



General Government Division

B-260121

September 28, 1995

The Honorable Philip M. Crane
Chairman, Subcommittee on Trade
Committee on Ways and Means
House of Representatives

Dear Mr. Chairman:

This letter responds to the Subcommittee's request for information on the U.S. Customs Service's costs to provide inspectional services and on financing methods for other agencies' inspectional services. As agreed with the Subcommittee, we addressed the following questions:

- What user fees have been implemented at selected federal agencies?
- Is it feasible to develop a model to project whether it would be less costly to hire additional full-time inspectors to perform services currently provided by inspectors working overtime?
- Has Customs developed cost estimates for providing those inspectional services for which it charges user fees?

USER FEES

Customs assesses user fees for certain inspectional services. The two categories of Customs user fees are (1) those established by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and (2) the commerce-related merchandise processing fee (MPF) that was established by the Omnibus Budget Reconciliation Act of 1986. These two fee categories are defined by the Congressional Budget Office as regulatory fees.¹ We issued a fact sheet on these two user fees in June

¹Regulatory fees include charges for such services as inspections, which may benefit the fee payer, lessen the fee payer's imposition of costs or risks on others or on society as a whole, or both.

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1994. (See Customs Service: Information on User Fees, GAO/GGD-94-165FS, June 17, 1994.)

We identified other federal agencies that charge regulatory fees and agreed with your office to describe user fees from the following four agencies: Immigration and Naturalization Service (INS), Nuclear Regulatory Commission (NRC), Office of the Comptroller of the Currency (OCC), and Securities and Exchange Commission (SEC). As agreed, we obtained information on the characteristics of the various user fees, including the legislative authority for the fees, description and basis for the fees, congressional oversight of the fee revenue, and availability of funds to the agency.

Enclosure I presents the characteristics of the various user fees.

FEASIBILITY OF DEVELOPING ANALYTIC MODEL
FOR EVALUATING POTENTIAL COST SAVINGS OF
ALTERNATIVE STAFFING OPTIONS

In fiscal year 1994, Customs paid inspectors approximately \$94 million in overtime. Your office asked us to explore the feasibility of Customs' developing an analytical model for use in evaluating the potential cost savings of alternative staffing options. You were specifically interested in knowing if a model could predict whether hiring additional full-time inspectors to replace some of the current overtime being paid would result in net savings.

We selected two airports based on their international passenger volume (Los Angeles International Airport (LAX), high volume; and Dulles International Airport, medium volume) and did limited analysis to determine whether adding additional full-time inspectors to work shifts incurring significant overtime would have resulted in net pay savings over time. Our analysis was limited to pay only because Customs was unable to provide us with relevant data on several significant costs, such as benefits for inspectors at the two airports. Thus, the results of our analysis should not be construed as indicative of which approach would produce the lowest overall cost. Our analysis does, however, indicate that, while it would be feasible for Customs to develop an analytical model for evaluating the potential cost implications of alternative staffing approaches, it would be difficult for Customs to implement such a model. The difficulty arises because the data Customs would need to implement the model has not been readily available.

Details on our analytical approach and our results are presented in enclosure II.

CUSTOMS COSTS FOR PROVIDING
INSPECTIONAL SERVICES

Customs has developed a model to determine unit costs for COBRA-funded inspectional services and those costs related to the MPF. The model, based on Customs' financial data, calculated unit cost estimates based on randomly sampled data from work performed at representative ports nationwide. For example, Customs' model calculated that the average cost for processing an air passenger was \$5.27.

The reliability of the sources of cost and performance information used in the model was suspect and could result in inaccurate cost and recovery rate calculations. Our past audits of Customs' financial statements showed that Customs was unable to accurately report costs by activity (e.g., inspection and control, enforcement, tariff, and trade) on the accrual basis of accounting, which appeared to be the basis on which the cost data used in the model were derived.² Further, the cost figures found in the user fee model appeared to be significantly different from the figures contained in Customs' recently issued fiscal year 1994 financial statements. For example, the model identifies fiscal year 1994 Inspection and Control total expenses as about \$550.7 million while Customs' Consolidated Statement of Budgetary Resources and Actual Expenses identifies actual total expenses as \$629.9 million, a difference of 12.6 percent. Thus, output from the model should be viewed with caution.

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We did our work between August 1994 and April 1995 in accordance with generally accepted government auditing standards. We received written comments on a draft of this letter from Customs' Director of Planning and Evaluation who agreed with our findings and conclusions. The Director added that the difference in the 1994 financial statements is attributable primarily to accounts payable and other amounts not "booked" as of the end of the fiscal year. He said Customs will ensure that changes being planned for its cost accounting system will take this into account.

Copies of this letter are being sent to the Ranking Minority Member of your Subcommittee and to the Commissioner of Customs. Copies will also be made available to others upon request.

²Financial Audit: Examination of Customs Fiscal Year 1992 Financial Statements, GAO/AIMD-93-3, June 1993; and Financial Audit: Examination of Customs Fiscal Year 1993 Financial Statements, GAO/AIMD-94-119, June 1994.

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If you have any questions about this letter, please call me at (202) 512-8777. Major contributors to this correspondence are listed in enclosure III.

Sincerely yours,

A handwritten signature in black ink that reads "Norman Rabkin". The signature is written in a cursive style with a large initial "N" and a long, sweeping underline.

Norman J. Rabkin
Director, Administration of
Justice Issues

Enclosures

USER FEES

The description and basis for the user fees, the legislative authority, congressional oversight, and the availability of the revenues are detailed below for INS, NRC, OCC, and SEC.

INS

INS is to facilitate the entry of persons legally admissible into the United States; grant benefits under the Immigration and Nationality Act, as amended, including providing assistance to those seeking permanent resident status or naturalization; prevent unlawful entry, employment, or receipt of benefits by those who are not entitled to them; and apprehend or remove those aliens who enter or remain illegally in the United States and/or whose stay is not in the public interest.

INS charges a variety of user fees. Its three primary account programs for which user fees are charged include (1) Immigration Examinations Fee Account, (2) Immigration User Fee Account, and (3) Land Border Inspection Fee Account. The fees generated about \$550 million in fiscal year 1994.

These three accounts are permanent, indefinite appropriations and can only be used for limited purposes. Fees are deposited into these separate accounts with amounts to be available for obligation without fiscal year limitation. However, Congress, through its oversight role retains its ability to monitor the use of the funds and/or amend the current legislation.

1. The 1989 Department of Justice Appropriation Act established the Immigration Examinations Fee Account. It provides that the account be used to reimburse any INS appropriation for expenses in providing immigration adjudication and naturalization services.³

The 1991 Department of Justice Appropriation Act permits examination fees to be set at a level that will ensure recovery of the full costs of providing all adjudication and naturalization services, including the cost of similar services provided without charge to asylum applicants or other immigrants.⁴

The current immigration examination fees were set by INS in July 1994 and include an estimate of the direct costs, indirect costs, and a surcharge. The surcharge (\$9), added to each application, is intended to cover the cost of processing refugee and asylum applications

³P. L. 100-459 (1988), 8 U.S.C. 1356(m), (n).

⁴P. L. 101-515 (1990), 8 U.S.C. 1356(m).

and international operations. The application fees range from \$15 to \$650 depending on the type of application.

2. The 1987 Department of Justice Appropriation Act established the Immigration User Fee Account. It authorizes the Attorney General to collect a fee for inspection services from certain international travelers arriving at U.S. airports and seaports. The fees are to be used to reimburse INS appropriations for certain costs associated with inspecting arriving passengers.⁵

The Immigration User Fee is set by statute at \$6 per person. The 1994 Department of Justice Appropriation Act raised the fee from its originally established level set in 1987 of \$5.⁶

3. The 1991 Department of Justice Appropriation Act also established the Land Border Inspection Fee Account. It provides that the account is to be used to reimburse INS appropriations for expenses incurred in providing inspection services at land border points of entry.⁷ INS sets the Border Inspection Fee. Currently the fee is \$25 per vehicle for an annual sticker.

NRC

The NRC licenses and regulates civilian use of nuclear energy to protect public health and safety and the environment. To achieve this goal, the NRC licenses builders and/or operators of nuclear reactors and other nuclear facilities, as well as owners and users of nuclear materials. The NRC inspects the activities of licensees, as well as makes rules and sets standards to ensure its safety rules are not violated.

Section 6101 of the Omnibus Budget Reconciliation Act (OBRA) of 1990, as amended, authorizes the NRC to collect user fees and annual charges from all licensees to approximate 100 percent of its budget authority, excluding funds appropriated for high-level waste activities from the nuclear waste fund.⁸

⁵P.L. 99-591 (1986), 8 U.S.C. 1356(d), (h).

⁶P.L. 103-121 (1993).

⁷P. L. 101-515 (1990), 8 U.S.C. 1356(q).

⁸P. L. 101-508 (1990), 42 U.S.C. 2214.

To the maximum extent practical, fees are to have a reasonable relationship to the cost of providing regulatory services. As required under the Energy Policy Act of 1992, NRC must review its policy for assessment of annual charges under OBRA-90, solicit public comment on the need for changes to the existing policy, and recommend to Congress any changes needed in existing law to prevent placing an unfair burden on certain NRC licensees.

The fees assessed are based on NRC's annual appropriation. Generally, the appropriations law authorizes NRC to obligate and expend fee revenues collected. The law also requires that the amount appropriated be reduced by the amounts collected.⁹ Thus, the fee amounts are calculated to recover that appropriation amount. The fees are the same for each license within a specific class. For example, in fiscal year 1994, the fee for operational power reactors was \$3.1 million and \$62,200 for non-power reactors. Fuel facilities fees ranged from \$1.2 million to \$3.2 million.

Congress can give attention to the NRC through its oversight, authorization, and appropriations role. Consequently, Congress can monitor the use of funds and/or amend the legislation that allows for the current approach to charging the user fees.

OCC

The OCC is responsible for the regulation of national banks.¹⁰ It also promulgates rules and regulations governing the operations of trust activities and overseas operations of banks. The OCC staff perform periodic examinations at each of the approximately 3,100 national banks.

The OCC assesses each national bank a fee based on its asset value. Semiannual fee assessments for national banks with consolidated domestic and foreign subsidiary assets are determined by a fee scale linked to the value of each bank's assets. The fee ranges from about \$3,000 to in excess of \$2.4 million.

Other fees may be assessed for chartering and trust examinations, bank-to-bank mergers, and change in bank control. For example, the hourly rate for examinations and investigations in fiscal year 1994 was \$102. The OCC estimates its costs for performing its mission and establishes fee assessment and other fee schedules to cover anticipated expenses.

Funding for the OCC is based on revenues generated by fee assessments of national banks, other user fees established by the OCC, and interest on investments in U.S. government obligations. While the OCC receives no appropriated funds, House and Senate Banking

⁹See the Energy and Water Development Appropriations Act for 1995, P.L. 103-316 (1994).

¹⁰12 U.S.C. 481, 482, 483.

committees exercise oversight responsibility for the OCC. Further, Congress retains its ability to monitor the use of the funds and/or amend the legislation that allows for the current mechanism for OCC funding.

Fee revenues are deposited into a revolving trust account and are available for use by the OCC without further action by Congress. The OCC uses these funds to purchase U.S. Treasury securities. By attempting to match asset maturity with its anticipated expenses for funding, the OCC aims to maintain a stream of income to fund its operations.

SEC

SEC administers federal securities laws designed to protect investors, ensure that securities markets are fair and honest, and provide the means to enforce securities laws through sanctions.

SEC has three primary fee programs and various other miscellaneous fees. The three primary fees--registration, transaction, and tender offer and merger filing fees--are congressionally established. Over the past few years, the registration fee has been adjusted through appropriations actions.

Section 6(b) of the Securities Act of 1933, as amended, requires that an applicant filing a registration statement pay a fee of 1/50 of 1 percent of the price at which the securities are proposed to be offered.¹¹ These fees are deposited in the Treasury General Fund. In addition, appropriations for fiscal years beginning in 1990 increased the fee and made the increase available to SEC without further legislative action. For example, for fiscal year 1995, Congress set the fee at one 1/29 of 1 percent.¹²

The transactions fee is set at the rate of 1/300 of 1 percent of the aggregate dollar amount of the sales of securities. Section 31 of the Securities Exchange Act of 1934, as amended, requires every national securities exchange to pay an annual fee based on the aggregate dollar amount of the sales of securities transacted on the exchange during the preceding calendar year.¹³ Revenues from this fee are to be deposited to the Treasury General Fund.

¹¹15 U. S. C. 77f.

¹²P. L. 103-352 (1994). Similar provisions were in the appropriation acts for fiscal years 1990, 1991, 1992, 1993, and 1994. (See 15 U.S.C. 77f note.)

¹³15 U. S. C. 78ee.

Tender offer and merger filings fees are set at the rate of 1/50 of 1 percent of the value of securities proposed to be purchased or of the cash and securities or property involved. Section 13(e) of the Securities Exchange Act of 1934, as amended, authorizes SEC to require an issuer purchasing its own securities to pay a fee.¹⁴ Section 14(g)(1) of the Securities Exchange Act of 1934, as amended, authorizes SEC to require payment of a fee for an acquisition, merger, consolidation, or proposed sale or other disposition of substantially all the assets of a company by a person other than a company registered under the Investment Company Act of 1940.¹⁵ The fee revenues are to be deposited to the Treasury General Fund.

SEC assesses other user fees on over 80 types of applications, statements, and reports fees. For example, SEC assesses a fee of \$250 for filing Form 10-K (Annual Report). These user fees are authorized by Section 14 (g)(4) of the Securities Exchange Act of 1934, as amended, which provides that, notwithstanding any other provision of law, SEC may impose fees for matters not involving any acquisition, merger, consolidation sale, or other disposition of assets as authorized by the user fee statute (31 U.S.C. 9701).¹⁶ These fee revenues are also to be deposited to the Treasury General Fund.

Most fee revenues collected are not available to SEC for obligation or expenditure. Fees collected under the Securities Act of 1933 and the Securities Exchange Act of 1934 are general revenues deposited into the Treasury General Fund. The additional revenues generated by increasing the registration fee are available to SEC for use without further legislation.

Congress can give attention to SEC through its oversight, authorization, and appropriations roles. Consequently, Congress can monitor the use of funds and/or amend the legislation that allows for the current approach to assessments.

¹⁴15 U. S. C. 78m.

¹⁵15 U. S. C. 78n.

¹⁶15 U. S. C. 78n.

LIMITED PAY COMPARISON BETWEEN HIRING NEW INSPECTORS
AND PAYING OVERTIME AT TWO SELECTED AIRPORTS

We analyzed Customs' inspector pay data from two airports selected for their international passenger volume: one with a high passenger volume, Los Angeles International Airport (LAX); and one with a medium passenger volume, Dulles International Airport. Customs provided data on inspectional hours worked and paid (both straight-time and overtime), by inspector, by hour of the day, from January 1, 1994, through September 30, 1994 (9 months). We selected this period because legislative changes to inspectional overtime became effective January 1, 1994, and the data through September 30, 1994, were the most recent available when we began our analysis.

We identified recurring patterns of daily inspector overtime across the 9 months and determined that the pattern for each airport was similar. Because LAX has a higher passenger volume than Dulles, the amount of overtime worked at LAX was much greater than at Dulles. For example, about 82,000 overtime hours were worked at LAX, with overtime pay of about \$3 million; about 15,000 hours were worked at Dulles, with overtime pay of about \$566,000 (see table II.1).

Table II.1: Straight-time and Overtime Hours and Pay for January to September 1994

	Hours		Pay	
	Straight-time	Overtime	Straight-time	Overtime
LAX	266,156	82,125	\$4,590,283	\$3,019,485
Dulles	42,647	15,278	\$763,670	\$565,917

Source: U.S. Customs data.

There was considerable daily variation in average hours of inspector overtime worked. Variation in overtime hours worked also fluctuated depending on the hour of the day. Across all days of the week at each airport, the average number of overtime hours worked were lowest between 6:00 a.m. and 7:00 a.m. and highest between 7:00 p.m. and 8:00 p.m. In general, at LAX the greatest number of overtime hours worked occurred from 5:00 p.m. until 10:00 p.m.; at Dulles from 5:00 p.m. until 11:00 p.m.

We simulated substituting additional newly-hired inspectors working straight-time for inspectors who worked overtime at LAX and Dulles. The substitution scenario for each airport covered 4:00 p.m. to midnight, Monday through Friday, during the 9 months. We

chose this period because our analysis showed that, when Sunday was excluded, the Monday through Friday 4:00 p.m. to midnight shift accounted for 66 percent of overtime at LAX and 72 percent at Dulles.¹⁷

We estimated what the pay savings would have been by adding 10 additional inspectors at LAX and 2 at Dulles during the 9 months in lieu of overtime worked. We projected these savings on an annual basis for years one, two, three, and long term (each year beyond three).¹⁸ To estimate first year straight-time pay, we assumed that the 10 additional inspectors were all hired at the hourly wage rate for GS-5 (entry level) inspectors. In the second and third years, we used the hourly wage rate for GS-7 and GS-9 inspectors, respectively, since career-ladder promotions usually occur after 1 year in grade. For the long term, we used the average hourly wage rate of inspectors who actually worked during the 9 months (about GS-11). In addition, we estimated the amount that additional costs (i.e., loaded costs) would have to increase (and by which the overall cost estimate would have to increase) before all savings were eliminated. For example, additional costs for the 10 inspectors at LAX for the first year would have to increase the cost estimate by 81 percent (or about \$130,000) before the estimated savings were eliminated; at Dulles, first year additional costs for the 2 inspectors would have to increase the cost estimate by 67 percent (or about \$21,000) before estimated savings were eliminated (see tables II.2 and II.3). Customs could not provide us with data on actual loaded costs.

Adding 10 additional straight-time inspectors to replace some overtime hours being worked at LAX would result in estimated net pay savings for year one of about \$188,000, about \$256,000 for year two, about \$192,000 for year three, and about \$127,000 for long-term years (see table II.2). The results of adding 2 inspectors at Dulles paralleled those for LAX. The estimated pay savings for Dulles in year one was about \$30,000; about \$42,000 in year two; about \$30,000 in year three; and about \$12,000 for each long-term year (see table II.3). Also shown in tables II.2 and II.3 are estimated annual savings. Because long-term savings

¹⁷Because Sunday was an overtime day for all inspectors, we did not consider it for substitution.

¹⁸Based on discussions with Customs officials, we estimated that the additional straight-time inspectors would spend a certain amount of their work time performing passenger processing and the remaining time performing other duties (e.g., training, leave). For the first year, we estimated that inspectors would spend 60 percent of their time on passenger processing activities and 40 percent on other duties, including their initial training. For the second and ensuing years, we estimated that 80 percent of an inspector's time was spent on inspection activities and 20 percent on other duties.

decrease as pay increases (due to promotions and salary increases), loaded costs may eliminate the long-term savings and reduce much of or eliminate the short-term savings.

Table II.2: Estimated Pay Savings at LAX When Adding 10 Inspectors

	Year 1 ^a (60% availability)	Year 2 ^b (80% availability)	Year 3 (80% availability)	Long-term (80% availability)
Straight-time hourly base pay rate	\$9.46	\$11.72	\$14.33	\$17.00
Estimated additional straight-time pay for 9-month period	\$159,860	\$198,000	\$242,209	\$287,300
Estimated overtime pay avoided for 9-month period	\$290,084	\$375,243	\$375,243	\$375,243
Estimated net pay savings for 9-month period ^c	\$130,223	\$177,244	\$133,035	\$87,943
Percent of additional straight-time pay that loaded costs ^d would need to exceed to eliminate savings ^e	81%	90%	55%	31%
Estimated <u>annual</u> net pay savings	\$188,100	\$256,019	\$192,162	\$127,029

^aFor the first year, we assumed that inspectors would spend 60 percent of their time on passenger processing activities.

^bFor the second and ensuing years, we assumed that inspectors would spend 80 percent of their time on passenger processing activities.

^cCalculated using the following formula: Estimated overtime pay avoided minus estimated additional straight-time pay.

^dMay include benefits, training, and overhead expenses (e.g., facility, equipment).

^eCalculated using the following formula: Estimated net pay savings divided by estimated additional straight-time pay multiplied by 100.

Source: U.S. Customs data.

Table II.3: Estimated Pay Savings at Dulles When Adding Two Inspectors

	Year 1 ^a (60% availability)	Year 2 ^b (80% availability)	Year 3 (80% availability)	Long-term (80% availability)
Straight-time hourly base pay rate	\$9.13	\$11.31	\$13.83	\$17.50
Estimated additional straight-time pay for 9-month period	\$30,856	\$38,218	\$46,751	\$59,150
Estimated overtime pay avoided for 9-month period	\$51,568	\$67,355	\$67,355	\$67,355
Estimated net pay savings for 9-month period ^c	\$20,712	\$29,138	\$20,605	\$8,205
Percent of additional straight-time pay that loaded costs ^d would need to exceed to eliminate savings ^e	67%	76%	44%	14%
Estimated <u>annual</u> net pay savings	\$29,917	\$42,088	\$29,763	\$11,852

^aFor the first year, we assumed that inspectors would spend 60 percent of their time on passenger processing activities.

^bFor the second and ensuing years, we assumed that inspectors would spend 80 percent of their time on passenger processing activities.

^cCalculated using the following formula: Estimated overtime pay avoided minus estimated additional straight-time pay.

^dMay include benefits, training, and overhead expenses (e.g., facility, equipment).

^eCalculated using the following formula: Estimated net pay savings divided by estimated additional straight-time pay multiplied by 100.

Source: U.S. Customs data

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