



September 2015

# FEDERAL USER FEES

## Key Considerations for Designing and Implementing Regulatory Fees

Accessible Version

# GAO Highlights

Highlights of [GAO-15-718](#), a report to congressional addressees

## Why GAO Did This Study

Regulatory user fees are assessed on certain nonfederal entities subject to regulation in conjunction with regulatory activities. They represent a significant source of federal government revenue—some individual regulatory user fees exceed \$1 billion in annual collections—and often support agencies' regulatory missions. Well-designed regulatory user fees can help fund regulatory programs while reducing taxpayer burden.

GAO built on its prior user fee work by assessing what additional design and implementation characteristics exist specifically for regulatory user fees in terms of how these fees are: (1) set, (2) collected, (3) used, and (4) reviewed. To do so, GAO reviewed relevant literature and analyzed 10 regulatory user fees within 6 agencies—Environmental Protection Agency, Food and Drug Administration, National Credit Union Administration (NCUA), Nuclear Regulatory Commission, Office of the Comptroller of the Currency, and Securities and Exchange Commission. GAO selected these agencies based on their high amounts of fee collections and rulemaking activity and diverse fee characteristics. GAO also examined stakeholder views on these selected fees and held a multi-agency panel discussion to ensure the broad applicability of the findings.

## What GAO Recommends

GAO is not making any recommendations in this report. NCUA provided written comments agreeing with GAO's findings. NCUA and three other agencies also provided technical comments, which were incorporated as appropriate.

View [GAO-15-718](#). For more information, contact Michelle Sager at (202) 512-6806 or [sagerm@gao.gov](mailto:sagerm@gao.gov).

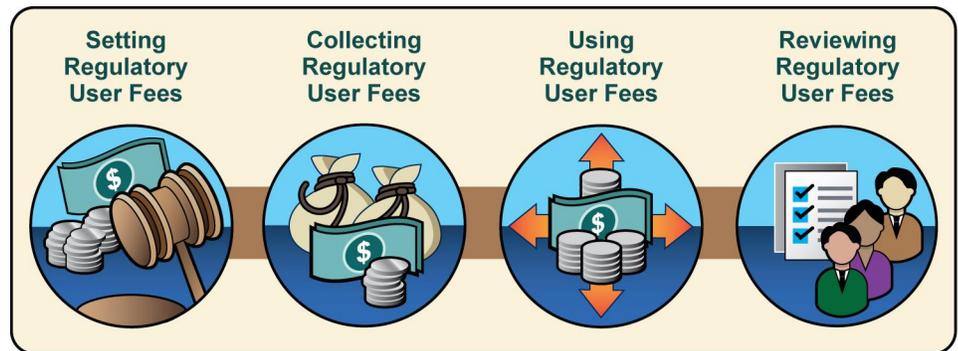
September 2015

## FEDERAL USER FEES

### Key Considerations for Designing and Implementing Regulatory Fees

## What GAO Found

GAO identified key elements of regulatory user fees for decision makers to consider as they design, implement, and evaluate these fees.



Source: GAO. | GAO-15-718

**Setting regulatory user fees:** Congress determines in statute the degree of flexibility to make fee design and implementation decisions that will be retained or delegated to the agency. This has implications for whether agencies issue regulations to set fees, who will determine the level of regulatory activity, and how costs will be allocated among beneficiaries. In setting fees, agencies typically give special consideration to small businesses' ability to pay.

**Collecting regulatory user fees:** Regulatory user fees are not always collected at the time of a specific service or transaction. While some regulatory user fees are charged for specific services, many are collected from an entire industry at regular intervals as prescribed by statute or regulation. Collecting fees this way can create a stable revenue stream. Agencies may use different methods to ensure collection of fees because they cannot always withhold services until the fee is paid.

**Using regulatory user fees:** It is important to consider the availability of fee collections and unobligated balances. In some cases, agencies have the authority to use balances to mitigate revenue instability. In other cases, collected fees are only available to the agencies if Congress appropriates them.

**Reviewing regulatory user fees:** Regulatory user fee reviews provide important information for decision makers, such as identifying the effects of changes in a regulated industry. The appropriate time frames and methods for agency review will vary by individual circumstances. Regulatory programs produce both public benefits and services to fee payers, so it is important that fee review processes provide opportunities for input from stakeholders, including fee payers and the general public. Agencies can promote transparency by providing information on how fees are calculated and used to address the diverse needs of policymakers, stakeholders, and the general public. Decision makers can help mitigate the appearance that fee-payers have undue influence on regulatory outcomes through appropriate stakeholder involvement and dissemination of information.

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## Abbreviations

APHIS	Animal and Plant Health Inspection Service
CBO	Congressional Budget Office
CFO Act	Chief Financial Officers Act of 1990
EPA	Environmental Protection Agency
FCC	Federal Communications Commission
FDA	Food and Drug Administration
FINRA	Financial Industry Regulatory Authority
IOAA	Independent Offices Appropriation Act of 1952
MVECP	Motor Vehicle and Engine Compliance Program
NCUA	National Credit Union Administration
NRC	Nuclear Regulatory Commission
OCC	Office of the Comptroller of the Currency
OECD	Organisation for Economic Co-operation and Development
OMB	Office of Management and Budget
PDUFA	Prescription Drug User Fee Act of 1992
SEC	Securities and Exchange Commission

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September 16, 2015

The Honorable James Lankford  
Chairman  
Subcommittee on Regulatory Affairs and Federal Management  
Committee on Homeland Security and Governmental Affairs  
United States Senate

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
House of Representatives

Regulatory user fees provide a significant source of funding for government regulation, and some exceed \$1 billion in annual collections. Thoughtful design is important to ensure that these fees can be used as intended to support agencies' regulatory missions and ensure that every funding source is carefully assessed. Building on our prior work on user fees, including *Federal User Fees: A Design Guide* (User Fee Design Guide) and *Federal User Fees: Fee Design Options and Implications for Managing Revenue Instability*, this report provides key questions for Congress, agency officials, and oversight bodies to consider when designing, implementing, and evaluating regulatory user fees (see appendix I).<sup>1</sup> Because the design of regulatory user fees varies widely and Congress provides agencies with different degrees of flexibility to manage them, some of the key questions identified in this report may be more applicable to certain agencies than others when considering individual regulatory user fees.

User fees are assessed to users for goods or services provided by the federal government. User fees generally apply to federal programs or activities that provide special benefits to identifiable recipients above or beyond what is normally available to the public. For the purposes of this report, "regulatory user fees" are defined as a subset of federal user fees that are charged to regulated entities in conjunction with regulatory

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<sup>1</sup>See GAO, *Federal User Fees: Fee Design Options and Implications for Managing Revenue Instability*, [GAO-13-820](#) (Washington, D.C.: Sept. 30, 2013) and *Federal User Fees: A Design Guide*, [GAO-08-386SP](#) (Washington, D.C.: May 29, 2008).

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activities.<sup>2</sup> Businesses and individuals pay regulatory user fees when they undertake certain activities subject to federal government regulation. These fees are often used to fund regulatory programs. For example, we consider the fees assessed by financial regulatory agencies and the Nuclear Regulatory Commission on their regulated industries to be regulatory user fees. We also consider application fees, such as fees charged by the Environmental Protection Agency to review applications for new pesticides, and inspection fees, such as fees charged by the Animal and Plant Health Inspection Service (APHIS) and U.S. Customs and Border Protection to people, goods, and means of conveyance entering the United States, to be regulatory user fees.

By contrast, businesses and individuals pay other types of user fees in exchange for the receipt of a discrete product or service where the government is not engaging in a regulatory activity. Examples of other user fees include entrance fees for national parks and fees paid for the purchase of certain government publications such as maps.<sup>3</sup>

We prepared this report under the Comptroller General's authority to conduct evaluations on his own initiative as part of our continuing efforts to assist Congress with establishing and updating user fees. Our objectives were to identify the design and implementation characteristics of regulatory user fees in terms of how these fees are: (1) set, (2) collected, (3) used, and (4) reviewed.

To do this work, we examined the characteristics of regulatory user fees through a literature review, case studies, and a multi-agency panel discussion. Our literature review included Office of Management and Budget (OMB) and agency budget documents; Inspectors General, Congressional Budget Office, and Organisation for Economic Co-operation and Development reports; and our related reports. We also used the literature review to define and identify regulatory user fees.

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<sup>2</sup>There is no one standard definition of a regulatory user fee. We developed this definition for the purposes of our report based on our analysis of the use of the term "regulatory user fee" by other sources and feedback from agencies included in this report.

<sup>3</sup>It should be noted that these definitions are not absolute and user fees can fall along a spectrum where an individual fee may have some characteristics of regulatory user fees and some characteristics of other types of user fees.

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For our case studies, we selected 10 regulatory user fees within six agencies, as shown in table 1. We selected agencies and fees with high dollar amounts of collections, high amounts of rulemaking activity, and diverse fee characteristics. For each case study, we reviewed documents related to the fee and interviewed agency officials about their management of the fee, including the extent to which they found the User Fee Design Guide to be applicable to their regulatory user fees. We also examined stakeholder views on the 10 selected fees by reviewing public comments on proposed rules in the *Federal Register* and minutes of public meetings.

**Table 1: Ten Regulatory User Fees Selected for Case Studies**

Agencies	Descriptions of regulatory user fees
<p>Environmental Protection Agency (EPA) EPA protects human health and the environment by developing and enforcing regulations based on environmental laws.</p>	<p>Motor vehicle and engine compliance program (MVECP) fee EPA collects MVECP fees to recover all reasonable costs associated with new vehicle and engine certification, compliance, and testing (42 U.S.C. § 7552).</p> <p>Pesticide registration service fee EPA collects pesticide registration service fees to cover the costs associated with the review of pesticide registration applications (7 U.S.C. § 136w-8).</p>
<p>Food and Drug Administration (FDA) of the Department of Health and Human Services FDA is responsible for protecting the public health by assuring the safety, efficacy, and security of human and veterinary drugs, biological products, medical devices, the nation's food supply, cosmetics, and products that emit radiation. FDA is also responsible for regulating tobacco products.</p>	<p>Prescription drug fee FDA's prescription drug fees pay the costs of the process for the review of human drug applications (21 U.S.C. § 379h).</p> <p>Tobacco fee FDA collects tobacco fees to pay the costs of regulating tobacco products (21 U.S.C. § 387s).</p>
<p>National Credit Union Administration (NCUA) NCUA charters federal credit unions and examines, supervises, and prescribes regulations for federally insured credit unions.</p>	<p>Operating fee NCUA assesses fees on federal credit unions for activities including the examination and supervision of federal credit unions (12 U.S.C. §1755).</p>
<p>Nuclear Regulatory Commission (NRC) NRC licenses and regulates the nation's civilian use of radioactive materials.</p>	<p>Part 170 fee for regulatory services NRC assesses Part 170 fees to cover its costs of providing regulatory services, including services to licensees or certificate holders (42 U.S.C. § 2214).</p> <p>Part 171 annual fee NRC assesses annual fees to licensees or certificate holders designed to recover a percentage of its budget authority (42 U.S.C. § 2214).</p>
<p>Office of the Comptroller of the Currency (OCC) of the Department of the Treasury OCC charters, regulates, and supervises all national banks and federal savings associations, as well as federal branches and agencies of foreign banks.</p>	<p>Semiannual assessments OCC collects assessments from the financial institutions under its jurisdiction as the Comptroller determines is necessary or appropriate to carry out the responsibilities of OCC (12 U.S.C. § 16).</p>
<p>Securities and Exchange Commission (SEC) SEC oversees securities exchanges, securities brokers and dealers, investment advisors, and mutual funds.</p>	<p>Section 31 fee National securities exchanges and the Financial Industry Regulatory Authority (FINRA) pay Section 31 transaction fees to SEC, generally based on the sales of securities (15 U.S.C. § 78ee).</p> <p>Filing fees Companies pay fees to SEC for a variety of activities, such as registration or purchase of securities, mergers, consolidations, and proposed sales or other disposition of all assets of a company. These are collectively known as filing fees (15 U.S.C. § 77f; 15 U.S.C. §78m; 15 U.S.C. § 78n; 15 U.S.C. § 80a-24).</p>

Source: GAO analysis of agency mission statements and other documents. | GAO-15-718

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We invited 12 agencies, including the 6 named above, to respond to a questionnaire and participate in a structured panel discussion. Eleven agencies completed the questionnaire and 10 attended the panel.<sup>4</sup> In addition to the 6 agencies named above, the panel consisted of participants from APHIS, Federal Communications Commission, Federal Energy Regulatory Commission, and U.S. Patent and Trademark Office. These agencies were selected based on our prior reviews of regulatory user fees, as well as large amounts of regulatory user fee collections and diversity of fiscal and regulatory characteristics. In addition, we met with OMB staff to supplement information obtained from the case studies, questionnaire, and panel discussion. The results of the case studies, questionnaire, and panel discussion cannot be generalized to all regulatory user fees, but are designed to reflect the broad diversity of regulatory user fee characteristics. Detailed information on our scope and methodology is included in appendix II.

We conducted this performance audit from August 2014 through September 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

In our body of work on federal user fees we have reported on principles for designing federal user fees and evaluated several individual fees. Our 2008 User Fee Design Guide described principles for setting, collecting, using, and reviewing federal user fees.<sup>5</sup> That report examined fees using four criteria: efficiency, equity, revenue adequacy, and administrative burden. These criteria have often been used to assess user fees and other government collections such as taxes. We further reported on user fee design principles in *Federal User Fees: Fee Design Options and Implications for Managing Revenue Instability*.<sup>6</sup> That report describes six

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<sup>4</sup>U.S. Customs and Border Protection officials completed the questionnaire but were unable to attend the panel due to a scheduling conflict. We also invited the Centers for Medicare & Medicaid Services, but the agency declined to participate.

<sup>5</sup>[GAO-08-386SP](#).

<sup>6</sup>[GAO-13-820](#).

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key fee design decisions intended to inform congressional design of fees that strike Congress's desired balance between agency flexibility and congressional control. We have also evaluated several individual user fees, including agricultural quarantine inspection user fees, patent fees, immigration fees, and air passenger inspection fees.<sup>7</sup>

As we reported in September 2013, user fee designs can vary widely and, in general, are governed by two authorities: an authority to charge fees and an authority to use fee collections.<sup>8</sup> Agencies derive their authority to charge fees either from the Independent Offices Appropriations Act of 1952 (IOAA) or from a specific statutory authority. IOAA gives agencies the authority to charge fees for a service or thing of value provided by the agency. Separate authority is needed for an agency to retain and obligate collected fees.<sup>9</sup> The terms of a specific statute permitting an agency to charge a fee would determine whether or not the agency can retain and obligate the collected fees. However, Congress has frequently provided agencies with statutory authority both to collect fees and to use the collections. In these specific fee authorities, Congress determines the degree of flexibility to make fee design and implementation decisions that will be retained or delegated to the agency. Our September 2013 report found that in designing individual user fees, Congress can decide among options to retain its control or increase agency flexibility for various elements of the fee, including how rates are set, how collections can be used, and what reporting and oversight is required.

The legal and policy framework governing regulations is also relevant to the management of regulatory user fees. Specific statutory authority may grant an agency the authority to issue a regulation which creates rights and obligations, and addresses other substantive matters in ways that have the force and effect of law.<sup>10</sup> These regulations are generally

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<sup>7</sup>A list of our related products is included at the end of this report.

<sup>8</sup>[GAO-13-820](#).

<sup>9</sup>An obligation is a definite commitment that creates a legal liability of the government for the payment of goods and services ordered or received, or a legal duty on the part of the United States that could mature into a legal liability by virtue of actions on the part of another party beyond the control of the United States.

<sup>10</sup>Agencies generally have authority to issue regulations to govern the internal affairs of the agency, as well as interpretive rules that express the agency's policy positions or views in a way that does not bind outside parties or the agency itself.

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codified in the Code of Federal Regulations.<sup>11</sup> Typically, regulations require a desired action or prohibit certain actions by regulated parties. The regulatory process is governed by statutes, executive orders, and agencies' policies and procedures that, for example, require agencies to evaluate the need for regulations, assess the potential effects of new regulations, and obtain public input (with certain exceptions) during the development of regulations. OMB is responsible for establishing government-wide financial management policies, such as OMB Circular No. A-25, *User Charges*. OMB is also responsible for ensuring that federal regulations issued by agencies follow executive order requirements and guidance.

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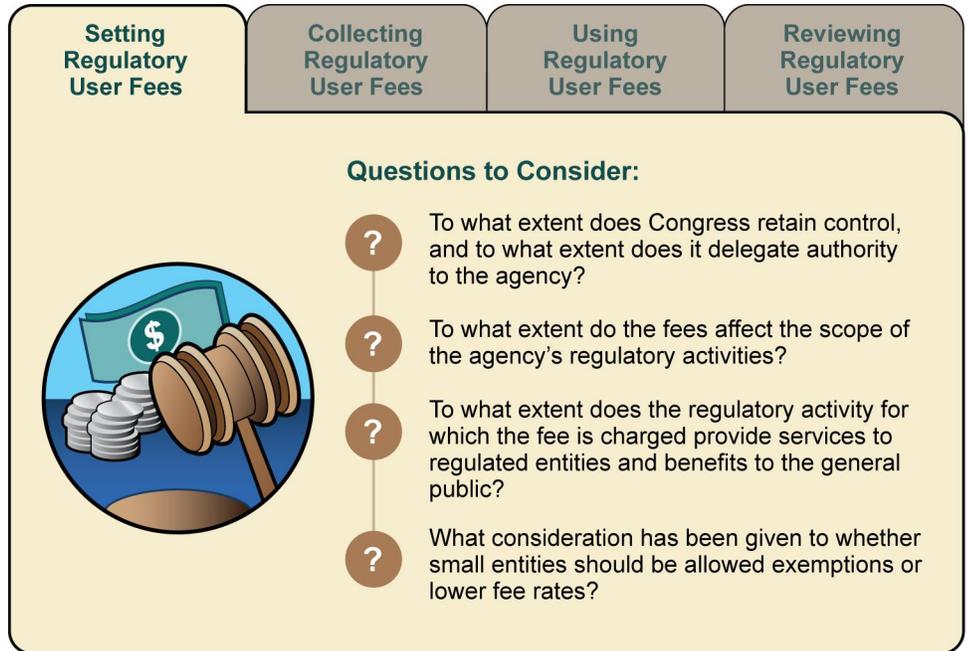
## Setting Regulatory User Fees: The Amount Set Can Determine the Level of Regulatory Activity

Congress determines in statute the degree of flexibility to make fee design and implementation decisions that will be retained or delegated to the agency. This has implications for whether agencies issue regulations to set fees, who will determine the amount of regulatory activity, and how costs will be allocated among the various beneficiaries of regulatory programs, including small entities (see figure 1).

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<sup>11</sup>The Code of Federal Regulations is the codification of documents of each agency of the government having general applicability and legal effect published in the *Federal Register*, and are relied upon by the agency as authority for, or are invoked or used by it in discharge of, its activities or functions.

**Figure 1: Questions for Decision Makers to Consider When Setting Regulatory User Fees**



Source: GAO. | GAO-15-718

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## The Extent of Agency Discretion to Set Regulatory User Fees Has Implications for Rulemaking

As our prior work found, the degree to which Congress delegates or retains the authority to set user fees has implications for fee program management, including agencies' use of the rulemaking process to set the fees.<sup>12</sup> When an agency has greater flexibility, the agency typically sets the fee by regulation; when Congress retains a greater degree of control, fees are typically set in statute and agencies would not need to use notice-and-comment rulemaking.<sup>13</sup> The 10 selected regulatory user fees included in this report exist at varying points along this spectrum.

### Examples of How Congress Exercises Control over Regulatory User Fee Setting and Delegates Authority to Agencies

- Congress sets in legislation the amount of the Environmental Protection Agency (EPA) pesticide registration service fee paid by each user.
- Congress set by statute the total amount of tobacco user fees the Food and Drug Administration (FDA) is authorized to collect each year, and established a formula in the Tobacco Control Act for allocating the total amount among the tobacco product classes that FDA regulates.
- Congress directs the Securities and Exchange Commission (SEC) in legislation to collect fees that are designed to recover the costs of SEC's annual appropriation, and prescribes a methodology that SEC must use to determine how much each user pays.
- Congress directs the Nuclear Regulatory Commission (NRC) in legislation to recover approximately 90 percent of its annual appropriation through user fees, but the agency has the authority to allocate the charges among individual users.
- Congress provided the National Credit Union Administration (NCUA) and the Office of the Comptroller of the Currency (OCC) with broad statutory authority to charge fees to fund their operations. These agencies set the total amount to be collected each year and establish the fee rates paid by individual users.

Source: GAO analysis of applicable laws. | GAO-15-718

Regulatory user fees can be set by notice-and-comment rulemaking or other mechanisms. The six selected agencies typically use notice-and-comment rulemaking to set regulatory user fee rates or structures in cases where Congress has authorized them to determine who will pay

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<sup>12</sup>[GAO-13-820](#).

<sup>13</sup>For purposes of this report, whether a user fee is considered regulatory depends on whether it is charged to regulated entities in conjunction with a federal agency's regulatory activities, rather than whether the fee rate is set by an agency through regulation. Further, rulemaking refers to agency processes for formulating, amending, or repealing rules. Notice-and-comment rulemaking, as spelled out in the Administrative Procedures Act, generally requires agencies to: (1) publish a notice of proposed rulemaking in the *Federal Register*, (2) allow interested persons an opportunity to comment on the rulemaking process through submission of "written data, views, or arguments," (3) incorporate into the final rule a concise general statement of its basis and purpose, and (4) publish the final rule not less than 30 days before it becomes effective. 5 U.S.C. §§ 551-570a.

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what amount. For example, the Clean Air Act, as amended, authorizes EPA to establish fees to recover the costs of its Motor Vehicle and Engine Compliance (MVECP) program. EPA uses notice-and-comment rulemaking to set MVECP fees and make changes to the fee structure. Similarly, NRC issues annual rulemakings to set the fee rates for its Part 170 fee for regulatory services—which is charged for direct services to applicants and licensees—and its Part 171 annual fee—which covers other regulatory costs. NCUA uses notice-and-comment rulemaking to establish its fee structure and uses memoranda to annually update the fee rates. In contrast, the six selected agencies typically did not use notice-and-comment rulemaking in cases where they do not have discretion to set or change the fee rate, or where a formula for calculating the fee is set in statute. In these cases, agencies communicate new fee rates by posting information to their websites, directly contacting fee payers, or using notices in the *Federal Register*, among other mechanisms.<sup>14</sup> For example, within approximately 30 days of receiving its annual appropriation, SEC publishes a notice in the *Federal Register* to communicate the new Section 31 securities transaction fee rates.

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### Fee Setting Decisions Can Affect the Level of Regulatory Activity

In setting regulatory user fees, decision makers can be faced with a policy decision about the scope of the agency's regulatory activities and the amount of the fee to be charged. Depending on its decisions, Congress may choose to provide additional appropriations to the agency. When regulatory user fees provide funding for an agency or program, Congress's or an agency's fee-setting decisions can affect the frequency, amount, or timeliness of the agency's regulatory activity because the total amount of regulatory user fees can determine the level of service or regulation that the agency provides. In some cases, such as SEC's Section 31 fee, this policy decision is made entirely by Congress because the total amount of fees to be collected is set by the annual appropriations process. In other cases, such as NCUA's operating fee and OCC's semiannual assessments, the agencies have broad discretion to set the amount of fees and use them to fund their regulatory activities. For example, OCC has statutory authority to collect an assessment, fee, or other charge from financial institutions as the Comptroller determines is necessary.

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<sup>14</sup>Notices in the *Federal Register* generally do not go through the notice-and-comment rulemaking process and do not amend the Code of Federal Regulations.

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The effects of fee-setting decisions depend on whether the program is fully or partially funded by user fees. Some programs' only source of budgetary resources is the fees they charge. In these cases, regulatory user fees are often charged to an entire industry to cover the full cost incurred by the agency to regulate that industry. For example, FDA's tobacco user fee is the sole source of funding for the agency's Center for Tobacco Products, and it is charged to manufacturers and importers of tobacco products that are subject to FDA regulation. In other cases, regulatory user fees can be set to cover the costs of an additional level of service above and beyond what is funded by the agency's annual appropriations. For example, both EPA's pesticide registration service fee and FDA's prescription drug fee may provide additional resources to supplement annual appropriations and enable faster review of new pesticide and prescription drug products.

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### Regulatory User Fees Balance Public Benefits with Services to Fee Payers

Some agency officials participating in our panel discussion said that their fee-funded regulatory programs benefit the general public—either directly or indirectly—such as by protecting public health or economic stability, but pointed out that fee payers often pass on the cost of regulation to their customers.<sup>15</sup> Panel participants also said that fee payers can receive direct services in exchange for paying regulatory user fees, such as a license or the review of an application. For example, motor vehicle and engine manufacturers pay EPA's MVECP user fee in exchange for EPA assessing whether engines meet emission standards and issuing certifications. The manufacturers receive an EPA certification that allows them to sell engines, while the public benefits from cleaner air.

In some cases payers receive the right to engage in a regulated activity or business. For example, the tobacco manufacturers and importers who pay FDA's tobacco user fee can engage in the regulated business. Most of these user fees, as our prior work found, are spent to promote public

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<sup>15</sup>Although policymakers have determined that regulation can be in the public interest, regulations can impose costs on firms in exchange for achieving certain benefits, and these costs can be passed on to consumers.

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health, such as through public education, regulatory science, product review, and compliance and enforcement.<sup>16</sup>

The intended benefit of paying a fee can also be a stable financial environment and consumer confidence. For example, the financial institutions regulated by NCUA and OCC pay fees for the right to operate financial institutions, such as credit unions or banks, and they benefit from the economic stability and consumer confidence that is supported by regulation of our nation's financial system.

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### Small Entities Are Typically Given Special Consideration

In setting fees, agencies typically give special consideration to small entities—which consist of small businesses and other small organizations, such as small banks or certain small educational institutions that handle nuclear material regulated by NRC. This can be an equity consideration that takes into account small entities' ability to pay the regulatory user fee and compete with larger businesses and organizations. These considerations can include exemptions or lower fee amounts. Of the 10 fees we examined, only SEC's filing fees and Section 31 fees do not have special considerations for small entities. The process for setting these fees is established by statutory provisions that do not take into account the size of the payer. Also, Section 31 fees are paid by national securities exchanges and the Financial Industry Regulatory Authority (FINRA), none of which is considered to be a small entity under SEC rules.<sup>17</sup>

In some cases, agencies are required by statute to provide special consideration for small entities. For example, the Pesticide Registration Improvement Act of 2003, as amended, provides for fee waivers for small businesses and for exemptions from fees in certain circumstances based on factors such as number of employees and volume of revenue.<sup>18</sup> Further, in our prior work, we found that the Leahy-Smith America Invents Act required the U.S. Patent and Trademark Office to establish reduced

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<sup>16</sup>See GAO, *Tobacco Product Regulation: Most FDA Spending Funded Public Education, Regulatory Science, and Compliance and Enforcement Activities*, [GAO-14-561](#) (Washington, D.C.: June 20, 2014).

<sup>17</sup>Section 31 fees are based on the dollar volume of securities sold.

<sup>18</sup>Pub. L. No. 108-199, 118 Stat. 419 (Jan. 23, 2004). This statute was most recently reauthorized in 2012.

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fee rates for micro entities.<sup>19</sup> In addition, when agencies set their fees by rulemaking they are required by the Regulatory Flexibility Act to consider the impact of these proposed regulations on small entities.<sup>20</sup> For example, EPA regulations provide that an entity may be eligible for a reduced MVECP fee if the full fee for an application for certification for a model year exceeds 1 percent of the aggregate projected retail sales prices of all vehicles or engines covered by a certificate, which is intended to ease the burden on smaller manufacturers. Additionally, agencies can provide special considerations for small entities when they are not required to do so. For example, NCUA and OCC—which have broad authority to set their fees—take into account the amount of assets held by the financial institutions that they regulate when setting their fee amounts. As a result of this fee structure, smaller financial institutions with fewer assets pay a lower amount than larger ones.

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## Collecting Regulatory User Fees: Timing Could Have Management Implications

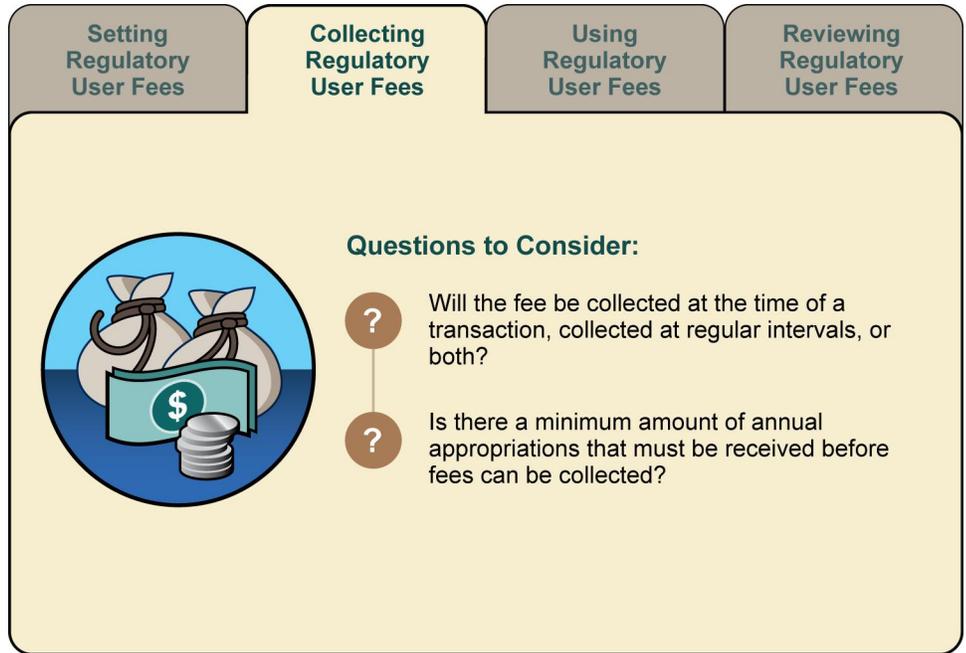
Regulatory user fees are not always collected at the time of a specific service or transaction. Rather, many are collected from an entire industry at regular intervals as prescribed by statute or regulation. There are management implications for the timing of fee collections, as well as whether a minimum amount of annual appropriations must be reached before the fee can be collected (see figure 2).

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<sup>19</sup>Pub. L. No. 112-29, 125 Stat. 284 (Sept. 16, 2011). Micro entities are defined as small entities that are not named as an inventor on more than four previously filed applications, and meet other requirements. See GAO, *Patent and Trademark Office: New User Fee Design Presents Opportunities to Build on Transparency and Communication Success*, [GAO-12-514R](#) (Washington, D.C.: Apr. 25, 2012).

<sup>20</sup>5 U.S.C. §§ 601-612.

**Figure 2: Questions for Decision Makers to Consider When Collecting Regulatory User Fees**



Source: GAO. | GAO-15-718

**Fees Collected at Regular Intervals Can Cover Broad Costs of Regulation, but May Require Different Internal Controls Than Transactional Fees**

Six of our 10 selected regulatory fees are collected at regular intervals such as quarterly or annually.<sup>21</sup> Unlike transactional fees collected at the time of an individual transaction, these non-transactional fees include NCUA’s operating fee, which is collected annually, as well as OCC’s semiannual assessments and SEC’s Section 31 fee, which are collected semiannually. Similarly, FDA’s tobacco fee and NRC’s Part 170 fee are billed quarterly, while NRC’s part 171 fee is billed quarterly or annually.<sup>22</sup> FDA’s prescription drug user fee includes both transactional charges for prescription drug applications and non-transactional fees, namely annual charges for establishments that manufacture prescription drugs and existing prescription drug products. In contrast to these non-transactional

<sup>21</sup>For the purposes of this report, we refer to fees collected at regular intervals as “non-transactional fees.”

<sup>22</sup>Entities owing \$100,000 or more are billed quarterly, while others are billed annually.

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fees, our prior user fee work, including the User Fee Design Guide, focused on fees that are collected at the time of transactions for government goods and services.

Some non-transactional fees are charged to an entire industry at regular intervals to broadly cover the costs of regulating that industry. In these cases, the amount of the fee is not calculated based on services provided to the individual user or the number of transactions by the user. For example, financial institutions pay fees to NCUA and OCC to cover the cost of regulation.<sup>23</sup> The amounts collected are in part based on the amount of assets held by the financial institution, rather than directly tied to the amount of time or resources the government spends regulating them. Non-transactional fees can also cover costs the agency incurs in serving the broader public interest through regulation as well as other responsibilities not directly associated with services provided to the regulated parties. For example, FDA's tobacco fee pays for public education, such as educating consumers on the danger of tobacco products, as well as the agency's regulation of these products. Other non-transactional fees are collected at regular intervals but calculated based on specific regulatory services provided to the user. For example, NRC's Part 170 fee is charged for specific services provided to identifiable users such as licensing and inspection. NRC charges an hourly rate for these services and bills the users quarterly.

Fee collection procedures have implications for management. Internal control standards identify properly executing transactions—which can include fee collections—as a key control activity.<sup>24</sup> Accordingly, agencies need to have internal controls in place for all user fees to ensure that all fees due are collected and that each user pays the correct amount, among other things. An important element for designing these controls is having accurate and complete data for identifying and billing users. For example, FDA uses excise tax data when calculating the fee amount paid by each tobacco manufacturer and importer.

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<sup>23</sup>While NCUA's operating fee covers the cost of the agency's regulatory activities, the agency's insurance-related costs are paid by transferring funds from the National Credit Union Share Insurance Fund.

<sup>24</sup>See GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

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**Methods selected agencies use to manage internal controls for their non-transactional fees**

- SEC inspects national securities exchanges' and FINRA's controls and procedures related to Section 31 fees.
- After an assessment cycle, OCC checks a sample of the assessments to ensure financial institutions were billed the correct amount.

Source: SEC and OCC officials. | GAO-15-718

For fees that are collected at the time of specific transactions (rather than at regular intervals), agencies can ensure all fees are collected by withholding a service until they are paid. For example, EPA's MVECP fee is collected on a transactional basis and the agency uses two checks—one at the time an application is submitted and another before a certificate is issued—to make sure its MVECP fee has been paid. EPA will not issue a certificate if the fee has not been paid. By contrast, internal control mechanisms may take a different form for non-transactional fees, such as periodic inspections, as shown at left.

One advantage of regular collections is that they can create a predictable revenue stream. According to FDA officials, the non-transactional elements of the prescription drug user fee—namely, annual fees for existing prescription drug products and establishments that manufacture prescription drugs—create a stable, predictable source of revenue, whereas revenue from the transactional application fees for new prescription drugs can be less predictable. We have previously concluded that the timing of fee collections can sometimes cause agencies to experience revenue instability. Specifically, collections that come in small increments on a rolling basis or late in the fiscal year may inhibit an agency's ability to identify overall patterns and fluctuations, or may create cash flow challenges.<sup>25</sup>

An additional consideration for managing regulatory user fees is whether fee collection is manual or automated. We have previously concluded that moving to electronic collections can reduce costs and mitigate risks, such as theft.<sup>26</sup> Moreover, two agencies—SEC and OCC—told us that automating fee collections reduces administrative burden. For example, SEC officials told us that improvements in automation would alleviate some of the administrative burdens related to filing fees. Specifically, many wire transfer payments lack adequate identifying information to post to the appropriate registrant's account and are therefore temporarily posted to an "unassigned" account. So SEC staff must research these payments and post them to the correct registrant account. According to officials, if SEC used additional payment options that required registrants

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<sup>25</sup>[GAO-13-820](#).

<sup>26</sup>See GAO, *Budget Issues: Electronic Processing of Non-IRS Collections Has Increased but Better Understanding of Cost Structure Is Needed*, [GAO-10-11](#) (Washington, D.C.: Nov. 20, 2009).

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to provide their account information prior to submitting monies to the SEC, it could eliminate payments going into the unassigned account. OCC officials also said automation has helped reduced the administrative burden of the agency's fee process, which was previously manual.

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### Some Agencies Must Receive a Minimum Amount of Appropriations before They Can Begin Fee Collections

The appropriations process can also have implications for the collection of regulatory user fees. Two of our selected fees have minimum appropriations thresholds that are established by statute. In other words, the agency must receive a certain amount of appropriations for the fiscal year before it can collect fees. For example, under provisions of the Pesticide Registration Improvement Act of 2003, as amended, pesticide registration service fees may not be assessed for a fiscal year unless Congress provides at least a set amount of annual appropriations for certain functions of the Office of Pesticide programs for that year.<sup>27</sup> Similarly, prescription drug user fees shall be refunded unless annual appropriations for salaries and expenses of FDA (excluding the amount of fees appropriated for that year) are equal to or greater than a specific amount.

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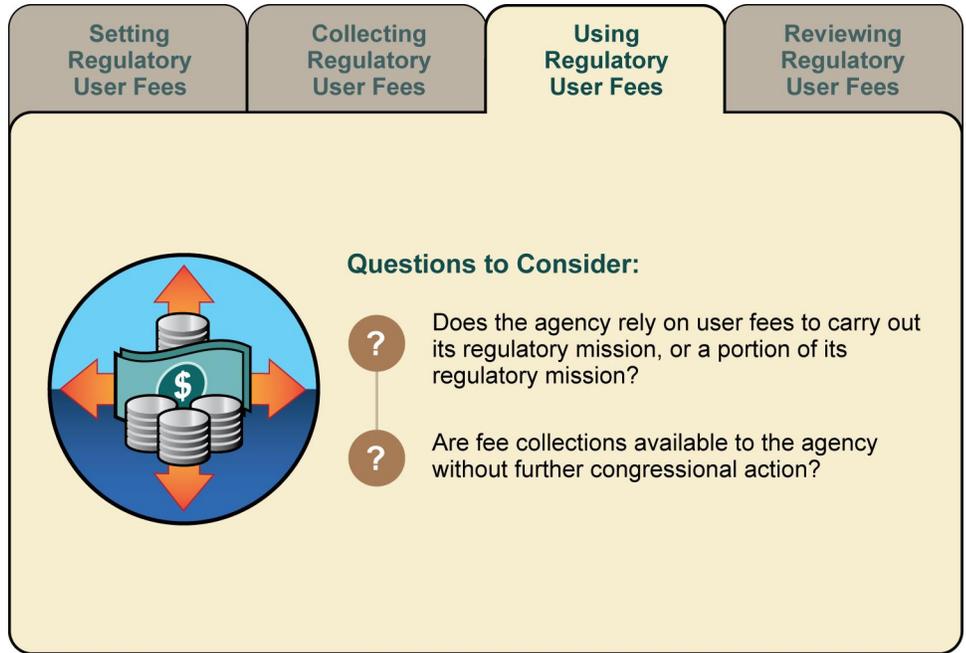
### Using Regulatory User Fees: Variations in Availability of Fees and Unobligated Balances

Considering key questions about using regulatory user fees can enable Congress and agencies to identify and manage issues related to revenue instability. As we have previously found, largely or wholly fee-funded programs do not necessarily see a proportional decline in costs when they experience a drop in collections. The authority to create or implement a tool to manage revenue instability may be retained by Congress or it may be delegated to the agency. Consideration of whether a user fee will fund a regulatory program includes determining the risk that fee revenue instability will affect the program and the appropriate strategies for managing that risk (see figure 3).

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<sup>27</sup> Congress has at times authorized EPA to assess pesticide registration service fees for a given fiscal year notwithstanding the minimum appropriations provision. For example, Congress enacted such a provision in the Consolidated Appropriations Act, 2014.

**Figure 3: Questions for Decision Makers to Consider When Using Regulatory User Fees**



Source: GAO. | GAO-15-718

### Available Unobligated Balances Can Sometimes Be Used to Manage Revenue Instability

Some agencies have offsetting collection authority, which allows the agency to obligate against fee collections without additional congressional action.<sup>28</sup> These agencies may decide to maintain an unobligated balance as a strategy to manage revenue instability.<sup>29</sup> While the use of available unobligated balances to manage revenue instability is not unique to regulatory user fees, stability of fee revenue can be an important

<sup>28</sup>Congress may choose to structure fees as offsetting collections or offsetting receipts. Offsetting collections are collections authorized by law to be credited to appropriation or fund expenditure accounts. Laws authorizing offsetting collections make them available for obligation to meet the account’s purpose without further legislative action. In contrast, offsetting receipts are collections that are offset against gross outlays but are not authorized to be credited to expenditure accounts. Unlike offsetting collections, offsetting receipts cannot be used without being appropriated.

<sup>29</sup>An available unobligated balance is budget authority that has not yet been obligated. For more information on balances in federal accounts, see GAO, *Budget Issues: Key Questions to Consider When Evaluating Balances in Federal Accounts*, [GAO-13-798](#) (Washington, D.C.: Sept. 30, 2013). Agencies sometimes refer to an available unobligated balance as a “reserve fund.”

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consideration when agencies rely on fees to carry out regulatory activities. As we have previously concluded, it is important that an agency develop a risk-based strategy when considering approaches to managing fee revenue instability.<sup>30</sup> This strategy would include identification and analysis of risks, as well as the effect on the agency's ability to provide goods and services.<sup>31</sup> Compliance with regulation is often a precursor to or requirement for engaging in certain businesses or activities. Sometimes fees are paid for faster and more predictable services and decisions from regulatory agencies. The agency must also execute its mission, such as FDA's mission to ensure the safety and effectiveness of prescription drugs. For example, each reauthorization of the Prescription Drug User Fee Act is accompanied by performance goals for FDA's prescription drug review program, such as goal time frames for FDA's review of new drug applications.

In our prior work, we found that available unobligated balances can help sustain operations for fee-funded programs in the event of a sharp downturn in collections or increase in costs.<sup>32</sup> The following agencies have available unobligated balances that they use to mitigate revenue instability for fee-funded programs:

- OCC maintains an available unobligated balance which, according to officials, it uses for unexpected expenses and to manage revenue instability. For example, OCC used these funds when it assumed certain supervisory responsibilities from the Office of Thrift Supervision in 2011.<sup>33</sup>
- The U.S. Patent and Trademark Office (USPTO) maintains an available unobligated balance to ensure its ability to maintain

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<sup>30</sup>[GAO-13-820](#).

<sup>31</sup>[GAO-13-820](#). This work included regulatory user fees and other user fees.

<sup>32</sup>[GAO-13-820](#).

<sup>33</sup>The Dodd-Frank Wall Street Reform and Consumer Protection Act eliminated the Office of Thrift Supervision. Supervisory authority for federal savings associations was transferred to OCC. The transfer of these powers was completed on July 21, 2011.

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operations.<sup>34</sup> The agency began maintaining this unobligated balance in 2010 to smooth the impact of economic downturns on operations and to help address funding uncertainty.

- The Animal and Plant Health Inspection Service's (APHIS) largest fee comes from air passengers. Airlines collect the fee from passengers and remit it to the agency quarterly. APHIS maintains an unobligated balance to cover the time between the provision of services and fee remittance.<sup>35</sup>

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### Collected Fees Are Sometimes Unavailable to the Agency

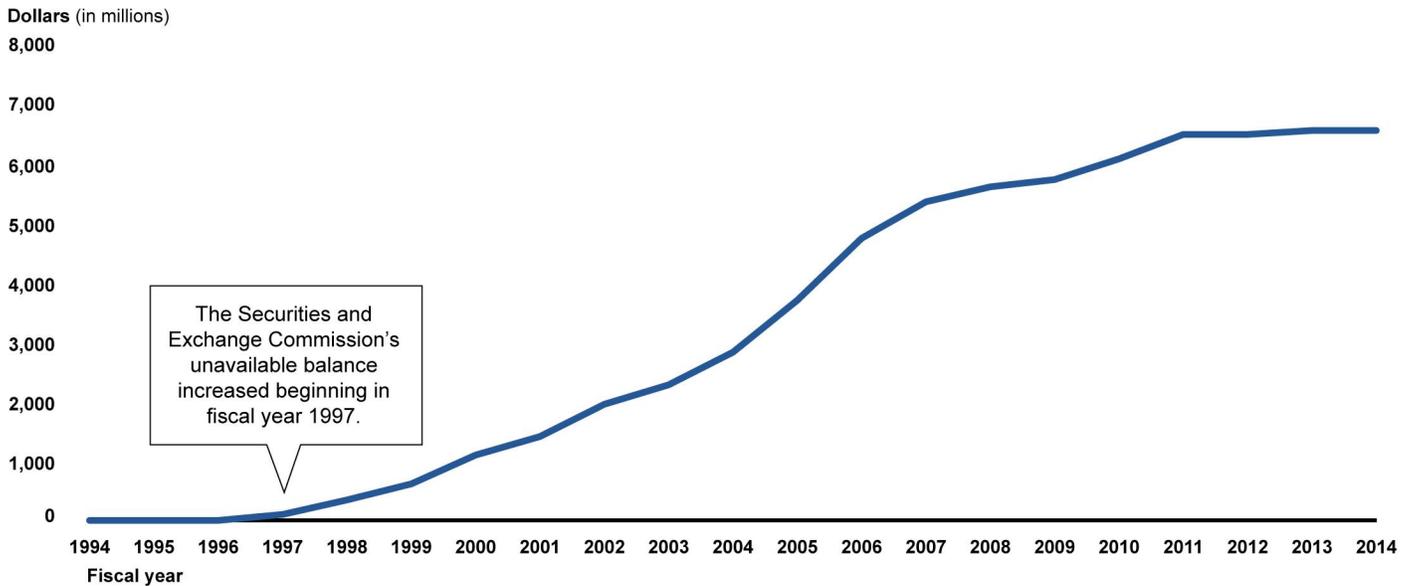
Some collections are only available to the agencies if Congress appropriates them. Unavailable balances can accumulate in cases where the agency is authorized to collect more in fees than Congress appropriates. For example, at the end of fiscal year 2014, SEC had a \$6.6 billion unavailable balance in its Salaries and Expenses account because, when SEC collects more in Section 31 fees than its annual appropriation, the excess collections are not available for obligation without additional congressional action. According to SEC officials, this large unavailable balance resulted from historical features of its Section 31 fee structure that are no longer in place. While in recent years Section 31 securities transaction fee rates have been adjusted annually to equal the agency's appropriation, officials said in prior years the amount of fee collections was disconnected from the appropriations process. As a result, over the years, SEC collected more in Section 31 fees than Congress appropriated to the agency, which led to a growing unavailable balance, as shown in figure 4.

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<sup>34</sup>The available unobligated balance (also referred to as the "operating reserve") is a portion of USPTO's annual appropriation set aside by the agency. It appears on USPTO's financial statements and OMB's budget database as an unobligated balance. The operating reserve is separate and distinct from the Patent and Trademark Fee Reserve Fund, which is a separate account established by the America Invents Act that is available to USPTO to the extent appropriated by Congress.

<sup>35</sup>We previously recommended that the Secretary of Agriculture establish a target reserve for the agricultural quarantine inspection fee that is more closely aligned with program needs and risks. See GAO, *Agricultural Quarantine Inspection Fees: Major Changes Needed to Align Fee Revenues with Program Costs*, [GAO-13-268](#) (Washington, D.C.: Mar. 1, 2013). The Department of Agriculture agreed with the recommendation and in April 2014 issued a proposed rule that would adjust its fee structure and establish a reserve equal to 90 days of operating costs. According to an APHIS official, as of June 2015, a draft final rule to amend the AQI fees was under review by the Office of Management and Budget.

**Figure 4: SEC Unavailable Balance, End of Year, Fiscal Years 1994-2014**



Source: GAO analysis of fiscal year 1996-2006 President's budgets. | GAO-15-718

Similarly, the Environmental Protection Agency's (EPA) Motor Vehicle and Engine Compliance Program (MVECP) fee collections have not been made available to the agency. These fees are deposited into the Environmental Services Special Fund. However, according to officials, Congress has not appropriated money to EPA from this fund for MVECP purposes.<sup>36</sup> EPA has instead received annual appropriations which may be used for MVECP purposes. As a result, the unavailable balance of this fund has steadily increased. The unavailable balance totaled \$370 million at the end of fiscal year 2014. In contrast, consistent with our findings from prior work, Customs and Border Protection's customs air passenger inspection fees are used to reimburse the agency's annual appropriations for a specific set of reimbursable expenses, such as overtime compensation and certain premium pay costs.<sup>37</sup> Similarly, NRC's user

<sup>36</sup>The Environmental Services Special Fund also contains other moneys, including Lead Accreditation and Certification fee collections.

<sup>37</sup>See 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).

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fees are used to offset approximately 90 percent of the agency's appropriation in a given fiscal year.

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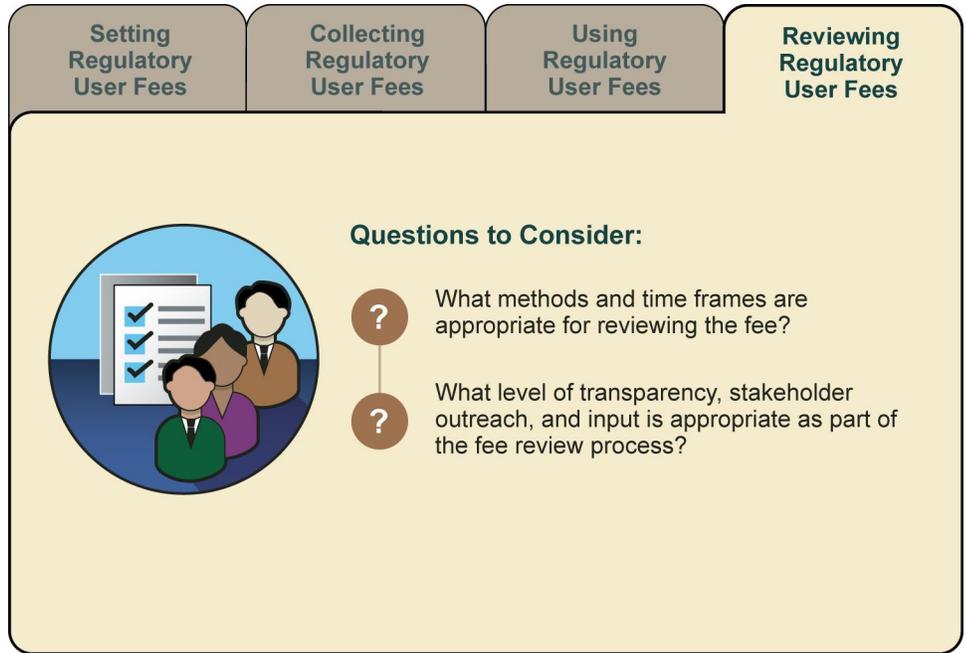
## Reviewing Regulatory User Fees: Time Frames and Methods Vary, and Transparency and Stakeholder Outreach Are Critical for Fee Reviews

Regulatory user fee reviews provide decision makers with information important for deliberations about fee financing, such as identifying effects of changes in a regulated industry, but the appropriate time frames and methods will vary by individual circumstances. Given the mix of public benefits and services to users inherent in regulatory programs, it is important for fee structures and costs to be transparent. Agencies can promote transparency by providing appropriate information to address the diverse needs of policymakers and stakeholders, including fee payers and the general public. Through appropriate stakeholder involvement and dissemination of information, decision makers can help avoid the appearance of regulatory capture (that fee payers have undue influence on regulatory outcomes) (see figure 5).<sup>38</sup>

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<sup>38</sup>Regulatory capture occurs when an agency becomes dominated by the industry it is charged with regulating and acts in ways that benefit the industry rather than the public interest.

**Figure 5: Questions for Decision Makers to Consider for Reviewing Regulatory User Fees**



Source: GAO. | GAO-15-718

### Fee Review Activities, Time Frames, and Uses Differ

Reviews provide decision makers with comprehensive information necessary to support robust deliberations about fee financing.<sup>39</sup> The regulatory agencies included in this report reviewed their fees regularly. Fee reviews take a variety of forms and the process and practice for reviewing fees—including activities, time frames, and uses—varied among the 10 fees we examined.<sup>40</sup> In contrast, some of our previous fee work found that agencies did not always conduct regular timely reviews of

<sup>39</sup>Among the general benefits of user fee reviews are that they: (1) help to ensure that Congress, stakeholders, and agencies have complete information about changing costs and whether a fee needs to be changed; (2) help agencies determine if they are prepared for any spikes or surges in demand; (3) help agencies and fee payers avoid a sudden increase in fee rates due to misalignment between costs and collections; (4) provide opportunities for stakeholder input; and (5) promote understanding and acceptance of the fee.

<sup>40</sup>For the purposes of this report, we are including any of the processes by which agencies evaluate, verify, or update regulatory user fees in our discussion of fee reviews.

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their user fees.<sup>41</sup> Further, we have previously concluded that fees that are not regularly reviewed run the risk of becoming misaligned with costs and consequently overcharging or undercharging users.<sup>42</sup>

Fee review activities can range from comprehensive reviews to ensure that fees are aligned with costs—as APHIS has done for its Agricultural Quarantine Inspection fee<sup>43</sup>—to simpler review activities such as checking to ensure that expected fee collections equal the appropriated amount. Agency officials described using a variety of fee review activities tailored to the specific fees. The scope of these activities can depend on whether the fee is cost-based and the amount of authority Congress has delegated to the agency. It is important for agencies to monitor internal controls to ensure they collect the correct amounts from all fee payers.<sup>44</sup> Statutes or regulatory processes typically determine how often specific regulatory fees should be reviewed. Through statutes, Congress may specify the frequency of fee reviews or give an agency discretionary authority to decide when to review its fees. Four of these agencies are subject to the Chief Financial Officers Act of 1990, which requires that they review their fees biennially and recommend fee adjustments as appropriate.<sup>45</sup> In addition, some regulatory user fees are reauthorized by Congress at regular intervals and undergo a more in-depth review during the reauthorization process.

Agency officials reported using Office of Management and Budget (OMB) Circular A-25, internal guidance, and guidance contained in statutes and regulations as criteria when reviewing their regulatory fees. OMB Circular

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<sup>41</sup>For example, in 2011 we surveyed the 24 agencies covered by the Chief Financial Officers Act of 1990. These agencies reported reviewing about 46 percent of the 3,666 fees charged. See GAO, *2012 Annual Report: Opportunities to Reduce Duplication, Overlap and Fragmentation, Achieve Savings, and Enhance Revenue*, [GAO-12-342SP](#) (Washington, D.C.: Feb. 28, 2012).

<sup>42</sup>A list of our related products is included at the end of this report.

<sup>43</sup>We previously reported that in 2010, APHIS hired a contractor to conduct a comprehensive fee review to determine the full cost of agricultural quarantine inspection services, identify potential changes to the fee structure, and recommend new fees. See [GAO-13-268](#).

<sup>44</sup>[GAO/AIMD-00-21.3.1](#).

<sup>45</sup>Chief Financial Officers Act of 1990, Pub. L. No. 101-576 (Nov. 15, 1990), *codified at* 31 U.S.C. § 902.

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A-25 is applied by agencies in their assessment of user charges under the Independent Offices Appropriation Act of 1952 and also provides guidance to agencies regarding their assessment of user charges under other statutes.<sup>46</sup> Some regulatory fees are charged by agencies that are not required to follow standard review requirements and criteria. For example, as a matter of practice, the independent regulatory agencies we interviewed told us they do not follow Circular A-25.<sup>47</sup> However, National Credit Union Administration (NCUA) officials noted that NCUA will evaluate the concepts in OMB Circular A-25 when designing future operating fee assessments. Also, Congress includes specific criteria in some authorizing statutes, and three of the case-study agencies referred to our User Fee Design Guide for criteria.

All six case-study agencies conducted some type of fee review activity annually. Often these fee reviews were connected to the annual appropriations process, but the substance of the different fee reviews varied. Agencies characterized these reviews as ranging from budget management reviews to more complicated reviews that identified fee amounts and allocations across different payers and parts of the regulated industry, and are used to amend fee regulations. The following examples illustrate this range of review activities:

- Officials from FDA's Center for Tobacco Products, Office of the Comptroller of the Currency (OCC), and NCUA all identified internal processes to check whether expected fee collections are aligned with agency priorities, plans, and commitments.<sup>48</sup> For example, OCC officials stated that the agency's projected fees are compared to projected expenses, as part of the internal budget process, to ensure

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<sup>46</sup>Circular A-25 covers all federal activities that convey special benefits to recipients beyond those accruing to the general public. It does not apply to the activities of the legislative and judicial branches of government or to mixed-ownership government corporations, as defined in 31 U.S.C. § 9701. Further, OMB staff told us they believe Circular A-25 provides good management principles for setting and reviewing user fees that can be applied to independent entities.

<sup>47</sup>"Independent regulatory agencies" refer to the agencies identified as such in the Paperwork Reduction Act. 44 U.S.C. § 3502.

<sup>48</sup>NCUA's authorizing statute provides broad discretion to NCUA's Board to review and set its fees annually or according to any method that it deems appropriate.

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that fee levels are adequate to fund the agency.<sup>49</sup>

- NRC officials said their fee review process is integrated into its structured annual fee rule process and associated rulemaking. Most licensing fees are reviewed and recalculated annually using the current year budget and NRC's hourly rate for services provided to regulated parties. In addition, certain fees have been established as flat fees. NRC reviews these flat fees and small entity fees biennially rather than as part the annual fee rule process. However, NRC may adjust them annually if the hourly rate or time estimate for its services changes.
- SEC officials said they recalculate their fee rates annually as required by the statutory provisions authorizing the fees. Further, as required by law, SEC reviews its Section 31 fee rates midyear to determine whether an adjustment to the fee rates is necessary.<sup>50</sup>

Further, some fees that are reviewed annually undergo more detailed reviews during the reauthorization process. Some EPA and FDA user fees are reauthorized by Congress at regular intervals and undergo a more in-depth review during the reauthorization process. FDA's prescription drug user fee is reauthorized every 5 years. The reauthorization establishes the fee requirements and the process by which FDA establishes the annual fee rates and requires FDA to provide annual reports on its progress in meeting negotiated performance goals for the 5-year period. The reauthorization gives FDA, industry, and public stakeholders the opportunity to propose and discuss enhancements and adjustments for the next iteration of the program. Similarly, EPA has a 5-year cycle for reauthorizing its pesticide registration service fees, and fee reviews are conducted in conjunction with that reauthorization process. FDA and EPA officials noted that the information they provide as part of these processes supports deliberations by Congress and stakeholders about changes to the fee programs.

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<sup>49</sup>OCC's funding is not provided through annual appropriations and assessments, charges, or fees collected by OCC "shall not be construed to be Government funds or appropriated moneys" pursuant to 12 U.S.C. § 16.

<sup>50</sup>While SEC does not consider this process to be a fee review because the statute defines how the agency should update fees and it has little discretion, the process resembles a fee review because it is designed to ensure that the agency collects the correct amount.

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Reviews of regulatory user fees can be used as an important tool to identify and respond to changes in the regulated industry. We have generally highlighted the importance of retrospective regulatory reviews to, among other things, respond to changes in technology, market conditions, and the behaviors of regulated entities that cannot be predicted by prospective analysis before implementation of regulations.<sup>51</sup> Reviews of regulatory user fees can similarly capture such changes in the regulated industry that might affect the efficiency and equity of fees.<sup>52</sup> For example, according to EPA officials, their technical assistance in the review of pesticide registration service fees is useful in determining whether additional categories are appropriate. As a result of these fee reviews, the Pesticide Registration Improvement Act contains about twice as many pesticide user fee categories than when it was originally enacted in 2004. For example, over the last 3 reauthorization cycles for this program, the fee categories more than doubled.

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### Attention to Public Participation and Transparency Are Important Considerations during Fee Reviews

Decision makers identified different ways that they ensure appropriate transparency and opportunities for public participation when reviewing regulatory user fees. Transparency and public participation are especially important for regulatory user fees because these fees support a mix of benefits to the general public, not only to fee payers. In particular these principles are important for regulatory user fees because these fees are often a condition of engaging in a particular business. Further, there are diverse stakeholders, some of whom are not fee payers, who have varying interests in the implementation of these regulatory user fees and the programs they support.

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<sup>51</sup>GAO, *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*, [GAO-14-268](#) (Washington, D.C.: Apr. 11, 2014).

<sup>52</sup>See also GAO, *Federal Communications Commission: Regulatory Fee Process Needs to Be Updated*, [GAO-12-686](#) (Washington, D.C.: Aug. 10, 2012), in which we recommended, among other things, that the Federal Communications Commission (FCC) should perform an updated FTE analysis when assessing regulatory fees among industry sectors to address major changes in the telecommunications industry. According to FCC officials, FCC has taken steps to address these recommendations through notices of proposed rulemaking and regulatory fees reports and orders in 2013 and 2014. As of August 2015, we were in the process of evaluating FCC's efforts in this area.

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For the purposes of this report, transparency entails disclosing information about the fee process with stakeholders so that regulated entities understand the amount they are paying and why, and other stakeholders understand how the fees contribute to a program's mission and expected public benefits. Public participation entails providing opportunities for all interested parties and stakeholders to provide input, not just regulated fee payers.

The forms of stakeholder engagement differed among agencies according to specific circumstances, such as the underlying statutory authorities and the amount of discretion the agency is given in setting and reviewing its fees.

- Stakeholder engagement requirements are clear when agencies issue regulations governing their fees. The federal rulemaking process provides standards for public notice, opportunities for comment, agencies' obligation to respond to significant comments, and the need to maintain a public rulemaking record. The public notices and rulemaking record aid public participation in the rulemaking process and provide access to the supporting facts and analyses for the agency's rulemaking decisions. Examples of fees set through notice-and-comment rulemaking include OCC's semiannual assessments, NRC's Part 170 and Part 171 fees, and EPA's Motor Vehicle and Engine Compliance Program fees.
- In some cases, Congress establishes specific procedures for periodic reauthorizations of the fee programs. For example, FDA's prescription drug fee reauthorization process includes regular meetings between the agency and industry, in addition to ongoing consultations between the agency and public stakeholder groups. FDA works with these stakeholders to develop a negotiated fee proposal, which it submits to Congress. For the pesticide registration service fee, EPA provides technical input to a coalition of stakeholders that helps develop the reauthorization statute.
- When an agency does not go through the rulemaking process to update fees and allocations, agency officials consider which alternative mechanisms are appropriate to communicate information about their fees and fee reviews, and to obtain input from stakeholders and the public. For some fees, agencies publish notices in the *Federal Register* that are not subject to stakeholder comment. This process is typically used when statutes specify a formula that the agency must apply, and the agency has little discretion in updating the fee rates, such as with SEC's fees. OCC and NCUA officials said their agencies promote transparency by posting information on their

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websites when fees are updated. NCUA officials also noted using public board meetings to disclose information.

Our review of stakeholder comments from rulemakings and public meetings for these regulatory user fees showed both support for inclusive fee reviews and fee-setting processes, and concerns that agencies sometimes are not providing enough transparency. For example, FDA prescription drug fee stakeholders indicated support for the reauthorization process, which requires regular meetings between the agency and industry and public stakeholder groups, while some NRC stakeholders said that the agency could be more transparent about its fee-setting process by showing how it arrived at its revised fee rates. In addition, OMB staff pointed out the importance of agencies having sufficient understanding of how the timing of the delivery of fee services affects stakeholders. In general, stakeholders provided substantive comments about the equity of fees, administrative burden of fees, level of service, fee setting methods, and fee reviews.

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## Transparency and Public Participation Can Help to Mitigate the Appearance of Regulatory Capture

Some of the agencies told us that transparency and participation of all stakeholders, including public interest groups, can mitigate the risk of regulatory capture or the appearance of regulatory capture. According to FDA officials, the perception that there could be regulatory capture is a concern with some of FDA's regulatory user fees. To address this issue, FDA's prescription drug fee, among other fees, is structured in a way that minimizes that risk. For example, the performance commitments that FDA negotiates with the regulated industry focus on the regulatory submission review process—what will happen and when—and not the outcomes of the review. In addition, EPA officials said that the agency created a docket for pesticide registration decisions, such as risk assessments and proposed registration decisions, and allows the public to comment on them.

Case study agencies also described other management strategies to minimize the appearance of regulatory capture. For example, these strategies include separating fee payments from the outcome of regulatory reviews both in terms of the processes and the staff involved, and considering the diverse viewpoints of industry and public interest stakeholders in the fee-setting process. Further, OCC officials said that the agency's contingency reserve allows it to maintain its independence

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from the banks by providing revenue stability if a bank were to move to a different regulator.<sup>53</sup>

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## Agency Comments

We provided a draft of this report to the Secretaries of Agriculture, Commerce, Health and Human Services, and Homeland Security; the Administrator of EPA; the Managing Director of FCC; the Chairmen of FERC, NCUA, and NRC; the Director of Enterprise Governance of OCC; and the Chief Operating Officer of SEC for review and comment. We also provided a copy of the report to the Director, OMB for informational purposes. We received written responses from the Executive Director of the National Credit Union Administration and the Executive Director for Operations of the Nuclear Regulatory Commission, which are reprinted in appendixes III and IV. NCUA's response agreed with our findings and stated that the questions identified in this report will be helpful when the agency determines future annual operating fee assessments. NRC's letter stated that the agency had no comments. We also received technical comments from the Department of Health and Human Services, NCUA, OCC, and SEC, which we incorporated as appropriate. APHIS, CBP, EPA, FCC, FERC, and USPTO had no comments.

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We are sending copies of this report to interested congressional committees and the aforementioned agencies. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

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<sup>53</sup>Banks decide where they are chartered. State chartered banks are supervised by the states and the Board of Governors of the Federal Reserve System or Federal Deposit Insurance Corporation.

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If you or your staff have any questions about this report, please contact me at (202) 512-6806 or [sagerm@gao.gov](mailto:sagerm@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.

A handwritten signature in black ink that reads "Michelle Sager". The signature is written in a cursive, flowing style.

Michelle Sager  
Director, Strategic Issues

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# Appendix I: Key Questions for Designing and Implementing Regulatory User Fees

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These questions can help decision makers design, implement, and evaluate regulatory user fees. They are intended to supplement the fee design questions in *Federal User Fees: A Design Guide and Federal User Fees: Fee Design Options and Implications for Managing Revenue Instability*.<sup>1</sup> While the key questions in those reports remain relevant for all types of federal user fees, here we provide additional questions that are specific to regulatory user fees (that is, fees charged by federal agencies to regulated entities in conjunction with regulatory activities). These products should be used together when designing, implementing, and evaluating regulatory user fees. We note that some of these questions may overlap. Further, we recognize that there is no one-size-fits-all approach to managing regulatory user fees. Because fee designs vary widely, when considering an individual regulatory user fee some questions may be more applicable than others.

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## Section I: Setting Regulatory User Fees

- 1) To what extent does Congress retain control, and to what extent does it delegate authority to the agency?
  - a) Is the total amount to be collected set in statute or determined by the annual appropriations process?
  - b) Does the fee reimburse the agency's annual appropriations?
  - c) Does the statute specify the fee rate paid by each user, or a specific formula or methodology that the agency must use to determine the fee rate?
  - d) Does the agency use the rulemaking process to set the fee rate?
  - e) In cases where rulemaking is not used, how does the agency communicate new fee rates to users?

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<sup>1</sup>See GAO, *Federal User Fees: Fee Design Options and Implications for Managing Revenue Instability*, [GAO-13-820](#) (Washington, D.C.: Sept. 30, 2013) and *Federal User Fees: A Design Guide*, [GAO-08-386SP](#) (Washington, D.C.: May 29, 2008).

- 2) To what extent do the fees affect the scope of the agency's regulatory activities?
  - a) Do the fees provide funding for activities that support the agency's regulatory mission?
  - b) Are the fees the sole source of funding for the regulatory activities, or one of multiple sources of funding?
  - c) Does the amount of the fee affect the scope of the agency's activities to carry out its mission, such as the level, frequency, or amount of regulation?
  - d) What role does Congress play in setting the total amount of the fee and the rates paid by individual users, and to what extent has this authority been delegated to the agency?
  - e) What role does the appropriations process play, if any, in setting the total amount of the fee?
- 3) To what extent does the regulatory activity for which the fee is charged provide services to regulated entities and benefits to the general public?
  - a) Is the fee paid as a condition of engaging in a particular activity or business subject to federal government regulation?
  - b) Are fee payers provided with a regulatory service, such as a certificate or application review?
  - c) Is the fee intended to fund a higher level of regulatory service than is funded by annual appropriations, such as expedited reviews?
  - d) Do fee payers receive an indirect benefit from federal government regulation, such as increased consumer confidence or industry stability?
  - e) What public benefits are derived from the regulatory activity for which the fee is charged?
- 4) What consideration has been given to whether small entities should be allowed exemptions or lower fees?
  - a) Does the statute require exemptions or lower fee rates for small entities?

- b) For fees set by rulemaking, how will the agency consider the effect of the fee regulation on small entities, as required by the Regulatory Flexibility Act?
- c) Will the fee structure account for any other policy considerations for small entities?

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## Section II: Collecting Regulatory User Fees

- 1) Will the fee be collected at the time of a transaction, collected at regular intervals, or both?
  - a) What internal controls will be in place to ensure that all fees due are collected?
  - b) For fees collected at regular intervals, what additional record keeping, data collection, or modeling, if any, is needed to ensure that fees are collected correctly?
  - c) Can the agency withhold service when the fee is not paid?
  - d) To what extent can fee collections be automated to reduce administrative burden and mitigate risks such as theft?
- 2) Is there a minimum amount of annual appropriations that must be received before fees can be collected?

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## Section III: Using Regulatory User Fees

- 1) Does the agency rely on user fees to carry out its regulatory mission, or a portion of its regulatory mission?
  - a) If so, what is the risk that the program could face an unexpected decline in collections or an increase in costs?
- 2) Are fee collections available to the agency without further congressional action?
  - a) If so, has the agency considered whether it needs to maintain an unobligated balance?
  - b) Does the statute establish a reserve fund, or specify whether the agency should establish a reserve fund?
  - c) If the agency maintains an unobligated balance, does it have a target amount?

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## Section IV: Reviewing Regulatory User Fees

- 1) What methods and time frames are appropriate for reviewing the fee?
  - a) What guidance should be used when reviewing the fee? Specifically, are the provisions of OMB Circular A-25 appropriate, or is there a need for program-specific guidance?
  - b) For independent regulatory agencies that do not follow OMB Circular A-25, is there a need for policies or requirements to ensure regular and timely reviews of regulatory user fees?
  - c) How, and by whom, will the fee review be used?
  - d) Are the fee reviews designed to identify meaningful changes that might occur in the regulated industry?
- 2) What level of transparency, stakeholder outreach, and input is appropriate as part of the fee review process?
  - a) Are fee review results communicated in a way that addresses the needs of the full range of stakeholders, appropriately addressing both fee payers and other beneficiaries such as the general public?
  - b) If fee changes are not done through a rulemaking, what alternative methods or venues can be used to communicate results of fee reviews and solicit stakeholder input?
  - c) How, if at all, will stakeholders provide feedback on the timing of fee-funded services?
  - d) How will the agency avoid the possibility or appearance that fee payers could have undue influence over regulatory decisions or outcomes (i.e., regulatory capture)?

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# Appendix II: Objectives, Scope, and Methodology

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Our objectives were to identify the design and implementation characteristics of regulatory user fees in terms of how these fees are: (1) set, (2) collected, (3) used, and (4) reviewed. In carrying out these objectives, we also assessed the extent to which agencies found the User Fee Design Guide to be applicable to their regulatory user fees. To address all of these objectives, we examined the characteristics of regulatory fees using a literature review, case studies, and a multi-agency panel discussion.

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## Defining and Identifying Regulatory User Fees

Because there is no one standard definition of a regulatory user fee, and no comprehensive list of federal user fees, we used a literature review to define and identify regulatory user fees. Our literature review included Office of Management and Budget (OMB) and agency budget documents; Inspectors General, Congressional Budget Office (CBO), and Organisation for Economic Co-operation and Development (OECD) reports; and our related reports. We identified relevant literature by searching web-based databases and resources, including CBO and Congressional Research Service databases, the *Federal Register*, and ProQuest. We also reviewed the President's budget request for fiscal years 2015 and 2016 and searched for information on agency websites. We included in our review any literature that we identified on user fees charged by the federal government to regulated entities in conjunction with regulatory activity.

To develop a definition of regulatory user fees for the purposes of this report, we analyzed the use of this term by other sources, including OMB, CBO, OECD, and academic literature. Based on these sources and feedback from the agencies we spoke with in the course of our case studies and panel discussion, for the purposes of this report, we define regulatory user fees as a subset of federal user fees which are charged to nonfederal entities subject to federal government regulation, in conjunction with regulatory activities.

To develop a list of regulatory user fees that meet our definition, we used the President's fiscal year 2015 budget request, agencies' congressional budget justifications, agency performance documents, and the results of our literature review. To ensure that we identified as many regulatory user fees as possible, we also searched for agencies with certain fiscal characteristics and high levels of rulemaking activity and corroborated the results of that search by reviewing agency documents. We determined that computer-processed data were not expected to materially affect our

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findings, conclusions, or key questions, thus rendering a data reliability assessment unnecessary.

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## Case Study Selection

We selected case studies of 10 regulatory user fees within six agencies based on high dollar amounts of regulatory user fee collections, high amounts of rulemaking activity, and diverse fee characteristics, including:

- agencies that are subject to the Chief Financial Officers Act of 1990 (CFO Act) and agencies that are not;<sup>1</sup>
- independent regulatory agencies and executive agencies;<sup>2</sup>
- fees that are intended to recover the full cost of operating an agency or program, as well as fees that are intended to recover partial costs and fees that are not cost based; and
- fees that are collected at the time of a specific transaction between the user and the regulator, and fees that are collected at regular time intervals (such as annually or quarterly) and not at the time of a transaction.

The fiscal and regulatory characteristics of our selected case studies are shown in table 2.

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<sup>1</sup>31 U.S.C. § 902(a)(8). This statute requires affected agencies to review fees on a biennial basis.

<sup>2</sup>For purposes of this report, “independent regulatory agencies” refers to those agencies designated as such in the Paperwork Reduction Act, 44 U.S.C. § 3502. They have historically been subject to less executive branch oversight than executive agencies.

**Table 2: Characteristics of the Six Agencies and Ten Regulatory User Fees Selected for Case Studies**

Agencies	CFO Act agency	Independent regulatory agency	Regulatory user fees	Cost recovery [Note A]	Collection basis
Environmental Protection Agency (EPA)	Yes	No	Motor vehicle and engine compliance program fee	Full cost recovery	Transactional
			Pesticide registration service fee	Partial cost recovery	Transactional
Food and Drug Administration (FDA)	Yes	No	Prescription drug fee	Partial cost recovery	Transactional and annual collections
			Tobacco fee	Full cost recovery	Quarterly
National Credit Union Administration	No	Yes	Operating fee	Full cost recovery	Annually
Nuclear Regulatory Commission	Yes	Yes	Part 170 fee	Partial cost recovery	Quarterly
			Part 171 fee	Partial cost recovery	Quarterly and annually
Office of the Comptroller of the Currency (OCC)	Yes [Note B]	Yes	Semiannual Assessments	Full cost recovery	Semi-annually
Securities and Exchange Commission (SEC)	No	Yes	Section 31 fee	Full cost recovery	Semi-annually
			Filing fees	Not cost-based	Transactional

Source: GAO analysis of agency documents, applicable laws, and the President's budget. | GAO-15-718

Note A: We examined the share of costs borne by the agency that these fees are intended to recover per their authorizing statutes and agency budget documents. We did not assess whether these fees are recovering costs as intended.

Note B: Because OCC is an independent bureau of the Department of the Treasury, which is a CFO Act agency, when classifying agencies for selection purposes we considered OCC to be a CFO Act agency.

For each case study, we reviewed documents related to the fee, such as rulemakings and congressional budget justifications, and interviewed agency officials about their management of the fee, including how regulatory user fees influence the agency's regulatory mission and how congressional control and oversight affect the fee.

We examined stakeholder views on the selected fees by reviewing public comments on proposed rules in the *Federal Register* and minutes of public meetings. Our analysis included the documented views of stakeholders from the regulated industry, trade associations, public interest groups, and individual members of the public. We reviewed public comments on rulemakings to the extent they were available, which we identified by searching regulations.gov. Public comments on rulemakings were available for 7 of our 10 selected fees. For each of these 7 fees, we reviewed comments on from one to four rulemakings depending on the

extent of comments the agencies received, using the most recent rulemaking available. These rulemakings were issued from 2000 through 2014. For 2 additional selected fees—EPA’s pesticide registration service fee and FDA’s prescription drug fee—we reviewed minutes of public meetings because no rulemakings were available. Specifically, we reviewed the minutes of three public meetings for the pesticide registration fee, which took place in 2012 and 2013, and the minutes of one public meeting for the prescription drug fee, which took place in 2011. We did not examine stakeholder views for SEC’s filing fees because documentation of stakeholder views was not available. SEC officials said the agency has not issued any rulemakings or held any public meetings for this fee. To analyze the stakeholder views for the other selected fees, one analyst reviewed each source to identify relevant themes—such as the effect of regulatory user fees on small entities and the transparency of fee-setting decisions—and categorize stakeholders’ comments related to those themes. A second analyst then reviewed the documentation to verify categorization decisions. Then, both analysts met to resolve any discrepancies. Finally, we evaluated the categorized information to identify common issues. The results of our review of stakeholder comments are not generalizable to all stakeholders, but provide insights into the views of fee payers, public interest groups, and other interested parties.

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## Questionnaire and Panel Discussion

We invited 12 agencies, including the 6 named above, to respond to a structured questionnaire and participate in a panel discussion. Eleven agencies completed the questionnaire and 10 attended the panel. In addition to the 6 case study agencies named above, the panel included participants from the Animal and Plant Health Inspection Service, Federal Communications Commission, Federal Energy Regulatory Commission, and U.S. Patent and Trademark Office. U.S. Customs and Border Protection officials also completed the questionnaire but were unable to attend the panel due to a schedule conflict. We also invited the Centers for Medicare and Medicaid Services, but the agency declined to participate. These agencies were selected based on our prior reviews of regulatory user fees, as well as large amounts of regulatory user fee collections and diversity of fiscal and regulatory characteristics.

To help identify topics for discussion at our panel, we developed and distributed a questionnaire to obtain these agencies’ views on how regulatory user fees are set, collected, used, and reviewed, including the extent to which agencies found the User Fee Design Guide to be applicable to their regulatory user fees. To minimize errors that might

occur from respondents interpreting our questions differently from our intended purpose, we pretested the questionnaire by phone with EPA and SEC officials. During these pretests, we asked officials to review the questionnaire as we interviewed them to determine whether (1) the questions were clear and unambiguous, (2) the terms used were precise, (3) the questionnaire did not place an undue burden on the officials completing it, and (4) the questionnaire was objective and unbiased. We modified the questions based on feedback from the pretests, as appropriate. We distributed the questionnaire on February 25, 2015, and asked respondents to complete the questionnaire within an electronic form and return it as an e-mail attachment. We sent follow-up emails to agencies that had not yet responded on March 6, 2015. We received 11 responses by March 19, 2015. To account for agencies with multiple regulatory user fees, we instructed each agency to answer the questions for the one regulatory user fees—or group of similar fees—with the highest dollar amount of collections in fiscal year 2014. Respondents from the 11 agencies that completed the questionnaire included officials from agency budget offices and program offices.

In addition, we held a 3-hour panel discussion with the 10 agencies named above on March 27, 2015. We used the questionnaire, as well as the preliminary results of our audit work, to determine discussion topics for the panel discussion. To do this, we summarized and synthesized this information to identify common themes. Discussion topics included the differences between regulatory user fees and other user fees, promising practices and challenges for managing regulatory user fees, fee reviews, and managing stakeholder relationships. We used information from the panel discussion to validate the themes identified in our case studies and ensure that they are broadly applicable to a larger set of agencies. While the results of the case studies, questionnaire, and panel discussion are designed to reflect the broad diversity of regulatory user fee characteristics, they cannot be generalized to all regulatory user fees. Because the universe of regulatory user fees is not defined, as noted above, it was not possible for us to design a representative sample. Throughout this report, we use specific, selected examples to illustrate how regulatory user fees are set, collected, used, and reviewed. We also met with Office of Management and Budget staff to supplement information obtained from the case studies, questionnaire, and panel discussion.

We conducted this performance audit from August 2014 through September 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the

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audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Appendix III: Comments from the National Credit Union Administration



National Credit Union Administration  
Office of the Executive Director

August 24, 2015

Ms. Michelle Sager  
Director  
Strategic Issues  
Government Accountability Office  
441 G St., NW  
Washington, DC 20548

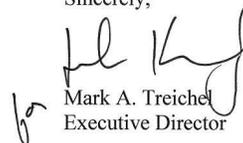
Dear Ms. Sager:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) draft report entitled *Federal User Fees: Key Considerations for Designing and Implementing Regulatory Fees* (GAO 15-718). The report addresses key considerations when setting, collecting, using and reviewing regulatory fees.

NCUA is committed to financial transparency and provides the public with detailed information concerning the agency's budget, spending, and fees. Our website contains a dedicated budget resource center with information about the agency's spending plans, annual fund audits, and the calculation of fees like the operating fee and details on NCUA's overhead transfer rate. As a result of this online transparency, NCUA's budget disclosures greatly exceed the disclosures of other federal financial institutions regulators.

The National Credit Union Administration understands the importance of user fee design. The additional questions provided by GAO in the Appendix will be helpful when we determine future annual operating fee assessments. We appreciate the opportunity to comment on the report.

Sincerely,

  
for Mark A. Treichel  
Executive Director

OCFO/MJM  
SSIC 1930

1775 Duke Street – Alexandria, VA 22314-3428 – 703-518-6300

# Appendix IV: Comments from the Nuclear Regulatory Commission



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

September 3, 2015

Ms. Michelle Sager  
Director, Strategic Issues  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Sager:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter to Chairman Stephen G. Burns, dated August 4, 2015, providing the U.S. Government Accountability Office (GAO) proposed report *FEDERAL USER FEES: Key Considerations for Designing and Implementing Regulatory Fees* (GAO-15-718) for NRC review and comment. We appreciate the opportunity to provide our comments for your consideration.

The NRC has reviewed the draft report and has no comments.

Sincerely,

A handwritten signature in black ink that reads "Mark A. Satorius".

Mark A. Satorius  
Executive Director  
for Operations

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# Appendix V: GAO Contact and Staff Acknowledgments

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## GAO Contact

Michelle Sager, (202) 512-6806 or [sagerm@gao.gov](mailto:sagerm@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Timothy Bober, Assistant Director, Steven Campbell, Susan Irving, Sharon Miller, and Laurel Plume made key contributions to this report. Also contributing to this report were JoAnna Berry, Tom Beall, A. Nicole Clowers, Marcia Crosse, Lorraine Ettaro, Robert Gebhart, Alfredo Gomez, James R. Jones Jr., Andrea Levine, Felicia Lopez, Julie Matta, Donna Miller, Amanda Postiglione, Susan Offutt, Oliver Richard, Cynthia Saunders, Anne Stevens, Colleen Taylor, Kimberly Walton, and Orice Williams Brown.

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# Appendix VI: Accessible Data

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## Accessible Text and Data Tables

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### Accessible Text for Figure 1: Questions for Decision Makers to Consider When Setting Regulatory User Fees

#### Setting Regulatory User Fees:

Questions to Consider:

- To what extent does Congress retain control, and to what extent does it delegate authority to the agency?
- To what extent do the fees affect the scope of the agency's regulatory activities?
- To what extent does the regulatory activity for which the fee is charged provide services to regulated entities and benefits to the general public?
- What consideration has been given to whether small entities should be allowed exemptions or lower fee rates?

Source: GAO. | GAO-15-718

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### Accessible Text for Figure 2: Questions for Decision Makers to Consider When Collecting Regulatory User Fees

#### Collecting Regulatory User Fees:

Questions to Consider:

- Will the fee be collected at the time of a transaction, collected at regular intervals, or both?
- Is there a minimum amount of annual appropriations that must be received before fees can be collected?

Source: GAO. | GAO-15-718

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### Accessible Text for Figure 3: Questions for Decision Makers to Consider When Using Regulatory User Fees

#### Using Regulatory User Fees:

Questions to Consider:

- Does the agency rely on user fees to carry out its regulatory mission, or a portion of its regulatory mission?
- Are fee collections available to the agency without further congressional action?

Source: GAO. | GAO-15-718

**Data Table for Figure 4: SEC Unavailable Balance, End of Year, Fiscal Years 1994-2014**

Fiscal year	Unavailable balance (Dollars in millions)
1994	0
1995	0
1996	0
1997 [Note]	100
1998	344
1999	614
2000	1,099
2001	1,411
2002	1,954
2003	2,281
2004	2,830
2005	3,704
2006	4,747
2007	5,361
2008	5,613
2009	5,735
2010	6,083
2011	6,495
2012	6,495
2013	6,561
2014	6,561

Source: GAO analysis of fiscal year 1996-2006 President's budgets. | GAO-15-718

Note: The Securities and Exchange Commission's unavailable balance increased beginning in fiscal year 1997.

**Accessible Text for Figure 5: Questions for Decision Makers to Consider for Reviewing Regulatory User Fees**

**Reviewing Regulatory User Fees:**

Questions to Consider:

- What methods and time frames are appropriate for reviewing the fee?
- What level of transparency, stakeholder outreach, and input is appropriate as part of the fee review process?

Source: GAO. | GAO-15-718

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## Agency Comments

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### National Credit Union Administration

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Sincerely,  
Mark A. Treich  
Executive Director

OCFO/MJM  
SSIC 1930

Nuclear Regulatory  
Commission

**Accessible Text for Appendix IV: Comments from the Nuclear Regulatory  
Commission**

**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**  
WASHINGTON, D.C. 20555--0001

September 3, 2015

Ms. Michelle Sager  
Director, Strategic Issues  
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441 G Street, NW  
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The NRC has reviewed the draft report and has no comments.

Sincerely,  
Mark A Satorius  
Executive Director for Operations

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# Related GAO Products

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*Tobacco Product Regulation: Most FDA Spending Funded Public Education, Regulatory Science, and Compliance and Enforcement Activities.* [GAO-14-561](#). Washington, D.C.: June 20, 2014.

*Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals.* [GAO-14-268](#). Washington, D.C.: April 11, 2014.

*Federal User Fees: Fee Design Options and Implications for Managing Revenue Instability.* [GAO-13-820](#). Washington, D.C.: September 30, 2013.

*Agricultural Quarantine Inspection Fees: Major Changes Needed to Align Fee Revenues with Program Costs.* [GAO-13-268](#). Washington, D.C.: March 1, 2013.

*Federal Communications Commission: Regulatory Fee Process Needs to Be Updated.* [GAO-12-686](#). Washington, D.C.: August 10, 2012.

*2012 Annual Report: Opportunities to Reduce Duplication, Overlap and Fragmentation, Achieve Savings, and Enhance Revenue.* [GAO-12-342SP](#). Washington, D.C.: February 28, 2012.

*User Fees: Additional Guidance and Documentation Could Further Strengthen IRS's Biennial Review of Fees.* [GAO-12-193](#). Washington, D.C.: November 22, 2011.

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*Budget Issues: Electronic Processing of Non-IRS Collections Has Increased but Better Understanding of Cost Structure Is Needed.* [GAO-10-11](#). Washington, D.C.: November 20, 2009.

*Federal User Fees: Additional Analyses and Timely Reviews Could Improve Immigration and Naturalization User Fee Design and USCIS Operations.* [GAO-09-180](#). Washington, D.C.: January 23, 2009.

*Immigration Application Fees: Costing Methodology Improvements Would Provide More Reliable Basis for Setting Fees.* [GAO-09-70](#). Washington, D.C.: January 23, 2009.

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

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*Federal User Fees: Some Agencies Do Not Comply With Review Requirements.* [GAO/GGD-98-161](#). Washington, D.C.: June 30, 1998.

*Federal User Fees: Budgetary Treatment, Status, and Emerging Management Issues.* [GAO/AIMD-98-11](#). Washington, D.C.: December 19, 1997.

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