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FEDERAL USER FEES

Some Agencies Do Not Comply With Review Requirements



General Government Division

B-277387

June 30, 1998

The Honorable Stephen Horn
Chairman
The Honorable Dennis J. Kucinich
Ranking Minority Member
Subcommittee on Government Management,
Information and Technology
Committee on Government Reform and Oversight
House of Representatives

This report responds to your request that we review agencies' adherence to the user fee review and reporting requirements in the Chief Financial Officers (CFO) Act of 1990 and Office of Management and Budget (OMB) Circular A-25. The CFO Act and OMB Circular are designed in part to help ensure that government fees are periodically reviewed and updated, where appropriate, to reflect changes in cost or in market value. User fees may be based on the recovery of costs of providing the service, the market value of goods and services provided, or may be set by legislation. In fiscal year 1997, user fees and charges provided the U.S. government with \$217.1 billion in revenues, amounting to over 13 percent of the federal revenues collected during that year.¹

Our specific objectives were to determine whether, as required by OMB Circular A-25, the 24 agencies subject to the CFO Act (1) reviewed their user fee rates biennially during fiscal years 1993 through 1997, (2) determined both direct and indirect costs when reviewing fees based on costs or current market value for fees based on market value, (3) reviewed other programs within the agency to identify potential new user fees, and (4) reported the results of the user fee reviews in their CFO annual reports. Subsequent to your initial request, we also agreed to determine whether agencies were more likely to review fees when they could use such fees for their expenses than when the fees went to Treasury's general fund.

Results in Brief

Six of the 24 CFO agencies reviewed all of their reported user fees at least every 2 years as required by OMB Circular A-25 during fiscal years 1993 through 1997, 3 reviewed all of their reported fees at least once, 11 reviewed some of their reported fees, and 4 did not review any of their reported fees during this period. The 24 agencies reported 546 user fees, of which 418 were reviewed either annually or biennially. The agencies

¹These revenues included insurance premiums which were not included in our review.

provided various reasons for not reviewing fees, including insufficient cost data and because some of the fees set by legislation could not be changed without new legislation. It appeared that agencies did not place significantly less emphasis on reviewing fees that went to Treasury's general fund than on fees authorized to cover agency expenses.

Documentation provided by the agencies indicated that of the reviewed fees that were based on cost recovery, 99 percent included both direct and indirect costs. Fee review documentation indicated that of the 23 reviewed fees that were based on market value, 14 reviews included a determination of current market value. We did not verify these cost data or market evaluations.

Agency documentation also indicated that of the 20 agencies that conducted user fee reviews, 8 agencies that had the potential for new fees did not consider new fee opportunities in their reviews. Twelve of the 20 agencies either looked for potential new fees or reported that they did not provide a service for which a fee was not already charged.

Eleven of the 24 agencies had not reported the results of their biennial reviews, or lack thereof, in their CFO annual reports for fiscal years 1993 through 1997. Only six agencies reported the review results two or more times during the 5-year period. Most of the agencies not reporting their user fee reviews said they did not do so either because the total amount of the fees was considered to be minimal and not considered material or because they found the reporting requirements confusing. OMB agreed that reporting instructions for the user fee review need to be clarified and plans to address this matter during 1998, as it revises its instructions.

Background

User fees or user charges are defined by OMB as assessments levied on a class of individuals or businesses directly benefiting from, or subject to regulation by, a government program or activity.² Examples of user fees are trademark registration fees, park entrance fees, and food inspection fees. User fees represent the principle that identifiable individuals or businesses who receive benefits from governmental services beyond those that accrue to the general public should bear the cost of providing the service.

²OMB's 1997 revision to OMB Circular A-11 (Preparation and Submission of Budget Estimates) for the fiscal year 1999 budget changed the definition of user fees. The revised definition excludes fees deposited in Treasury's general fund. Because our assignment covered the period before the revision occurred, our review includes those fees that are to be deposited in Treasury's general fund.

General user fee authority was established under title V of the Independent Offices Appropriation Act (IOAA) of 1952. The IOAA gave agencies broad authority to assess user fees or charges on identifiable beneficiaries by administrative regulation. This does not authorize agencies to retain and/or use the fees they collect. In the absence of specific legislation that authorizes agencies to retain and/or use the fees they collect, fees must be deposited in the U.S. Treasury general fund. Authority to assess user fees may also be granted to agencies through the enactment of specific authorizing or appropriations legislation, which may or may not authorize the agencies to retain and/or use the fees they collect.

OMB Circular A-25, dated July 8, 1993, establishes guidelines for federal agencies to use in assessing fees for government services and for the sale or use of government property or resources. The Circular (1) states that its provisions shall be applied by agencies in their assessment of user charges under the IOAA and (2) provides guidance to agencies regarding their assessment of user charges authorized under other statutes.

A specific user fee rate or amount may be based on the full cost to the government of the service or goods provided or on market value, or may be set legislatively. The Circular outlines the circumstances under which agencies are to use cost recovery or market value for determining the fee amount. It defines full cost as all direct and indirect costs to any part of the federal government of providing goods or services, including, but not limited to, direct and indirect personnel costs (i.e., salaries and fringe benefits); overhead costs (i.e., rents and utilities); and management and supervisory costs. The Circular defines market value as the price for goods, resources, or services that is based on competition in open markets and creates neither a shortage nor a surplus of the goods, resources, or services.

In some cases, legislation either sets the specific user fee rate or amount or stipulates how the fee is to be calculated, such as a formula. These fees can be based on partial cost recovery, partial market value, or some other basis.³ For example, the Social Security Administration's (SSA) fees for administration of state supplementary payments are legislatively set at \$6.20 per payment for fiscal year 1998. An example of partial cost recovery is under Public Law 98-575, which excludes the recovery of overhead costs

³Legislation also may stipulate that the fee is to be based on full cost recovery or market value. We included such fees in the cost recovery category or the market value category, as appropriate, for purposes of our review.

from the National Aeronautics and Space Administration's commercial space launch services fees.

Both the CFO Act and OMB Circular A-25 provide that agencies review their user fees biennially. The CFO Act of 1990 requires an agency's CFO to review on a biennial basis the fees, royalties, rents, and other charges for services and things of value and make recommendations on revising those charges to reflect costs incurred. OMB Circular A-25 provides that each agency will review user charges biennially to include (1) assurance that existing charges are adjusted to reflect unanticipated changes in costs or market values and (2) a review of other programs within the agency to determine whether fees should be initiated for government services or goods for which it is not currently charging fees. Circular A-25 further states that agencies should discuss the results of the user fee reviews and any resultant proposals in the CFO annual report required by the CFO Act. The Circular also states that when the imposition of user charges is prohibited or restricted by existing law, agencies will review activities and recommend legislative changes when appropriate.

Periodic reviews of all user fees are important because the reviews can provide agencies, the administration, and Congress with information on the government's costs to provide these services or, in some cases, the current market value of goods and services provided.

Objectives, Scope, and Methodology

To obtain the information for the first three objectives, we requested the CFOs of the 24 agencies to provide for fiscal year 1996 (1) a list of all user fees, (2) the basis (cost recovery, market value, or legislatively set) for determining the fee amount, (3) total amount of user fees collected in fiscal year 1996, and (4) supporting documents for the most recent review they had conducted of each user fee between fiscal years 1993 and 1997. We used 1996 fees because 1996 was the most recent year agencies had complete data. We reviewed the supporting documentation of the fee reviews to determine whether the reviews (1) indicated that direct and indirect costs were determined (if the fee was based on cost recovery) or current market value was determined (if the fee was based on market value) and (2) included an assessment of other programs within the agency to identify potential new user fees. We followed up with agency program officials when necessary to clarify the CFOs' responses. We also reviewed Federal Register notices for fiscal years 1993 through 1997 that discussed fee revisions and how the fees were calculated. In addition, we reviewed prior reports by the agencies' Inspectors General (IG) and us that

covered user fees in CFO agencies during the time period covered by the scope of our work. We did not verify whether agencies reported all of their user fees.

To obtain information on the fourth objective, we reviewed the CFO annual reports for fiscal years 1995 through 1997 and requested information from the 24 agencies on whether they reported the results of reviews in the CFO reports during fiscal years 1993 and 1994.

To determine whether agencies were more likely to review fees if the fees were authorized to be used to cover agencies' expenses compared to when they were not, we obtained information from each of the agencies on whether they had legislative authority to use fees they collect. We then compared the number of reviews of fees that agencies were allowed to keep with the number of reviews of those that they were not allowed to keep.

We reviewed relevant laws and regulations pertaining to user fees, including the CFO Act of 1990, the IOAA and other user fee authorizing legislation, and OMB Circular A-25. We also reviewed OMB Bulletins 94-01 and 97-01, Form and Content of Agency Financial Statements, to determine whether they contained user fee reporting requirements. We met with OMB officials to obtain additional information on OMB's user fee review and reporting requirements.

In some cases, agencies said they did not formally conduct "biennial fee reviews" but instead periodically, generally annually, conducted fee rate updates that met the key requirements of a biennial review. In these instances, we considered the rate updates as user fee reviews.

In those cases where agency documentation indicated that agencies determined the direct and indirect costs of providing services, we did not verify that both direct and indirect costs had been considered or that the types of costs considered were appropriate. Our previous work has concluded that, in general, the federal government does not have adequate cost accounting systems to track costs to specific programs or services. To audit each individual cost factor for the fees we reviewed was beyond our scope and would have involved more time and resources than were available.

Our scope did not include fees charged to other federal agencies or federal employees. We also excluded insurance premiums because, according to

an OMB official, they were not subject to Circular A-25 during the scope of our review. We excluded credit-related fees, such as loan guarantee fees, since OMB advised that credit-related fees were not covered by Circular A-25, but were governed by OMB Circular A-129, Policies for Federal Credit Programs and Non-Tax Receivables.

We did our work at the 24 CFO agencies' headquarters in Washington, D.C., between June 1997 and June 1998 in accordance with generally accepted government auditing standards.

We requested comments on a draft of this report from the Director of the Office of Management and Budget and asked the Chief Financial Officers of the 24 agencies included in the review to verify the accuracy of their agencies' data used in the report. Their comments are discussed near the end of this letter.

The CFO Agencies Reviewed Most of Their User Fees

As table 1 shows, the 24 CFO agencies reported having 546 total user fees in effect in fiscal year 1996. Agencies reported that 397 of their fees were based on cost recovery, 35 were based on market value, and 114 were set by legislation. As previously stated, statute-based formulas can be based on either market value, cost recovery, or some other basis.

Table 1: CFO Agencies' Reported User Fees, Fiscal Year 1996

Agency	Number of user fees	Basis of fees		
		Cost recovery	Market value	Legislatively set (not full cost recovery or market value) ^a
Department of Agriculture	59	39	7	13
Department of Commerce	66	66	0	0
Department of Defense	35	25	5	5
Department of Education	4	3	0	1
Department of Energy	12	6	3	3
Department of Health and Human Services	20	16	0	4
Department of Housing & Urban Development	1	0	0	1
Department of the Interior	88	30	14	44
Department of Justice	12	9	0	3
Department of Labor	7	4	0	3
Department of State	7	5	0	2
Department of Transportation	150	148	1	1
Department of the Treasury	31	17	0	14
Department of Veterans Affairs	14	4	4	6
U.S. Agency for International Development	3	2	0	1
Environmental Protection Agency	5	2	0	3
Federal Emergency Management Agency	1	1	0	0
General Services Administration	3	1	0	2
National Aeronautics and Space Administration	6	4	0	2
National Science Foundation	1	0	0	1
Nuclear Regulatory Commission	9	8	1	0
Office of Personnel Management	1	0	0	1
Small Business Administration	3	2	0	1
Social Security Administration	8	5	0	3
Total	546^b	397	35	114

^aIf the legislation provided for full cost recovery or full market value, we included that fee in the cost recovery or market value category, as appropriate.

^bThis total does not include 15 fees that agencies reviewed on a case-by-case basis under negotiated reimbursable agreements.

Source: GAO's analysis of CFO agencies' data.

Of the 24 CFO agencies with 546 reported user fees, 6 agencies reviewed all of their reported fees at least biennially as required by Circular A-25 during

fiscal years 1993 through 1997, 3 reviewed all of their reported fees at least once, 11 reviewed some of their reported fees, and 4 did not review any of their reported fees during this period. The agencies reported that they had reviewed 259 of the fees annually, 159 biennially, and 34 once during this 5-year period, as shown in table 2.

Table 2: CFO Agencies' 1996 Reported User Fees and the Number of Fees Reviewed Between Fiscal Years 1993-1997

Agency	Number of user fees	Reported frequency of user fee reviews			Total number of fees reviewed
		Reviewed annually	Reviewed biennially	Reviewed once during the 5-year period	
Department of Agriculture	59	35	11	3	49
Department of Commerce	66	32	21	9	62
Department of Defense ^a	35	14	0	1	15
Department of Education	4	0	4	0	4
Department of Energy	12	5	7	0	12
Department of Health and Human Services	20	8	4	4	16
Department of Housing & Urban Development	1	0	0	1	1
Department of the Interior	88	0	88	0	88
Department of Justice	12	0	8	0	8
Department of Labor	7	2	2	1	5
Department of State	7	0	2	2	4
Department of Transportation	150	140	0	2 ^b	142
Department of the Treasury	31	10	4	2 ^b	16
Department of Veterans Affairs	14	1	0	3	4
U.S. Agency for International Development	3	0	0	0	0
Environmental Protection Agency	5	2	0	3 ^c	5
Federal Emergency Management Agency	1	1	0	0	1
General Services Administration	3	1	0	1	2
National Aeronautics and Space Administration	6	6	0	0	6
National Science Foundation	1	0	0	0	0
Nuclear Regulatory Commission	9	0	8	1 ^b	9
Office of Personnel Management	1	0	0	0	0 ^d
Small Business Administration	3	2	0	1	3
Social Security Administration	8	0	0	0	0 ^e
Total	546^f	259	159	34^b	452

(Table notes on next page)

Note: The frequency of fee reviews and the number of user fees are based on information reported by agencies. We reviewed the most recent fee review agencies had conducted during the 5-year period for each fee.

^aThe Department of Defense (DOD) information also includes information provided by the Department of the Army Corps of Engineers. DOD also reported that its policy requires that all user fees be reviewed annually and that it did not provide documentation of reviews for installation-level fees because the task would require significant use of the Department's resources.

^bFor the Departments of the Treasury and Transportation and the Nuclear Regulatory Commission, each had reviewed a newly effective fee once and thus was in accordance with the biennial review requirement. Accordingly, the Nuclear Regulatory Commission reviewed all of its reported fees in accordance with Circular A-25.

^cThe Environmental Protection Agency reported that in addition to the documented formal review of these fees in 1997, it reviewed these fees informally and did not document the reviews in 1993 and 1995. We did not count these as biennial reviews because, as EPA reported, they were undocumented.

^dThe Office of Personnel Management had two fees, one of which the agency reviewed and is included in the 15 fees reviewed on a case-by-case basis discussed in the footnote below.

^eThe Social Security Administration reported that as of June 1998, it had completed the reviews of two fees and was in the process of making the final decision on the fee amounts.

^fThe total does not include 15 fees that agencies reviewed on a case-by-case basis under reimbursable agreements.

Source: GAO's analysis of CFO agencies' data.

According to OMB Circular A-25, agencies should have reviewed the fees at least biennially. The fee reviews that were conducted annually or biennially were in compliance with the Circular. Excluding the three newly effective fees in table 2, 13 agencies did not comply with the Circular for 31 fees that were reviewed only once during the 5-year period. All of the 31 fees were in effect long enough to have had biennial reviews.

Fifteen of the 24 CFO agencies had not reviewed 94 user fees at all during the 5-year period. These 94 fees were about 17 percent of the total 546 fees. The agencies provided various reasons for not conducting the reviews. For example, the Department of the Treasury's U.S. Customs Service reported that it had not reviewed its nine fees (reported as totaling over \$1 billion in fiscal year 1996) because of insufficient cost data. Customs said that it was in the process of developing the necessary data to evaluate the fees and make recommendations to Congress on any necessary changes. The U.S. Agency for International Development reported that it did not review its three fees because the amount of user fees collected was minimal (reported as \$50,000 for fiscal year 1996). SSA said that it had not reviewed its eight fees because the majority of its fees

were either legislatively set or were based on the actual computation of the full cost to provide the service. According to an agency official, SSA was currently conducting a review of two of its fees and stated that four additional fees will be reviewed in conjunction with the agency's comprehensive evaluation of its fee charging policy.

Of the 94 fees not reviewed, 42 were set by legislation. The 42 fees represent about 37 percent of the 114 fees set by legislation and about 45 percent of the fees that agencies had not reviewed. Several agencies reported that they had not reviewed the fees set by legislation because they believed the fees were either not subject to the user fee review requirements or could not be changed unless legislation was amended. For example, the Department of Veterans Affairs and the Department of Health and Human Services' Food and Drug Administration reported that they had not reviewed fees that were set by legislation because they believed the fees were not subject to the CFO Act. The Department of Transportation's Federal Aviation Administration (FAA) and the Department of Health and Human Services' Health Care Financing Administration (HCFA) reported that they did not review the fees because they believed the fees could not be changed unless legislation was amended.

However, OMB Circular A-25 provides that all fees, including those set by specific legislation, be reviewed. One rationale for reviewing all user fees, even those where a policy decision was made to not recover full costs, is that the extent to which fees do not recover the direct and indirect costs—i.e., the government subsidy—should be transparent so that program managers can properly inform the public, Congress, and federal executives about the extent of the subsidy.⁴

⁴Statement of Federal Financial Accounting Standards (SFFAS) No. 4: Managerial Cost Accounting Standards, July 31, 1995. The purpose of this Standard is to provide managerial cost accounting concepts and standards aimed at providing reliable and timely information on the full cost of federal programs, their activities, and outputs.

Documentation Indicated That Generally Both Direct and Indirect Costs or Current Market Value Was Considered

OMB Circular A-25 provides that the user fee review include assurance that existing charges reflect costs or current market value. Of the 397 cost-based fees, agencies reviewed 357. For 352 (or about 99 percent) of the cost-based fees reviewed, documentation indicated that both direct and indirect costs were considered. Agencies had reviewed 23 of the 35 fees based on market value. Documentation indicated that current market value was assessed for 14 of the 23 reviewed fees. Overall, the reviews determining whether fees reflected cost or current market value resulted in 159 fee increases that became effective during the period we reviewed.

We did not verify whether the agencies had appropriate cost accounting systems in place to identify all direct and indirect costs or whether the costs included were complete and appropriate. However, problems with CFO agencies' cost systems were one of the reasons given by the CFO Council in June 1997 for requesting the Financial Accounting Standards Advisory Board to delay implementation of SFFAS No. 4.⁵ Prior work by agency IGS and us has also shown that agencies often lack cost accounting systems to track costs by specific program or service. In 1998, we reported in our audit of the U.S. Government's 1997 Consolidated Financial Statement that the government was unable to support significant portions of the more than \$1.6 trillion reported as the total net costs of government operations.⁶ We further stated that without accurate cost information, the federal government is limited in its ability to control and reduce costs, assess performance, evaluate programs, and set fees to recover costs where required. We also stated in the report that, as of the date of the report, only four agency auditors had reported that their agency's financial systems complied with the Federal Financial Management Improvement Act (FFMIA) of 1996 requirements for financial management systems.⁷ In 1996 and 1997, we reported that while three Power Marketing Administrations (PMA), with reported revenues of \$997 million in fiscal year 1996, were generally following applicable laws and regulations regarding recovery of power-related costs, they were not recovering all

⁵The CFO Act of 1990 created the CFO Council to advise and coordinate activities of the CFO agencies on financial management matters. The Council consists of agencies' CFOs, top OMB officials, and other agency officials involved in financial management.

⁶Financial Audit: 1997 Consolidated Financial Statements of the United States Government (GAO/AIMD-98-127, Mar. 31, 1998).

⁷FFMIA requirements state that "In General - Each agency shall implement and maintain financial management systems that comply substantially with Federal financial management systems requirements, applicable Federal accounting standards, and the United States Government Standard General Ledger at the transaction level." The four agencies referred to in the report as being in substantial compliance with FFMIA's system requirements were the Department of Energy, the General Services Administration, the National Aeronautics and Space Administration, and the National Science Foundation.

costs.⁸ Although PMAs are required to recover all costs, they had not done so, partly because they did not follow the full cost definition as set forth in OMB Circular A-25. In addition, IGS within 6 of the 24 CFO agencies reported on weaknesses in agencies' procedures for determining the cost of goods or services for which there were user fees during the 5-year period covered by our scope.⁹

Also, in reference to market value assessments, we reported in 1996 and 1998 that the Department of Agriculture's U.S. Forest Service did not always obtain the fair market value for user fees covering the use of federal land.¹⁰

Some Agencies' User Fee Reviews Did Not Indicate That Other Programs Within the Agency Were Reviewed to Identify Potential User Fees

OMB Circular A-25 provides that agencies' user fee reviews should include a review of other agency programs to determine whether additional fees should be charged either under existing authority or by proposing new legislative authority. Of the 20 agencies that conducted user fee reviews, documentation indicated that

- seven agencies considered new fees,
- five agencies did not consider new fee opportunities because they did not provide a service for which a fee was not already charged, and
- eight agencies where the potential for new fees existed did not consider new fee opportunities.

Agencies' reasons for not looking for new fee opportunities varied. The Department of Veterans Affairs reported that it views its nonfee services as goodwill to the community, and the agency would have to obtain legislative authority to charge for the nonfee services. An FAA official said FAA had not attempted to identify new individual user fees pending the outcome of the ongoing consideration being given to the financial restructuring of FAA, which was included in legislation proposed to Congress on April 20, 1998. The Department of Commerce's Bureau of the Census said that it is facing the task of achieving the best balance between

⁸Federal Electricity Activities: The Federal Government's Net Cost and Potential for Future Losses, Volume 1 (GAO/AIMD-97-110, Sept. 19, 1997) and Power Marketing Administrations: Cost Recovery, Financing, and Comparison to Nonfederal Utilities (GAO/AIMD-96-145, Sept. 19, 1996). PMAs, part of the Department of Energy, market electric power generated mainly at federal hydropower facilities. The Southeastern, Southwestern, and Western Area PMAs were included in the reports.

⁹The IGS who reported on weaknesses in CFO agencies' procedures for determining cost included the Departments of Agriculture, Defense, the Interior, Justice, and the Treasury; and the Nuclear Regulatory Commission.

¹⁰U.S. Forest Service: Fee System for Rights-of-Way Program Needs Revision (GAO/RCED-96-84, Apr. 22, 1996) and U.S. Forest Service: Barriers to Generating Revenue or Reducing Costs (GAO/RCED-98-58, Feb. 13, 1998).

maximizing the usefulness of data to the widest possible audience and charging for more of the information. HCFA reported that it had looked at potential user fees earlier and decided that the new fees would not be in the best interest of the government because either the cost of fee collection would have outweighed the expected revenues or the agency and the recipient benefited equally from the service.

Many Agencies Did Not Report User Fee Review Results in CFO Reports

OMB Circular A-25 provides that agencies should discuss the results of the user fee reviews and any resultant proposals in the CFO annual reports required by the CFO Act. The act requires that the CFOs of the 24 agencies identified in the act submit an annual financial management report to the Director of OMB. To satisfy this CFO reporting requirement, agencies submit annual, audited financial statements. The CFO Act requires the Director of OMB to prescribe the form and content of the financial statements, consistent with applicable accounting principles, standards, and requirements. The CFO Act also requires that these agencies analyze the status of financial management and prepare and make their annual revisions to plans implementing the OMB governmentwide 5-year financial management plan. The OMB guidance is not clear as to how the user fee review results should be reported.

Thirteen¹¹ of the 24 CFO agencies had referenced the user fee reviews in either their annual financial statements or their annual revisions to the 5-year financial management plan between fiscal years 1993 and 1997 as follows:

- One agency reported review results in 4 of the 5 years.
- Five agencies reported review results in 2 of the 5 years.
- Seven agencies reported review results in 1 of the 5 years. Five of these seven agencies reported results for the first time in their fiscal year 1997 reports after we had asked about the reporting. Two of them said that they had not previously reported the reviews because the reporting guidance was not clear. The remaining three said (1) the total amount of fees was not material, (2) nonadherence was an oversight, and (3) prior reviews were informal and undocumented.

The other 11 agencies reported that they had not reported the results of their biennial reviews, or lack thereof, in any of the CFO annual reports for

¹¹These agencies were the Departments of Agriculture, Commerce, Energy, Health and Human Services, the Interior, Justice, Labor, the Treasury, and Veterans Affairs; Environmental Protection Agency; Federal Emergency Management Agency; Social Security Administration; and the Small Business Administration.

fiscal years 1993 through 1997. As shown in table 3, eight agencies said they did not report the review results because either the total amount of fees was considered to be minimal and not material or the reporting requirements were confusing and not consistent with OMB guidance for the form and content of annual financial statements. Guidance for form and content states specifically what agencies should present in the annual financial statements and does not include the user fee reporting requirement.

Table 3: Agencies' Reasons for Not Reporting User Fee Results

Agencies	Reasons for not referencing the user fee review in the CFO annual reports
Departments of State and Transportation, National Aeronautics and Space Administration, Nuclear Regulatory Commission	Confusion existed as to where to report the results. Neither the CFO Act of 1990 nor OMB Circular A-25 was clear in the requirement to report the biennial reviews, and OMB's form and content instruction for agencies' annual financial statements does not contain this reporting requirement.
Department of Education, U.S. Agency for International Development, General Services Administration, National Science Foundation	The amounts of user fees involved were considered to be minimal and not considered material.
Department of Housing and Urban Development	An oversight of the requirement.
Department of Defense	Because the frequency of rate updates exceeded that required by OMB Circular A-25, the agency had not addressed this area in the CFO annual reports.
Office of Personnel Management	Prior to 1997, OMB had stated that the agency's service was not a user fee service.

Source: GAO's analysis of CFO agencies' data.

According to OMB officials, OMB has not provided any guidance on reporting the results of the user fee reviews other than Circular A-25. OMB agreed that Circular A-25 user fee reporting instructions need to be clarified and plans to address this during 1998, by updating Circular A-11, Preparation and Submission of Budget Estimates. An OMB official said Circular A-11 has a higher profile than Circular A-25 and was scheduled to be revised before Circular A-25.

Fees Authorized to Cover Agency Expenses Generally Were Not More Likely to Be Reviewed Than Fees That Were Not

It did not appear that agencies placed significantly less emphasis on reviewing fees that went to Treasury's general fund than on fees of which all or a portion were authorized to cover agency expenses. In 78 percent of the 452 fees agencies reviewed, all or a portion of the fees were authorized to cover or reimburse agency expenses. In 67 percent of the 94 fees agencies did not review, all or a portion of the fees were authorized to cover or reimburse agency expenses.

Conclusions

Generally, the CFO agencies did not fully adhere to OMB Circular A-25 and the CFO Act user fee review provisions requiring that user fee rates be reviewed biennially. It did not appear that agencies placed significantly less emphasis on reviewing fees that were to be deposited in Treasury's general fund than they placed on fees that were authorized to cover agencies' expenses.

The agencies did not review all of the fees that should have been reviewed and reviewed fees set by legislation less often than other fees. For example, only 6 of the 24 CFO agencies reviewed all of their user fees at least biennially. Also, some agencies could be recovering less than their actual costs when their fees are based on cost recovery because of a lack of adequate cost accounting systems in the government to identify actual costs. Further, eight of the agencies did not include a review of potential new user fees as required by OMB. As a result, the government may not be recovering the costs or the current market value, where appropriate, for the goods and services it provides.

OMB's guidance on how and where to report the results of user fee reviews is not clear. Many of the agencies reported that Circular A-25 user fee reporting instructions were confusing and had not reported the results of the user fee reviews in CFO reports. Administration officials and Congress, therefore, have incomplete information on whether the government is recovering costs of providing goods and services or is obtaining the current market value, where appropriate.

Recommendation to the Director, OMB

We recommend that the Director of OMB clarify the user fee reporting instructions by specifying how agencies should report the results of their user fee reviews and address the issues of compliance with the biennial review requirements, including the requirements regarding statutorily set fees and agencies' consideration of potential new user fees.

Agency Comments and Our Evaluation

We requested written comments on a draft of this report from the Director of the Office of Management and Budget and oral comments from the Chief Financial Officers of the 24 agencies on the accuracy of information in the draft report pertaining to the agencies.

On June 12, 1998, we received written comments from OMB's Assistant Director for Budget, which are included in appendix I. OMB commented that while it was pleased to see that most of the fees were reviewed annually or biennially, it shares our concern that agencies pay attention to the review and discussion requirements in the Chief Financial Officers Act of 1990 and OMB Circular A-25. OMB further stated that it will continue its efforts in 1998 to increase agency awareness and compliance with current CFO Act and Circular A-25 requirements. OMB said that it would highlight the requirements of user fee reviews in this year's update to Circular A-11 to make agencies more fully aware of the requirements.

As of June 29, 1998, we had received responses from 23 of the 24 CFO agencies. We had not received a response from the Department of Housing and Urban Development. Seventeen agencies provided oral comments, and six agencies provided written comments. Ten of the agencies responded that they either had no comments on the draft report or agreed with the information in the report. Nine of the agencies provided additional information on their user fee reviews or suggested technical changes, which we considered and incorporated within the report where appropriate.

Four agencies raised programmatic or policy-related issues, as follows:

- SSA said that it had reviewed two of its fees annually and asked us to revise our data to recognize this. SSA provided documentation it believed would support its contention that the reviews had been done. However, in our view, the documentation SSA provided was not sufficient evidence that the user fee reviews met the requirements of Circular A-25. Accordingly, we did not revise our report as SSA had requested, and we informed SSA of our decision. SSA also said it had reviewed two other fees and was deciding the fee amounts, and we noted this in the report.
- The Department of Health and Human Services, the National Aeronautics and Space Administration, and the Small Business Administration raised policy-related issues, such as the need for biennial reviews in light of the new Managerial Cost Accounting Standards and whether the new user fee definition in Circular A-11 supersedes the Circular A-25 definition. We did

not cover these types of issues in our review, but expect that OMB will consider such issues as it revises its instructions on user fee reviews.

We are sending copies of this report to the Chairmen and Ranking Minority Members of the Senate Committee on Governmental Affairs and the Senate Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia, and the Director of OMB. We will also make copies available to others upon request. Major contributors to this report are listed in appendix II. If you have any questions about the report, please call me on (202) 512-8387.



Bernard L. Ungar
Director, Government Business
Operations Issues

Comments From the Office of Management and Budget



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D. C. 20503

June 12, 1998

Mr. Bernard L. Unbar
Director
Government Business Operations Issues
General Accounting Office
Washington, DC 20548

Dear Mr. Unbar:

Thank you for the opportunity to comment on your draft report entitled "Federal User Fees: Some Agencies Do Not Comply With Review Requirements." While we are pleased to see that 418 of the 548 user fee programs were reviewed annually or biennially, we share your concern that agencies pay attention to the review and discussion requirements in the Chief Financial Officers Act of 1990 and OMB Circular A-25.

Over the past year, OMB has taken several steps to improve its ability to analyze and track user fees. As mentioned in your report, Circular A-11 now includes a new definition of user fees, similar to one used by the House of Representatives for deciding committee jurisdiction. For the first time, the President's Budget presented a summary of user fees collected by the Federal Government. This summary was produced as the result of an account by account review to determine which accounts contained user fee collections.

It is important to remember that user fees programs are audited along with the rest of an agency's revenues and expenditures in the course of producing the audited financial statements. However, in effectively evaluating user fee programs, agencies encounter a number of hurdles. In many cases agencies lack, or are only beginning to implement, the types of cost-accounting systems capable of tracking direct and indirect costs accurately. As the quality of the financial information and accounting systems improves, so too should the number and quality of user fee reviews.

OMB will continue its efforts in 1998 to increase agency awareness and compliance with current CFO Act and Circular A-25 requirements both to review existing user fee programs and to identify potential programs where user fees could be charged. One step we are taking is to highlight these requirements in this year's OMB Circular A-11, which should help make our Resource Management Offices and agencies more fully aware of the requirements.

Thank you again for the opportunity to comment.

Sincerely,

Richard P. Emery Jr.
Assistant Director for Budget

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