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User Fees: Applicable Budget Enforcement Procedures

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Summary

User fees have played an increasingly important role in budget policymaking the last several years. These fees are charged to the direct beneficiaries of goods or services provided by the federal government. A user fee may be classified as a governmental receipt or an offsetting collection, depending on whether the fee is based on the sovereign powers of the government or on business-like activities. Like other revenues of the federal government, user fees classified as governmental receipts are paid into the general fund or special funds of the Treasury. User fees classified as offsetting collections, however, are deducted from the gross amount of spending. The classification of user fees, and whether the user fee offsets discretionary or direct spending, affects the enforcement of budget procedures under the Congressional Budget Act of 1974 and the Balanced Budget Act and Emergency Deficit Control Act of 1985, as amended.

Introduction. *User fees* generally refer to fees charged to users of goods or services provided by the federal government.¹ Unlike general revenues, such as income or payroll taxes, user fees are collected from limited segments of the public, and are used to fund specific government activities rather than the general purposes of government. For example, entrance fees to national parks are charged only to those entering the park, and the proceeds usually are appropriated by Congress to finance the goods or services provided to users of the park. The amount of the fee often is related to the cost of the good or service provided. User fees are intended to represent payment for the benefit provided. In some cases, such as user fees collected by the Nuclear Regulatory Commission, user fees are set to cover the overall costs of the agency.

¹According to the Office of Management and Budget (OMB), the term “user fee” applies to “fees, charges, and assessments the Government levies on a class directly benefitting from, or subject to regulation by, a Government program or activity, to be utilized solely to support the program or activity.” See OMB, *Budget of the U.S. Government, FY2000, Analytical Perspectives* (Washington: 1999), chapter 4, “User Fees and Other Collections,” pp. 93-104.

In FY1998, the most recent fiscal year actual data are available, the federal government collected \$135.801 billion in user fees.² Over 99%, or \$134.804 billion, of the total user fees collected were treated as offsetting collections; almost 1%, or \$0.997 billion, were treated as governmental receipts. Of the user fees treated as offsetting collections, 11%, or \$15.417 billion, were used to offset discretionary spending, and 89%, or \$119.387 billion, were used to offset mandatory spending (fees collected by the U.S. Postal Service accounted for over 50% of these mandatory offsets).

According to studies by the Congressional Budget Office and the General Accounting Office (GAO), user fee collections have increased over the last two decades.³ GAO found that collections from user fees increased 27% in real terms between fiscal years 1991 and 1996.⁴ While the GAO report illustrates the growth in the amount of user fees collected by the 27 fee-reliant agencies studied, the overall growth of user fees collected by the federal government is more difficult to gauge. Recent data on the overall growth of user fees are not readily available primarily because the data have not been collected by a single agency over an extended period of time.

Some have argued that budget enforcement constraints have contributed to the growth in user fee collections and changes in the classification of user fees.⁵ While this report does not evaluate these propositions, it does focus on the budgetary treatment of user fees within the context of budget enforcement procedures.

Budgetary Treatment of User Fees. User fees are not recorded as a separate category in the federal budget. They may be classified as either *governmental receipts* or *offsetting collections*. User fees resulting from the government's sovereign powers are treated as governmental receipts, and are paid into the general fund of the Treasury as general revenues, such as income tax collections. User fees resulting from business-like or market-oriented activities are classified as offsetting collections, and are counted as offsets to spending. Offsetting collections are deducted from gross budget authority and outlays. Not all offsetting collections, however, are user fees. For example, intragovernmental transactions are classified as offsetting collections but are not user fees.

Within the classification of offsetting collections, user fees may be credited to either an expenditure account or a receipt account. User fees credited to an expenditure account are available for the purposes of the account without any additional action by Congress. The fees collected by the U.S. Postal Service from stamp sales are made available automatically to finance its operations. Such fees offset spending (*i.e.*, budget authority and outlays) at the account level. User fees credited to a receipt account require additional legislative action before the funds may be spent. Entrance fees collected by the National

²Ibid, p. 94.

³Congressional Budget Office (CBO), *The Growth of Federal User Charges* (Washington: August 1993); CBO, *The Growth of Federal User Charges: An Update* (Washington: October 1995); General Accounting Office, *Federal User Fees: Budgetary Treatment, Status, and Emerging Management Issues*, AIMD-98-11 (Washington: December 1997).

⁴GAO, *Federal User Fees*, p. 6.

⁵For example, see: Allen Schick, *The Federal Budget: Politics, Policy, Process* (Washington: The Brookings Institution, 1995), pp. 106-108.

Park Service must be appropriated by Congress each year in order for these funds to be spent. Referred to as *offsetting receipts*, such fees are deducted from the budget authority and outlays of the agency that performs the activity and the subfunction to which the activity is assigned. Some user fees classified as offsetting receipts are not offset against any agency or function, but instead are deducted from the total gross spending of the federal government. These user fees are classified as *undistributed offsetting receipts*.

While the classification of a specific user fee generally follows this standard conceptual framework, it is important to note that many exceptions exist, and Congress often uses its legislative authority to classify user fees as it chooses.

User Fee Legislation and Jurisdiction. Most user fees are authorized by specific statutes.⁶ User fee legislation, like any other legislation, is referred to the committees of the House and Senate having jurisdiction. The referral is made by the presiding officer of each house, with the advice of the parliamentarian. Generally, jurisdictional issues are resolved based on House and Senate rules and precedents.

Since user fees are collections from a limited and specific segment of the public, user fee legislation generally is not considered a revenue measure. Standing committees of the House, other than the Appropriations and Budget Committees, may report legislation creating or modifying user fees.⁷ However, based on precedents of the House, a ruling on whether a user fee is a general revenue measure depends on the nature of the charge rather than its label. A self-titled user fee may be ruled a revenue measure if it is levied on a broad segment of the public, or for purposes that represent the government's sovereign powers. Senate rules and precedents are not explicit in distinguishing between user fees and taxes.⁸

If a user fee is considered to be a broad-based fee, it is subject to the rules that govern revenue measures. The House Ways and Means and Senate Finance Committees have jurisdiction over "revenue measures generally." House rules protect the Ways and Means Committee's jurisdiction by prohibiting from consideration any revenue measure, or amendment, not reported by the committee. While Senate rules generally protect committee jurisdictions, no provisions exist explicitly protecting the Senate Finance Committee's jurisdiction over revenue measures.⁹ Article I, Section 7 of the U.S. Constitution further requires that all revenue measures originate in the House.

⁶Some user fees, however, are established by administrative regulation. Under Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701), agencies have the authority to charge fees, by administrative regulation, to identifiable beneficiaries of goods and services provided by the federal government. See OMB Circular A-25, revised July 8, 1993, available on OMB's web site at www.whitehouse.gov/OMB.

⁷This policy was clarified in a statement by the Speaker at the beginning of the 102nd Congress (see *Congressional Record*, vol. 137, Jan. 3, 1991, p. 66), and has continued to govern the committee jurisdiction of user fees (see *Congressional Record*, daily edition, vol. 145, Jan. 6, 1999, p. H218).

⁸For a more detailed analysis of the jurisdictional issues, see: CBO, *The Growth of Federal User Charges*, pp. 23-26.

⁹For the House, see Rule X, clause 1(s), and Rule XXI, clause 5(a); for the Senate, see Rule XXV, clause 1(i), and Rule XV, clause 5.

Budget Enforcement Procedures. User fee legislation, like other budgetary policies, is considered and adopted within a framework of budget enforcement procedures established primarily by the Congressional Budget Act of 1974 (Titles I-IX of P.L. 93-344) and the Balanced Budget and Emergency Deficit Control Act of 1985 (Title II of P.L. 99-177), as amended.¹⁰

1974 Congressional Budget Act. The Congressional Budget Act established the congressional budget process, which is centered around the adoption each year of a concurrent resolution on the budget. The budget resolution sets forth aggregate spending and revenue levels, and functional levels of spending, for the upcoming fiscal year and at least the following four fiscal years. Once adopted, the total budget authority and outlays set forth in the resolution are allocated to each House and Senate committee with jurisdiction over specific spending legislation. The House and Senate Appropriations Committees further subdivide their allocations among their respective subcommittees.

Aggregate spending and revenue levels, and spending allocations, are enforced on the floor of each house by points of order. Section 311(a) of the CBA provides a point of order against any measure that would cause spending to exceed the aggregate spending ceiling or revenues to drop below the revenue floor. Section 302(f) provides a point of order against any measure that would cause a committee's allocation to be exceeded. Also under section 302(f), a point of order may be raised against any appropriation measure that would cause the Appropriations Committees' subdivisions to be exceeded.

These points of order are not self-enforcing; a Member must raise a point of order against the violating legislation. Congress may waive these points of order by suspension of the rules, by unanimous consent, by a waiver motion in the Senate, or by a "special rule" in the House. Most waiver motions in the Senate require a three-fifths vote of Senators (60 votes if there are no vacancies).

Congress also may include reconciliation directives in a budget resolution in order to initiate necessary changes in direct spending and revenue laws. Reconciliation directives instruct one or more committees to recommend legislative language necessary to achieve the levels of direct spending or revenue agreed to in the budget resolution. The legislative language recommended by committees is packaged by the House and Senate Budget Committees "without substantive revision" into one or more reconciliation bills. In some instances, reconciliation instructions may direct a committee to report its legislative recommendations directly to its house. Reconciliation legislation is considered under expedited procedures that limit debate and place restrictions on amendments.

1985 Balanced Budget Act. The Balanced Budget Act, as amended by the 1990 Budget Enforcement Act (Title XIII of P.L. 101-508), and most recently by the 1997 Budget Enforcement Act (Title X of P.L. 105-33), created a sequestration process to enforce adjustable statutory limits on discretionary spending and a "pay-as-you-go" (PAYGO) requirement on direct spending and revenue legislation.

¹⁰For a more thorough discussion of these procedures, see: U.S. Library of Congress, Congressional Research Service, *Manual on the Federal Budget Process*, by Robert Keith and Allen Schick, CRS report 98-720 GOV (Washington: August 28, 1998).

Adjustable statutory limits currently exist for four separate categories of discretionary spending: violent crime reduction spending (through FY2000); highway spending (through FY2003); mass transit spending (through FY2003); and total discretionary spending (through FY2002). If the Office of Management and Budget (OMB) director determines in a sequestration report issued 15 days after the end of a session that a spending category has been breached, a sequestration making across-the-board spending cuts in nonexempt programs within the applicable category is required. A within-session sequestration may occur when an appropriation, such as a supplemental appropriation, causes a spending cap to be breached during a fiscal year. In this case, a sequestration would occur seven days after the enactment of the appropriation. If a violation of the discretionary spending limits occurs in the last quarter of the fiscal year (*i.e.*, July 1 through September 30), the spending limit for the applicable category must be reduced by the amount of the violation in the following fiscal year.

PAYGO rules require that the effects of direct spending and revenue legislation enacted during a session be recorded on a PAYGO scorecard. When combined with the existing scorecard balance, such legislation may not yield a negative balance. If it does, such legislation must be offset by an equivalent amount of direct spending reductions, revenue increases, or a combination of both. The PAYGO rules apply to direct spending and revenue legislation enacted through FY2002, and apply to the out-year effects of such legislation through FY2006. If the OMB director determines in the final sequestration report that a violation will occur, a sequestration making across-the-board cuts in nonexempt direct spending programs is required.¹¹

Similar PAYGO rules are enforced procedurally in the Senate as well. A point of order may be raised against any direct spending or revenue legislation that would increase the deficit for the first fiscal year, the first five fiscal years, or the following five fiscal years, covered by the most recently adopted budget resolution. The FY2000 budget resolution (H.Con.Res. 68) modified this point of order by allowing any future on-budget surpluses to be used to offset an increase in direct spending or a reduction in revenue.

Treatment of User Fees Under Budget Enforcement Procedures. Budget enforcement procedures that apply to a user fee depend on whether a user fee offsets discretionary spending, offsets direct spending, or is treated as a governmental receipt.

Discretionary spending is funded through the annual appropriations process. Such spending is provided in appropriation bills, which are under the jurisdiction of the House and Senate Appropriations Committees. A user fee in an appropriation bill may be used to offset an increase in discretionary spending while still conforming to the spending policies agreed to in the budget resolution.¹² Such an offset could prevent the successful

¹¹In addition to exempting several programs from any sequestration, the 1985 Balanced Budget Act, as amended, limits the amount that may be sequestered in several other programs. For example, a reduction in Medicare spending is limited to 4%.

¹²Under current budget scorekeeping rules (specifically rule #3), an increase in mandatory user fees (*i.e.*, changes in mandatory programs) included in an appropriation bill is credited against annual discretionary spending limits and the appropriations subcommittees in the House and Senate, thus offsetting discretionary spending. For additional explanation of how these scorekeeping rules apply
(continued...)

raising of any one of the points of order enforcing aggregate spending totals, the spending allocations of the Appropriation Committees and subcommittees. Also, a user fee that offsets discretionary spending may be used to stay within the statutory spending caps. An increase in user fees would allow an equivalent increase in discretionary spending, without triggering a sequestration under the 1985 Balanced Budget Act.

Legislation creating or modifying a user fee in an appropriation bill, however, may face procedural problems under House and Senate rules. House Rule XXI and Senate Rule XVI generally prohibit the inclusion of legislation in appropriations.¹³ A point of order often could be raised against an appropriation bill that includes user fee legislation. The rules, however, may be waived by suspension of the rules, by unanimous consent, or, in the House, by a “special rule.”

Direct spending and revenues are controlled in substantive laws. Most direct spending and revenues are permanent and do not require any annual action by Congress, although Congress usually modifies some direct spending programs and revenues each session. The authorizing legislation for direct spending is under the jurisdiction of the legislative committees. A new or increased user fee treated as an offsetting collection may be used to offset an increase in direct spending; a user fee treated as a governmental receipt may be used to offset a reduction in revenue. The points of order enforcing the aggregate levels of spending and revenues, and the committee spending allocations, could be prevented by such a user fee offset.

A user fee also may be used to comply with reconciliation directives included in a budget resolution. For example, a committee that is required to reduce direct spending may do so by recommending an increase in a user fee. The user fee increase would reduce the level of direct spending by an equivalent amount. Similarly, a user fee that is treated as a governmental receipt may be used by the House Ways and Means and Senate Finance Committees to comply with reconciliation instructions that require a change in revenues.

A user fee offsetting an increase in direct spending or a reduction in revenues also may be used to comply with the PAYGO rules. An increase in direct spending or reduction in revenues may be offset by an increase in a user fee, which would prevent a PAYGO sequestration at the end of a congressional session, or a point of order under the Senate’s PAYGO rule.

¹²(...continued)

to user fees, see: CBO, *The Growth of Federal User Charges*, p. 34. The current scorekeeping guidelines are set forth in the explanatory statement accompanying the conference report to the Balanced Budget Act of 1997, H.Rept. 105-217, pp. 1007-1053.

¹³This prohibition does not apply to continuing resolutions in the House.