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Economics of Federal User Fees

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Economics of Federal User Fees

The federal government collects various fees from businesses and households. Choosing to raise public funds via user fees, as opposed to other means such as taxes, has important administrative and economic consequences. Many fees stem from “business-like activities,” in which the government provides a service or benefit in return for payment. For example, many national parks charge entry fees, which then help fund maintenance projects. Such fees and charges that result from voluntary choices, such as entering a national park, are distinguished from taxes—which stem from the government’s sovereign power to compel payments. The Government Accountability Office (GAO) defines a user fee as a “fee 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 and beyond what is normally available to the public.”

User fees and charges have several advantages as a means of financing public activities. They are voluntary, they connect the burden of financing activities to those who directly benefit from them, and can help decentralize decisionmaking by bypassing centralized allocation of resources. Some have expressed concerns that user fee arrangements may bypass regular congressional scrutiny and dilute Congress’s power of the purse. Collections of fees and charges may also be more sensitive to economic fluctuations, which could complicate financing of programs dependent on those revenue streams.

Many user fees or charges are classified as offsetting collections, which are deposited into expenditure accounts. Offsetting collections can be used to offset agency spending and typically require no further congressional approval to use. Other fees and charges are classified as offsetting receipts, which are collected into revenue accounts and typically require congressional authorization to be spent. User fees and charges can be classified as discretionary or mandatory spending, depending on how they are legally authorized. The levels and administration of some fees are specified in detailed statutory text, while other fees are created under broader agency authorities. Certain agencies, such as the Food and Drug Administration (FDA), have increased their reliance on user fees in past decades. Some critics have raised concerns that increased reliance on user fees could shift incentives facing those agencies.

Some legislative proposals, such as H.R. 850 introduced in the 115th Congress, would limit or eliminate most exceptions and require most fees and charges to be deposited in the U.S. Treasury General Fund. Congress could fund agencies and activities now funded in whole or in part via user fees directly through the annual appropriations process. Such proposals would mark a departure from past practice. Statutory text governing many fees has evolved over many years and involves substantive policy decisions, often related to the industry or programmatic concerns. A general change in funding from user fees and charges to annual appropriations would likely shift the division of responsibilities between authorizing committees and appropriations committees.

Congress may also enhance its oversight of agencies reliant on user fees by requiring more timely and detailed financial reports as well as more precise and systematic explanations of linkages between those fees and associated programs. Congress could also ask for greater transparency in fiscal data. While the Office of Management and Budget (OMB) and the U.S. Treasury Bureau of the Fiscal Service provide extensive data on user fees and charges, it is difficult to conduct governmentwide analyses using publicly available sources. Congress could mandate more detailed and more easily accessed data on user fees and charges. Additional funding may be needed to develop the capacity to issue those data.

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The federal government collects various fees and other charges from businesses and households. Choosing to raise public funds via user fees, as opposed to other means such as taxes, has important administrative and economic consequences. Many fees stem from “business-like activities,” in which the government provides a service or benefit in return for payment. For example, many national parks charge entry fees, which then help fund maintenance projects.¹ Some fees are closely tied to regulatory or judicial activities, such as filing or inspection fees, which stem from the federal government’s sovereign powers. Other federal fees or charges are intragovernmental transactions that do not involve the public. For example, the Office of Personnel Management (OPM) charges other federal agencies fees to cover the cost of background investigations.²

For many federal agencies, fees or user charges amount to a minimal portion of budgetary resources. Other regulatory agencies, such as the Securities and Exchange Commission (SEC), the Federal Energy Regulatory Commission (FERC), the Patent and Trademark Office (PTO), and the Federal Trade Commission (FTC), are wholly or partially funded by user fees and other nontax receipts. User fees from the public accounted for \$331 billion in FY2017, about a tenth of total federal receipts (\$3.32 trillion).³

Fees and charges generally result from voluntary choices, such as entering a national park. By contrast, the collection of taxes ultimately relies on the government’s sovereign power to compel payments. Fees may not be compulsory, but not paying them may make it impossible to carry out many activities legally. For instance, without paying passport application fees and obtaining a passport, people cannot fly to other countries. Nor can businesses issue securities without paying federal filing fees.

The statutory basis for each particular fee or user charge varies in specificity and in the degree of discretion granted to the executive branch. For example, authorizing legislation might specify in detail how certain fees are imposed and how proceeds are used. In other cases, federal agencies rely on broader authorities to impose user fees.

User fees have several advantages as a means of financing public activities. They are voluntary, they connect the burden of financing activities to those who directly benefit from them, and they can help decentralize decisionmaking by bypassing centralized allocation of resources. At times, proposals to raise fees may encounter less political resistance than proposals to raise an equivalent sum via taxes. On the other hand, the flow of user fees and charges may reflect fluctuations in economic conditions, which may complicate the financing of government operations. Some are also concerned that funding arrangements may bypass regular congressional scrutiny and dilute Congress’s power of the purse.⁴

¹ U.S. Department of the Interior, National Park Service, “Your Fee Dollars at Work,” November 8, 2018, <https://www.nps.gov/aboutus/fees-at-work.htm>.

² OPM, National Background Investigations Bureau, “Investigations Billing Rates & Resources,” n.d., <https://nbib.opm.gov/hr-security-personnel/investigations-billing-rates-resources/>.

³ *Budget of the U.S. Government, Analytical Perspectives FY2019*, ch. 12, February 2018, <https://www.whitehouse.gov/wp-content/uploads/2018/02/spec-fy2019.pdf>.

⁴ U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on Health Care, Benefits and Administrative Rules, *Restoring the Power of the Purse: Legislative Options*, 114th Cong., 2nd sess., December 1, 2016. In particular, see testimony of Kevin Kosar, “Reform on Agencies’ Expenditures of Fees,” <https://www.rstreet.org/2016/12/01/testimony-to-house-oversight-and-government-reform-on-agencies-expenditures-of-fees/>.

What Is a User Fee or User Charge?

The Government Accountability Office (GAO) defines a *user fee* as a

fee 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 and beyond what is normally available to the public.⁵

The Office of Management and Budget (OMB) defines the term *user charge* to include transactions not normally considered fees, such as land or asset sales. OMB's budget preparation documents state that user charges include not only proceeds from selling postage stamps, electricity, and Medicare Part B premiums, but also sales of assets and natural resources, among other categories.⁶

The federal government, which operates on a modified cash accounting basis, does not recognize in its budgetary accounts the loss of asset values when it sells assets or natural resources, as a private firm would using typical business accounting methods.⁷ For instance, if the government were to sell oil at a price of \$60 per barrel that it bought at \$120 per barrel, only the current revenues would be reflected in budget accounts. A private firm would normally adjust its balance sheet to reflect a loss.

OMB designates whether each account receives collections associated with user charges, and that information is contained within OMB's MAX budget data system.⁸ OMB has not released data on those designations. The Budget Appendix that OMB issues annually, while not including information on that designation, does present detailed subaccount-level data that often indicate whether a federal program's budgetary resources rely on fee income.⁹ The format of the Budget Appendix, however, makes it an impractical source of data for government-wide research.

As far as CRS can determine, a comprehensive and authoritative list of federal fees is not publicly available. Budget and financial documents from OMB and the U.S. Treasury, however, do provide detailed information on offsetting collections and offsetting receipts—the budget categories that typically contain user fees and other charges—as well as information on budgetary accounts. In some cases, account descriptions clearly indicate an association with one or more fees. In other cases, however, whether or not an account receives fees is unclear. For example, an account might be labeled as miscellaneous receipts, or as fines, fees, and penalties.

Offsetting Collections and Offsetting Receipts

User fees classified as offsetting collections, which go into expenditure accounts, generally can be used without further congressional action. Offsetting collections, as the term suggests, typically count as offsets to spending when accounts are scored to check compliance with various

⁵ GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 1, 2005, <https://www.gao.gov/products/GAO-05-734SP>.

⁶ OMB, Circular A-11 (2018), Section 20.7(g), <https://www.whitehouse.gov/wp-content/uploads/2018/06/s20.pdf>.

⁷ The reduction in asset value may be noted in other ways, such as in inventory systems.

⁸ OMB, Circular A-11 (2018), Section 79.4(e), <https://www.whitehouse.gov/wp-content/uploads/2018/06/s79.pdf>.

⁹ OMB, *Budget of the U.S. Government, Appendix FY2019*, February 2018, <https://www.whitehouse.gov/omb/appendix/>.

budgetary controls.¹⁰ Scorekeeping is the process of measuring the budgetary effects of legislation. For example, the Budget Control Act of 2011 (P.L. 112-25) imposed caps on specified categories of discretionary budget authority. When evaluating compliance with those caps, scorekeepers (CBO, OMB, and the budget committees) subtract offsetting collections from budget authority totals.

User fees or charges are collected into the U.S. Treasury General Fund or into special fund accounts. Offsetting receipts, which go into receipt accounts, typically require approval through appropriations acts.¹¹ User fees can be classified as discretionary or mandatory spending, depending on how those fees are authorized.¹²

Some payments to the federal government, such as electromagnetic spectrum auction proceeds or offshore continental shelf oil and gas leases that are classified as undistributed offsetting receipts, do not offset spending of any agency, but are recorded as reducing the federal deficit.

Data Sources and Federal Analyses of User Fees and Charges

OMB provides a discussion of budget concepts related to offsetting receipts and offsetting collections, which include the bulk of user fees and charges in terms of dollar amounts, in the President's annual budget submission.¹³ More detailed supplementary tables that summarize collections of offsetting receipts and offsetting collections are also provided online.¹⁴

The U.S. Treasury's Bureau of the Fiscal Service issues its annual *Combined Statement*¹⁵ that reports budget data for all federal agencies at an account level as well as detailed summaries of receipts, including user fees.¹⁶ The *Monthly Treasury Statement* and a quarterly statement of offsetting receipts provide data on an ongoing basis.¹⁷ As the Treasury's role and responsibilities differ from those of OMB, totals from Treasury sources may not coincide with data issued by OMB due to various budgetary reporting adjustments.

GAO has analyzed the administration of various user fees and has set out some principles for the design of those fees.¹⁸

¹⁰ Offsetting collections are typically treated as negative budget authority or outlays. "...receipts associated with activities which are operated as business-type enterprises, or which are market-oriented in character, should be included as offsets to the expenditures to which they relate." *Report of the President's Commission on Budget Concepts*, October 1967, p. 65.

¹¹ See *Budget of the U.S. Government, Analytical Perspectives FY2019*, ch. 12, February 2018, <https://www.whitehouse.gov/wp-content/uploads/2018/02/spec-fy2019.pdf>.

¹² See out-of-print CRS Report RS20439, *User Fees: Applicable Budget Enforcement Procedures*, by Bill Heniff Jr. (available to congressional clients upon request).

¹³ *Budget of the U.S. Government, Analytical Perspectives FY2019*, ch. 12, February 2018.

¹⁴ *Budget of the U.S. Government, Table 12-6: Offsetting Collections and Offsetting Receipts Detail*, February 2018, <https://www.whitehouse.gov/wp-content/uploads/2018/02/12-6-fy2019.xlsx>.

¹⁵ U.S. Treasury, *Combined Statement of Receipts, Outlays, and Balances*, various years, https://www.fiscal.treasury.gov/fsreports/rpt/combStmnt/current_rpt.htm.

¹⁶ U.S. Treasury, Bureau of the Fiscal Service, *Combined Statement: Part Two FY2018 Details of Receipts*, <https://fiscal.treasury.gov/files/reports-statements/combined-statement/cs2018/rta.xlsx>. The Combined Statement includes details on periods of availability, balances, appropriations and other authorities to obligate funds, and outlays.

¹⁷ U.S. Treasury, *Monthly Treasury Statement*, various months, <https://www.fiscal.treasury.gov/fsreports/rpt/mthTreasStmnt/current.htm>.

¹⁸ U.S. GAO, *Key Considerations for Designing and Implementing Regulatory Fees*, GAO-15-718, September 2015, <https://www.gao.gov/assets/680/672572.pdf>.

The Benefit Principle

User fees, as noted above, can tie benefits enjoyed by households or firms—such as passports, access to national parks, or approvals to raise investment funds from the public—to payments that can help defray public costs of providing them. An economist’s rule of thumb known as the benefit principle, which suggests linking the fiscal burden of publicly provided benefits to those who enjoy those benefits, can promote fairness and efficiency. For example, many would contend that those with the opportunity to travel abroad should shoulder more of the costs of reviewing passport applications and issuing documents than those who do not. Moreover, if fees are set at levels that match the incremental cost of providing benefits, then when an agency is called to expand its work—such as an uptick in demand for passports, park visits, or company registrations—then those fees could fund the needed extra resources. Matching fees to incremental costs, however, is difficult where demand is irregular or unpredictable.

OMB guidelines on user fees outline aims similar to the benefit principle, mandating that federal agencies

ensure that each service, sale, or use of Government goods or resources provided by an agency to specific recipients be self-sustaining; promote efficient allocation of the Nation’s resources by establishing charges for special benefits provided to the recipient that are at least as great as costs to the Government of providing the special benefits; and allow the private sector to compete with the Government without disadvantage in supplying comparable services, resources, or goods where appropriate.¹⁹

OMB mandates that agencies review user fees every other year. OMB also encourages agencies seeking new authority to assess fees to “seek to remove restraints on user charges.”

In some cases, federal agencies and regulated industries negotiate over user fee levels and the improvements in federal regulatory operations supported in large part by those fees. For instance, pharmaceutical companies negotiate with the Food and Drug Administration (FDA) over fees charged to review drug applications.²⁰ Over time, the scope of FDA activities supported in part by fees has expanded.²¹ Some contend that the FDA’s increasing reliance on user fees has tilted the agency’s priorities toward industry interests and away from consumer protection responsibilities.²² One 2005 analysis of the FDA drug review process found that approval times decreased after legislation expanded the agency’s reliance on user fees, while it found no statistically significant evidence of a decrease in one proxy measure of drug safety.²³

¹⁹ OMB, *Circular A-25 Revised*, p. 2, July 8, 1993, <https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf>.

²⁰ Jill Wechsler, “FDA, Industry Prepare for New User Fee Initiatives,” *Pharmaceutical Executive*, vol. 37, no. 9, September 5, 2017, <http://www.pharmexec.com/fda-industry-prepare-new-user-fee-initiatives>. Also see CRS Report R42564, *FDA User Fees and the Regulation of Drugs, Biologics, and Devices: Comparative Analysis of S. 3187 and H.R. 5651*, coordinated by Susan Thaul.

²¹ See CRS Report R44864, *Prescription Drug User Fee Act (PDUFA): 2017 Reauthorization as PDUFA VI*, by Agata Dabrowska and Susan Thaul.

²² Jeanne Lenzer and Shannon Brownlee, “The FDA Still Lets Doctors Implant Untested Devices into Our Bodies,” *Washington Post*, January 6, 2019.

²³ Ernst R. Berndt, Adrian H. B. Gottschalk, Tomas J. Philipson, and Matthew W. Strobeck, “Industry Funding of the FDA: Effects of PDUFA on Approval Times and Withdrawal Rates,” *Nature Reviews Drug Discovery*, vol. 4, July 2005, pp. 545-554.

Federal agencies such as the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) are largely supported from amounts paid by covered industries.

Matching Charges to Spillover Costs Can Enhance Efficiency

The costs and benefits associated with many goods and services mainly involve buyers and sellers. For example, buying a stamp allows a correspondent to mail a letter, which leads the postal service to incur roughly similar costs. Others—at least to a first approximation—are not affected. For other goods, market or market-like transactions may impose costs or convey benefits on third parties. When prices paid by buyers or received by sellers do not reflect spillover costs or benefits to others, economic theory suggests levels of transactions will be inefficient, in the sense that alternative economic arrangements could make all participants—at least potentially—better off.

Logic of Pigou Taxation May Apply to Design of User Fees and Charges

The benefit principle is in some ways similar to the concept of Pigou taxation—that taxing goods linked to negative spillovers, such as pollution, can enhance economic efficiency by diminishing those spillovers. More generally, spillovers are costs borne or benefits enjoyed by one party due to activities of another party where no voluntary exchange or market transaction occurs. Conversely, subsidizing goods or services that provide beneficial spillovers can also increase economic efficiency. For instance, some justify federal tax subsidies to home ownership on the grounds that homeowners generate positive spillovers in their neighborhoods.²⁴

Charges aimed at limiting negative spillovers are known as Pigou taxes, after the English economist who first articulated the concept.²⁵ Pigou taxation provides a more narrowly based efficiency rationale for user fees that would limit negative spillovers. Moreover, administering an excise tax imposed on Pigou tax grounds—which would involve a private vendor collecting and remitting tax revenues—differs from user fees and charges collected directly by a government.

Nonetheless, the same logic that raising the end-user price of goods linked to negative spillovers can enhance economic efficiency can be applied to the design of user fees. For instance, federal policymakers might choose to charge pharmaceutical companies application fees lower than the full cost of associated approval processes because introducing new drugs onto the market may have wider positive social benefits.

²⁴ For a review of research literature, see E. Rossi-Hansberg and P. Sarte, “Economics of Housing Externalities,” in *International Encyclopedia of Housing and Home*, vol. 2, 2012, pp. 47-50, <https://www.princeton.edu/~erossi/EHE.pdf>. Some have questioned whether federal tax advantages stimulate higher home ownership levels. See Jonathan Gruber, Amalie Jensen, and Henrik Kleven, *Do People Respond to the Mortgage Interest Deduction? Quasi-Experimental Evidence from Denmark*, NBER Working Paper 23600, July 2017.

²⁵ A. Cecil Pigou, *A Study in Public Finance* (London: Macmillan, 1929), ch. 8, “Taxes and Bounties to Correct Maladjustments.”

Spillover Benefits Complicate Application of Benefit Principle

The economic suitability of the benefit principle depends on whether the publicly provided benefit has meaningful spillover effects. For example, benefits generated by governments such as national defense or support for basic research are widely shared and thus, arguably, are appropriately supported by general taxation. By contrast, while the broader economy benefits from the ability of firms to raise capital in transparent and competitive markets, the chief beneficiary of having a security offering approved is the issuing firm. Similarly, a family visiting a federal park presumably benefits more than another family that stayed at home. Financing more of park maintenance through general taxation would thus involve an implicit subsidy from nonusers to users, something that reliance on user fees would mitigate. In other cases, the linkage between fees and benefits is not apparent. For example, a 2009 law (Travel Promotion Act of 2009, TPA; P.L. 111-145) imposed a \$10 fee on most international air travelers from visa-waiver countries to fund tourism marketing initiatives.²⁶

An exact match between the level of user fees and publicly provided benefits may be hard or impossible to determine in many situations. While public corporations operating on a largely commercial basis, such as the Tennessee Valley Authority, may set prices and fees much as a private firm would, many of the federal government's activities are within the public sector because past policymakers considered them to be closely associated with inherently governmental functions—such as providing security—or as services that the private sector would have had trouble providing, such as basic research. The U.S. Postal Service sets rates to cover nearly all of its costs according to a 2006 statutory framework.²⁷ Subsidized rates for certain classes of mail users, such as the blind, reflect adaptation of pricing schemes to broader social priorities. The proper boundaries between public, private, and nonprofit sectors, of course, is an ongoing concern of policymakers.

In many cases, it is difficult to design fees, charges, or taxes that directly influence activities generating negative spillovers. For instance, cars and trucks generate air pollution as well as wear and tear on roadways. Excise taxes on gasoline and other fuels—if set at levels that approximate the costs of pollution and road wear—can motivate drivers to use roads less often when the total costs of driving, including pollution, road wear, and other costs, exceed the benefits of driving. Thus, excise taxes can be a way of using the price mechanism to induce individuals to make decisions that lead to more economically efficient outcomes.²⁸ Setting excise taxes at levels that reflect all costs to third parties may involve complex estimates. For instance, while higher fuel usage implies greater use of roads and more production of air pollutants, several other factors complicate that linkage. Heavier vehicles may cause disproportionate damage to roads.²⁹ Vehicles vary widely in fuel efficiency and in the volume of pollutants generated. In addition, driving also imposes congestion costs on other drivers, and those costs vary by location and time of day. One

²⁶ CRS Report R43463, *U.S. Travel and Tourism: Industry Trends and Policy Issues for Congress*, by Michaela D. Platzer.

²⁷ CRS Report R40983, *The Postal Accountability and Enhancement Act of 2006*, by Michelle D. Christensen.

²⁸ This discussion does not consider issues of distribution of resources among individuals, although equity issues can play a leading role in some pricing questions. For example, excise taxes on gas may have larger effects on low-income rural drivers.

²⁹ David M. Newbery, "Road Damage Externalities and Road User Charges," *Econometrica*, vol. 56, no. 2, 1988, pp. 295-316.

recent analysis estimated that fuel excise taxes addressed less than a third of the air-pollution-related efficiency losses.³⁰

While excise taxes are a public finance instrument that is distinct from user fees and charges, similar complications may be encountered. In some cases, adopting new fiscal instruments—such as using road charges or tolls—may prove more effective tools in increasing efficiency. In the case of transportation policy, increased economic efficiency, depending on how consumers and policymakers respond, might manifest itself in some combination of higher after-tax incomes, greater provision of publicly provided goods, cleaner air, and less-congested highways. Changes in the design of some user fees or charges might also yield analogous efficiency improvements.

Other Policy Concerns

Some observers have raised concerns that federal agencies that rely more heavily on user fees may put greater weight on the interests of those paying fees rather than the broader public interest. For instance, the U.S. Patent and Trademark Office charges application and examination fees to those seeking to obtain a patent. Certainly, the applicant would be a central beneficiary of a patent, if granted, although many others—including other inventors, business competitors, and consumers—might also be significantly harmed or benefited. Some contend that the Patent Office’s reliance on fees motivates it to approve invalid patents.³¹ Tying patent fees narrowly to the benefits obtained by the applicant, while overlooking wider spillover effects, might then result in poor decisions. Of course, nonfinancial policy instruments, such as applicable laws, regulations, or congressional oversight, may affect outcomes more directly.

Administrative concerns may also play a role. In some cases, where the costs of collecting fees are high relative to the costs of providing public services, imposing user fees may be a suboptimal choice of funding. For instance, federal courts collect more in PACER fees (which provide access to court documents) than is needed to maintain the underlying computer system, with excess fees being earmarked for other court improvements.³² Some argue that funding that system and other court improvements with general revenues would allow broader access to court filings and related public documents, which one proposal (H.R. 6714 introduced in the 115th Congress) would have implemented.³³ Charging access fees above incremental costs—which for electronic documents may be minimal—can limit access to public information.³⁴ Eliminating PACER user fees, however, may require Congress to shift that fiscal burden elsewhere.

Other policy concerns also may play a role. Ability to pay among households varies widely; a national park entrance fee that one family regarded as trivial might deter another family.

³⁰ Christopher R. Knittel and Ryan Sandler, “The Welfare Impact of Second-Best Uniform-Pigouvian Taxation: Evidence from Transportation,” *American Economic Journal: Economic Policy*, vol. 10, no. 4, 2018, pp. 211–42.

³¹ Michael D. Frakes and Melissa F. Wasserman, “Decreasing the Patent Office’s Incentives to Grant Invalid Patents,” Brookings Institute Hamilton Project, December 2017, https://www.brookings.edu/wp-content/uploads/2017/12/es_121317_decreasing_patent_office_incentives_grant_invalid_patents.pdf.

³² Brian Browdie, “The Cost of Electronic Access to US Court Filings is Facing a Major Legal Test of its Own,” *Quartz*, October 14, 2016, <https://qz.com/800076/the-cost-of-electronic-access-to-us-court-filings-is-facing-a-major-legal-test-of-its-own/>.

³³ John DiGilio, “The Matter of PACER Fees: Why are We Paying for Information in the Public Domain?,” LAC Group blog, June 1, 2018, <https://lac-group.com/matter-pacer-fees/>.

³⁴ Free Law Project, “Facts About PACER and CM/ECF,” 2018, <https://free.law/pacer-facts/>.

Policymakers may also wish to express preferences for identifiable groups, such as the elderly, children, or veterans.

The classification of fees, charges, taxes, and even negative loan subsidy amounts hinges on budget concepts outlined above along with scorekeeping rules and precedents. In some cases, the distinctions made to categorize a given receipt might seem arbitrary to some. For example, the Travel Promotion Act fees imposed on most international air travelers convey no special benefit on them, but are not categorized as taxes. Refundable biofuel tax credits are counted as negative taxes in budget documents rather than as subsidy outlays.³⁵ Those distinctions, however, can affect the tax treatment of those receipts. For instance, a firm can generally deduct an excise tax from its gross revenues, but typically cannot deduct a fee.³⁶

Some governments have instituted user fees to fill shortfalls in tax revenues. The economic burden of higher fees or charges might be less obvious and therefore subject to less resistance than broad-based taxes. For example, policymakers in several states have sought to avoid increases in general taxes by increasing fee revenues.³⁷ That strategy may have two downsides. First, more narrowly focused fees set at higher levels could cause greater economic distortions than smaller taxes applied to a broader base. Second, more narrowly based fees might be less stable in economic downturns. To the extent that fees diverge from the incremental costs of publicly provided services, sudden fiscal adjustments might be required.³⁸

Is Privatization an Option?

If benefits from federal operations are distributed narrowly enough to justify financing them via user fees or charges, one might ask whether those activities should be carried out by the private sector. State and local governments and the federal government have privatized many services previously provided by government. Foreign governments have also privatized provision of goods and services once delivered by the public sector. Some activities, however, may involve inherently governmental responsibilities that would be difficult to devolve to the private sector. A 1997 GAO report noted that rigorous evaluations of cost savings of privatization initiatives at the state and local government level were not common.³⁹ GAO also noted that privatization increased the need for oversight and evaluation, although some local officials deemed that the “weakest

³⁵ Congressional Budget Office, *Using Biofuel Tax Credits to Achieve Energy and Environmental Policy Goals*, July 14, 2010, <https://www.cbo.gov/sites/default/files/111th-congress-2009-2010/reports/07-14-biofuels.pdf>.

³⁶ Eric Toder, “Tax or Fee: The Label Could Matter,” Tax Policy Center Tax Vox blog, October 2, 2009, <https://www.taxpolicycenter.org/taxvox/tax-or-fee-label-could-matter>.

³⁷ Laura Hancock, “Avoiding Taxes, Lawmakers look at Raising Fees,” *Casper Star Tribune*, January 31, 2017. Also see Greg Bluestein, “Calls for Tax Increases Pop Up Across GOP-Dominated South,” *Atlanta Journal-Constitution*, March 21, 2015.

³⁸ Katherine Barrett and Richard Greene, “The Risks of Relying on User Fees,” *Governing*, April 2013, <http://www.governing.com/columns/smart-mgmt/col-risks-of-raising-non-tax-revenue.html>.

³⁹ U.S. General Accounting Office (GAO, now the Government Accountability Office), *Privatization: Lessons Learned by State and Local Governments*, GGD-97-48, March 14, 1997, <https://www.gao.gov/products/GGD-97-48>. Also see Elisabeth R. Gerber, Christianne K. Hall, and James R. Hines Jr., “Privatization: Issues in Local and State Service Provision,” University of Michigan Center for Local, State, and Urban Policy, Policy Report No. 1, February 2004, <http://closup.umich.edu/files/pr-1-privatization.pdf>.

link” in privatization initiatives. Others note that while privatization may yield efficiency gains, it may also lead to policy or operational failure.⁴⁰

User Fees and the Power of the Purse

Conflicts between executive branch agencies, which often have sought greater flexibility to use funds to respond to public priorities as they see them, and Congress, which has sought to defend its fiscal prerogatives and ability to set federal policy priorities, are long-standing.

The Miscellaneous Receipts Act

In 1849, Congress sought to bolster its powers of the purse by passing the Miscellaneous Receipts Act, which required all government revenues, aside from postal sales, to be deposited into the U.S. Treasury “at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever...”⁴¹ Over time, Congress set out exceptions to the modern version of the Miscellaneous Receipts Act that let agencies charge user fees, accept gifts, and collect and retain fines and penalties within specified limits or as detailed in appropriations laws.⁴²

Recent Proposals on User Fees and Charges

Some legislative proposals, such as H.R. 850 (115th Congress), would eliminate most exceptions and require most fees and charges to be deposited in the U.S. Treasury General Fund. Congress could fund agencies and activities directly through annual appropriations. Funding through lump-sum appropriations, as opposed to via user fees, however, might change incentives facing decisionmakers and could affect federal operations and programmatic outcomes.

Issues and Options for Congress

Congressional Oversight and Control of the Federal Purse

Congress could constrain agency discretion by requiring more user fee proceeds be either subject to annual appropriations or deposited in the U.S. Treasury General Fund, although that may limit agencies’ capacity to respond to new public demands and other changing conditions, as the Government Accountability Office (GAO) has noted.⁴³ Some inspectors general and congressional committees have also called for tighter, more efficient, and more consistent financial management of user fee funds.⁴⁴ During the mid-1980s, Congress, with GAO support,

⁴⁰ *The Economist*, “The Promise and Pitfalls of Privatising Public Assets,” June 22, 2017, <https://www.economist.com/united-states/2017/06/22/the-promise-and-pitfalls-of-privatising-public-assets>.

⁴¹ Enacted as 9 Stat 398, <https://memory.loc.gov/l1/lsl/009/0400/04260398.tif>.

⁴² The modern version of the Miscellaneous Receipts Act is codified as 31 U.S.C. § 3302.

⁴³ GAO, *Federal Fees, Fines, and Penalties: Observations on Agency Spending Authorities*, GAO-17-268T, December 1, 2016, <https://www.gao.gov/products/GAO-17-268T>.

⁴⁴ U.S. Department of Transportation, Office of Inspector General, “FAA Needs To Enhance the Oversight and Management of Its Overflight Fee Program,” December 11, 2017, <https://www.oig.dot.gov/library-item/36135>.

conducted a comprehensive review⁴⁵ of so-called “backdoor spending”—an informal term for budget authority provided in laws other than appropriations acts—including spending supported by user fees, which was updated in 1996.⁴⁶ A narrower follow-up in 2017 covering five agencies concluded that “all entities GAO examined have policies and procedures to manage and report on their permanent funding authorities,” but that “some, however, could improve practices to manage funds and report information that facilitates oversight.”⁴⁷

Sweeping changes to the budgetary treatment of user fees, however, could add new pressures on the congressional appropriations process. Proposals to require that most fees be collected into the Treasury General Fund and that activities previously supported by those fees be funded by annual appropriations could create new demands on appropriations committees. Such proposals could also affect the division of responsibilities among authorizing committees and appropriations committees. Statutory texts governing many fees, including those noted above, have evolved over many years and involve substantive policy decisions, often related to industry or programmatic concerns. Congress may also enhance its oversight of agencies reliant on user fees by requiring more timely and detailed financial reports as well as more precise and systematic explanations of linkages between those fees and associated programs.

Transparency

OMB and Treasury issue extensive information on user fees and charges. Nonetheless, the format and level of detail of published data make it difficult to address some government-wide policy questions regarding user fees and charges. Congress could modify laws governing the President’s budget submission (31 U.S.C. 1105) to require OMB to release data that it collects on which budget accounts receive material amounts of user fee and user charge revenues.⁴⁸ That could allow Congress to track and analyze user fees and charges more easily. In particular, it would also provide a means to distinguish discretionary and mandatory fees and charges, which could be useful in understanding the effects or constraints imposed by budget enforcement measures. That might provide Congress with a clearer view of its fiscal options when considering budgetary measures. Mandating that OMB or other agencies provide more data would probably require additional budgetary resources to cover costs of new personnel and capabilities.

Broader Policies Regarding User Fees and Charges

Congress can promote economic efficiency and an equitable sharing of public burdens by choosing appropriate means of financing federal operations. User fees and charges, as noted above, can help tie the costs of supporting specific federal operations with those who benefit from them. Even if closely regulated industries may find federal requirements, inspections, or approval processes burdensome, they also presumably benefit from the increased demand for their products that carry the imprimatur of explicit or implicit federal approval. Federal regulation and inspection operations, however, also serve broader interests of consumers, taxpayers, and related

⁴⁵ GAO, *The Use of Spending Authority and Permanent Appropriations Is Widespread*, AFMD-87-44, July 17, 1987, <https://www.gao.gov/products/GAO/AFMD-87-44>.

⁴⁶ GAO, *Inventory of Accounts with Spending Authority and Permanent Appropriations*, 1996, AIMD-96-79: May 31, 1996, <https://www.gao.gov/products/AIMD-96-79>.

⁴⁷ GAO, *Permanent Funding Authorities: Some Selected Entities Should Review Financial Management, Oversight, and Transparency Policies*, GAO-17-59, December 9, 2016, <http://www.gao.gov/products/GAO-17-59>.

⁴⁸ As noted above, OMB, Circular A-11, Section 79.4(e), <https://www.whitehouse.gov/wp-content/uploads/2018/06/s79.pdf>.

industries. To the extent that inherently governmental responsibilities motivate federal operations, the argument for using general revenues may be stronger. If benefits of federal actions are more narrowly distributed, the case for financing operations with user fees or charges may become stronger. Of course, the structure and administration of federal inspection and regulation plays a central role in enhancing efficiency and minimizing burdens borne relative to benefits enjoyed.

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