

GAO

Report to the Committee on Finance,
U.S. Senate, and Subcommittee on
Trade, Committee on Ways and Means,
House of Representatives

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CUSTOMS SERVICE

Passenger User Fee Collection Needs To Be Reevaluated



General Government Division

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The Honorable Bob Packwood, Chairman
The Honorable Daniel Patrick Moynihan
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable Philip M. Crane, Chairman
The Honorable Charles B. Rangel
Ranking Minority Member
Subcommittee on Trade
Committee on Ways and Means
House of Representatives

The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985¹ and the Tax Reform Act of 1986² authorized the U.S. Customs Service to charge user fees for processing passengers and conveyances, such as commercial vessels and vehicles, entering the United States.³ The fee established by COBRA for processing international air and sea passenger arrivals in the United States is called the passenger user fee (PUF) and is \$6.50 per passenger. As agreed with the Committees, our objectives were to (1) determine whether carriers have collected and remitted PUFs; (2) assess any factors that may hamper the collection of this fee, including statutory restrictions, internal control weaknesses, and audit limitations; and (3) identify any options that may improve the collection and remittance of the PUF.

To address the objectives we reviewed (1) applicable legislation and regulations and Customs' guidance and policies related to the PUF, (2) Customs' compliance audits of air and sea carriers⁴ and Treasury's audit of the PUF for air passengers, (3) Customs' passenger arrival data and carrier PUF payment records, and (4) reports related to Customs' internal controls over the PUF done by Treasury and by us.

We conducted this review in Washington, D.C., and Los Angeles between March 1994 and February 1995 in accordance with generally accepted

¹P.L. 99-272 (1986).

²P.L. 99-514 (1986).

³These public laws are codified at 19 U.S.C. 58c.

⁴Sea carriers include cruise lines serving the United States. However, some freighter lines also carry passengers on cruises.

government auditing standards. Appendix I contains a more detailed discussion of our objectives, scope, and methodology.

Background

COBRA of 1985 and the Tax Reform Act of 1986 authorized Customs to charge fees for providing various inspectional services. The fees are to be deposited as offsetting receipts in the Customs User Fee Account, a separate account within Treasury's general fund. Use of the fees is not subject to the annual congressional appropriation process. In fiscal year 1993, the latest year for which complete data were available, Customs collected a total of \$189.6 million in COBRA user fees, of which \$144.1 million were PUFs.

COBRA user fee revenues were initially used to pay for Customs' inspectional overtime and excess preclearance costs.⁵ The Customs and Trade Act of 1990⁶ amended COBRA of 1985 to allow Customs to hire inspectional personnel; purchase equipment; and fund related items, such as computer software used to target passengers for inspection, that enhance inspectional services, after overtime and excess preclearance costs are funded. Customs data for fiscal year 1993 showed that overtime costs and excess preclearance costs totaled \$103.9 million and \$7.9 million, respectively. For the same year, costs for existing and new inspectional positions and equipment and related items totaled \$43.5 million. Overall, the costs for COBRA-funded items totaled \$155.3 million in fiscal year 1993.

The annual allocation of COBRA user fee revenues has generated surpluses each fiscal year since 1987 because revenues have exceeded reimbursable costs. The annual surpluses have resulted in a cumulative surplus of \$189.5 million through fiscal year 1993. The surplus has been used to offset the federal budget deficit.

The COBRA user fee statute and its implementing regulations⁷ require that air and sea carriers and other issuers of tickets and travel

⁵Preclearance is the process through which international air passengers and their baggage are tentatively examined and inspected by Customs for entry into the United States before departure from a foreign location. The nine preclearance stations are in Canada—six, Bermuda—one, and the Bahamas—two. Excess costs are the additional costs Customs incurs when providing inspectional services in foreign ports, as compared to examining and inspecting air passengers and their baggage in the United States. Such costs include housing and moving costs for Customs personnel as well as excess management and operational costs.

⁶P.L. 101-382 (1990).

⁷19 C.F.R. 24.22(g).

documents—such as travel agents—collect the PUF when a ticket or travel document is issued to a passenger.⁸ Passengers who meet the following criteria are exempt from paying the PUF: (1) employees of air and sea carriers traveling on official business; (2) diplomats who are in the United States, or who have a diplomatic passport or visa; (3) passengers precleared on Military Airlift Command flights; (4) passengers arriving due to an emergency or forced landing; and (5) passengers transiting the United States using an airport in-transit facility.

Carriers and other ticket issuers are required to remit the PUFs within 31 days after the end of the calendar quarter in which they were collected. For example, PUFs collected between January 1 and March 31 are to be remitted by May 1. If the PUF is not collected when the ticket is issued to a passenger, the fee is to be collected from the passenger at the time of departure by the departing carrier.

Customs has contracted with a bank in Atlanta, Georgia, to process PUF payments, and carriers are required to mail their quarterly payments to this bank. The bank processes the payments and then wires the funds to the Federal Reserve Bank in New York City, which posts the funds to the Customs subaccount in the Treasury account. The bank is also to send related documentation—such as a detailed transaction report, photocopies of checks, and a deposit slip—to Customs' National Finance Center (NFC) in Indianapolis, Indiana.⁹ NFC is to review the bank's documentation and record the payment information in a database that tabulates this information and generates a report of carrier payments by quarter.

In December 1993, Congress enacted the North American Free Trade Agreement (NAFTA) Implementation Act,¹⁰ which amended the user fee statute by (1) increasing the PUF from \$5.00 to \$6.50 through fiscal year 1997; and (2) eliminating the exemptions from the fee for passengers travelling to the United States from Canada, Mexico, U.S. territories and

⁸In our review, data were available only for air and sea carriers; therefore, our discussion excludes other issuers of tickets and travel documents.

⁹NFC performs Customs' accounting operations. Specifically, NFC is responsible for (1) developing and implementing a Service-wide financial management program; (2) developing and providing data processing and internal control services related to revenue, appropriations, and payroll systems; (3) maintaining central control of all fiscal and accounting activities; and (4) preparing reports on revenues collected and the use of appropriations.

¹⁰P.L. 103-182 (1993).

possessions, and adjacent islands¹¹ also through fiscal year 1997. The changes became effective in January 1994.¹² Customs estimated that about 18 million passengers traveled to the United States from the exempted locations in fiscal year 1993, of whom 14 million were air passengers and 4 million were sea passengers. Customs also estimated that the elimination of exemptions, coupled with the PUF increase, should generate an additional \$156 million in revenues annually through fiscal year 1997.

Customs performs compliance audits of air and sea carriers to determine whether they collect and remit the proper amount of PUFs. Carriers are required to maintain necessary documentation for 2 years to verify the accuracy of their PUF remittances and determine their compliance with the user fee statute. Audit staff from Customs' seven regional offices conduct the compliance audits under the direction of its Office of Regulatory Audit (ORA).¹³ Such audits are initiated on the basis of referrals from Customs field offices and from NFC, which is responsible for monitoring carrier payments for possible changes, such as large fluctuations in carrier payments over time. If such changes include significant declines in payments, NFC may advise ORA to consider initiating a compliance audit. Customs cannot use COBRA user fees to fund carrier compliance audits, because the cost of these audits is not included among those listed in the statute as payable from fee revenues.

The COBRA user fee statute contains no billing or other specific provisions to assess damages or penalties or charge interest for nonpayment of the PUF by carriers. However, pursuant to regulation, Customs can charge interest for PUF amounts that carriers should have collected but did not, and that the carriers collected but did not remit. According to Customs, in order to charge interest, Customs must determine a nonpayment amount. This is usually determined on the basis of an audit. Customs must then establish a due date and bill the carrier for the amount of nonpayment. If the carrier fails to remit payment by the due date, interest begins to accrue after that date. In accordance with regulation, Customs can also assess damages in some cases, but Customs has no authority to assess penalties in relation to the PUF.

¹¹U.S. territories and possessions include American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. Adjacent islands include all islands in the Caribbean Sea, the Bahamas, Bermuda, St. Pierre and Miquelon, and the Turks and Caicos Islands.

¹²Beginning with fiscal year 1998, the country exemptions for Canada, Mexico, U.S. territories and possessions, and adjacent islands will be reinstated and the PUF will revert to \$5.

¹³ORA is the unit within Customs responsible for auditing private sector entities that move merchandise across the borders of the United States.

Results in Brief

Air and sea carriers collected and remitted to Customs \$756.4 million in PUFs from the fee's inception in July 1986 through the end of fiscal year 1993, the latest year for which complete data were available. However, compliance audits of air and sea carriers done by Customs and by Treasury's Office of Inspector General (OIG) found that some of these carriers had not paid the PUFs they owed. The audits estimated that the nonpayment¹⁴ for the audited carriers totaled about \$15.3 million through November 1994. In addition, the audits found that some carriers had collected PUFs but had not remitted them. Other carriers had not collected any PUFs for certain periods of time or from certain sources of ticket sales, such as overseas offices of U.S. air carriers.

The actual amount of PUFs owed is unknown. However, a Treasury OIG report projected that air carriers had owed about \$45 million in PUFs from July 1986 to December 1990. There were no estimates of amounts owed by sea carriers.

Several factors hamper Customs' ability to collect PUFs.

- The COBRA user fee statute requires that the carrier issuing a ticket or travel document to a passenger collect and remit the PUF, rather than the carrier transporting the passenger to the United States. Since carriers may transport passengers who have purchased tickets from other carriers, Customs cannot rely solely on passenger arrival data to determine a carrier's PUF liability. Second, the statute does not require carriers and other ticket issuers to submit passenger-related supporting documentation when remitting PUFs. Customs verifies remittances through audits of carriers.
- The statute does not provide for specific sanctions for nonpayment. Customs can assess damages for nonpayment, but only on carriers that collected PUFs but did not remit them. Customs can charge interest for PUFs owed that were identified during audits of carriers but cannot charge interest on PUFs for the period between when a carrier collected the fees and when Customs billed the carrier. Customs is developing legislative and regulatory proposals to assess penalties and charge interest earlier for the nonpayment of PUFs.
- The statute's exemptions have been misinterpreted by carriers who have incorrectly considered some of their passengers exempt from the PUF. For example, some air carriers did not collect PUFs from passengers obtaining

¹⁴For purposes of simplicity, the term "nonpayment" includes the underpayment and nonpayment of the PUF.

tickets on the basis of frequent flyer mileage because they incorrectly assumed that such tickets were exempt from the fee.

- Air and sea carriers' internal control weaknesses can also contribute to PUF nonpayment. Customs' compliance audits have found that some carriers have not developed the necessary procedures and internal controls to collect and remit the PUFs.

Customs' ability to identify nonpayment through its compliance audits has limitations. For example, Customs' audit staff resources limit the number of air and sea carrier compliance audits. As a result, at current resource levels, Customs can audit only three or four carriers a year. Also, its auditors have encountered several obstacles while conducting audits, such as restricted access to records and incomplete and poor quality carrier data.

In contrast to the collection and remittance of the PUF, remittance of most of the other COBRA user fees, such as those for processing commercial vessels, commercial vehicles, and barges, is required at the time and place of arrival. This may also be an option worth considering for collecting and remitting the PUF, although we did not evaluate the feasibility or costs of implementing such an option.

Some Air and Sea Carriers Have Not Paid Passenger User Fees Owed

Customs compliance audits and a Treasury OIG report¹⁵ found that some air and sea carriers had not paid the PUFs they owed. Customs and Treasury estimated that the carriers owed about \$15.3 million through November 1994. The audits also found that some carriers had collected PUFs but had not paid them, while others had not collected any PUFs for certain periods of time or from certain sources of ticket sales. The actual amount of PUFs owed is unknown. However, the Treasury OIG report projected that air carriers owed about \$45 million in PUFs for the period July 1986 to December 1990. Customs officials expected that nonpayment of the PUF might increase because some carriers may not be aware of changes to the fee made by an amendment—included in NAFTA—to the user fee statute. The amendment eliminated the exemption, through fiscal year 1997, for certain passengers not previously required to pay PUFs.

Compliance Audit Results

Air and sea carriers remitted \$756.4 million in PUFs they owed to Customs from the fee's inception in July 1986 through the end of fiscal year 1993. As

¹⁵Audit Report on the U.S. Customs Service Air Passenger User Fees (Office of Inspector General, Department of the Treasury, March 26, 1992).

of November 1994, Customs had completed 64 compliance audits of 57 carriers.¹⁶ The audits estimated that through November 1994, 35 carriers had not paid a total of about \$13.8 million in PUFs to Customs. Nonpayment was found in 38, or 59 percent, of the 64 audits.¹⁷ The other 26 audits did not identify any PUF nonpayment.

Of the \$13.8 million in PUFs identified as not having been paid, air carriers owed about \$11.9 million and sea carriers about \$1.9 million. As of November 1994, Customs had collected about \$5.4 million of the amount owed, leaving outstanding PUF liabilities of about \$8.4 million.¹⁸ About \$7.9 million of the PUFs still outstanding was owed by three air carriers that were in bankruptcy—one of which owed \$7.1 million—and a sea carrier that disputed Customs' estimates of PUFs owed. Two other carriers that were billed for PUFs—and had made partial payments—still owed about \$0.2 million in fees.

In addition to the Customs audits, the Treasury OIG audited three air carriers to determine their compliance with PUF requirements and found that one foreign air carrier had not paid Customs \$1.5 million in PUFs it owed.¹⁹ As a result of this audit, the carrier remitted the amount owed to Customs. The other two carriers did not owe any PUFs.

Some Carriers Collected PUFs but Did Not Remit Them

Customs compliance audits found that some air and sea carriers collected PUFs but did not remit them to Customs. For example, an audit found that a domestic charter air carrier collected \$57,220 in PUFs from a tour operator with whom it had contracted but failed to remit the fees to Customs for 4 years. During the audit, the air carrier returned the PUFs to the tour operator, who then remitted them to Customs. In another example, a Customs audit found that a foreign air carrier collected PUFs on ticket sales outside the United States totaling \$362,410 but did not remit them as required. The audit also found that the air carrier (1) erroneously collected PUFs from passengers purchasing tickets in Canada, which at the time was exempt from the PUF; (2) failed to collect PUFs from passengers

¹⁶Seven carriers were audited more than once.

¹⁷The Customs audits found that carriers also owed about \$10.7 million in inspection user fees—a fee similar to the PUF—to the Immigration and Naturalization Service (INS) for its costs associated with inspecting arriving passengers.

¹⁸Customs considers about \$0.3 million in PUFs owed by three air carriers as uncollectible, and therefore it cancelled them as outstanding liabilities. A domestic air carrier had part of its estimated PUF liability waived through a settlement with the Treasury Department. Treasury agreed with the carrier that Customs used an erroneous methodology when estimating the PUF liability. In addition, Customs cancelled the PUF liability of two foreign air carriers because of the low likelihood of collecting the fees.

¹⁹The audit also found that the carrier had not paid about \$1.3 million in inspection user fees to INS.

departing the United States who had not previously paid the PUFs when the tickets were issued to them; and (3) collected but did not remit fees, totaling \$959,000, owed to other U.S. government organizations, such as INS and the Internal Revenue Service. In a third example, Customs identified two sea carriers that had collected \$797,855 in PUFs but had not remitted them as required. As a result of the audit, the carriers remitted all the PUFs owed.

Some Air and Sea Carriers Did Not Collect Any PUFs for Certain Periods of Time or From Certain Sources of Ticket Sales

Customs compliance audits also found that some other air and sea carriers did not collect any PUFs for certain periods of time or from certain sources of ticket sales. For example, an audit estimated that a domestic air carrier failed to collect and remit to Customs about \$7.1 million in PUFs between July 1986 and December 1991 from ticket sale sources, such as international travel agencies and the carrier's overseas offices. According to a Customs official, Customs submitted a claim against this carrier in bankruptcy court for \$5.4 million for the period before the carrier's bankruptcy filing. Customs had not billed the carrier for the remaining \$1.7 million covering the period after the bankruptcy filing. In another example, a Customs audit found that a sea carrier failed to collect and remit \$36,050 in PUFs from 20 of its cruises over a 4-year period. As a result of the audit, the carrier remitted the amount owed.

Estimated PUF Nonpayment

Except for the amounts estimated during Customs compliance audits, the actual amount of PUF nonpayment is unknown. However, a 1992 report by Treasury's OIG on air passenger PUFs estimated the fee nonpayment by air carriers at as much as \$45 million, or \$10 million a year. The estimate was for the period beginning with the inception of the PUF in July 1986 and ending in December 1990.²⁰ There were no estimates of nonpayment by sea carriers.

Some Carriers May Not Be Aware of Their PUF Liability Under NAFTA

According to Customs officials, the removal of the country exemptions under the NAFTA implementing legislation will likely increase the number of (1) passengers required to pay the PUF and (2) carriers required to collect and remit it. The Customs officials were concerned that carriers

²⁰International passengers also are required to pay a user fee to INS when they enter the country. The Justice Department OIG did an audit on INS' collection of the fee. In its April 1994 report, titled Immigration and Naturalization Service, Collection of Carrier Fees, the Justice OIG estimated that 22 air carriers that had not remitted any fees had not paid as much as \$15.8 million in fees from January 1991 to December 1992. One of these carriers owed \$11.6 million of the total amount. The report also estimated that overall nonpayment for this period—by as many as 178 air carriers—could total as much as \$46.4 million, since those carriers that had remitted fees did not always remit them accurately.

selling tickets to and from the previously exempt countries may not comply with the PUF requirements. While Customs officials expect that the air and sea carrier industry associations will notify their members of the amendment's changes, they believe that many air carriers that will be subject to the PUF are not members of these associations and thus may be unaware of their liability. Because Customs does not know who these carriers are, it cannot notify them of their responsibility to collect and remit the PUF. Customs officials told us that in addition, many of the air carriers are small with limited automated resources and poor internal controls that would hinder collecting and remitting PUFs. Customs officials were also concerned that these carriers' resource and internal control limitations may result not only in nonpayment of PUFs but also in an increased audit workload for Customs to identify those additional carriers that may not have paid PUFs.

Factors That May Contribute to PUF Collection and Remittance Problems

Factors that may contribute to PUF collection and remittance problems are (1) the collection and remittance system established in the COBRA user fee statute, (2) air and sea carriers' internal control weaknesses, and (3) limitations associated with Customs compliance audits.

COBRA User Fee Statute Can Contribute to Problems With Collection and Remittance of the PUF

According to Customs officials and GAO and Treasury reports, sections of the COBRA user fee statute can contribute to problems with the collection and remittance of the PUF. Specifically, since ticket issuers are required to collect and remit PUFs, Customs' ability to determine the PUF liability of these issuers or verify the accuracy of their fee remittances is limited. In addition, Customs can only assess damages for nonpayment of PUFs owed by carriers that collected but did not remit them, not on carriers that should have but did not collect the fees. Customs is developing a proposal for legislative and regulatory changes to give it the authority to assess penalties for nonpayment of the PUF. Finally, carrier misinterpretation of the statute in relation to the exemptions from the PUF can also contribute to nonpayment of the fee. The PUF differs from most of the other COBRA user fees in that remittance of those fees is required at the time and place of arrival.

Statute Limits Customs' Ability to Determine Carriers' PUF Liability

The user fee statute's PUF collection and remittance requirements limit Customs' ability to determine air and sea carriers' liability for the fee and can hamper its collection efforts. As previously discussed, the statute requires that the carrier issuing a ticket or travel document to a passenger

collect and remit the PUF, rather than the carrier transporting the passenger. In our August 1992 report,²¹ we identified the collection and remittance requirement as an impediment to collecting the PUF. We concluded that since carriers may transport passengers who have purchased tickets from other carriers, Customs cannot rely solely on passenger arrival data to determine a carrier's PUF liability.

The Treasury OIG report also concluded that "the enabling legislation for the user fee statute, as written, is difficult for the airline industry to follow and for Customs to accurately implement."

Carriers Not Required to Submit Passenger-Related Information

As discussed earlier, the user fee statute requires carriers and other ticket issuers to remit PUFs within 31 days after the end of the calendar quarter in which they were collected. However, the statute does not require these carriers to submit passenger-related information in support of the payments made. Instead, the implementing regulation requires that a carrier submit its name, address, and tax identification number when remitting PUFs. However, according to the Treasury OIG report, some air carriers are not submitting this information. According to this report, important air carrier passenger information that could be used to monitor PUF payments would consist of (1) the number of passengers transported into the United States and the number of passengers ticketed by one air carrier but transported by another, (2) the number of passengers exempted from the PUF, and (3) the number of passengers for whom PUFs were not collected in a foreign country but were subsequently collected upon departure from the United States. The report recommended that Customs amend its regulations to require the submission of such information. As of February 1995, Customs had not taken action to implement this recommendation.

Our August 1992 report also concluded that without information from carriers on the number of passengers entering the United States, Customs had no basis for knowing whether carriers had remitted the proper amount of PUFs. According to Customs, it must either rely on the good faith of the carriers to collect and remit all the PUFs they owe or audit such carriers to verify their remittances.

Limited Sanctions for PUFs Owed

Customs is limited in the sanctions it can impose on carriers for PUFs owed. It can assess damages on carriers that collect but do not remit the PUF to Customs in a timely manner, and it can charge interest for PUF

²¹Financial Management: Customs Needs to Establish Adequate Accountability and Control Over its Resources (GAO/AFMD-92-30, Aug. 25, 1992).

amounts billed as a result of an audit of carriers. Customs has no authority to assess penalties relating to PUFs. This limitation may contribute further to problems with the collection and remittance of PUFs.

Customs can assess damages for PUFs owed, but only on carriers that collected PUFs but did not remit them, not on carriers that should have but did not collect the fees. This authority is based on Customs' 1993 amendment to the international carrier bond regulation.²² The regulation was amended to provide for damages against international carriers that collected PUFs but did not remit them as required, i.e., within 31 days after the end of the calendar quarter in which they were collected. As explained by Customs' Associate Chief Counsel, Tariffs, Trade, and Regulations, the PUF amount owed must first be identified and Customs must then bill the carrier for this amount. If the carrier fails to remit the amount billed, Customs can assess damages. The Associate Chief Counsel explained that the carrier would be liable for damages because it would have breached a regulatory requirement that fees collected on behalf of the government be remitted in a timely manner.²³

Customs can charge interest for PUF amounts that carriers should have collected but did not, and that carriers collected and did not remit. The National Finance Center must first bill a carrier for the amount owed. If the carrier does not remit the amount billed, interest begins to accrue from the date of the bill. However, Customs cannot charge interest on PUFs for the period between when a carrier collected the fees and when Customs billed the carrier, essentially providing the carrier interest-free use of the fees collected. For example, Customs did not charge interest for about \$1.5 million in PUFs owed—covering the period from July 1986 through December 1990—by a foreign air carrier. In a 1992 memorandum, Customs' Office of the Chief Counsel stated that since Customs did not bill the air carrier for the PUFs owed, it therefore did not establish the

²²19 C.F.R. 113.64(a). This regulation requires that all international carriers post a bond to guarantee the payment of all duties, taxes, and other charges.

²³The Customs and Trade Act of 1990 amended the user fee statute to provide that all administrative and enforcement provisions of the Customs laws and regulations apply to COBRA user fees, such as the PUF.

condition necessary—a due date for payment²⁴—to charge and collect interest.²⁵

According to Customs officials, its authority to only charge interest or assess damages on air and sea carriers for PUFs owed, rather than having the authority to also assess penalties, may contribute to carriers owing additional PUFs. These officials contend the fact that carriers cannot be penalized either for not collecting any PUFs or collecting but not remitting them may give carriers no incentive to comply with PUF requirements. According to other Customs officials, the absence of penalties in the user fee statute contributes to the loss of additional revenue for the government in the form of penalties and interest that could be assessed on the PUF amounts owed.

Customs is developing a proposal to allow it to assess penalties and charge additional interest and damages for PUFs owed. The draft proposal contains both statutory and regulatory changes. The statutory change would add a penalty provision for PUFs owed. The regulatory change would amend existing regulations to add a provision under which a carrier could be charged interest for PUFs owed from the date the fees were originally collected or should have been collected, as opposed to when Customs billed the carrier. In addition, the current international carrier bond regulation would be amended to provide Customs the authority to assess damages against a carrier for PUFs owed but not collected and remitted. The proposal, however, is not intended to change the current procedures governing the collection and remittance of the PUF.

Misinterpretation of PUF Exemptions Contributes to Fees Being Owed

Customs compliance audits found that some carriers owed PUFs because they misinterpreted the fee exemptions contained in the user fee statute. For example, audits found that some air carriers did not collect the PUFs as required from their employees, employees' family members, and retired employees not traveling on official business. Other air carriers did not collect PUFs from frequent flyer ticket purchasers because they assumed that such tickets were exempt from the fee.

In another example, a Customs audit found that a sea carrier disagreed with Customs' interpretation of the exemptions to the PUF and instead believed that passengers returning by air from cruises ending in Mexico

²⁴As discussed earlier, Customs can establish the billing date only on the basis of an audit.

²⁵This memorandum cited as support a 1987 memorandum from the Office of Chief Counsel. According to the memorandum, it would be difficult under the statutory language of 19 U.S.C. 58(c) to establish that an [air carrier] is legally obligated to pay a fee it may not even have collected. However, if Customs could establish that an air carrier had collected fees, Customs would have a debt upon which to base an interest charge.

after traveling in a nonexempt area and passengers on certain Caribbean cruises that docked at a nonexempt port—and later docked at an exempt port—were exempt from the PUF.

According to sea carrier industry association officials, exemptions from the PUF were not clearly defined, thus leading to their misinterpretation. For example, sea carriers did not know how their cruise itineraries, especially those with multiple ports of call (including calls at more than one U.S. port), were affected by these exemptions because Customs had not provided any guidance about exemptions. Furthermore, the association officials were concerned that Customs interpreted exemptions in ways that would generate additional revenues. These officials used the following hypothetical example to illustrate their concern. A cruise originates in Miami, Florida; stops in San Juan, Puerto Rico; and proceeds to ports in the Caribbean Sea before returning to Miami. The officials claimed that according to Customs, a passenger on this cruise can be assessed the PUF when arriving in San Juan and again for returning (“arriving in”) to Miami. However, the association officials believed that the PUF should not apply to the arrival in San Juan because there was no Customs inspection at that port.

Customs officials responded that the issue of assessing the PUF more than once is a matter of differing interpretations between the sea carrier industry and Customs. According to Customs’ interpretation, the user fee statute clearly states that the PUF shall be collected for each arrival at a U.S. port—in the above example, San Juan and Miami. Furthermore, such arrivals do involve some form of Customs inspection, although such an inspection may not be readily apparent to passengers. According to the Customs officials, their December 1993 fact sheet about the changes to the PUF resulting from an amendment to NAFTA, including clearly defined exemptions, was sent to known air and sea carriers. We have no information regarding the impact of the Customs fact sheet on the carriers’ ability to determine their PUF liability.

Carrier Internal Control Weaknesses Contributed to Nonpayment

Customs compliance audits of air and sea carriers have attributed the nonpayment of the PUF by some of these carriers to the inadequacy of their internal controls. According to Customs officials we spoke with in one region, collecting and remitting the fee is not a high priority for some of these carriers. Consequently, carriers have not developed the necessary procedures and internal controls to collect and remit the PUFs. For example, an audit attributed a domestic charter air carrier’s failure to

remit PUFs it had collected to its own inadequate internal controls as well as those of the tour operators with whom it had contracted. According to the audit, the carrier and tour operators did not periodically review their flights to ensure their compliance with PUF requirements, nor did they have a system to ensure that the PUFs were collected and remitted. In another example, an audit found that inadequate internal controls contributed to the failure of a foreign air carrier to remit the PUFs and fees it had collected on behalf of other U.S. government organizations. The audit found that the carrier's regional office in the United States that was responsible for remitting the PUFs and other U.S. government agency fees did not have access to the carrier's worldwide sales and fee collection data and did not maintain passenger data. Consequently, the regional office was unable to compute the carrier's liability for PUFs collected outside the United States.

Another Customs audit attributed PUF nonpayment by a domestic air carrier to the carrier's (1) lack of compliance with the PUF requirement; (2) failure to comply with its own procedures; and (3) inadequate internal controls to ensure the collection of PUFs from various ticket sale sources, such as international and domestic travel agencies. Customs' audit found that while specific procedures existed for collecting the PUFs, one of the carrier's policies prevented any corrective action if the carrier's internal audits found that PUFs had not been collected. According to this policy, if a corrective adjustment involved less than \$25, the adjustment would not be made. Since the PUF was \$5 at that time and thus below the adjustment threshold, the policy nullified the effectiveness of the carrier's own audits.

Another Customs audit attributed the nonpayment of PUFs by a foreign sea carrier to its lack of a system to account for the collection and payment of the fee. The carrier also lacked formalized administrative procedures to ensure compliance with PUF requirements.

A Customs audit found that weak internal controls over record-keeping procedures resulted in a domestic air carrier not remitting \$229,674 in PUFs it owed Customs. In addition, as a result of these weaknesses, the carrier erroneously remitted to Customs about \$6.3 million in inspection user fees that should have been remitted to INS. The audit concluded that the carrier did not have adequate controls over documents and records to ensure proper recording of fees or to perform independent checks of recorded amounts.

The Treasury OIG audit of air carriers attributed an air carrier's nonpayment of PUFs to a computer programming error. Because of this

error, the carrier failed to remit PUFs collected in foreign countries from the sale of tickets with a U.S. destination.

Limitations Associated With Customs Carrier Compliance Audits

Customs compliance audits of air and sea carriers were limited in several ways. Customs' audit staff resources limit the number of air and sea carrier compliance audits it can perform. Audits are funded from Customs' salaries and expenses appropriation. Customs cannot use the COBRA user fees to fund carrier audits because the cost of such audits is not included among those listed in the statute as payable from fee revenues. According to a Customs official, Customs has about 9 auditors nationwide—from a total audit staff of about 300 auditors—conducting PUF audits. However, since the nine auditors are also responsible for auditing other entities, such as importers and customhouse brokers, none of them work on carrier audits full-time. Consequently, according to a Customs official, Customs can audit only three or four carriers a year. As a result, Customs has audited only 19 percent of carriers that have actually remitted PUFs.

According to Customs officials, Customs auditors have encountered several obstacles while conducting audits of carriers that limit the audits' effectiveness. The obstacles include (1) restricted access to carrier records, especially foreign air and sea carrier ticket sales and accounting records; (2) incomplete and poor quality carrier data, such as accounting records; and (3) delayed carrier responses to information requests. According to Customs officials, these obstacles limited the effectiveness of audits because they contributed to making such audits very difficult, time-consuming, and incomplete. For example, during a Customs audit, a domestic air carrier did not allow access to its automated systems and did not provide documents in a timely manner. Further, the carrier purged some data, preventing Customs auditors from using them. As a result, completion of the audit was delayed. Another domestic air carrier did not maintain adequate accounting records, which made tracing and verifying remittances difficult. In other examples, foreign air carriers have refused access to records kept in their home countries, citing sovereignty issues—i.e., records of a foreign-owned corporation not being subject to review by another foreign government's agency—and the high cost of transporting such records to the United States. According to a Customs official, the inability to access all of a carrier's records may render estimates of nonpayment incomplete. Of particular importance is access to sales records, because the PUF is collected upon the sale of a ticket. Because of their inability to access records located in foreign countries, Customs auditors have been unable to adequately verify the accuracy of

certain air carriers' ticket sales, and hence the accuracy of their remittances. Consequently, these auditors have had to qualify their estimates of PUF nonpayment.

Further, Customs has not identified all the carriers required to collect and remit PUFs; thus, it cannot target and audit all the carriers that have not remitted the PUFs they owe. The March 1992 Treasury OIG report identified 63 air carriers subject to PUFs that Customs had not previously identified. The Treasury OIG reviewed 15 of these carriers and estimated that they may have owed Customs a total of \$356,150 in PUFs in 1989. In addition, the report concluded that without a complete list of air carriers required to collect and remit PUFs, Customs could not ensure that all air carriers were collecting and remitting PUFs. The report recommended that Customs identify all carriers required to collect and remit the PUF. Our August 1992 report also found that Customs did not have a complete and accurate list of carriers subject to PUFs and concluded that such a list was a basic control to identify those carriers that were not remitting the fees. Customs is in the process of obtaining air passenger arrival data from the Department of Transportation. The data are intended to assist Customs in targeting carriers for audit and in identifying carriers that transport passengers to the United States.

Options That May Enhance Collection and Remittance of the PUF

Options that may enhance the collection and remittance of the PUF include (1) requiring remittance of the fee at the time and place of arrival like other COBRA user fees, such as that for processing commercial vessels; and (2) billing air and sea carriers for the fees they owe on the basis of passenger data submitted at arrival. We discussed these options with officials from Customs and air and sea carrier industry associations. According to association officials, many of their members would probably oppose options such as billing carriers because of increased administrative burdens and costs. We did not evaluate the feasibility or determine the costs of implementing the options discussed.

Requiring Remittance of PUF at Time and Place of Arrival

In contrast to the PUF, remittance of most of the other COBRA user fees, such as those for processing commercial vessels and vehicles, is required at the time and place of arrival. For example, in the case of a commercial vessel of 100 tons or more, the COBRA user fee statute requires the payment upon arrival of a processing fee of \$397 for inspectional services

provided.²⁶ Payment of this fee is a condition for entering the United States. The commercial vessel fee is to be collected at each port of arrival, regardless of the number of arrivals in the course of a single voyage.²⁷

According to some Customs officials, air and sea carriers could remit the PUF at the time and place of arrival as part of submitting their manifests²⁸ for each arriving flight or cruise. While requiring remittance of the PUF by carriers at the time and place of arrival could enhance fee revenues and reduce the need for compliance audits, it could also require additional Customs personnel at ports of entry to process the remittances. In addition, carriers would still have to collect the PUF from passengers, relying on internal controls that some audits have shown to be inadequate. Furthermore, carriers could be liable for fees they did not collect or fees they could not collect from passengers who traveled using other carriers' tickets.

Billing Air and Sea Carriers for PUFs Owed

According to some Customs officials, Customs could bill air and sea carriers for the PUFs they owe. A carrier's PUF liability could be determined on the basis of passenger arrival data submitted by carriers upon arrival. A billing system could enhance PUF revenues, eliminate the need for audits, and allow Customs to use data it already collects from carriers' manifests to determine fee liability. In addition, by billing carriers, Customs could establish due dates for PUF remittances and be able to charge interest for amounts not remitted by the due date.

Conclusions

Customs' and Treasury OIG's compliance audits of air and sea carriers estimated that some of these carriers had not paid about \$15.3 million in PUFs they owed. The Treasury OIG also estimated that carriers owed \$45 million in PUFs for the period July 1986 to December 1990. The PUF collection and remittance system established in the COBRA user fee statute—including the requirement to collect the fee when tickets are issued to passengers—and air and sea carriers' internal control weaknesses can contribute to problems in collecting PUFs.

²⁶"Arrival" means arrival at a port of entry in the customs territory of the United States, or any place served by a port of entry.

²⁷Payment of the commercial vessel fee is not to exceed \$5,955 per year. This amount equals 15 arrivals per vessel.

²⁸A manifest includes data such as the carrier's name, flight—or cruise—number, origin and destination, and number of crew and passengers.

Customs has relied on compliance audits of air and sea carriers to determine whether they collect and remit the proper amount of PUFs. However, these audits were limited in several ways, including audit staff resources and restricted access to carrier ticket sale and accounting records. The limitations have resulted in Customs auditing 19 percent of carriers that have actually remitted PUFs and producing incomplete estimates of nonpayment.

The PUF collection system established in the COBRA user fee statute hampers the fee's collection efforts. Options exist for changing the structure of the PUF collection and remittance system. For example, if the PUF were collected directly from carriers at the time and place of arrival, as is the case with most other COBRA user fees, or if carriers were billed for PUFs on the basis of passenger arrival data, Customs would not have to rely on carrier internal controls to collect the fee from passengers. Customs would also not have to rely on its audits to ensure and verify compliance. If such options were made available to Customs, it could develop procedures to oversee the timely collection of the fee and reduce nonpayment problems. We did not evaluate any of the options discussed; thus, we do not know all of the costs or benefits of implementing any of these options.

Matter for Congressional Consideration

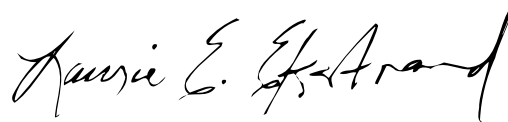
Congress may want to consider requiring Customs to (1) evaluate the feasibility of various options to increase collection of the PUF, such as changing the fee collection and remittance system to one similar to other COBRA user fee systems, or billing carriers for the fee; and (2) recommend legislative changes that would be necessary to implement options that are considered feasible and cost-beneficial.

Agency Comments

We provided a draft of our report to Customs and requested that cognizant Customs officials provide us with oral comments on the report's contents, conclusions, and matter for consideration. On February 24, 1995, we met with Customs officials, including the Budget Division's Financial Program Advisor, to discuss their comments on the report. Under Customs' ongoing reorganization, the Budget Division is responsible for the user fees, including the PUF; thus, it commented on the report on behalf of Customs. The officials agreed with the report's contents and its conclusions and matter for consideration.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to interested parties and make copies available to others upon request.

Major contributors to this report are listed in appendix II. If you have any questions or need additional information on the contents of this report, please contact me at (202) 512-8777.



Laurie E. Ekstrand
Associate Director, Administration
of Justice Issues

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Abbreviations

| | |
|-------|--|
| ATA | Air Transport Association |
| COBRA | Consolidated Omnibus Budget Reconciliation Act |
| IATA | International Air Transport Association |
| ICCL | International Council of Cruise Lines |
| INS | Immigration and Naturalization Service |
| NAFTA | North American Free Trade Agreement |
| NFC | National Finance Center |
| OIG | Office of Inspector General |
| ORA | Office of Regulatory Audit |
| PUF | Passenger User Fee |

Objectives, Scope, and Methodology

House Conference Report No. 213,¹ accompanying the Omnibus Budget Reconciliation Act of 1993,² required GAO to report to the Senate Committee on Finance and the House Committee on Ways and Means on the efficiency, effectiveness, and fairness of Customs' user fees. As agreed with the Committees, our objectives were to (1) determine whether air and sea carriers have collected and remitted Customs' passenger user fee (PUF); (2) assess the factors hampering any nonpayment of this fee, including statutory restrictions, internal controls, and audit limitations; and (3) identify any options that may improve the collection and remittance of the PUF.

To address our first objective, we interviewed officials from Customs' User Fee Task Force, Office of Regulatory Audit (ORA), Office of Chief Counsel, and National Finance Center (NFC). We also reviewed relevant documents about the user fees established by the Consolidated Omnibus Budget Reconciliation Act of 1985 in general, and the PUF in particular, including legislation, implementing regulations, and policies and guidance. In addition, we reviewed (1) completed Customs and Treasury audits of air and sea carriers, (2) air and sea carrier PUF payment records maintained by NFC and international passenger arrival data maintained by Customs, and (3) a draft Customs proposal to establish interest and penalty provisions for nonpayment of PUFs. Finally, we discussed the nonpayment of PUFs with officials from the Air Transport Association (ATA), the International Air Transport Association (IATA), and the International Council of Cruise Lines (ICCL) to obtain their perspectives on this issue.³

To address our second objective, we reviewed a 1992 Treasury Office of Inspector General report that assessed Customs' internal controls. We discussed Customs' responses to the report's findings and recommendations with cognizant Customs officials. In addition, we reviewed our applicable standards and guidance related to internal controls and our audits of Customs, including our 1992 report on Customs' financial management and our 1994 report on Customs' fiscal year 1993

¹H.R. Conf. Rep. No. 213, 103rd Cong., 1st Session at 922 (1993).

²P.L. 103-66 (1993).

³ATA represents 22 air carriers in the United States, Canada, and the Netherlands and serves as the link between these carriers and various government and private sector organizations. IATA serves a similar function representing about 215 air carriers worldwide, including 75 foreign carriers that serve the U.S. market. ICCL represents 22 cruise lines in the United States and other countries on legislative and regulatory issues that affect cruise line operations.

financial statements,⁴ which tested and evaluated Customs' internal controls. We also discussed Customs' internal controls and their effectiveness, and possible improvements, with relevant Customs officials.

To address our third objective, we identified options to collect and remit the PUF and discussed these options with officials from Customs and ATA, IATA, and ICCL. We did not evaluate the feasibility or determine the costs and benefits of implementing any of the options discussed.

We did our work at Customs headquarters in Washington, D.C.; at Customs' Pacific Region headquarters in Long Beach, California; at the Los Angeles airport; and at the Washington, D.C., headquarters of ATA, IATA, and ICCL. We did not verify the accuracy of the information provided. We also did not conduct independent audits of air and sea carriers to determine their compliance with PUF requirements. Further, we did not assess the validity of the audit methodologies. We did not test the internal controls we reviewed, but we relied on our completed audits of Customs.

We obtained oral comments on a draft of this report on February 24, 1995, from Customs officials. These comments are discussed on page 18. We did our work between March 1994 and February 1995 in accordance with generally accepted government auditing standards.

⁴Financial Audit: Examination of Customs' Fiscal Year 1993 Financial Statements (GAO/AIMD-94-119, June 15, 1994).

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