

May 2008

FEDERAL USER FEES

A Design Guide





Highlights of [GAO-08-386SP](#), a report to congressional requesters

Why GAO Did This Study

The federal government will need to make the most of its resources to meet the emerging challenges of the 21st century. As new priorities emerge, policymakers have demonstrated interest in user fees as a means of financing new and existing services. User fees can be designed to reduce the burden on taxpayers to finance the portions of activities that provide benefits to identifiable users above and beyond what is normally provided to the public. By charging the costs of those programs or activities to beneficiaries, user fees can also promote economic efficiency and equity. However, to achieve these goals, user fees must be well designed.

GAO was asked to study how user fee design characteristics may influence the effectiveness of user fees. Specifically, GAO examined how the four key design and implementation characteristics of user fees—how fees are set, collected, used, and reviewed—may affect the economic efficiency, equity, revenue adequacy, and administrative burden of cost-based fees. GAO reviewed economic and policy literature on federal and nonfederal user fees, including prior GAO work, and used relevant case examples to illustrate different types of design elements and the impacts they may have.

To view the full product, including the scope and methodology, click on [GAO-08-386SP](#). For more information, contact Susan J. Irving at (202) 512-9142 or irvings@gao.gov.

FEDERAL USER FEES

A Design Guide

What GAO Found

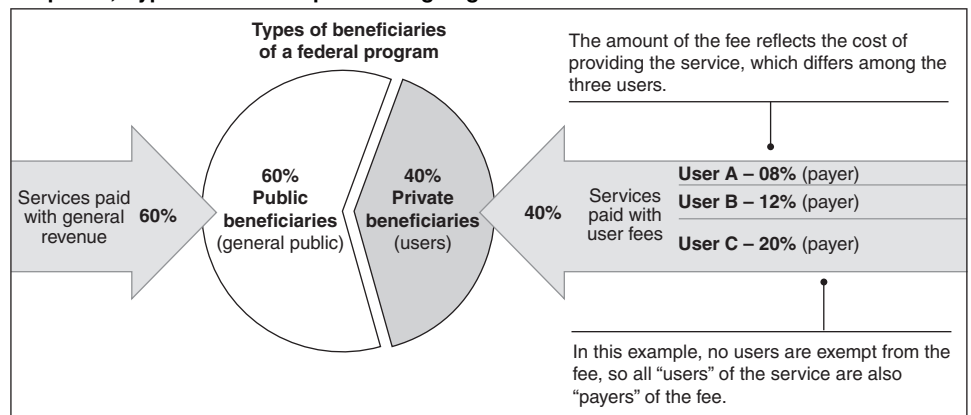
Setting user fees: Setting user fees according to the beneficiary-pays principle can promote equity and economic efficiency. For cost-based fees, the extent to which a program provides benefits to the general public versus users and the cost of providing those benefits should, theoretically, guide how much of total program costs are paid for by user fees and the amount each user pays (see figure). Although this principle provides a useful guideline for setting fees, strictly following the principle is not always desirable or practical.

Collecting user fees: The primary challenge of determining when and how to collect a fee is striking a balance between ensuring compliance and minimizing administrative costs. In some cases, the collection systems of another agency or a nonfederal entity, such as a private sector enterprise, may be leveraged, as when the airlines collect passenger inspection fees.

Using user fees: Determining how fees will be used is a balancing act between Congressional oversight and agency flexibility. Congress gives agencies various degrees of access to collected fees. For example, fees may be dedicated to the related program or may instead be deposited to the general fund of the U.S. Treasury and not used specifically for the related program or agency. In addition, fee collections may be subject to appropriation or obligation limits, which increase opportunity for oversight but may limit agencies' ability to quickly respond to changing conditions.

Reviewing user fees: Agencies must substantively review their fees on a regular basis to ensure that they, Congress, and stakeholders have complete information. Reviews provide information on whether the fee rates and authorized activities are aligned with actual program costs and activities, may provide opportunities for stakeholder input, and can help promote understanding and acceptance of the fee.

Simplified, Hypothetical Example of Assigning Costs to Beneficiaries



Source: GAO.

Contents

Letter		1
	Background	4
	Setting User Fees: Determining Beneficiaries and Allocating Costs	7
	Collecting User Fees: Balancing Compliance with Administrative Costs	22
	Using User Fees: Balancing Congressional Oversight, Agency Flexibility, and Stakeholder Expectations	26
	Reviewing User Fees: Providing Information on Costs and Program Activities and Facilitating Stakeholder Support	33
	Concluding Observations	39
	Agency Comments	39
Appendix I	Key Questions	41
Appendix II	GAO Contact and Staff Acknowledgments	44
Figures		
	Figure 1: Questions to Consider When Setting User Fees	7
	Figure 2: Simplified, Hypothetical Example of Assigning Program Costs to Beneficiaries, Including Users	8
	Figure 3: Examples of Federal Programs with Different Levels of Funding from User Fees	9
	Figure 4: Questions to Consider When Designing How User Fees Will Be Collected	22
	Figure 5: Questions to Consider When Designing How User Fees Can Be Used	26
	Figure 6: Questions to Consider When Designing How User Fees Will Be Reviewed	33

Abbreviations

AMS	Agricultural Marketing Services
APHIS	Animal and Plant Health Inspection Service
AQI	Agricultural Quarantine Inspection
BLM	Bureau of Land Management
CBP	U.S. Customs and Border Protection
CFO	chief financial officer
Corps	U.S. Army Corps of Engineers
DHS	Department of Homeland Security
FAA	Federal Aviation Administration
FDA	Food and Drug Administration
GDP	gross domestic product
HMF	Harbor Maintenance Fee
HMTF	Harbor Maintenance Trust Fund
IOAA	Independent Offices Appropriation Act of 1952
MOE	maintenance of effort
MPF	Merchandise Processing Fee
NPS	National Park Service
OIC	Offer in Compromise
OMB	Office of Management and Budget
PAYGO	pay-as-you-go
PDUFA	Prescription Drug User Fee Act
REA	Federal Lands Recreation Enhancement Act
USCIS	U.S. Citizenship and Immigration Services
USDA	U.S. Department of Agriculture

This is a work of the U.S. government and is not subject to copyright protection in the United States. It may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



United States Government Accountability Office
Washington, DC 20548

May 29, 2008

Congressional Requesters

The federal government will need to make the most of its resources to meet the emerging challenges of the 21st century. As the nation continues to change in fundamental ways, a wide range of needs and demands have emerged, for example, evolving defense and homeland security programs, increasing global interdependence, and advances in science and technology. At the same time, our current long-term simulations of the federal budget show ever-larger deficits. As funds become increasingly scarce and new priorities emerge, policymakers have demonstrated interest in user fees as a means of financing new and existing services.

Total federal user fees are in the hundreds of billions of dollars annually and growing. According to Office of Management and Budget (OMB) data, total fee collections increased 69 percent from \$138 billion in fiscal year 1999 to \$233 billion in fiscal year 2007.¹ Even after adjusting for inflation, fee collections grew 39 percent. During this time period, total user fee collections varied from 6.4 to 7.6 percent of total federal spending (gross outlays).

User fees can be designed to reduce the burden on taxpayers to finance the portions of activities that provide benefits to identifiable users above and beyond what is normally provided to the public. By charging the costs of programs or activities to identifiable beneficiaries, user fees can promote economic efficiency and equity just as prices for private goods and services can do in a free and competitive private market. However, to achieve these goals, user fees must be well designed. You asked us to study how user fee design characteristics may influence the effectiveness of user fees. Specifically, we examined how the four key design and implementation characteristics of user fees—how fees are (1) set, (2) collected, (3) used, and (4) reviewed—may affect the economic efficiency, equity, revenue adequacy, and administrative burden of the fees.

¹These are data on “user charges,” which OMB defines as fees, charges, and assessments levied on individuals or organizations directly benefiting from, or subject to regulation by, a federal program or activity.

There are various ways to design user fees to encourage greater efficiency, equity, and revenue adequacy and reduce the administrative burden on the agency and payers of the fees. We examined fees using criteria that have often been used to assess user fees and other government collections, specifically taxes.²

- **Efficiency:** By requiring identifiable beneficiaries to pay for the costs of services, user fees can simultaneously constrain demand and reveal the value that beneficiaries place on the service. If those benefiting from a service do not bear the full social cost of the service, they may seek to have the government provide more of the service than is economically efficient. User fees may also foster production efficiency by increasing awareness of the costs of publicly provided services and therefore increasing incentives to reduce costs where possible.
- **Equity:** Equity means that everyone pays their fair share, but the definition of fair share can have multiple facets, in part because beneficiaries and users may not be the same as discussed in the section “Setting User Fees.” Under the beneficiary-pays principle, the beneficiaries of a service pay for the cost of providing the service from which they benefit. Under the ability-to-pay principle, those who are more capable of bearing the burden of fees should pay more for the service than those with less ability to pay.
- **Revenue adequacy:** Revenue adequacy is the extent to which the fee collections cover the intended share of costs. It encompasses the extent to which collections may change over time relative to the cost of the program. For the purposes of our work, revenue adequacy also incorporates the concept of revenue stability, which generally refers to the degree to which short-term fluctuations in economic activity and other factors affect the level of fee collections.
- **Administrative burden:** This is the cost of administering the fee, including the cost of collection and enforcement, as well as the compliance burden (the administrative costs imposed on the payers of the fee).

These criteria interact and are often in conflict with each other; as such, there are tradeoffs to consider among the criteria when designing a fee. Every fee design will have pluses and minuses, and no design will satisfy everyone on all dimensions. The weight that different policymakers may

²See GAO, *Understanding the Tax Reform Debate: Background, Criteria & Questions*, [GAO-05-1009SP](#) (Washington, D.C.: September 2005).

place on different criteria will vary, depending on how they value different attributes. To that end, understanding the tradeoffs associated with different aspects of a fee's design can provide decision makers with better information and support more robust deliberations about user fee financing. The criteria, questions, and illustrative examples presented in this guide are designed to aid policymakers in thinking about issues to consider when designing new user fees and redesigning or updating existing fees.

The questions and tradeoffs discussed in this guide relate to cost-based user fees—including some dedicated excise taxes (i.e., those that have a “user pays” aspect to them, such as the federal gas tax)—for which private beneficiaries are discernable. They generally fall into two broad categories: (1) business-type transactions, such as recreation fees for parks and fees for grazing on federal land and (2) regulatory transactions, such as food inspection and immigration fees and fees for regulating the nuclear energy industry. Certain types of fees have particular design elements, such as setting market-based fee rates or insurance premiums, which are outside the scope of this review.

To address our objectives, we reviewed economic and policy literature on federal and nonfederal user fees, including our prior work on user fees. To illustrate different types of design elements and the impacts they may have, we used relevant case examples found in the literature, including our past reviews of user fees, in particular our recent reviews of the Department of Homeland Security's (DHS) U.S. Customs and Border Protection (CBP), U.S. Army Corps of Engineers (Corps), and U.S. Department of Agriculture (USDA) fees. We used data on total federal user fees and gross outlays for fiscal years 1999 through 2007 presented in OMB's *Analytical Perspectives* and adjusted those figures for inflation using a fiscal year, chain-weighted gross domestic product (GDP) price index.³

We performed our work from February 2007 through May 2008 in Washington, D.C. and Boston, Massachusetts.

³The price index values we used are averages of quarterly indexes from the Department of Commerce, Bureau of Economic Analysis' National Income and Product Accounts, table 1.1.4, last revised January 30, 2008.

Background

User financing—in the form of user fees, user charges, or excise taxes on certain products—is one approach to financing federal programs or activities. User fees assign part or all of the costs of these programs and activities—the cost of providing a benefit that is above and beyond what is normally available to the general public—to readily identifiable users of those programs and activities. Because user fees represent a charge for a service or benefit received from a government program, payers may expect a tight link between their payments and the cost of providing services and have expectations about the quality of the related service.

Definition of User Fees

For the purposes of this guide we use the term user fees to include user fees as well as excise taxes with a “user pays” element.⁴ Examples include those imposed on motor fuels, tires, and heavy vehicles that accrue to the Highway Trust Fund, from which Congress appropriates funds for federal highway and transit programs. Similarly, Federal Aviation Administration (FAA) activities are funded in part by excise taxes assessed on airline tickets, aviation fuel, and certain cargo.⁵ A highway toll may also be considered a user fee because it is related to the specific use of a particular section of highway. The boundaries between fees and taxes are not always clear and the tradeoffs among design elements presented in this guide can be relevant to both.

In general, a user fee is related to some voluntary transaction or request for government goods or services above and beyond what is normally available to the public, such as a request that a public agency permit an applicant to practice law or medicine or construct a house or run a broadcast station.⁶ Taxes, on the other hand, arise from the government’s sovereign power to raise revenue and need not be related to any specific benefit, and payment is not optional; when Congress imposes taxes, it

⁴The Congressional Budget Office has defined user charges as fees or taxes that are based on benefits individuals or firms receive from the federal government or that in some way compensate for costs they might impose on society or its resources. See Congressional Budget Office, *The Growth of Federal User Charges* (Washington, D.C.: August 1993). For budget purposes, we define user fees as fees assessed on users for goods or services provided by the federal government. See GAO, *A Glossary of Terms Used in the Federal Budget Process*, [GAO-05-734SP](#) (Washington, D.C.: September 2005).

⁵See GAO, *Aviation Finance: Observations on the Current FAA Funding Structure’s Support for Aviation Activities, Issues Affecting Future Costs, and Proposed Funding Changes*, [GAO-07-1163T](#) (Washington, D.C.: Aug. 1, 2007).

⁶*National Cable Television Ass’n v. United States*, 415 U.S. 336, 341-42 (1974).

need not consider benefits bestowed by the government on an individual but may base taxation solely on an individual's ability to pay. The Supreme Court has ruled that a tax is "an enforced contribution to provide for the support of government."⁷ The legal distinction between a "fee" and a "tax" can be complicated and depends largely on the context of the particular assessment. Whether a particular assessment is statutorily referred to as a tax or a fee is never legally determinative. Instead, federal courts will examine the structure and the context of the assessment's application.

Fees vary in the degree to which they can be considered truly voluntary because the availability of reasonable substitutes varies. For example, to enter certain national parks, one must pay an entrance fee. The fee is voluntary to the extent that there are alternatives to national parks for outdoor recreation, for example, state, county, or private parks and recreation facilities. In contrast, people who want to operate radio stations have no similarly close alternative and must obtain a license from the Federal Communications Commission and pay a fee for that license.

Authority to Charge Fees

Agencies derive their authority to charge fees either from the Independent Offices Appropriation Act of 1952 (IOAA)⁸ or from specific statutory authority. IOAA provides broad authority to assess user fees or charges on identifiable beneficiaries by administrative regulation. User fees assessed under IOAA authority must be (1) fair and (2) based on costs to the government, the value of the service or thing to the recipient, public policy or interest serviced, and other relevant facts. Fees collected under this authority are deposited in the general fund of the U.S. Treasury and are generally not available to the agency or the activity generating the fees. Unless otherwise authorized by law, IOAA requires that agency regulations establishing a user fee are subject to policies prescribed by the President. OMB provides such guidance to executive branch agencies under this authority through Circular No. A-25.⁹ The Circular establishes federal guidelines regarding user fees assessed under the authority of IOAA and other statutes, including the scope and types of activities subject to user fees and the basis upon which the fees are set. It also provides guidance

⁷*United States v. La Franca*, 282 U.S. 568, 572 (1931).

⁸IOAA is codified at 31 U.S.C. § 9701.

⁹See <http://www.whitehouse.gov/omb/circulars/a025/a025.html>.

for executive branch agency implementation of fees and the disposition of collections.¹⁰

In many instances, Congress has provided specific authority to federal agencies to assess user fees—in agency authorizing or appropriations legislation, for example. Legislation authorizing a user fee may enact a specified rate or amount to be assessed or may stipulate how the fee is to be calculated, such as a formula; the method and timing of collection; and the authorized uses of the fee collections, which may be broadly or narrowly defined. The amount of a fee may be set to partially or fully recover costs or may be set according to some other basis (e.g., market value). Specific authorizing statutes may even grant the agency broad discretion to set and revise fee rates without Congressional approval—that is, solely through the regulatory process—based on various factors. Specific user fee statutes should be construed consistent with IOAA and OMB Circular No. A-25 to the extent possible as part of an overall statutory scheme.¹¹

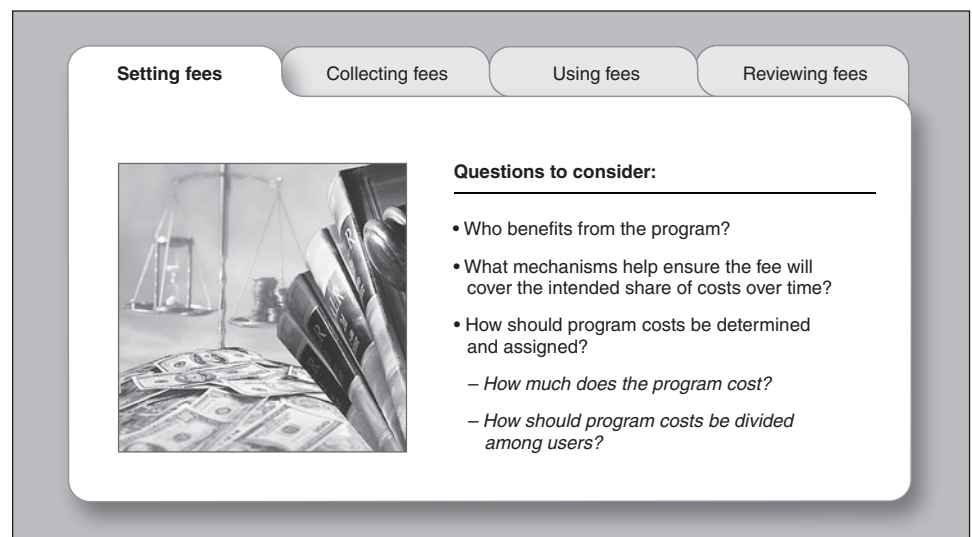
¹⁰OMB Circular No. A-25 does not apply to the activities of the legislative and judicial branches of government or to mixed ownership government corporations as defined by 31 U.S.C. § 9701.

¹¹For more information, see GAO, *Principles of Federal Appropriations Law*, vol. 4, 2nd ed., [GAO-01-179SP](#) (Washington, D.C.: March 2001).

Setting User Fees: Determining Beneficiaries and Allocating Costs

Of the four components of implementing a user fee, setting the rate of the fee is perhaps the most challenging because determining the cost of the service is often quite complex and requires consideration of a range of issues (see fig. 1).

Figure 1: Questions to Consider When Setting User Fees



Sources: GAO (information); PhotoDisc and Comstock® (images).

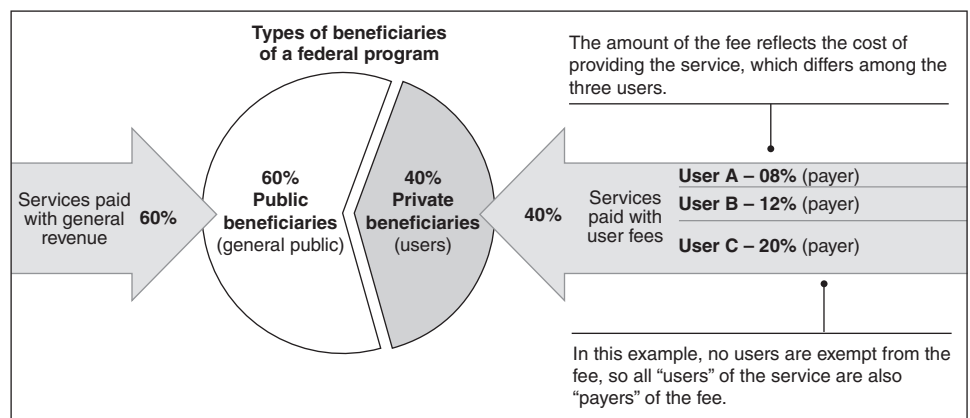
To What Extent Does the Program Benefit Both the General Public and Users?

In theory, the extent to which a program is funded by user fees should generally be guided by who primarily benefits from the program, though, as we discuss later, the extent to which a program benefits users or the general public is not usually clear cut. This is known as the beneficiary-pays principle. Under this principle, if a program primarily benefits the general public (e.g., national defense), it should be supported by general revenue, not user fees; if a program primarily benefits identifiable users, such as customers of the U.S. Postal Service, it should be funded by fees; and if a program benefits both the general public and users, it should be funded in part by fees and in part by general revenues.¹² As shown in figure

¹²Programs that primarily benefit the general public are generally nonexcludable, that is, there is no practical way of preventing someone from benefiting from the program, and nonrival, that is, once the program is in operation, there is no additional cost of providing it to more people.

2, the beneficiary-pays principle can promote equity by assigning costs to those who both use and benefit from the services. First, as shown on the left side of figure 2, the extent to which a program provides benefits to the general public versus users should guide the proportion of total program costs that are paid for by general revenues versus user fees. Second, as shown on the right side of the illustration, the cost of providing the benefits to each user should be determined and assigned through user fees. Figure 3 depicts selected federal programs funded according to this principle.




Figure 2: Simplified, Hypothetical Example of Assigning Program Costs to Beneficiaries, Including Users



Source: GAO.

Note: Though not shown in this example, fees may include exemptions, so that some "users" of the program are not "payers" of the fee. The cost of providing the service to exempt users may be paid for with general revenues or by the fees of other users.

Figure 3: Examples of Federal Programs with Different Levels of Funding from User Fees

National defense	FDA prescription drug reviews	U.S. Postal Service
		
<p>National defense benefits the general public. Therefore, it is fully supported by general revenues, rather than user fees.</p>	<p>FDA prescription drug reviews benefit drug sponsors and the public. Therefore, they are supported in part by general revenues and in part by user fees.</p>	<p>Postal services directly benefit users sending letters or other mail. Therefore, they are almost fully supported by user fees, rather than general revenues.^a</p>

Sources: GAO (information); images: PhotoDisc (right and left), Dynamic Graphics (center).

^aThe U.S. Postal Service gets a small proportion of its funding from general revenues for costs of providing free mail for the blind and overseas voting.

Secondary beneficiaries of a program generally are not considered in this examination. For example, consumers of new prescription drugs are secondary beneficiaries of prescription drug reviews, which provide a primary benefit to the drug sponsors.¹³ Similarly, fees should be charged to the direct user, even if that payer then passes the cost of the fee on to others. The entities that bear the burden of a fee—what economists call the incidence of the fee—are not necessarily those who legally must pay the fee. Fees may be passed along to others through price changes, as the fee may change the price of one good relative to another and therefore affect the allocation of resources. How prices change—and therefore the incidence of the fee—depends on (1) how responsive market supply and demand are to price changes (price elasticity) and (2) market conditions that affect an entity’s ability to control prices.¹⁴ The ability of payers to

¹³A drug sponsor is the person or entity who assumes responsibility for the marketing of a new drug, including responsibility for complying with applicable provisions of laws, such as the Federal Food, Drug, and Cosmetic Act and related regulations. The sponsor is usually an individual, partnership, corporation, government agency, manufacturer, or scientific institution.

¹⁴See GAO, *Tax Policy: Effects of the Alcohol Fuels Tax Incentives*, [GAO/GGD-97-41](#) (Washington, D.C.: Mar. 6, 1997).

pass along the fee does not necessarily change the economic efficiency effects of the fee but can affect its perceived equity and the transparency of the fee.¹⁵

User fees set under the beneficiary-pays principle can also enhance economic efficiency by ensuring that resources are allocated to the most highly valued use, as users make adjustments to their consumption of the service based on their costs and benefits. For example, setting a Food and Drug Administration (FDA) fee for new prescription drug applications too high could discourage the development of new drugs. On the other hand, setting the fee too low induces overuse of agency resources and services. To the extent a fee is voluntary, user fees based on a program or service's total costs may also act as a market test and can help ensure that the benefits of the program are at least as great as its costs.

Under the beneficiary-pays principle, the government may wish to charge some users a lower fee or no fee to encourage certain behaviors that provide a public benefit, such as advancing a public policy goal (e.g., promoting free trade). For example:

- Potential profits from the development of “orphan” drugs—those that treat rare diseases—are limited by the small size of their market, and therefore drug companies may be reluctant to invest in them; such drugs are exempt from the FDA prescription drug application fee to encourage their development.
- Imports from certain least developed countries are exempt from CBP's Merchandise Processing Fee (MPF), which both addresses their ability to pay and may help promote their economic development. DHS officials noted that in other cases MPF exemptions have been used as a tool to negotiate free trade agreements; an exemption may be extended as a concession for the reduction of import tariffs on certain U.S. goods.
- Low-income taxpayers are exempt from the \$150 application fee for the Internal Revenue Service's Offer in Compromise (OIC) program—a program for taxpayers unable to fully pay their tax liabilities—to make the program more accessible and encourage participation.

¹⁵In prior work on tax systems, we found that transparent tax systems enable payers to know their own tax burden and the tax burden of others, irrespective of who legally must pay the tax (see [GAO-05-1009SP](#)).

Although user fees can promote one facet of equity—the beneficiary-pays principle—they may run contrary to another facet—the ability-to-pay principle. To the extent that user fees are a substitute for funding through general tax revenues, they may be less progressive than taxes and therefore shift additional burden on those less able to pay. Fees (or taxes) that are proportionally more burdensome for low-income than high-income individuals are said to be regressive. To address this concern, the design of a fee may consider the ability of a user to pay, for example, by exempting low-income users or scaling fees by some measure of ability to pay.

In certain cases user fees may not be the most equitable, efficient option for funding a program. Examples include fees for

- government programs intended to provide a benefit based on need or merit, such as the Department of Housing and Urban Development’s Section 8 housing voucher program (which assists low-income families, including the elderly and the disabled);
- competing sectors within an industry (e.g., modes of transportation) if the other sectors are not subject to similar fees; and
- new industries that face high initial costs and may need government support until they can become self-sustaining.

Abrupt imposition of new or substantially increased user fees could have unintended consequences. For example, in May 2007, U.S. Citizenship and Immigration Services (USCIS) published a new fee schedule that raised fees effective July 2007 for immigrant and naturalization benefit applications by an average of 88 percent. Large numbers of applicants filed for benefits before the increase took effect, which contributed to a surge that exacerbated USCIS’s backlog of applications. In cases like this, transitional measures such as grandfather clauses or phasing in increases might help address concerns about the adverse effects of the abrupt imposition of a fee, while implementing the beneficiary-pays principle gradually. However, as is the case with exemptions, the benefits of transitional measures must be balanced with the likelihood of reduced efficiency and equity gains and increased administrative costs. Furthermore, delaying a fee increase may also have adverse effects on an agency’s operations. In some cases, new or increased user fees may also cause decreases in the value of privately owned assets. We have previously reported on how user fees can result in such capital losses, as well as ways

of determining when, how much, and to whom compensation for these losses should be paid.¹⁶

Although the beneficiary-pays principle is a useful guideline for assigning costs, determining a program's beneficiaries and the extent to which a program benefits users, the general public, or both is not usually clear cut. For example, in prior work we found that National Park Service (NPS) staff reported that they did not want to raise federal grazing fees assessed on ranchers, even though these fees were lower than fees charged by other government agencies and private landowners, in part because grazing not only benefits ranchers but also benefits parks—for example, by controlling vegetation.¹⁷ In another example, USDA food safety inspections benefit the meat and poultry industries as well as the general public: inspections improve consumer confidence in the safety of those food products and the companies can advertise their products as USDA inspected, which may enhance the perceived quality. The inspections also benefit the general public by preventing the spread of communicable diseases carried by meat and poultry products, but it is difficult to quantify that public health benefit and consequently the extent to which the program should be covered by user fees versus general revenues.

Fees can be practical, equitable, and efficient only when the users can be identified and charged for the service or program. Sometimes, however, it may be difficult to identify specific users or to collect fees from them, making it difficult to follow the beneficiary-pays principle. NPS, which can identify and verify some users, also collects fees from air tour operators that fly over certain national park units. However, in prior work we found that because NPS could not verify air tour activity over the parks, it relied on operators to voluntarily report their air tours and pay the required fees.¹⁸ Some tour operators paid and some did not, resulting in inequities and less-than-owed fee collections.

¹⁶See GAO, *Congressional Attention Is Warranted When User Charges Or Other Policy Changes Cause Capital Losses*, [GAO/PAD-83-10](#) (Washington, D.C.: Oct. 13, 1982).

¹⁷See GAO, *Livestock Grazing: Federal Expenditures and Receipts Vary, Depending on the Agency and the Purpose of the Fee Charged*, [GAO-05-869](#) (Washington, D.C.: Sept. 30, 2005), and *National Park Service: Opportunities Exist to Clarify and Strengthen Special Uses Permit Guidance on Setting Grazing Fees and Cost-Recovery*, [GAO-06-355R](#) (Washington, D.C.: Feb. 9, 2006).

¹⁸See GAO, *National Parks Air Tour Fees: Effective Verification and Enforcement Are Needed to Improve Compliance*, [GAO-06-468](#) (Washington, D.C.: May 11, 2006).

What Mechanisms Help Ensure the Fee Will Cover the Intended Share of Costs over Time?

Fee collections should be sufficient to cover the intended portion of program costs over time. Although the costs of any particular program may rise or fall, there is a general concern that fees may not keep pace with increases in costs because of factors such as inflation. For example, in recent testimony we noted that revenues to support federal highway and transit funding are eroding in part because the federal motor fuel tax, which is set at the fixed amount of 18.4 cents per gallon, has not been increased since 1993. Therefore, the purchasing power of fuel tax revenues has eroded.¹⁹ To address these concerns, OMB Circular No. A-25 directs agencies to set fees as percentages of some appropriate base rather than fixed dollar amounts whenever possible. However, fees set at a percentage rate of some value (the basis) will not remain aligned with program costs if the value of the basis does not rise and fall in line with changes in the program costs. For example, in recent years the Harbor Maintenance Fee (HMF), which is assessed at a rate of 0.125 percent of the value of commercial cargo, has resulted in substantially higher collections than spending because the growth in the volume and value of commercial cargo has exceeded increases in harbor maintenance spending. As a result, HMF collections exceeded expenditures by over \$506 million in fiscal year 2007. Thus, regardless of whether a fee is set at a flat dollar amount or a percentage rate, regular reviews and updates of the fee are necessary to ensure that the fee remains aligned with program costs (see final section of this guide, “Reviewing User Fees: Providing Information on Costs and Program Activities and Facilitating Stakeholder Support”).

On the other hand, fee payers and other stakeholders may be concerned that, over time, the portion of program costs covered by general revenues will decline. This concern may be well founded; in prior work on fee-reliant agencies, we found that increased user fee collections sometimes appeared to have replaced appropriated funds.²⁰ This substitution can be a particular concern when new or increased fees are assessed to augment total funding for a service or program. For example, part of the rationale for FDA’s Prescription Drug User Fee Act (PDUFA) fees was to increase FDA resources for—thereby decreasing the processing time of—new drug applications. To assuage fee payers’ concerns that fees might not be used

¹⁹See GAO, *Surface Transportation: Preliminary Observations on Efforts to Restructure Current Program*, [GAO-08-478T](#) (Washington, D.C.: Feb. 6, 2008).

²⁰This study examined the overall fee collections of 27 agencies from fiscal year 1991 through fiscal year 1996. See GAO, *Federal User Fees: Budgetary Treatment, Status, and Emerging Management Issues*, [GAO/AIMD-98-11](#) (Washington, D.C.: Dec. 19, 1997).

to increase the level of an existing service—but instead simply be used as a substitute for funding from general revenues—a fee statute may provide a kind of maintenance of effort (MOE) requirement in terms of general revenues funding.²¹ For example, in any year, FDA may only collect and spend PDUFA fees when Congress has appropriated from general revenues a certain amount specifically for FDA new drug application reviews.²² Such provisions, however, can have unintended consequences. In prior work we reported that according to FDA officials the spending baseline for the drug review program reduced available resources for other activities, such as reviewing over-the-counter and generic products and inspecting medical product manufacturing facilities.²³ Increased reliance on fees as a source of funding may lead to a misalignment between the beneficiaries of a program and the sources of funding for the program and can have significant implications for agencies.

How Should Program Costs Be Determined and Assigned to Users?

Assigning costs requires (1) determining how much a program costs and (2) determining how to assign program costs among different users. As the beneficiary-pays principle is useful in guiding decisions about how program costs are divided between the general public and users, it can also guide how program costs are assigned among users. Basing fees on the cost of providing the program or service from which a user benefits enhances equity, as measured by the beneficiary-pays principle, as each user pays for the cost of services actually used. As discussed above, fees set following the beneficiary-pays principle also generally promote economic efficiency, as users take into account the “price” of a service when deciding how much of the service to consume.

²¹MOE requirements help ensure that program funding from existing sources remains at or near historic levels before funding from other sources may be received. For example, federal grant programs may use MOE requirements to ensure that grants to state or local governments are used to supplement, rather than supplant, state and local program funding.

²²The specified amount is the amount appropriated for the program in fiscal year 1997, adjusted for inflation as defined in statute.

²³See GAO, *Food and Drug Administration: Effect of User Fees on Drug Approval Times, Withdrawals, and Other Agency Activities*, [GAO-02-958](#) (Washington, D.C.: Sept. 17, 2002).

How Much Does the Program Cost?

To set fees so that total collections cover the intended share of program costs, a reliable accounting of total program cost is important.²⁴ To obtain such an accounting, it is necessary to determine which activities and costs should be included and which should not.²⁵ Unless the authorizing legislation specifies costs that should be included or excluded, agencies should follow OMB guidance. OMB Circulars No. A-25 and No. A-11 instruct agencies to include all direct and indirect costs when determining full cost, including but not limited to personnel costs, including salaries and benefits such as medical insurance and retirement; physical overhead; consulting; material and supply costs; utilities; insurance; travel; rents or imputed rents on land, buildings, and equipment; management and supervisory costs; costs of collecting and enforcing fees; research; establishment of standards and regulation; and imputed costs.²⁶ In prior work we found inconsistent implementation of this guidance. Some fees designed to cover the full cost of a program include all direct and indirect costs, but others do not. The power marketing administrations, for example, include all direct and indirect costs—including the cost of employee retirement benefits paid by the Office of Personnel Management—when setting their electricity rates.²⁷ On the other hand, in

²⁴This does not apply when the government, not acting in its capacity as sovereign, is leasing or selling goods or resources (e.g., offshore oil leases) or is providing a service (e.g., leasing space in federally owned buildings). Under these business-type conditions, OMB Circular No. A-25 guidance directs agencies to base user fees on market prices. Market rates are intended to promote economic efficiency and allow the private sector to compete with the government without disadvantage. If user fees do not cover the full costs of a service that is also privately produced, those private producers may be placed at a competitive disadvantage. Although reliable program cost information is not needed to set a market-based fee, the agency would still need this information to effectively manage the program, as discussed in Statement of Federal Financial Accounting Standards No. 4, *Managerial Cost Accounting Concepts and Standards for the Federal Government* (July 31, 1995).

²⁵For more information on accounting for program costs, see GAO, *Managerial Cost Accounting Practices: Implementation and Use Vary Widely across 10 Federal Agencies*, [GAO-07-679](#) (Washington, D.C.: July 20, 2007); *Managerial Cost Accounting Practices: Leadership and Internal Controls Are Key to Successful Implementation*, [GAO-05-1013R](#) (Washington, D.C.: Sept. 2, 2005); and *Human Capital: DOD Needs Better Internal Controls and Visibility over Costs for Implementing Its National Security Personnel System*, [GAO-07-851](#) (Washington, D.C.: July 16, 2007).

²⁶Imputed costs of an agency are costs of goods or services incurred on behalf of the agency that are paid by another federal entity, such as certain retirement benefits paid to retirees by the Office of Personnel Management.

²⁷See, for example, Bonneville Power Administration, *2007 Annual Report* (Portland, Ore.: November 2007).

recent work, we found that USDA’s Animal and Plant Health Inspection Service (APHIS) did not include certain indirect and imputed costs when calculating the Agricultural Quarantine Inspection (AQI) fee rate.²⁸

Fees should also be set and adjusted to cover the intended share of costs over time, which means agencies must project and consider future program costs. For example, in 2006 USDA’s Food Safety and Inspection Service set fee rates through fiscal year 2008 for its meat, poultry, and egg products overtime inspection services. The fee rates for each year included adjustments for inflation and employee pay raises, so that future fee collections were projected to grow with program costs.²⁹ When more than one agency implements—and therefore incurs costs related to—a fee program, those agencies should work together to agree on a method for estimating future costs and collections. APHIS and CBP, for example, used different forecasting assumptions related to the AQI fees. In response to our recent work, the agencies now use common assumptions.³⁰

Whether fee rates will be set using average cost or marginal cost is also an important consideration when setting fees. Setting fees at a rate equal to the marginal cost of providing the service or product to the user maximizes economic efficiency.³¹ In part because it is often difficult to measure marginal cost, fee rates are sometimes set based on average cost. The AQI fees are intended to cover total program costs; to set these fees, APHIS projects program costs for different inspection types (e.g., air passenger, commercial aircraft, and commercial vessels) and divides each by the total projected number of each type of payer. That is, each airline pays the same fee per arrival to cover the costs related to inspecting aircraft.

²⁸See GAO, *Federal User Fees: Substantive Reviews Needed to Align Port-Related Fees with the Programs They Support*, [GAO-08-321](#) (Washington, D.C.: Feb. 22, 2008).

²⁹Agencies must use realistic inflationary indicators if they want to reasonably estimate future program costs and better align future collections with those costs. OMB Circular No. A-94, which provides guidance to agencies on benefit-cost analysis for federal programs, notes that future inflation is highly uncertain and recommends that when a general inflation assumption is needed, agencies use the rate of increase in the GDP deflator from the administration’s economic assumptions for the period of the analysis.

³⁰See GAO, *Federal User Fees: Key Aspects of International Air Passenger Inspection Fees Should Be Addressed Regardless of Whether Fees Are Consolidated*, [GAO-07-1131](#) (Washington, D.C.: Sept. 24, 2007).

³¹Marginal cost is equal to the cost of providing an additional unit of the good or service.

When marginal costs are measurable but are low relative to the fixed costs of the program, setting the fee at marginal cost will lead to collections less than total costs. In these cases, users may be charged more than marginal costs or the program may be funded in part through general revenues.³² One option is to create a two-part fee consisting of (1) a flat fee to cover fixed costs and (2) a usage-based fee to cover marginal costs. For example, the marginal cost of providing electricity (i.e., operating power plants and maintaining transmission lines) is small compared with the costs of building power plants and transmission lines; thus, electricity consumers could be charged a flat monthly charge plus a charge that would vary based on their consumption.³³

If a fee is to recover the costs associated with an agency program or service or some portion thereof, it is critical that agencies record, accumulate, and analyze timely and reliable data relating to those costs, consistent with applicable accounting standards.³⁴ Many agencies, however, lack reliable cost data.³⁵ For example, we previously reported that DHS's U.S. Immigrations and Customs Enforcement lacked adequate cost data to determine the portion of costs related to international air passenger immigration inspections, a fee-funded activity.³⁶ Because generating and maintaining reliable cost data can be expensive, agencies must consider the costs of implementing, maintaining, and using financial management systems when determining the level of cost detail they need. Recognizing this, OMB Circular No. A-25 notes that program cost should be determined or estimated from the best available records of the agency and that new cost accounting systems need not be established solely for this purpose. Still, unreliable cost information can skew fee-setting decisions, so management needs reliable cost information to ensure that user fees recover the intended share of costs. As such, each agency should

³²There will be some loss of economic efficiency in either case: user fees set above marginal cost and taxes—that is, general revenues—both result in some loss of economic efficiency. See [GAO-05-1009SP](#).

³³For more information on pricing for federal services, see GAO, *The Congress Should Consider Exploring Opportunities To Expand And Improve The Application Of User Charges By Federal Agencies*, [GAO/PAD-80-25](#) (Washington, D.C.: Mar. 28, 1980).

³⁴According to Statement of Federal Financial Accounting Standards No. 4, reliable information on the costs of federal programs and activities is crucial for effective management of government operations, which includes setting user fees.

³⁵See [GAO-07-679](#).

³⁶See [GAO-07-1131](#).

How Should Program Costs Be Allocated across Users?

determine the appropriate level of detail for its cost accounting processes and procedures.

If the cost of providing a service varies for different types of users, the fee may vary (a user-specific fee) or be set at an average rate (a systemwide fee). All other things being equal, user-specific fees promote equity and economic efficiency because the amount of the fee is closely aligned with the cost of the service.³⁷ Systemwide fees may be higher or lower than the actual cost of providing a service to certain types of users. As a result there may be cross-subsidies across users. For example, we recently reported that FAA's current funding structure raises concerns about equity and efficiency because users pay more or less than the costs of the air traffic control services they receive and therefore may lack incentives to use the national airspace system as efficiently as possible.³⁸ Because user-specific fees require agencies to track the costs of providing service to different users, these fees are often more costly to administer than systemwide fees. Fees charged to vessel operators for overtime immigration inspections are user specific. The fee is only assessed when the vessel operator or its agent requests an overtime inspection. The amount of the fee varies depending on the number and pay grade of the inspectors and the amount of time spent on the inspection. We recently reported that this structure increases the fee's administrative costs.³⁹ According to CBP estimates, the cost of processing and billing the fee was 26 percent of related collections in fiscal year 2007. In contrast, the commercial vessel AQI fee is a systemwide fee. Vessel owners/operators pay the \$492 fee regardless of whether or not the ship is actually inspected by an agricultural specialist and regardless of the agricultural risk posed by the vessel. In managing these types of trade-offs between the benefits and drawbacks of user-specific versus systemwide fees, several factors may be important to consider.

³⁷Unless fees are perfectly user specific, some users will pay a higher proportion of the costs they impose and some users will pay a lower proportion of their costs. In the case of a fee that is not user specific and recovers full program costs (i.e., does not use general revenue funding), some users will pay more than the costs they impose, essentially cross-subsidizing other users, who will pay less. See, for example, GAO, *Assigning Air Traffic Control Costs to Users: Elements of FAA's Methodology Are Generally Consistent with Standards but Certain Assumptions and Methods Need Additional Support*, [GAO-08-76](#) (Washington, D.C.: Oct. 19, 2007).

³⁸See [GAO-07-1163T](#).

³⁹See [GAO-08-321](#).

-
1. **The purpose of a program:** Systemwide fees may promote a policy goal such as helping to support national systems. For example, despite variation in the amount of maintenance dredging needed at different ports, the HMF is imposed uniformly at all ports at which shipments are subject to the fee in order to support a national port system. This means that users of naturally deep draft ports that require little dredging (e.g., Seattle) in effect subsidize users of shallower and river ports (e.g., New Orleans). A user-specific fee may be more desirable if the fee is seen as a way to support individual entities or locations or when maximizing economic efficiency outweighs the desire to support a national system through the imposition of a uniform fee.
 2. **The amount of the fee:** If the fee is small relative to other costs that a user faces, it may be less important to have a user-specific fee with different rates. For example, several ships' agents we spoke with noted that carriers rarely question federal vessel inspection fees, in part because the fees are such a small part of a commercial vessel's overall expenses that they do not affect business decisions.
 3. **The amount of cost variation among users:** If there are numerous different groups of users and a small cost variation among them, the efficiency gains of a user-specific fee may be overwhelmed by the added administrative costs. Conversely, if a program has a relatively small number of user groups and the cost of providing the service to those groups differs significantly, then user-specific fees might be both beneficial and feasible.

Some fees include provisions for exemptions, waivers, and caps to promote certain policy goals and these provisions affect how program costs are allocated among users. As discussed previously, exemptions can promote one kind of equity by factoring the users' ability to pay into the fee rate formula.⁴⁰ However, as with systemwide fees, such provisions may also increase cross-subsidies between users. Exemptions and caps may also raise equity and efficiency concerns. For example, shipments into certain ports are not subject to the HMF, which may make these ports less

⁴⁰However, exemptions may only effectively address ability-to-pay concerns if exempted entities are aware of the exemption and have the capacity to make use of it. For example, a study by the Taxpayer Advocate Service found that nearly half of taxpayers below the poverty level, who should have been eligible for a waiver of the OIC fee, did not submit the form required to obtain a waiver. See Taxpayer Advocate Service, *National Taxpayer Advocate: 2007 Annual Report to Congress*, vol. 1 (Washington, D.C.: Dec. 31, 2007). The Internal Revenue Service revised the OIC application form and instructions in February 2007, and they now contain several references to the fee waiver.

costly to use than ports that are subject to the HMF. Shippers may have an incentive to use a port that might otherwise not be the most cost-efficient port to use, so the HMF as designed may create competitive advantages and disadvantages among ports. Stakeholders at HMF ports argued that the exemption is inequitable and can diminish a port's ability to compete. For example, officials at the port of Boston told us that they believe that one importer moved its operations from Boston to the port of Quonset/Davisville in Rhode Island where shipments are not subject to the HMF to avoid paying the fee.⁴¹ Similarly, officials from ports located near international borders reported that the HMF disadvantages them relative to nearby foreign ports. Seattle port authority officials consider the HMF to be a "punitive assessment" because they said it decreases Seattle's competitiveness against nearby Canadian ports (which do not charge the fee). The officials noted that the port of Vancouver actively promotes itself as not charging the HMF and said this partly explains why the port of Vancouver is growing faster than the Seattle port.

Reliably accounting for the costs and benefits associated with such provisions is important in order to ensure that these provisions are achieving the intended results. In fully-fee-funded programs, if some users are exempt from paying fees, total fee collections cannot cover total program costs unless other users pay a higher fee to cover the costs of the exempted users. For example, commercial and private vessels are both subject to agricultural quarantine inspections, but private vessels are exempt from the AQI fees. In prior work we found that the costs of these private vessel inspections are included in the AQI fee charged to commercial vessels. Thus commercial vessels are paying for the cost of inspecting private vessels. An alternative to cross-subsidization would be to pay for the costs of providing services to exempt entities through general revenues. In this way the policy goal is attained and the general public, rather than other users, make up the cost of exempt users or discounted fees.

Finally, like user-specific fees, fee exemptions and caps can increase administrative costs to the agency because the agency must carefully track when fees are due and from whom rather than simply charging everyone. Commercial vessel operators are generally assessed a \$437 customs

⁴¹According to Corps officials, shipments into the port of Quonset/Davisville are not subject to the HMF because its harbor channel is not a federal channel and no federal funding is used for maintenance dredging of the channel.

inspection fee when they arrive at port, but the fee is capped at \$5,955 per calendar year. This is approximately 13.6 payments. This means that CBP has to calculate the point at which the vessel has reached the cap and is no longer subject to the fee. We recently reported that the cap increases CBP's administrative costs and the potential for errors.⁴² This issue was particularly problematic in 2007 because a fee increase took effect on April 1, 2007, so vessels arriving before and after that date paid two different rates. Since the fee cap applies to payments received within a calendar year, it was even more difficult for CBP to calculate the total amount paid and determine if a vessel had reached the cap.

⁴²See [GAO-08-321](#).

Collecting User Fees: Balancing Compliance with Administrative Costs

The primary challenge in determining when and how to collect a fee is striking a balance between ensuring compliance and minimizing administrative costs (see fig. 4).

Figure 4: Questions to Consider When Designing How User Fees Will Be Collected

Setting fees Collecting fees Using fees Reviewing fees

Questions to consider:

- At what point should the fees be collected?
- Can leveraging existing collection or compliance systems decrease administrative costs?

Sources: GAO (information); PhotoDisc (images).

At What Point Should the Fees Be Collected?

Fees can be collected (1) at the point of sale before the service is provided, as airline passenger fees are paid when a ticket is purchased; (2) at the point of service, as when visitors enter a national park; or (3) after the service has been provided, for example when the agency bills the user for a service, as with overtime vessel inspections.⁴³ Collecting the fee at the point of sale or point of service may decrease administrative costs since billing becomes unnecessary. However, point-of-sale/point-of-service collections do not always ensure low administrative costs since other practices can considerably complicate a point-of-sale/service collections system. For example, commercial vessel customs inspection

⁴³OMB Circular No. A-25 guidance states that fees should be collected in advance of or at the point of service, unless appropriations and authority are provided in advance to allow reimbursable services. Regardless of the method of collection, the guidance requires agencies to ensure that the requirements of OMB Circular No. A-123 (Internal Control Systems) and appropriate audit standards are applied to fee collections.

fees are collected by inspectors at the time of inspection, usually in the form of a check. We recently reported that because these collections are not automated, they are administratively costly. When an agency collects fees on the spot rather than billing for services (e.g., the national parks system), the agency may have less work to do in tracking who has paid and who has not, thus reducing administrative tasks associated with ensuring compliance. However, internal controls for fee collections are still necessary.

In some cases, collecting the fee at the point of service would present challenges that make doing so impractical. For example, if CBP collected fees from international air passengers at the airport, as is the practice in some other countries, inspection wait times for passengers would likely increase. For some fees, users are billed for services. This may create additional administrative costs since agency billings for services provided can add an extra step to the process. In some instances agencies are able to reduce their cost of collecting fees by using electronic payments or lockboxes⁴⁴ or enabling users to prepay their fees, thus reducing payments from many to perhaps one time per year. Commercial trucks entering the United States, for example, are subject to a \$5.25 AQI fee, payable upon arrival. However, the owner or operator of the truck can prepay the AQI fee annually and receive a truck transponder that covers all entries for the calendar year, which enables CBP to inspect the truck and then wave the driver through, rather than taking the time to collect the fee at each crossing.⁴⁵ This prepayment reduces the administrative costs for both the agency, which may collect an annual payment instead of payments for every inspection, and the payer, who can make one payment per year rather than paying at each crossing.

Can Leveraging Existing Collections or Compliance Systems Decrease Administrative Costs?

In some cases, it makes sense for the agency to coordinate the collection or audit function with a third party. Specifically, when an entity or industry (e.g., shippers) is assessed multiple user fees there may be opportunities for one agency to collect on behalf of others. For example, HMF collections are used by the Corps for harbor operations and maintenance costs, but the fee is collected by CBP because CBP has the

⁴⁴Lockbox services are provided by banks, which receive and process fee payments made by check or cash and send payment information to the agency.

⁴⁵For fiscal year 2008, the fee for the prepaid AQI truck transponder is \$105, 20 times the per arrival fee.

administrative structures in place to collect other fees and duties assessed on the value of imported goods. It is less costly for the government and payers of the fee for CBP to collect the fee as part of the formal entry process than it would be for the Corps or another entity to establish a new collections process. This cost saving occurs because CBP already values cargo for the assessment of duties so there is no duplication of effort. We recently reported that customs brokers with whom we spoke said that this system for collecting the HMF assessed on imported goods works well, is efficient, and imposes minimal administrative costs.⁴⁶ It may also make sense for agencies to coordinate fee collections when multiple federal agencies administer similar programs. For example, the Bureau of Land Management (BLM) manages grazing programs operated on both BLM and Department of Energy lands.⁴⁷ Similarly, consolidating the audit function of related fees within one agency or department can lessen the administrative costs of auditing them. For example, the audit function for the customs, immigration, and AQI user fee remittances by air carriers was consolidated under a memorandum of understanding between APHIS, the former U.S. Customs Service, and the former Immigration and Naturalization Service before the three related inspection functions were consolidated under CBP.⁴⁸ In some instances, as when CBP collects the HMF on behalf of the Corps, the agency is compensated for its cost of collecting the fee.⁴⁹

In some cases, a nonfederal entity such as a state government or private sector enterprise has an existing infrastructure that can collect the fees. Passenger inspection fees, for example, are collected by airlines and cruise lines along with ticket fares; the collections are then remitted to CBP. However, when a private party takes over the collection function, ensuring compliance may become more complicated, contributing to administrative costs. Agencies may use audits to monitor and enforce compliance with the requirement to remit fees. CBP audits airlines and cruise lines to ensure that they are collecting and remitting the inspection fees as

⁴⁶See [GAO-08-321](#).

⁴⁷See [GAO-05-869](#).

⁴⁸With the creation of DHS in 2003, the customs, agricultural, and immigration inspections of international airline passengers were integrated into one program led by DHS's CBP.

⁴⁹As outlined in OMB Circular No. A-25, the costs of administering and collecting the fee should be included when calculating the cost of the program and included in the fee rates when the fee is intended to recover full costs.

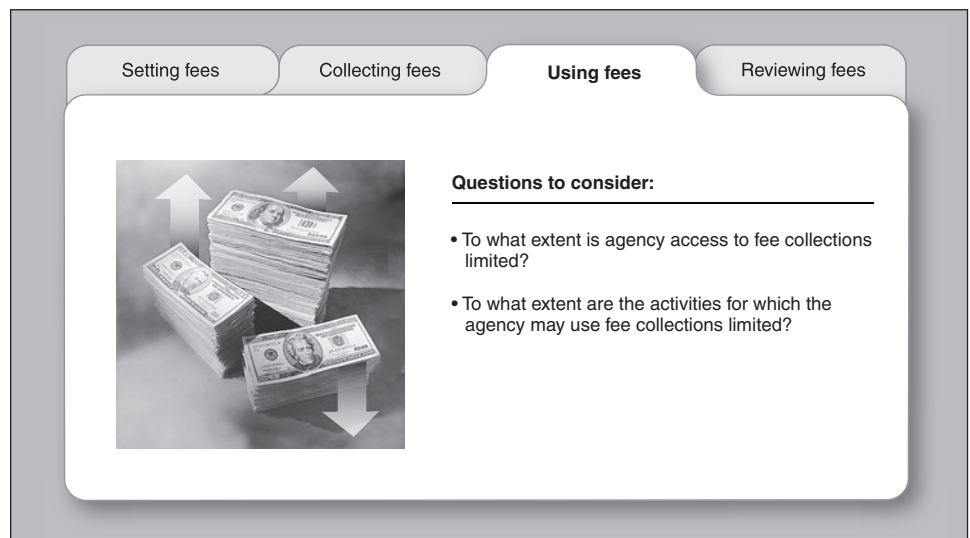
required. There are a range of other tools that can encourage compliance in these situations, for example, bond requirements and rewards and penalties. However, we have previously reported that to be effective, rewards and penalties must meet specific criteria, that is, they must provide optimal incentives and must correspond with performance.⁵⁰

⁵⁰See GAO, *Grants Management: Enhancing Performance Accountability Provisions Could Lead to Better Results*, [GAO-06-1046](#) (Washington, D.C.: Sept. 29, 2006).

Using User Fees: Balancing Congressional Oversight, Agency Flexibility, and Stakeholder Expectations

Congress determines to what extent an agency may access (obligate and spend) fee collections. On the one hand, when the use of fee collections is not dedicated to the related program or agency, Congress has greater flexibility to make decisions about allocating resources and play an active oversight role.⁵¹ While some maintain that the merits of a program, rather than its ability to generate fees, should influence federal funding decisions, dedicating fee collections to the program that generated the fee and giving the agency authority to obligate and expend the fees readily and decide how the collections will be used enhance the agency's flexibility and ability to respond quickly to changing conditions. Some have suggested that agencies will have less motivation to collect and users to pay if the fees are not credited to the activity that generated the fee. The extent to which this is the case is unclear. Further, this may be dealt with by engaging stakeholders—both in and out of government—to help improve their understanding of the purpose and design of the fee. In designing a fee, Congress has various mechanisms it can use to strike a balance between flexibility and oversight (see fig. 5).

Figure 5: Questions to Consider When Designing How User Fees Can Be Used



Sources: GAO (information); PhotoDisc (images).

⁵¹Fees assessed by an agency under the authority of IOAA, rather than under a specific authorizing statute, must be deposited to the general fund of the U.S. Treasury and are not reserved for the agency or program that generated the fees, unless otherwise authorized by law.

What Are the Statutory Controls on Agency Use of Fee Collections?

Agency use of fee collections is determined by Congress. If fee collections must be annually appropriated to an agency before the agency may obligate and expend such collections, an agency has less independence in using them than fees that are permanently appropriated.⁵² Requiring an appropriation increases opportunities for Congressional oversight on a regular basis. Expenditures from the Harbor Maintenance Trust Fund (HMTF), for example, are subject to annual appropriation, enabling Congress to annually determine the level of federal spending on harbor maintenance rather than automatically equating spending with total fee collections. Although the HMTF had a balance of almost \$4 billion at the end of fiscal year 2007, the Corps obligated \$798 million and \$910 million from the fund in fiscal years 2006 and 2007, respectively.⁵³ The level of spending from the HMTF reflects Congressional priorities, possibly including reduction of the overall federal budget deficit.⁵⁴ Some stakeholders said, however, that there is a backlog of harbor maintenance

⁵²There are two types of offsets: offsetting collections and offsetting receipts. Offsetting collections are authorized by law to be credited to expenditure accounts (in effect, a negative expenditure) and are not subject to further Congressional appropriation before an agency may obligate the collections; an annual appropriation act may include limitations on the availability of obligation of these collections. Offsetting receipts are offset against gross outlays; are deposited in receipt accounts, which are generally dedicated to a specific purpose; and must be appropriated before they are available for obligation. However, most trust fund offsetting receipts are permanently appropriated and, therefore, can be used without subsequent annual appropriation legislation. A third type of collection, governmental receipts, is not offset against outlays and whether its use is subject to appropriation depends on the specific authorizing legislation for the collection. See [GAO-05-734SP](#) and [GAO/AIMD-98-11](#).

⁵³Because of the way the appropriation was structured, if the Corps were to obligate additional funds from the HMTF, it would have to reduce, by the same amount, obligations for other Corps programs. For example, in fiscal year 2006, Congress appropriated almost \$2 billion for the Corps' operation and maintenance program. This \$2 billion included amounts available for projects eligible for funding from the HMTF. If the Corps decided to increase spending on operation and maintenance of harbors and channels that is eligible for funding from the HMTF, the Corps would have to reduce funding for other operation and maintenance programs that are not eligible for funding from the HMTF, such as flood and storm damage reduction projects and aquatic ecosystems restoration.

⁵⁴Trust fund surpluses add to the unified budget totals (increasing a surplus or reducing a deficit) and any trust fund deficits subtract from them. See GAO, *Federal Trust and Other Earmarked Funds: Answers to Frequently Asked Questions*, [GAO-01-199SP](#) (Washington, D.C.: January 2001).

needs and that the misalignment between the amount of fee collections and expenditures undermines the credibility of the fee.⁵⁵

Conversely, a fee may be designed to give the agency authority to use collections without additional Congressional action; this design may enable the agency to respond more quickly to customers or to changing conditions.⁵⁶ For example, the authorizing statute makes USDA Agricultural Marketing Services (AMS) fees directly available to the agency without further Congressional action. A 1999 USDA report on user fees noted that because AMS's services are voluntary and because the agency is financed largely through user fees, AMS has a strong incentive to develop services for which the industry is willing to pay. The report also asserts that if AMS did not retain these fees, innovations in service delivery would generate no financial return for the agency.⁵⁷ Further, the report stated that expanded agency discretion for the use of fee collections will have the greatest effect in agencies with substantial discretion for adjusting the types and amounts of services they provide. Creating a structure for oversight becomes even more important when agency discretion to use fee collections is expanded.

Permanent authority for fee collections also increases agency flexibility. With permanent authority, funds are available until expended, which enables agencies to carry forward unexpended collections to subsequent years and match fee collections to average program costs over more than 1 year. Such carryovers are one way agencies can establish reserve accounts, that is, revenue to sustain operations in the event of a sharp downturn in collections. For programs in which fees are expected to cover program costs and program costs do not necessarily decline with a drop in

⁵⁵As noted in [GAO-01-199SP](#), federal trust funds do not necessarily operate in the same way as trust funds in the private sector. Specifically, designation as a trust fund does not in and of itself impose a greater commitment on the federal government to carry out that specified activity over other government activities. However, the label trust fund may lead the public to expect a greater commitment, setting up unrealistic expectations. Stakeholders may expect that earmarked revenues—whether they are in a trust fund, special fund, or the general fund—will be spent because the revenues are there, regardless of the need for the spending at the moment or the priority that would otherwise be given such spending.

⁵⁶OMB Circular No. A-25 notes that it may be appropriate for an agency to seek multiyear or no-year spending authority if the program depends on user demand that is irregular or unpredictable.

⁵⁷U.S. Department of Agriculture, Economic Research Service, *User-Fee Financing of USDA Meat and Poultry Inspection* (Washington, D.C.: March 1999).

fee collections, a reserve is important. For example, the AQI fee statute gives APHIS permanent authority to use the collected fees and APHIS maintains a reserve in case of emergency. According to APHIS, the reserve is necessary because the AQI program is funded solely through user fee collections. However, with permanent spending authority, agencies may have less incentive to limit total collections to total costs.

Whether a fee program is designated as mandatory or discretionary within the budget context may affect the federal budget process more broadly.⁵⁸ Mandatory programs are subject to “pay-as-you-go” (PAYGO) rules if they are in effect.⁵⁹ Under such budget rules, increases in mandatory spending or decreases in revenue must be deficit neutral, that is, they must be offset by a decrease in mandatory spending or an increase in revenue. For example, if the rate of the HMF, which is classified as a mandatory governmental receipt, were reduced and total collections decreased, Congress would have to offset the lost revenues to comply with PAYGO rules. This requirement has in the past led to situations in which extensions of expiring fees are used to offset increases in unrelated programs.⁶⁰ Programs that are classified as discretionary are affected by applicable discretionary spending limits under the Concurrent Budget Resolution. Because some fees are classified as discretionary spending, they must be considered in discretionary spending calculations.⁶¹

⁵⁸Mandatory spending refers to budget authority that is provided in laws other than appropriation acts and the outlays that result from such budget authority. Congress controls spending for these programs indirectly by defining eligibility and setting the benefit or payment rules, rather than directly through appropriation acts. Discretionary spending refers to outlays from budget authority that are provided in and controlled by appropriation acts.

⁵⁹Although statutory PAYGO expired in 2002, both chambers of the 110th Congress imposed PAYGO through their rules.

⁶⁰For example, recently enacted legislation extended trade adjustment assistance programs—programs for workers and farmers adversely affected by increased imports—for 3 months. The legislation provided offsets, including a 1-week extension of the expiration of customs inspections fees, to make the legislation comply with PAYGO rules under Congressional budget enforcement procedures. See Pub. L. No. 110-89, 121 Stat. 982 (Sept. 28, 2007).

⁶¹The budget resolution sets a cap, called a 302a allocation, on total appropriations for the Appropriations Committees. In turn, the Appropriations Committees provide caps, or 302b allocations, to their subcommittees. If a subcommittee were to exceed its 302b allocation, another subcommittee would have to allocate less. The section 302 allocations refer to relevant sections of the Congressional Budget and Impoundment Control Act of 1974.

Whether fees are designed so that collections are received directly or on a reimbursement basis also affects agency flexibility. The former offers the advantage of making funds immediately available to an agency, increasing its flexibility to plan and respond to changing conditions. The AQI fee collections are shared between CBP and APHIS, but only APHIS has authority to use its portion of the collections directly. According to APHIS, having the funds automatically available is useful because it facilitates the ability to keep pace with workload demands and respond quickly to unplanned needs. CBP's portion of the AQI fee collections—as well as its portion of the Immigration User Fee—is set up as a “reimbursable account,” wherein the agency must spend other appropriations and apply for reimbursement. This design means it takes longer for CBP to get fee collections than for APHIS. According to CBP, this “reimbursable” arrangement results in less flexibility and a greater administrative burden.⁶² Similarly, issues may occur when a program has large up-front costs (e.g., to develop an information technology system or purchase a capital asset). Fees collected over subsequent years to cover those costs would need to be either transferred to the U.S. Treasury's general fund or “saved” for future capital expenditures, depending on the statutory authority, because they cannot be used to reimburse appropriations made in a prior fiscal year.

How Broadly or Narrowly Are the Authorized Uses of the Fee Collections Defined?

How broadly or narrowly Congress defines the authorized uses for the fee affects agency flexibility. For example, the AQI fee statute makes the fee collections available to cover the costs of providing agricultural quarantine inspection services and administrative costs related to the fee. The customs inspection fees, however, are only available to reimburse appropriations for a limited, prioritized set of activities.⁶³ Congress may also limit agency flexibility in the use of the fees by directing the agency to

⁶²The Immigration User Fee Account is used to reimburse any expenses incurred in providing immigration inspection and pre-inspection services. Reimbursements are made on a quarterly basis. This has been a problem for CBP, since it has to use appropriations to cover initial costs and then later get reimbursed, raising concerns about revenue adequacy and administrative burden. Because CBP is reimbursed by USDA/APHIS on a bimonthly basis for its inspection activities, the APHIS fee raises similar concerns.

⁶³In this instance, although Congress limited agency flexibility by limiting the use of fee collections, it did so in a way that did not closely link the fee to the program. Specifically, not all of the activities authorized to be funded by the custom fee are associated with conducting customs inspections, and not all customs inspection activities can be covered by user fee collections. In a recent user fee review, we learned that this created the misimpression among stakeholders that fees were being misused. See [GAO-07-1131](#).

use the fees at the location where the fees were collected. NPS had a now-expired pilot program under which 80 percent of fee collections were retained and used by the park where they were collected.⁶⁴

Statutes that narrowly limit how fees may be used could reduce Congress's and an agency's flexibility in making resource decisions⁶⁵ and reduce the agency's ability to adjust to changing priorities or program needs. The previously referenced NPS program is an example. We reported that restricting use of the 80 percent of fee collections from the NPS program to the sites at which they were collected created funding imbalances. This restriction resulted in some high-revenue sites having more revenue than needed to meet priority needs and contributed to a backlog of priority needs at lower-revenue sites.⁶⁶ Restrictions on use of fees may fail to keep pace with program needs over time as activities that support the service change. This can result in authorized activities that are misaligned with actual service or program activities. We recently reported, for example, that CBP officials said that since the terrorist attacks of September 11, 2001, the merchandise processing program has a greater focus on security than was the case in previous years. Although the increase is understandable, it has led to a situation in which activities associated with merchandise processing, including screening and inspecting conveyances and inspecting vessels and containers, are not reimbursable by the Merchandise Processing Fee (MPF), even though CBP views these activities as part of the merchandise processing service, the cost of which is offset by MPF collections.⁶⁷ Recalling the earlier

⁶⁴Congress authorized the pilot program, called the Recreational Fee Demonstration Program, in 1996. See GAO, *Recreation Fees: Management Improvements Can Help the Demonstration Program Enhance Visitor Services*, [GAO-02-10](#) (Washington, D.C.: Nov. 26, 2001).

⁶⁵Congress always maintains autonomy, as it can change authorized activities through legislation. Nonetheless, Congress has more flexibility as to how to use fee collections that are deposited to the general fund of the U.S. Treasury.

⁶⁶To address these concerns and other issues, Congress passed the Federal Lands Recreation Enhancement Act (REA) in 2004. REA replaced the pilot program with new fee authority that increased agency flexibility for the expenditure of fee collections. Though, in general, REA requires that the collecting unit retain a minimum of 80 percent of fee collections, the agency may reduce the percentage allocation to as little as 60 percent if it determines that the collections at a given unit exceed its reasonable needs. See GAO, *Recreation Fees: Agencies Can Better Implement the Federal Lands Recreation Enhancement Act and Account for Fee Revenues*, [GAO-06-1016](#) (Washington, D.C.: Sept. 22, 2006).

⁶⁷See [GAO-08-321](#). According to CBP, the agency has initiated a comprehensive review of its costs and activities related to merchandise processing, as well as MPF collections.

discussion in this guide about public versus private benefits, if it is determined that a portion of merchandise processing activities primarily relates to national security—benefits that primarily accrue to the general public—a case could also be made that the corresponding costs be funded by general revenues.

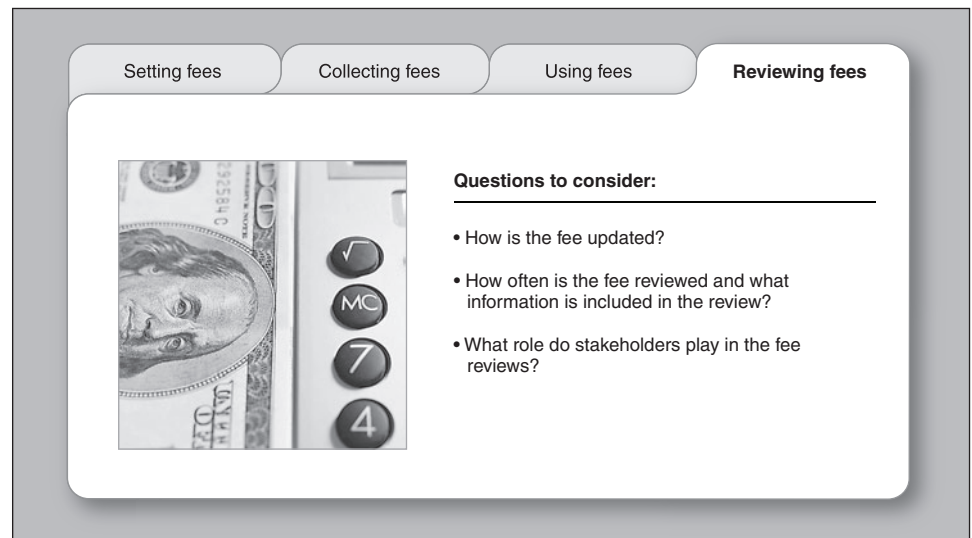
Finally, although narrowing the authorized uses of a fee in statute may facilitate Congressional oversight, it can also increase agency administrative costs. Ensuring proper use of fee collections may require collecting more detailed cost data at a greater cost to the agency. For example, we recently reported that CBP must track the time CBP officers spend on authorized activities for several of its inspection fees. To help address a concern that timekeeping was taking time away from officers' inspection duties, CBP implemented a standard process for tracking time in early 2007. The process includes estimating the amount of time officers conducting different functions (e.g., vessel or passenger inspections) spend on different activities, including customs, immigration, and agricultural quarantine inspections.

These challenges mean that statutory fee authorities that make fee collections available for obligation and expenditure for limited purposes may require more frequent review and updating for the authorized purposes to remain aligned with program needs.

Reviewing User Fees: Providing Information on Costs and Program Activities and Facilitating Stakeholder Support

By providing program information to agencies, stakeholders, and Congress, reviews can improve transparency, help ensure that fees remain aligned with program costs and activities, increase awareness of the costs of the federal program, and therefore increase incentives to reduce costs where possible (see fig. 6). Reviews can also provide an opportunity to solicit stakeholder input on the fee and the programs it supports.

Figure 6: Questions to Consider When Designing How User Fees Will Be Reviewed



Sources: GAO (information); PhotoDisc (images).

How Is the Fee Updated?

Fees that are not reviewed and adjusted regularly run the risk of undercharging or overcharging users, raising equity, efficiency, and revenue adequacy concerns. Fee rates may be adjusted by the agency (i.e., by regulation) or by Congress (i.e., by legislation) depending on the statute authorizing a fee.

When fees are adjusted by an agency through the regulatory process, fees may be updated more frequently than fees adjusted by legislation and this may improve the ability to keep fee collections aligned with changes in program costs. APHIS, for example, periodically updates the AQI fees through the regulatory process to ensure that collections are aligned with the costs of the program. However, in past reviews stakeholders have expressed distrust and concern about fee rates set by regulation because agencies that retain fee collections may have incentives to artificially

inflate the costs of the user fee program. This risk may be reduced, and tools for Congressional and stakeholder oversight enhanced, if the agency clearly reports its methods for setting the fee, including an accounting of program costs and the assumptions it uses to project future program costs and fee collections.

On the other hand, when fees are specified and adjusted by legislation, Congress has more tools with which to play an active oversight role, but the fees may not be updated as frequently because of competing legislative priorities and other factors. For example, a fee for registering aircraft with FAA has been an insignificant amount since the 1960s.⁶⁸ Fees set by statute can, of course, be regularly adjusted. Such Congressional reviews and updates may be triggered in several ways, including a sunset provision. FDA prescription drug fees, for example, are authorized for 5 years at a time. A sunset provision, however, may not guarantee that a fee will be adjusted to reflect changes in program costs. Although the MPF includes a sunset provision, the maximum and minimum fees, which are set in legislation, have not been adjusted since 1995.

Congress may provide strict guidelines within which an agency may set fees through a regulatory process that may depend on further Congressional action. For example, the 2007 prescription drug user fee authorizing legislation set base fee revenue amounts for fiscal years 2008 through 2012. For each year after 2008, the law permits FDA to adjust the base fee revenue amounts to account for inflation and workload, and to set fees annually through the regulatory process so that total projected fee collections will approximate the revenue levels set in statute.

How Often Is the Fee Reviewed and What Information Is Included in the Review?

To ensure that Congress, stakeholders, and agencies have complete information about changing program costs and whether authorized activities align with program activities, agencies must substantively review and report on their fees on a regular basis. When a fee's authorizing statute does not specify review and reporting requirements, and for fees that derive their statutory authority from IOAA, the Chief Financial Officers (CFO) Act of 1990⁶⁹ and OMB Circular No. A-25 provide for biennial fee

⁶⁸The current House reauthorization bill, H.R. 2881, calls for substantial fee increases. See [GAO-07-1163T](#).

⁶⁹The CFO Act requires an agency's CFO to review, on a biennial basis, the fees, royalties, rents, and other charges for services and things of value and make recommendations on revising those charges to reflect costs incurred. 31 U.S.C. § 902(a)(8).

reviews that include recommendations about adjustments to the fees, as appropriate.⁷⁰

The regulatory process is also used to provide information on fees to Congress and stakeholders and to solicit stakeholder input.⁷¹ When an agency has authority to adjust a fee through the regulatory process, it should make substantive information about recent and projected program costs and fee collections available to the public through notices in the *Federal Register*. For example, in 2004 APHIS set the AQI fee rates for fiscal years 2005 through 2010. It published the new fee rates, along with descriptions of the costs of the program, projected program costs and fee collections, and the assumptions it used to make those projections, in the *Federal Register*.⁷² Similarly, USCIS notified the public of proposed fee adjustments in the *Federal Register*. The notice provided information on the program's workload and the agency's methodology for determining program costs, including a list of program activities, how it accounts for the cost of providing services to users exempt from the fees, and its assumptions about inflation. For fees set in regulation, agencies must solicit stakeholder input by requesting comments in the *Federal Register*.⁷³ This provides an opportunity for stakeholders to comment on proposed regulatory changes—via written communication, not face-to-face conversations. As the passenger facility charge⁷⁴ user fee was

⁷⁰OMB Circular No. A-25 provides that each agency will review user charges biennially. These reviews will include (1) assuring that existing charges are adjusted to reflect unanticipated changes in costs or market values and (2) a review of other programs within the agency to determine whether fees should be initiated for government services or goods for which it is not currently charging fees. It also states that if imposing such fees is prohibited or restricted by law, agencies will recommend legislative changes as appropriate. Further, the Circular instructs agencies to discuss the results of the user fee reviews and any resulting proposals in the CFO annual report required by the CFO Act. This reporting may be done in agency performance and accountability reports.

⁷¹Under the Administration Procedures Act, general notice for proposed rule making is published in the *Federal Register*. After such notice is published, an agency must provide an opportunity for interested parties to comment. 5 U.S.C. § 553 (b), (c).

⁷²In addition, each summer APHIS publishes an annual reminder notice of upcoming user fee changes in the *Federal Register*.

⁷³Executive Order 12866, *Regulatory Planning and Review*, requires agencies to provide the public with meaningful participation in the regulatory process, including an opportunity to comment on proposed regulations, which in most cases should include a comment period of not less than 60 days.

⁷⁴Passenger facility charges are passenger fees that airlines collect and remit to airports. Airports use the fees to fund FAA-approved projects that enhance safety, security, or capacity; reduce noise; or increase air carrier competition.

implemented, for example, stakeholders provided comments regarding the fee, many of which ultimately were addressed in the final design of the fee. Nevertheless, we previously reported that nonfederal stakeholders have said that relying solely on notice and comment through the *Federal Register* is insufficient for obtaining stakeholder input.⁷⁵ In the past, APHIS solicited stakeholder comments as it adjusted the AQI fee, but it updated the fee using an interim final rule that took effect prior to the end of the comment period. Although an interim final rule does not preclude an agency from making changes to the final rule, stakeholders said that APHIS did not take their comments on the AQI fees into account because comments were not solicited before the change was implemented and because no changes to the fee were made during final rule making. Based on guidance from OMB, APHIS is no longer updating its fees using interim final rules.

Whatever the means for disseminating information about the fee, if the review is not comprehensive, it may not provide sufficient information to assess whether a fee needs to be changed. For example, we recently reported that the information on the MPF in CBP's biennial fee review was insufficient to either project fee collections or to provide assurance that the amount of the fee was aligned with program costs. This was the case because the review lacked projections of future MPF collections, the effects of exemptions, and changes in import demographics. We noted that without this information, CBP is not able to either determine if the amount, structure, or authorized uses of the fee should be changed or comment on the need for any changes to the fee statute. CBP's review noted that a detailed analysis of the current and estimated future effects of MPF exemptions, changes in import demographics, and a reliable cost estimate for processing merchandise are needed.⁷⁶

What Role Do Stakeholders Play in the Fee Reviews?

Transparent processes for reviewing and updating fees help assure payers and other stakeholders that fees are set fairly and accurately and are spent on the programs and activities Congress intended. Also, because user fees represent a charge for a service or benefit received from a specific government program, payers may expect a tight link between payments

⁷⁵See GAO, *Reexamining Regulations: Opportunities Exist to Improve the Effectiveness and Transparency of Retrospective Reviews*, [GAO-07-791](#) (Washington, D.C.: July 16, 2007).

⁷⁶See [GAO-08-321](#).

and the cost of providing services and have expectations about the quality of the related service. Effectively communicating with stakeholders involves sharing relevant analysis and information as well as providing opportunities for stakeholder input. In past user fee reviews, we have reported that agencies that do not communicate with stakeholders miss opportunities for meaningful feedback that could affect the outcome of changes in fees and program implementation. Providing for stakeholder input may affect their support for and acceptance of the fee, and may contribute to improved understanding about how the fees work and what activities they may fund. Payers may also expect to participate in decisions about the provision of the service, including its form or quality. For example, in prior work on a proposed user fee for FAA services, we found that some stakeholders stated that if user fees are adopted, users should have more input into FAA's operations, citing the "user pays, user says" concept.⁷⁷ Soliciting stakeholder input is particularly important because government is often a monopoly supplier—that is, alternatives are limited so some fees are not fully voluntary—users cannot "vote with their dollars" as freely as they can in a competitive private market.

Agencies can accommodate payers' and stakeholders' input in various ways. The authorizing legislation of some but not all fees stipulates that the agency solicit stakeholder input in certain forms, including an advisory committee.⁷⁸ The immigration inspection fees statute, for example, directed the Attorney General to establish an advisory committee, whose membership consists of entities subject to the fees, to advise the agency on the performance of the inspectional services and the level of fees.⁷⁹ As we recently reported, the legislation that authorized the HMF did not establish an HMF advisory committee, although it did establish an advisory committee for a similar user-funded program for new work

⁷⁷See GAO, *Aviation Finance: Observations on Potential FAA Funding Options*, [GAO-06-973](#) (Washington, D.C.: Sept. 29, 2006).

⁷⁸Our prior work found that federal advisory committees play an important role in shaping public policy by providing advice on a wide array of issues. See GAO, *Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance*, [GAO-04-328](#) (Washington, D.C.: Apr. 16, 2004). However, neither IOAA nor OMB Circular No. A-25 includes a requirement for agencies to establish an advisory committee or solicit stakeholder input related to their user fees.

⁷⁹The Immigration and Naturalization Service User Fee Advisory Committee was first established in 1986. The Homeland Security Act of 2002 transferred the immigration inspection functions to the newly created CBP in DHS, and the committee was renamed the Airport and Seaport Inspections User Fee Advisory Committee.

construction and rehabilitation on inland waterways.⁸⁰ PDUFA requires FDA to work with stakeholders, including representatives from consumer, patient, and health provider groups and the pharmaceutical and biotechnology industries, to develop performance goals for the FDA prescription drug review program.⁸¹

It is important, however, that actions are taken to ensure that fee programs do not become solely beholden to stakeholder interests. Where Congress and fee payers agree on priorities, there may be no conflict between oversight and accountability to Congress on the one hand and accountability to fee payers on the other. Where Congressional and fee payer priorities differ, however, the agency may be under greater pressure to satisfy the demands of fee payers, particularly when a fee is voluntary.⁸² For example, although the FDA performance goals may be consistent with PDUFA's goal to improve FDA application processing times for new prescription drugs, a Congressional Research Service report on the fees cited some critics as saying that giving the pharmaceutical industry a role in setting program performance goals creates conflicts of interest and gives the industry too much influence over FDA actions.⁸³ We previously identified several promising practices for forming and managing federal advisory committees that could better ensure that committees are, and are perceived as being, independent and balanced. These practices include (1) obtaining nominations for committees from the public, (2) using clearly defined processes to obtain and review pertinent information on potential members regarding potential conflicts of interest and points of view, and (3) prescreening prospective members using a structured interview.⁸⁴

⁸⁰The purpose of this Inland Waterways Users Board is to make recommendations on program priorities and spending.

⁸¹See [GAO-02-958](#).

⁸²See [GAO/AIMD-98-11](#).

⁸³See Congressional Research Service, *The Prescription Drug User Fee Act (PDUFA): Background and Issues for PDUFA IV Reauthorization* (Washington, D.C.: Apr. 30, 2007).

⁸⁴See GAO, *Federal Advisory Committee Act: Issues Related to the Independence and Balance of Advisory Committees*, [GAO-08-611T](#) (Washington, D.C.: Apr. 2, 2008).

Concluding Observations

The normative principles outlined in this guide are meant to present a framework for considering user fee design. Any user fee design embodies trade-offs among equity, efficiency, revenue adequacy, and administrative burden. Focusing only on the pros and cons of any single design element could make it difficult to achieve consensus on a fee's design. Instead, policymakers will ultimately need to balance the relative importance they place on each of these criteria and focus on the overall fee design.

There are always exceptions to any rule, however; as such, there will undoubtedly be cases in which policy considerations outweigh normative design principles. Nevertheless, the criteria, questions, and illustrative examples presented in this guide present real issues that policymakers must face when designing or redesigning user fees. See appendix I for a summary of key questions to consider.

Agency Comments

We provided a draft of this guide to the Director of the Office of Management and Budget and the Secretaries of Homeland Security, Defense, and Agriculture for review. We received technical comments from each agency, which we incorporated as appropriate.

We are sending copies of this guide to interested Congressional committees as well as the Director of the Office of Management and Budget and the Secretaries of Homeland Security, Defense, and Agriculture. In addition, this guide will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this guide, please contact me at (202) 512-9142 or irvings@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this guide. GAO staff who made major contributions to this guide are listed in appendix II.



Susan J. Irving
Director for Federal Budget Analysis
Strategic Issues

List of Requesters

The Honorable Bennie G. Thompson
Chairman

The Honorable Peter T. King
Ranking Member
Committee on Homeland Security
House of Representatives

The Honorable Charles B. Rangel
Chairman

The Honorable Jim McCrery
Ranking Member
Committee on Ways and Means
House of Representatives

Appendix I: Key Questions

(We note that some of these questions may overlap.)

Section I: Setting User Fees

1. To what extent does the program benefit the general public and identifiable users?
 - a. Does use of the program by certain users, or for certain types of uses, provide a public benefit, for example, by advancing a public policy goal?
 - b. What is the users' ability to pay?
 - c. To the extent that the fees are used to replace funding by general revenues, what is the impact on the distribution of the burden of financing the program?
 - d. What would be the impact of a fee on users' competitiveness with others that would not be subject to the fee?
 - e. Is a similar service provided by the private sector? If so:
 - Will private producers be subject to unfair competition if the fee is not set to recover the full costs of the service?
 - Should their charges be a reference point in setting fees?
 - f. For programs that have not been paid for by fees in the past, has the value of the program been capitalized into private assets? If so:
 - Could transitional measures be used to address these concerns?
2. How will the fee be linked to the cost?
 - a. Does the agency have timely and reliable cost data to link the fee to program costs?
 - b. Will the fee recover full or partial costs?
 - c. Will the fee structure include exemptions or reduced fees?
 - d. Will the fee be set as a percentage rate or as a fixed dollar amount?
 - e. If the fee varies, will fee minimum amount, maximum amount, or both be set?
 - f. Will the fee structure be user-specific or systemwide?
 - Is the amount of the fee small or large relative to other costs that the user faces?
 - Are there numerous different groups of users?
 - Is the cost variation among the different groups of users large or small?
 - g. Does the program have high fixed costs?
 - Is a two-part fee structure, with a flat rate plus a fee based on usage, appropriate?

3. How will the fee be structured to cover the intended share of program costs over time?
 - a. Are fee collections projected to change over time in relation to the cost of the program due, for example, to inflation?
 - b. To what degree will short-term fluctuations in economic activity and other factors affect the level of fee collections?
 - c. Will the fee design include a maintenance of effort requirement?

Section II: Collecting User Fees

1. What mechanisms are available to ensure payment and compliance with requirements while minimizing administrative costs?
 - a. To what extent do payment and compliance mechanisms impose administrative costs on the agency, the payers, or both?
 - b. Do rewards and penalties for compliance correspond to performance?
2. Is there an agency or other entity that already collects or audits fees from the users?
 - a. How will compatible policies and procedures and regular communication be established?
 - b. How does coordination affect the administrative costs of fee collection for the agency and payers?
 - c. Will collection by another entity affect compliance with fees?

Section III: Using User Fees

1. What degree of access will the agency have to collected fees?
 - a. Will the fees directly support the related program or agency or be deposited to the general fund of the U.S. Treasury?
 - b. Will agency access to fees be subject to Congressional appropriation?
 - c. Will the budget execution of fee collections be through reimbursement, or will the agency receive fee collections directly?
 - d. Will the amount of spending be tied to the amount of collections?
 - e. Will the fee be categorized as mandatory or discretionary?
2. How broadly or narrowly will the activities for which fee collections can be used be defined?

Section IV: Reviewing User Fees

1. Will the fee be updated through legislation or by agency regulation?
2. How frequently will fees be reviewed and updated?
 - a. Will legislation include a sunset provision to trigger fee updates?
 - b. Will legislation direct the agency to submit regular fee reviews to Congress, different from the biennial fee review required by the Chief Financial Officers Act of 1990?

3. What mechanisms will be used to gather stakeholder input?
 - a. Will the agency establish an advisory committee?
 - b. Will proposed changes to the fees be published for comment in the *Federal Register*?
 - c. What safeguards will be used to prevent the agency from becoming beholden to fee payers/stakeholders?

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Susan J. Irving, (202) 512-9142 or irvings@gao.gov

Acknowledgments

Jacqueline M. Nowicki (Assistant Director) and Susan E.M. Etzel managed this assignment. Jessica Nierenberg, Kathleen Padulchick, and Amy Rosewarne made key contributions to this guide. Jay Cherlow, Denise Fantone, Chelsa Gurkin, Terrance N. Horner, Susan Offutt, Alessandra Rivera, and Jack Warner also provided assistance. In addition, Pedro Briones, Carlos Diz, and Sheila Rajabiun provided legal support, and Donna Miller developed the guide's graphics.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday, GAO posts newly released reports, testimony, and correspondence on its Web site. To have GAO e-mail you a list of newly posted products every afternoon, go to www.gao.gov and select "E-mail Updates."

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are \$2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. Government Accountability Office
441 G Street NW, Room LM
Washington, DC 20548

To order by Phone: Voice: (202) 512-6000
TDD: (202) 512-2537
Fax: (202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Ralph Dawn, Managing Director, dawnr@gao.gov, (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548