

GAO

Testimony

Before the Subcommittee on Immigration,
Citizenship, Refugees, Border Security,
and International Law, Committee on the
Judiciary, U.S. House of Representatives

For Release on Delivery
Expected at 2:00 p.m. EDT
Tuesday, March 23, 2010

FEDERAL USER FEES

Fee Design Characteristics and Trade-Offs Illustrated by USCIS's Immigration and Naturalization Fees

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Strategic Issues



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Highlights of [GAO-10-560T](#), a testimony before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, Committee on the Judiciary, U.S. House of Representatives

Why GAO Did This Study

In light of increasing congressional interest in user fee financing, GAO developed a framework for examining user fee design characteristics that may influence the effectiveness of user fees.

Specifically, we examined how the four key characteristics of user fees—how fees are set, collected, used, and reviewed—may affect the economic efficiency, equity, revenue adequacy, and administrative burden of cost-based fees. United States Citizenship and Immigration Services (USCIS) is responsible for granting or denying the millions of immigration and naturalization applications each year and charges fees to recover all processing costs. In 2007, USCIS completed a fee review to determine the level at which fees should be set to recover the full cost of its services and increased application fees by an average of 86 percent.

USCIS is preparing its first fee review since the 2007 fee increase. It is critical that USCIS and the Congress have the best possible information when overseeing these fees and the operations they fund. This testimony focuses on (1) user fee design and implementation characteristics and criteria, (2) cost assignment and trade-offs identified in USCIS's 2007 fee review, and (3) additional considerations for fee-funded agencies. It is based on past GAO reports, which included recommendations to the Secretary of Homeland Security (DHS). DHS agreed to consider these recommendations in their next fee review.

View [GAO-10-560T](#) or [key components](#). For more information, contact Susan J. Irving at (202) 512-6806 or irvings@gao.gov.

FEDERAL USER FEES

Fee Design Characteristics and Trade-Offs Illustrated by USCIS's Immigration and Naturalization Fees

What GAO Found

There are four key design and implementation characteristics of user fees—how fees are set, collected, used, and reviewed. Each design and implementation characteristic presents its own set of decisions to consider and embodies trade-offs among the four criteria that are often used to assess user fees: equity, efficiency, revenue adequacy, and administrative burden.

Equity: Equity means that everyone pays his/her fair share, but there is more than one way to think about fair share. Under the beneficiary-pays principle, the beneficiaries of a service pay for the cost of providing the service from which they benefit. Under the ability-to-pay principle, those who are more capable of bearing the burden of fees should pay more for the service than those with less ability to pay.

Efficiency: By requiring identifiable beneficiaries to pay for the costs of services, user fees can simultaneously constrain demand and reveal the value that beneficiaries place on the service. If those benefiting from a service do not bear the full social cost of the service, they may seek to have the government provide more of the service than is economically efficient.

Revenue adequacy: Revenue adequacy is the extent to which the fee collections cover the intended share of costs. It encompasses the extent to which collections may change over time relative to the cost of the program and the concept of revenue stability, or the degree to which short-term fluctuations in economic activity and other factors affect the level of fee collections.

Administrative burden: This is the cost of administering the fee, including the cost of collection and enforcement, as well as the compliance burden.

Setting the fee is perhaps the most challenging of the fee design decisions because determining the cost of the service is often quite complex and requires considering a range of issues. One of the biggest issues in fee setting is how to define and apply the equity criterion, such as determining the overlap between beneficiaries and users, whether to employ a beneficiary pays or ability to pay equity principle, how to address fee exemptions and waivers, and finally, how to assign costs among users. Many of these design choices described in USCIS's 2007 fee review provide transparent analysis and identify deliberate trade-offs. However, USCIS did not conduct the analysis necessary to fully inform either congressional decision making or USCIS's internal deliberations on key areas such as the cost of activities funded by statutorily-set fees that led to unknown cross-subsidizations.

When fees are supposed to cover all or a set portion of the costs of an agency or activity the criterion of "revenue adequacy" may be especially important to consider. For example, a reserve is important for fully fee-funded programs because it provides a cushion if program costs would not drop proportionally with a drop in fee collections. A reserve could also help support preparation for any anticipated surge in users, especially if fee collections would come after the expenditures to prepare for the surge.

Chairwoman Lofgren, Mr. King, Members of the Subcommittee:

It is a pleasure to join you today as you think about issues related to the U.S. Citizenship and Immigration Services' (USCIS) user fees. User fees can be designed to reduce the burden on taxpayers by financing the portions of activities that provide benefits to identifiable users above and beyond what is normally provided to the public. By charging the costs of programs or activities to identifiable beneficiaries, user fees can promote economic efficiency and equity just as prices for goods and services can do in a free and competitive market. However, to achieve these goals, user fees must be well designed.

In light of recent increased congressional interest in user fee financing, we at GAO developed a normative framework for examining user fee design characteristics that may influence the effectiveness of user fees. Specifically, our federal user fee design guide examined how the four key design and implementation characteristics of user fees—how fees are set, collected, used, and reviewed—may affect the economic efficiency, equity, revenue adequacy, and administrative burden of cost-based fees.¹ Since 2007, we have examined a variety of federal user fees—including those at USCIS—in the context of this framework. I am pleased to be here today to talk about effective user fee design in general and USCIS fees in particular.

As this subcommittee knows, USCIS is responsible for granting or denying the millions of immigration and naturalization applications it receives each year and charges fees to recover all processing costs.² In February 2007, USCIS completed a fee review to determine the level at which fees should be set to recover the full cost of its services. USCIS's most recent fee schedule, which became effective July 30, 2007, increased application fees by an average of 86 percent.³ The fee schedule was widely questioned, in part because of the magnitude of the increases and in part because of the agency's failure to foresee and manage the surge in applications received immediately before the effective date of the fee increases.

¹See GAO, *Federal User Fees: A Design Guide*, [GAO-08-386SP](#) (Washington, D.C.: May 29, 2008).

²For the purposes of this testimony, the term "application" refers to both applications and petitions.

³USCIS's 2007 user fee review was issued prior to the issuance of [GAO-08-386SP](#), however the comparison of USCIS's review to the user fee design principles is important to identifying opportunities for future improvements.

USCIS is preparing its first fee review since the 2007 fee increase. The time is ripe for analyzing and understanding the elements and trade-offs in designing a fee structure so that both USCIS and the Congress have the best possible information available to them when overseeing these fees and the critical operations they fund. Further, because USCIS's operations are mostly funded by user fees, it is critical that fee collections and operating costs remain aligned to ensure collections are sufficient such that applicants may enjoy continued access to the timely, high-quality services they deserve.

As agreed with this Subcommittee, my testimony today focuses on:

1. user fee design and implementation characteristics and criteria,
2. cost assignment and trade-offs identified in USCIS's 2007 fee review, and
3. additional considerations for fee-funded agencies.

Before doing that, however, I would like to step back and talk a bit about some important considerations for the practical application of any normative framework.

Any user fee design embodies trade-offs among the four dimensions of equity, efficiency, revenue adequacy, and administrative burden. While there are purely analytic aspects to each of these criteria, the trade-offs depend on policy and value decisions. No single design will satisfy everyone on all dimensions—every fee design will have pluses and minuses—and the weight that different policymakers place on different criteria will vary depending on how they value different attributes. As a general rule, the design of a fee should be viewed in its entirety. Focusing only on the pros and cons of any single design element can obscure how the pieces fit together and could make it difficult to achieve consensus on a fee's design. Instead, policymakers will ultimately need to balance the relative importance they place on each of these criteria and focus on the overall fee design. Moreover, there will undoubtedly be cases in which policy considerations outweigh normative design principles.

My testimony today is based on GAO reports and testimonies issued from May 2008 through January 2009 on the principles of effective user fee design in general and on USCIS's user fees and fee review specifically. In developing the design guide, we reviewed economic and policy literature on federal and nonfederal user fees, including our prior work on user fees. To review USCIS's fee structure, we reviewed legislation and agency documentation, such as the proposed and final Federal Register notices

regarding the 2007 fee schedule and USCIS's February 2007 fee review analysis. We conducted the work for both of those reports according to 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.

Fee Design and Implementation Characteristics and Criteria

Each of the four design and implementation characteristics presents its own set of decisions to consider. In this statement I touch briefly on the main considerations at each stage; a summary of key questions to consider is included in appendix I.

Setting user fees: For cost-based fees, the extent to which a program provides benefits to the general public versus to identifiable users, and the cost of providing those benefits should, in the abstract, guide how much of total program costs are paid for by user fees and the amount each user pays.

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

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

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

Criteria for Assessing Design

Our May 2008 user Fee Design Guide discusses four criteria that are often used to assess user fees and taxes: (1) equity, (2) efficiency, (3) revenue adequacy and (4) administrative burden on the agency and payers of the fees. As I noted, these criteria interact and are often in conflict with each other; as such, there are trade-offs to consider among the criteria when designing a fee. Further, the design characteristics are interrelated: how you set the fees can influence the activities for which they are used, and how often they are reviewed can influence the level at which the fee is set. To understand the implications of any fee design, it is important to understand the options and trade-offs between these criteria.

Equity: Equity means that everyone pays his/her fair share, but there is more than one way to think about fair share. Under the beneficiary-pays principle, the beneficiaries of a service pay for the cost of providing the service from which they benefit, but even this can be complicated when beneficiaries and users differ. Under the ability-to-pay principle, those who are more capable of bearing the burden of fees should pay more for the service than those with less ability-to-pay.

Efficiency: By requiring identifiable beneficiaries to pay for the costs of services, user fees can simultaneously constrain demand and reveal the value that beneficiaries place on the service. If those benefiting from a service do not bear the full social cost of the service, they may seek to have the government provide more of the service than is economically efficient.

Revenue adequacy: Revenue adequacy is the extent to which the fee collections cover the intended share of costs. It encompasses the degree to which collections may change over time relative to the cost of the program. Revenue adequacy also incorporates the concept of revenue stability, which generally refers to the degree to which short-term fluctuations in economic activity and other factors affect the level of fee collections.

Administrative burden: This is the cost of administering the fee, including the cost of collection and enforcement, as well as the compliance burden (the administrative costs imposed on the payers of the fee).

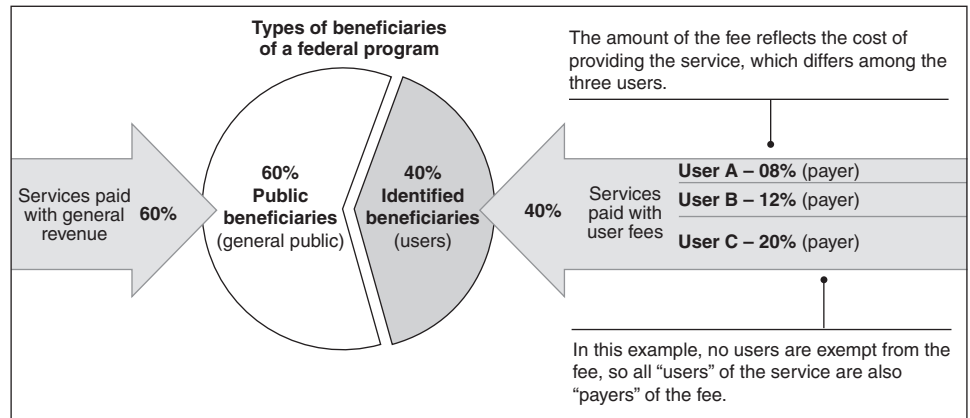
USCIS's 2007 Fee Design Reflects Trade-Offs among Some Key Fee Design Principles and Provides a Foundation for Further Improvements in the 2010 Fee Design

Today I will spend most of my time discussing the issues involved in setting a user fee. It perhaps is the most challenging of the fee design decisions because determining the cost of the service is often quite complex and requires considering a range of issues. One of the biggest issues in fee setting is how to define and apply the equity criterion, such as determining the overlap between beneficiaries and users, whether to employ a beneficiary-pays or ability-to-pay equity principle, how to address fee exemptions and waivers, and finally, how to assign costs among users. Many of these design choices described in USCIS's 2007 fee review provide transparent analysis and identify deliberate trade-offs. However, USCIS did not conduct the analysis necessary to fully inform either congressional decision making or USCIS's internal deliberations on key areas such as the cost of activities funded by statutorily set fees. As a result, the amount being cross-subsidized was unknown.

According to the beneficiary-pays principle, the extent to which a program is funded by user fees should generally be guided by who primarily benefits from the program. Under this principle, if a program primarily benefits the general public (e.g., national defense), it should be supported by general revenue, not user fees; if a program primarily benefits identifiable users, such as customers of the U.S. Postal Service, it should be funded by fees; and if a program benefits both the general public and users, it should be funded in part by fees and in part by general revenues⁴ (see figure 1).

⁴Programs that primarily benefit the general public are generally nonexcludable, that is, there is no practical way of preventing someone from benefiting from the program, and nonrival, that is, once the program is in operation, there is no additional cost of providing it to more people.

Figure 1: Simplified, Hypothetical Example of Assigning Costs to Beneficiaries



Source: GAO.

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

Although the beneficiary-pays principle is a useful guideline for assigning costs, determining a program’s beneficiaries and the extent to which a program benefits users, the general public, or both is not usually clear cut. For example, in prior work we found that National Park Service staff reported that they did not want to raise federal grazing fees assessed on ranchers, even though these fees were lower than fees charged by other government agencies and private landowners, in part because grazing not only benefits ranchers but also benefits parks—for example, by controlling vegetation.⁵ In another example, United States Department of Agriculture (USDA) food safety inspections benefit the meat and poultry industries as well as the general public: inspections improve consumer confidence in the safety of those food products and the companies can advertise their products as USDA-inspected, which may enhance the perceived quality. The inspections also benefit the general public by preventing the spread of communicable diseases carried by meat and poultry products, but it is difficult to quantify that public health benefit and consequently the extent to which the program should be covered by

⁵See GAO, *Livestock Grazing: Federal Expenditures and Receipts Vary, Depending on the Agency and the Purpose of the Fee Charged*, [GAO-05-869](#) (Washington, D.C.: Sept. 30, 2005), and *National Park Service: Opportunities Exist to Clarify and Strengthen Special Uses Permit Guidance on Setting Grazing Fees and Cost-Recovery*, [GAO-06-355R](#) (Washington, D.C.: Feb. 9, 2006).

Beneficiary-Pays Versus Ability-to-Pay

user fees versus general revenues. Secondary beneficiaries of a program generally are not considered in this examination. For example, consumers of new prescription drugs are secondary beneficiaries of prescription drug reviews, which provide a primary benefit to the drug sponsors.⁶ Similarly, fees should be charged to the direct user, even if that payer then passes the cost of the fee on to others.

Strictly following the beneficiary-pays principle is not always desirable or practical. The government may wish to charge some users a lower fee or no fee to encourage certain activities. For example, potential profits from the development of “orphan” drugs—those that treat rare diseases—are limited by the small size of their market, and therefore drug companies may be reluctant to invest in them; such drugs are exempt from the Food and Drug Administration (FDA) prescription drug application fee to encourage their development.

While the beneficiary-pays principle may promote one aspect of equity, it may run contrary to another—the ability-to-pay principle. Fees that are proportionally more burdensome for low-income than high-income individuals are said to be regressive. To address this concern, the design of a fee may consider the ability of a user to pay, by for example, exempting low-income users or scaling fees by some measure of ability-to-pay. When those who are more capable of bearing the burden of fees pay more for the service than those with less ability-to-pay, the ability-to-pay definition of equity is employed, creating conflict with the beneficiary-pays definition of equity and causing cross-subsidization among applicants.

USCIS demonstrated the ability-to-pay principle of equity by limiting the 2007 increase in the fees charged for some low-volume applications, such as the Form I-360, Petition for Amerasian Widow(er) or Special Immigrant. This avoided what, in some cases, would have been a 250 percent fee increase or greater, levied on a population unlikely to be able to pay. Instead USCIS only increased the fees by the total average increase across all applications. The unrecovered processing costs for these form types were distributed across other form types and thus distributed among other fee-paying applicants.

⁶A drug sponsor is the person or entity who assumes responsibility for the marketing of a new drug, including responsibility for complying with applicable provisions of laws, such as the Federal Food, Drug, and Cosmetic Act and related regulations. The sponsor is usually an individual, partnership, corporation, government agency, manufacturer, or scientific institution.

USCIS demonstrated the beneficiary-pays principle of equity by not limiting a second set of fees, for which the population would likely be able to pay the large fee increase. For example, by not adjusting fees for the Form I-829, Petition by Entrepreneur to Remove Conditions—a form for which the applicants are entrepreneurs with \$500,000 to invest—USCIS closely aligned these fees with the cost of providing the services to these users.

Both ability-to-pay and beneficiary-pays are valid applications of the equity principle. Choosing between them depends on the policy goal to be achieved.

Exemptions and Waivers

Fees can also include provisions for exemptions and waivers to promote certain policy goals and these provisions affect how program costs are allocated among users. The cost of providing services to fee-exempted or fee-waived users is commonly funded by general revenues or by the fees of other users. Fee exemptions and waivers may also increase an agency's administrative burden—the cost of administering the fee—since the agency must carefully track when fees are due and from whom rather than simply charging every applicant. Fee-paying applicants also bear an administrative burden in terms of compliance costs associated with waiver and exemption policies.

USCIS's user fee design allows fee exemptions for certain form types and fee waivers for some applicants, and USCIS funds these activities through a surcharge added to fee-paying applicants. By law, USCIS's immigration and naturalization fees “may be set at a level that will ensure recovery of the full costs of providing all [adjudication and immigration] such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.”⁷ As a result, certain form types are fee-exempt, such as for refugees and applicants seeking asylum, and fee waivers are granted on a case-by-case basis for applicants who demonstrate an inability to pay by

⁷8 U.S.C. § 1356 (m).

meeting certain need-based criteria.⁸ The cost of fee exemptions and waivers is allocated to the fee-based applications as a flat-rate surcharge.

Reliably accounting for the costs and benefits associated with such provisions is important in order to ensure that these provisions are achieving the intended results. In fully fee-funded programs, if some users are exempt from paying fees, total fee collections cannot cover total program costs unless other users pay a higher fee to cover the costs of the exempted users. For example, commercial and private vessels are both subject to Agricultural Quarantine Inspections (AQI), but private vessels are exempt from the AQI fees. In prior work we found that the costs of these private vessel inspections are included in the AQI fee charged to commercial vessels.⁹ Thus commercial vessels are paying for the cost of inspecting private vessels. An alternative to cross-subsidization would be to pay for the costs of providing services to exempt entities through general revenues. USCIS received an appropriation for asylum, refugee, and humanitarian parole activities, and military naturalizations beginning in fiscal year 2010.¹⁰ In this way the policy goal is attained and the general public, rather than other users, make up the cost of exempt users or discounted fees.

Finally, fee exemptions and caps can increase an agency's administrative costs because it must carefully track when fees are due and from whom rather than simply charging everyone. The U.S. Customs and Border Protection (CBP) generally assesses a \$437 customs inspection fee on commercial vessel operators when they arrive at port, but the fee is capped at \$5,955 per calendar year. This is approximately 13.6 payments. This means that CBP has to calculate the point at which the vessel has

⁸In determining inability-to-pay, USCIS considers the totality of all factors, circumstances, and evidence the applicant supplies including age, disability, household income, and qualification within the past 180 days for a federal means tested benefit, as well as other factors associated with each specific case. More information about fee waiver guidance can be found at <http://www.uscis.gov/feewaiver>.

⁹[GAO-08-386SP](#)

¹⁰For fiscal year 2010, Congress appropriated \$50 million to USCIS for the processing of applications for asylum or refugee status; of which \$5 million was for the processing of military naturalization applications. Department of Homeland Security Appropriations Act of 2010, Pub. L. No. 111-83, 123 Stat. 2142, 2164 (Oct. 28, 2009). However, the act restricted USCIS from obligating any of these funds for processing applications for asylum or refugee status until the agency "has published a final rule updating part 103 of title 8, Code of Federal Regulations, to discontinue the asylum/refugee surcharge."

reached the cap and is no longer subject to the fee. We recently reported that the cap increases CBP's administrative costs and the potential for errors.¹¹ This issue was particularly problematic in 2007 because a fee increase took effect on April 1, 2007, so vessels arriving before and after that date paid two different rates. Since the fee cap applies to payments received within a calendar year, it was even more difficult for CBP to calculate the total amount paid and determine if a vessel had reached the cap.

Assigning Costs among Users

Assigning costs among fee-payers requires determining (1) total program costs and (2) how to assign these costs among different payers. The beneficiary-pays principle can be useful in guiding decisions about cost allocation among users. That is, basing fees on the cost of providing the program or service to various groups of users enhances equity as each user pays for the cost of services actually used.

When the cost of providing a service varies for different types of users, the fee may vary (i.e., a user-specific fee), or be set at an average rate (i.e., a systemwide fee). All other things being equal, user-specific fees promote equity and economic efficiency because the amount of the fee is more closely aligned with the cost of the service.¹² In contrast, systemwide fees may be higher or lower than the actual cost of providing a service to certain types of users and may result in cross-subsidies across users. For example, we previously reported that the Federal Aviation Administration's (FAA) funding structure had raised concerns about equity and efficiency because users paid more or less than the costs of the air traffic control services they receive and therefore may lack incentives to use the national airspace system as efficiently as possible.¹³ However, because user-specific fees require agencies to track the costs of providing

¹¹See [GAO-08-321](#).

¹²Unless fees are perfectly user specific, some users will pay a higher proportion of the costs they impose and some users will pay a lower proportion of their costs. In the case of a fee that is not user specific and recovers full program costs (i.e., does not use general revenue funding), some users will pay more than the costs they impose, essentially cross-subsidizing other users, who will pay less. For more information about funding options for the FAA see *National Airspace System Modernization: Observations on Potential Funding Options for FAA and the Next General Airspace System*, GAO-06-1114T (Washington, D.C.: September 27, 2006).

¹³See *Aviation Finance: Observations on the Current FAA Funding Structure's Support for Aviation Activities, Issues Affecting Future Costs, and Proposed Funding Changes*, [GAO-07-1163T](#) (Washington, D.C.: August 1, 2007).

service to different users, these fees are often more costly to administer than systemwide fees. In managing the trade-offs between the benefits and drawbacks of user-specific versus systemwide fees, several factors may be important to consider, such as the purpose of the program, the amount of the fee and the amount of cost variation among users when assigning costs.

Program purpose. In general, national systems are often best supported by a systemwide fee whereas a user-specific fee may be the better choice to support individual entities or locations or when maximizing economic efficiency outweighs the desire for a national system.

Amount of the fee. If the fee is small relative to other costs that a user faces, it may be less important to have a user-specific fee with different rates.

Cost variation among users. Lastly, if there are numerous different groups of users and a small cost variation among them, the efficiency gains of a user-specific fee may be overwhelmed by the added administrative costs. Conversely, if a program has a relatively small number of user groups and the cost of providing the service to those groups differs significantly, then user-specific fees might be both beneficial and feasible.

Whether fee rates will be set using average cost or marginal cost is also an important consideration when setting fees. Setting a fee at a rate equal to the marginal cost of providing the service or product to the specific user maximizes economic efficiency, but is often not easy to do. In part because it is often difficult to measure marginal cost, fee rates are sometimes set based on average cost.¹⁴ For example, while international arriving airline passengers all pay a fee for AQIs at the airport, it is difficult to know at the time the fee is assessed which passenger will require which level of inspection. The AQI fees are intended to cover total program costs; to set these fees, the Animal and Plant Health Inspection Service (APHIS) projects program costs for different inspection types (e.g., air passenger, commercial aircraft, and commercial vessels) and divides each by the total projected number of each type of payer. That is, each airline pays the same fee per arrival to cover the costs related to inspecting aircraft.

¹⁴Marginal cost is equal to the cost of providing an additional unit of the good or service.

Even when marginal costs are measurable, setting the fee equal to marginal cost could be problematic. When marginal costs are measurable but are low relative to the fixed costs of the program, setting the fee at marginal cost will lead to collections less than total costs. In such a situation either a program may be funded in part through general revenues or—if an agency, program or activity is completely fee-funded—users would have to be charged more than marginal costs.¹⁵ A third approach might be to create a two-part fee consisting of (1) a flat fee to cover fixed costs and (2) a usage-based fee to cover marginal costs. For example, the marginal cost of providing electricity (i.e., operating power plants and maintaining transmission lines) is small compared with the costs of building power plants and transmission lines; thus, electricity consumers could be charged a flat monthly charge to cover fixed costs plus a charge that would vary based on their consumption.

In its last fee review USCIS determined its fee rates by assigning different costs to various fee-paying users in different ways. First, USCIS identified the costs for adjudicating each form type, referred to as the “make determination” costs. As I noted before, user-specific fees promote equity and economic efficiency because the amount of the fee is closely aligned with the cost of the service.¹⁶ USCIS’s make-determination costs, which comprise 49 percent of its total costs, vary by form type and are assigned accordingly; as such, this portion of the costs are aligned with the associated fees. Next, USCIS allocated \$732 million in overhead costs, including payroll, accounting, and legal services, in proportion to full-time equivalents. Such systemwide fees minimize administrative burden because they do not require identifying and charging specific costs to each user.¹⁷ Lastly, all fee-paying applicants pay a flat-rate \$72 surcharge to recover the costs associated with asylum and refugee services and fee-waived and fee-exempt applications. However, in fiscal year 2010, USCIS received an appropriation for asylum, refugee, and humanitarian parole

¹⁵There will be some loss of economic efficiency in either case: user fees set above marginal cost and taxes—that is, general revenues—both result in some loss of economic efficiency. See [GAO-05-1009SP](#).

¹⁶In USCIS’s case, this would be a form-specific fee as all fee-paying applicants for a certain form type would pay the same amount regardless of how much their individual application cost to process.

¹⁷However, we raise concerns about the lack of justification and support for USCIS’s allocation of remaining costs in our related report, including how USCIS allocated certain overhead costs and whether alternate assignment methods may offer greater precision. See [GAO-09-70](#).

Unknown Costs Create
Unknown Cross-Subsidizations

activities, and military naturalizations.¹⁸ Both methods achieve the policy goal but these decisions illustrate two approaches to covering the cost of exempt users—distribute the costs among other users or have the cost made up by the general public.

As this Subcommittee knows, some of USCIS’s fees are set in statute. In our work, we reported that at the time of the 2007 fee review USCIS did not know the relationship between those statutorily set fees and the costs of the activities associated with them. Because USCIS cannot change these fee rates through the regulatory process, USCIS officials told us that they had not identified the costs associated with statutorily set fees and that doing so was not a priority for them. This means that decision makers lack this key information; in addition, it raises the possibility that processing costs for these services are being partially borne by other fee-paying applicants. Absent information on the cost of these services, however, the amount of cross-subsidization is unknown.

The most notable of the statutorily set fees is the \$1,000 fee for the premium-processing service, which was USCIS’s fifth largest single generator of funds in fiscal year 2007.¹⁹ In December 2000, the Congress authorized the collection of a premium processing fee for employment-based applications, to be paid in addition to the regular application fees.²⁰ The Congress set the amount of the premium processing fee at \$1,000; pursuant to this authority and as established in regulations, USCIS guarantees that certain employment based applications will be processed within 15 calendar days of receipt.²¹

¹⁸For fiscal year 2010, Congress appropriated \$50 million to USCIS for the processing of applications for asylum or refugee status; of which \$5 million was for the processing of military naturalization applications. Department of Homeland Security Appropriations Act of 2010, Pub. L. No. 111-83, 123 Stat. 2142, 2164 (Oct. 28, 2009). However, the act restricted USCIS from obligating any of these funds for processing applications for asylum or refugee status until the agency “has published a final rule updating part 103 of title 8, Code of Federal Regulations, to discontinue the asylum/refugee surcharge.”

¹⁹In addition to the premium processing fee, USCIS did not know the relationship between the cost of processing the H-1B applications and its statutorily-set fee imposed on employers and therefore did not know the amount being subsidized by other fee-paying applicants.

²⁰Pub.L.No. 106-553, App. B, Title I, § 112, 114 Stat. 2762, 2762A-68 (Dec. 21, 2000), *codified at* 8 U.S.C. § 1356 (u).

²¹8 C.F.R. § 103.2(f). USCIS may designate the employment-based applications that are eligible for premium services pursuant to public notice in the *Federal Register*.

Although the premium processing fees are not—unlike most of USCIS’s application fees—cost-based, information on the cost of the services for which the fee is charged should be determined. We have previously reported that reliable information on the costs of federal programs and activities is crucial for agencies and the Congress to ensure effective management of government operations, which includes setting user fees.²²

The cross-subsidization issue for premium processing fees is complicated by the statutory provision that premium processing fees be available for two activities: (1) certain premium processing services for business customers and (2) infrastructure improvements associated with adjudications and customer-service.²³ In its 2007 fee review, USCIS stated that the agency’s intent was to use all premium-processing collections to fund planned infrastructure improvements, which are a significant component of USCIS’s Transformation Program.²⁴ As a result, the cost of premium processing is borne by other fee payers (see figure 2 below). Funding the Transformation Program with premium-processing activities is consistent with report language accompanying the fiscal years 2008-2010 Department of Homeland Security appropriations bills, which direct USCIS²⁵ to allocate all premium-processing fee collections to information technology and business-system transformation. It is worth noting that if the agency (a) is directed to use all its premium processing fee revenue for infrastructure improvements, (b) provides premium processing services, and (c) is an entirely fee funded agency, it can only cover the costs of premium processing activities by imposing them on other fee payers.

While the Congress continues to support this use of premium processing collections, we note that it does raise several issues. First, as noted above and shown in figure 2, the cost of premium processing is being borne by other fee payers. Second, premium processing applicants are bearing an uneven amount of the costs of the Transformation Program—an initiative

²²[GAO-07-1131](#)

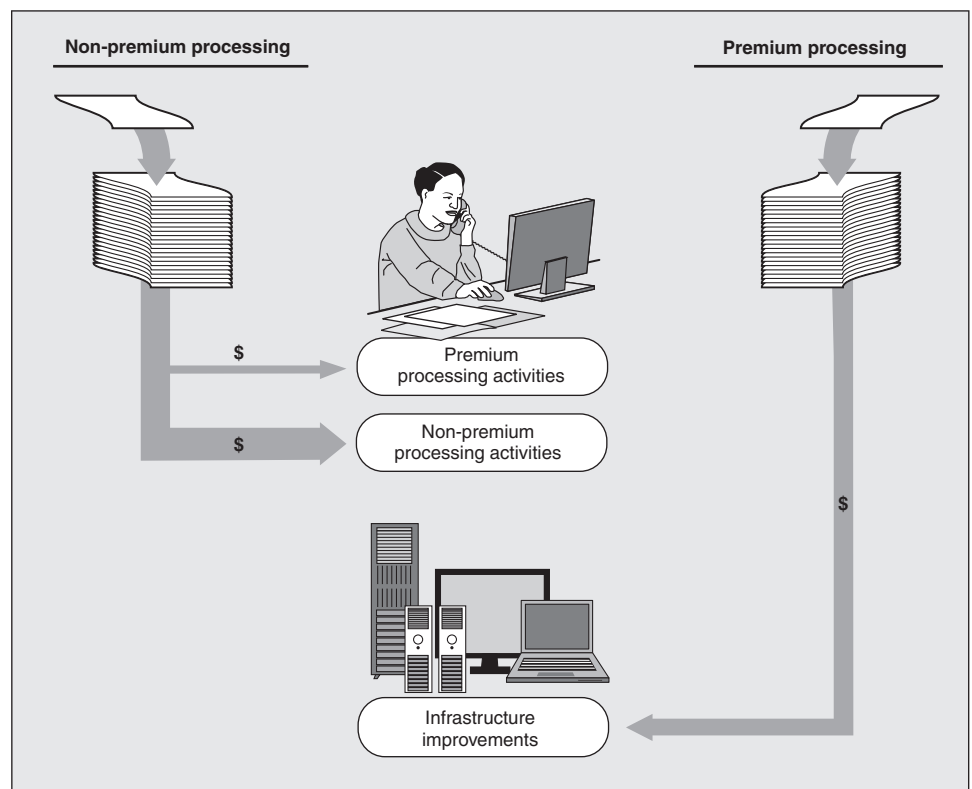
²³8 U.S.C. §1356(u).

²⁴USCIS is embarking on an agencywide Transformation Program that is intended to transform USCIS’s current paper-based data systems into a modern, digital processing resource that will enhance customer service and better prevent future backlogs. The transformation program was not included in the agency’s definition of overhead costs for purposes of the 2007 review.

²⁵H.Rep. No. 110-181, at 114 (2007); H. Rep. No. 110-862, at 131 (2008); H. Rep. No. 111-298, at 115 (2009).

that will ultimately benefit all types of future applicants. Spreading the transformation costs among all application fees would distribute the burden across all fee-paying applicants, but it could be seen as creating inequities across time because today's applicants would be paying for improvements likely to benefit future applicants.

Figure 2: The Flow of Premium Processing Collections and Usage



Source: GAO analysis of USCIS data.

Additional Considerations for Fee-Funded Agencies

The criterion of “revenue adequacy” may be especially important when fees are supposed to cover all or a set portion of the costs of an agency, program or activity. As noted, revenue adequacy is the extent to which the fee collections cover the intended share of costs. Let me touch on two aspects of revenue adequacy: (1) the extent to which collections may change over time relative to the cost of the program and (2) the degree to which short-term fluctuations in economic activity and other factors affect the level of fee collections.

Program costs change over time. This means that fees intended to cover all or a set share of the costs of an agency, program, or activity must be not only set but also adjusted—even between formal reviews—to cover those costs. This in turn requires agencies to project and consider future program costs—even if they conduct periodic fee reviews. For example, USDA’s Food Safety and Inspection Service did this in 2006 when it set fee rates through fiscal year 2008 for overtime inspection services for meat, poultry, and egg products. The fee rates for each year included adjustments for inflation and employee pay raises, so that future fee collections were projected to grow with program costs.²⁶

If an agency or program is fully fee-funded, a reserve is important because it provides a cushion if program costs would not drop proportionally with a drop in fee collections. A reserve could also help support preparation for any anticipated surge in users, especially if fee collections would come after the expenditures to prepare for the surge. For example, the AQI fee statute gives APHIS permanent authority to use the collected fees. APHIS maintains a reserve in case of emergency. For example, following the September 11, 2001 attacks, there was a significant drop in international passenger travel, which led to a significant drop in certain AQI user fee collections. In order for APHIS to continue the AQI programs through that uncertain time, APHIS relied heavily on its 25-percent reserve. Without a sufficient reserve balance in place, experienced full-time personnel would have been furloughed and services reduced. We have previously reported, however, that while a reserve is necessary, it is also possible that the provision of permanent spending authority may mean agencies have less incentive to limit total collections to total costs.

We found that in its 2007 fee review, USCIS did not conduct the analysis needed to establish a target level of carryover balance, or “reserve,” that would allow for the continuity of operations funded by the Immigration Examinations Fee Account (IFEA) in the event of a decrease in application volume. As a result we determined that USCIS did not fully consider issues related to revenue adequacy. Without analyzing its

²⁶ Agencies must use realistic inflationary indicators if they want to reasonably estimate future program costs and better align future collections with those costs. OMB Circular No. A-94, which provides guidance to agencies on benefit-cost analysis for federal programs, notes that future inflation is highly uncertain and recommends that when a general inflation assumption is needed, agencies use the rate of increase in the gross domestic product deflator from the administration’s economic assumptions for the period of the analysis.

contractual and operating costs to determine an appropriate target carryover balance, USCIS is at risk of reducing or disrupting services if collections decrease. Further, absent analysis, it is unclear for how long and at what service level USCIS could operate with its current carryover balance. USCIS officials did say, however, that an appropriate level of carryover should reflect: (1) USCIS's first-quarter obligations, which includes the full contract value for the whole fiscal year;²⁷ (2) deferred revenue equal to the amount of its outstanding workload,²⁸ and (3) the operating "tempo" of the organization.

While regular fee reviews should be done for all fees, they may be especially important where fees represent a significant source of support for an agency or program.²⁹ Absent timely review, the agency lacks up-to-date knowledge about the cost of fee-funded activities and the relationship of those costs to the fees charged. Where either the level of the fee or the activities covered by it are set in statute, lack of timely analysis means the agency cannot provide the Congress with the information it needs to make informed decisions about any changes.³⁰ Most of USCIS's user fees are cost-based fees set through the regulatory process and deposited into the Immigration Examinations Fee Account. Prior to 2007, USCIS's last comprehensive fee review was in Fiscal Year 1997. As I noted, the lack of timely, comprehensive fee reviews in the years between 1997 and 2007 contributed to the size of the fee increase.

Abrupt imposition of new or substantially increased user fees could have unintended consequences on workload. For example, prior to the 2007 fee increases large numbers of applicants filed for benefits before the increase took effect, which contributed to a surge that exacerbated USCIS's backlog of applications. In cases like this, transitional measures such as grandfather clauses or phasing in increases might help address concerns about the adverse effects of the abrupt imposition of a fee, while implementing the beneficiary-pays principle gradually. However, as is the

²⁷USCIS enters into yearlong contracts at the start of the year and therefore must have collections equal to the full contract value available for obligation at the start of the year.

²⁸USCIS's deferred revenue are fee collections received by the agency for applications for which the adjudications have not been completed.

²⁹OMB Circular A-25 recommends, and the Chief Financial Officers (CFO) Act of 1990 requires agency CFOs to review their user fees biennially.

³⁰[GAO-07-1131](#), [GAO-08-321](#).

case with exemptions, the benefits of transitional measures must be balanced with the likelihood of reduced efficiency and equity gains and increased administrative costs. Furthermore, delaying a fee increase may also have adverse effects on an agency's operations.

Concluding Observations

The transparency and quality of USCIS's user fee design depends on complete, reliable information on which to base informed trade-offs that support the goals of USCIS. Analyzing and understanding the costs of providing these services are important so that both USCIS and the Congress have the best possible information available to them when designing, reviewing, and overseeing these fees. To this end, USCIS took an important step forward with its 2007 fee review. In the next review it should build on this by including the full costs of its services regardless of whether the fee is set through the regulatory or statutory process. Fee reviews are critical for any agency, but especially for agencies—like USCIS—that are mostly or solely fee funded.

We at GAO do not take a position on whether an agency should be partially or fully fee-funded, or whether the costs of exemptions and waivers should be distributed across other fee payers or funded through general revenues. These are policy questions appropriately decided by policymakers. With the design guide we have tried to provide a kind of "road map" for policymakers that lays out the questions and issues to consider—the decisions that must be made—in the design of any fee. In our analyses of various fees we have sought to illustrate the application of this design guide and assist the Congress in its review of existing fees and consideration of possible new fees.

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

Chairwoman, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

Contacts and Acknowledgments

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In addition to the contact named above, Jacqueline M. Nowicki, Assistant Director; Chelsa Gurkin; Lauren Gilbertson; Barbara Lancaster; and Michael Dino, Assistant Director made key contributions to this statement.

Appendix I: Key User Fee Design Questions

We note that some of these questions may overlap.

Section I: Setting User Fees

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

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- f. Will the fee structure be user-specific or systemwide?
 - Is the amount of the fee small or large relative to other costs that the user faces?
 - Are there numerous different groups of users?
 - Is the cost variation among the different groups of users large or small?
 - g. Does the program have high fixed costs?
 - Is a two-part fee structure, with a flat rate plus a fee based on usage, appropriate?
3. How will the fee be structured to cover the intended share of program costs over time?
 - a. Are fee collections projected to change over time in relation to the cost of the program due, for example, to inflation?
 - b. To what degree will short-term fluctuations in economic activity and other factors affect the level of fee collections?
 - c. Will the fee design include a maintenance-of-effort requirement?

Section II: Collecting User Fees

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

Section III: Using User Fees

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

Section IV: Reviewing User Fees

1. Will the fee be updated through legislation or by agency regulation?
2. How frequently will fees be reviewed and updated?
 - a. Will legislation include a sunset provision to trigger fee updates?
 - b. Will legislation direct the agency to submit regular fee reviews to the Congress, different from the biennial fee review required by the Chief Financial Officers Act of 1990?
3. What mechanisms will be used to gather stakeholder input?
 - a. Will the agency establish an advisory committee?
 - b. Will proposed changes to the fees be published for comment in the Federal Register?
 - c. What safeguards will be used to prevent the agency from becoming beholden to fee payers/stakeholders?

Appendix II: GAO Homeland Security User Fee Related Products

Federal User Fees: A Design Guide. [GAO-08-386SP](#). Washington, D.C.: May 29, 2008.

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: Improvements Could Be Made to Performance Standards and Penalties in USCIS's Service Center Contracts. [GAO-08-1170R](#). Washington, D.C.: September 25, 2008.

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

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

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