability. Once expired, these unobligated balances cannot be used for any new activity – they can only be used for making adjustments to obligations already incurred or for recording previously unrecorded obligations related to the specific expired fiscal year. They are maintained in the accounting system for an additional five years after expiration. At the end of the five years, these funds are cancelled and returned to Treasury.

This distinction between fixed and indefinite periods of availability establishes two very different types of unobligated balance. The first type is the expired unobligated balance that is no longer available to obligate and the second type is the unexpired unobligated balance that remains available to obligate.

Let me give you some actual HHS figures as of September 30, 2005 to put the discussion into perspective. At the end of the last fiscal year, HHS had a total of 531 accounts established in Treasury.

- During FY 2005, 150 (28%) of these 531 accounts had available funding. Of this number:
    - 59 were “annual” accounts,
    - 23 were “multi-year” accounts, and
    - 68 were “no-year” accounts.

Expired Balances

- During FY 2005, the remaining 381 (72%) of these 531 accounts had expired funding. Of this number:
    - 306 were expired "annual" accounts and
    - 75 were expired "multi-year" accounts.
- With the expiration of the 59 FY 2005 annual appropriations, the number of accounts with expired unobligated balances increased to 440.
- The expired balances for these 440 accounts totaled $4.8 billion. By fiscal year, the balances were:
    - FY 2000 -- $0.6 billion
    - FY 2001 -- $1.2 billion
    - FY 2002 -- $1.0 billion
    - FY 2003 -- $0.7 billion
    - FY 2004 -- $0.6 billion
    - FY 2005 -- $0.7 billion
- Of the total $4.8 billion, $3.0 billion was in mandatory programs ($2.8 billion of which was in one open-ended appropriated entitlement program).
- Having reached the end of the five-year period after expiration, 64 of these 440 accounts had expired balances cancelled as of September 30, 2005. Once cancelled, these funds were returned to the Treasury.

Unexpired Balances

- 91 accounts remained with unexpired unobligated balances (23 of these were "multi-year" and 68 were "no-year"). These unexpired balances totaled $11.2 billion -- $9.5 billion of which was for mandatory programs. Of this $9.5 billion, almost two-thirds ($6.1 billion) was an anomaly caused by the early appropriation of Temporary Assistance for Needy Families and Child Care Entitlement funding to help with Katrina relief.

Let me take a few minutes to describe the principles that apply to the use of unobligated balances. First, I'll describe the principles that affect the use of expired unobligated balances.

The key piece of legislation affecting expired balances was passed in the National Defense Authorization Act of 1991. This legislation, popularly known as the "M Account" legislation, requires expired fixed appropriations to retain their fiscal-year identity in an expired account for five years. During this five-year period, the expired account is available only to record previously unrecorded obligations and to make upward adjustments in previously under-recorded obligations. Unobligated balances in these expired accounts cannot be used to satisfy an obligation properly chargeable to current appropriations, according to a GAO Comptroller General decision. At the end of the five-year period, any remaining balances are cancelled and the account is closed.

There are several principles of appropriations law that apply to our unexpired unobligated balances. The first is the "**necessary expense**" doctrine contained in section 1301(a) of title 31 of the U.S. Code that requires that we use unobligated balances <u>only</u> for the purposes stipulated in the original appropriation.

The second principle of appropriations law that must be considered is the **augmentation principle**. This is a corollary of the "necessary expense" doctrine. Since Congress has the "power of the purse," it is presumed that not only must agencies spend funds only as described in appropriation language, but also an agency is limited to spending only the amount provided by Congress. Funds in excess would be considered an improper augmentation of the appropriation.

The third principle of appropriations law that must be considered is the **prohibition against transferring funds** between appropriations without specific statutory authority. This is discussed at some length in GAO's <u>Principles of Federal Appropriations Law</u> (Volume II, p. 2-24). In addition, section 513 the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006, specifically prohibits transfers not authorized in an appropriations Act. (One example of an exception authorized by an appropriations Act is the limited authority provided to the Secretary in section 208 of that Act).

The last principle of appropriations law I want to mention is related to the treatment of **reappropriations of unobligated balances** under section 1301(b) of title 31 of the U.S. Code. This requirement directly relates to how the movement of unobligated balances from one purpose to another (even when done by statute) results in the funds being counted (scored) as a new appropriation.

Let me give you some examples of how we use unobligated balances.

As required by the "M Account" legislation, <u>expired</u> unobligated balances are only used to record previously unrecorded obligations and to make upward adjustments in previously under-recorded obligations. For example, in FY 2005, we had to reimburse the Department of the Treasury's Judgment Fund for the settlement of a contract dispute under the Contract Dispute Act. This payment to the Judgment Fund was made from expired unobligated balances available from FY 2003 -- the fiscal year the dispute was settled. This qualified as an "unrecorded obligation" and was legitimately chargeable to expired unobligated balances in the relevant accounts of the affected agencies. Many administrative obligations (such as utilities or travel) are recorded based on estimated costs. When a bill comes in after a fiscal year has ended for more than the estimate, these obligation "adjustments" must be made from expired unobligated balances from the year the estimate was recorded. These types of adjustments are reflected in the President's Budget Appendix in the Program and Financing Schedules as "adjustments in expired accounts."

Unexpired unobligated balances are a much different story. Since Congress deliberately appropriates these funds to remain available for longer periods of time, these balances play a very important role in helping us carry out the programs we are responsible for. For example, at the end of FY 2005, HHS had $11.2 billion in unexpired unobligated balances. Of this amount, $9.5 billion was in mandatory accounts, $0.8 billion was in business-type operations accounts, and $0.9 billion was in discretionary accounts. Of the $9.5 billion in mandatory accounts, as I mentioned earlier, $6.1 billion was an anomaly caused by the early appropriation (on September 21, 2005) of Temporary Assistance for Needy Families and Child Care Entitlement funding to help with Katrina relief. These funds were obligated immediately on October 1, 2005, but were counted in the total unobligated balance available as of September 30. $1.9 billion was for the Contingency Fund for State Welfare Programs originally appropriated in FY 1996 under Welfare Reform and recently extended by its reauthorization in the Deficit Reduction Act. These funds were appropriated as fall-back funding for states that, under Welfare Reform, were using capped amounts for welfare programs. The remaining $1.5 billion in balances helps finance such mandatory programs as Medicaid, Child Support Enforcement, and State Grants and Demonstrations. Most of our mandatory accounts have "no-year" authority in order to ensure the availability of a steady flow of funding from year-to-year.

The $0.8 billion in unexpired unobligated balances for business-type operations is made up of user fees (such as for Prescription Drug approvals and Clinical Laboratory inspections); Cooperative Research and Development Accounts (CRADAs) in the Food and Drug Administration (FDA), Centers for Disease Control and Prevention (CDC), and

National Institutes of Health (NIH); Indian Health Service (IHS) Medicare and Medicaid collections; Health Resources and Services Administration (HRSA) data banks; and other central-service revolving funds. Unobligated balances that carry over from year-to-year are essential to efficiently carry out these business-type operations.

On the discretionary side, $0.7 billion of the $0.9 billion is represented by buildings and facilities accounts in FDA, NIH, CDC, and IHS. Since in most cases the entire cost of a building or facility needs to be appropriated in order to start a project, these funds were appropriated to remain available "until expended" to ensure the completion of these projects. The remaining $0.2 billion in discretionary balances is spread over a number of programs. Each of these programs also has a specific purpose that is met by the extended availability of funds.

How do these unobligated balances affect our budgeting and programming? Expired unobligated balances generally have no effect on our budgeting and programming since these funds are not available for new obligations. Unexpired unobligated balances, however, are integral to the budget process. These resources are factored into the program level reflected in the President's Budget and have a major bearing on the amount of appropriations requested. In addition, we constantly monitor the status of these unexpired balances and, when balances are excess to a particular program need, we let Congress know through OMB so future appropriation requests can be reduced or funds can be reallocated to a higher priority. For example, in FY 2005, $58 million was found to be excess to the programmatic needs of a CMS Grants and Demonstrations project.

Based on this, Congress rescinded those funds and appropriated them to our Emergency Fund for the purchase of influenza antiviral drugs.

In summary, while we appreciate the subcommittee's interest in providing some flexibility in the use of unobligated balances, there are many existing laws that have established boundaries for their use (both unexpired and expired). We have some flexibility, and in general would always prefer more, but we acknowledge that flexibility has to be balanced with accountability. We look forward to working with the committee on any ideas they may have that would increase flexibility while maintaining accountability.

Thank you again for the opportunity to describe how unobligated balances fit into the financial picture at HHS. I will be happy to answer any questions.