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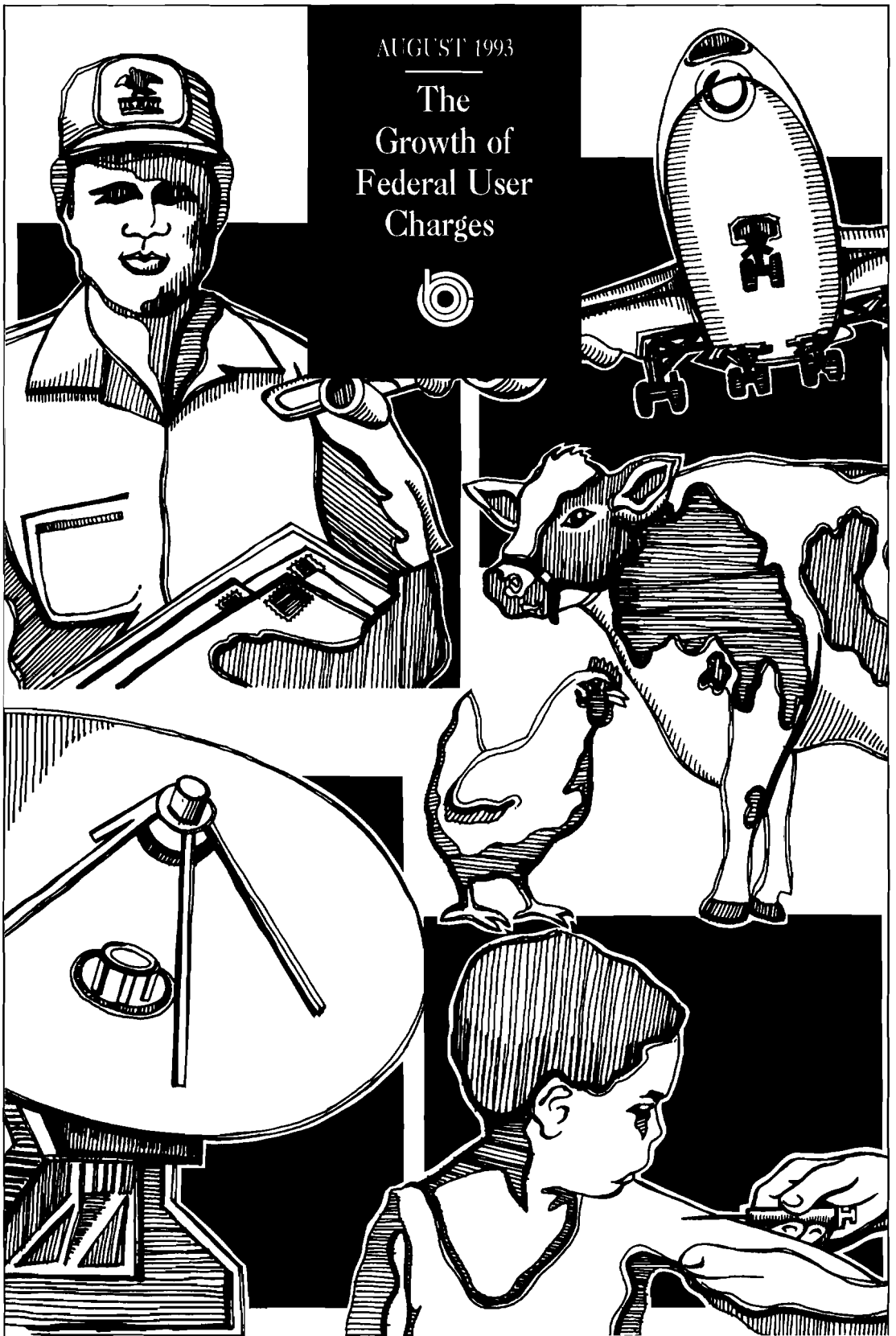

AUGUST 1993

The Growth of Federal User Charges

NOTE

Numbers in the text, tables, and figures of this study may not add to totals because of rounding.

Preface

User charges are playing an increasingly important role in financing federal programs. In response to a request from the Senate Committee on the Budget, this study documents the growth of user charges since 1980 and analyzes the economic and legal issues they have raised over the years as well as the more recent effects of changes in law and budget processes. It also assesses the potential for the growth of user charges.

The principal author of the study was Pearl W. Richardson of the Congressional Budget Office's (CBO's) Tax Analysis Division, under the direction of Rosemary D. Marcuss, Eric J. Toder, and Joseph J. Cordes. Several interns at CBO helped collect data for the study. They were Rick L. Fischer, Brendan D. Fitzpatrick, and Clifford Wind.

Because of its broad scope, this study involved many staff members within CBO and in other agencies. The author would particularly like to thank Thomas J. Cuny for the information, advice, and assistance he provided and for his comments on the draft manuscript; Gail del Balzo and Nicola O. Goren for their assistance and comments on the legal and jurisdictional issues surrounding user charges; Charles Brain and Kathleen O'Connell of the House Committee on Ways and Means staff and John V. Sullivan of the House Parliamentarian's staff for background and comments on jurisdictional issues; and Frederick M. Kaiser, Nonna A. Noto, Louis Alan Talley, and M. Ann Wolfe of the Congressional Research Service for providing background material and information on user charge legislation.

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Sherwood D. Kohn edited the manuscript. Chris Spoor provided editorial assistance. Denise Jordan produced drafts of the study. With the assistance of Martina Wojak-Piotrow, Kathryn Quattrone prepared the report for publication.

Robert D. Reischauer
Director

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Contents

TABLES

FIGURES

BOXES

Summary

User charges have for some time, and especially in recent years, played an important role in financing federal programs. In 1991, user charges--such as passport fees, national park entrance fees, and gasoline excise taxes--amounted to nearly $120 billion and were the sole source of financing for some programs. User charges are not new. Since the founding of the republic, federal lawmakers have sought to make some programs partly or entirely self-supporting. But a large and persistent federal deficit has created new incentives to expand the scope of user charges and to substitute them for broad-based taxes as a source of program funds. This trend has been particularly marked since the passage of the Balanced Budget Act of 1985.

Choosing Between User Charges and Broad-Based Taxes

Apart from their role in the budget, user charges differ from broad-based taxes in their nature and function. User charges are fees or taxes that are based on benefits individuals or firms receive from the federal government or that in some way compensate for costs they might impose on society or its resources. By contrast, income and many other taxes bear little direct relationship to people's use of or benefits from public services or resources. User charges are feasible for a variety of goods and services that the government may provide or that it can control by denying access to nonpayers or by prohibiting nonpayers from engaging in certain activities.

Most of the goods that the government provides are public and therefore more suitable for general-fund financing. For example, it would be impractical to impose user charges for such services as national defense because they benefit many people collectively and because excluding nonpayers from access to their benefits would be difficult, if not impossible. Imposing user charges that are based strictly on costs and benefits would also be unwarranted when the goal of a program is to make certain goods and services more accessible to lower-income individuals, or to provide equal access to all, regardless of their ability to pay.

From an economic standpoint, user charges serve two purposes: they allocate resources and distribute costs in proportion to the benefits received. The degree of difference between user charges and broad-based taxes depends on how direct the relationship is between the charge and the benefit. When the correlation is close, user charges function as prices. Thus, they serve as a mechanism for allocating resources, although, if the proceeds of user charges are subject to Congressional appropriation, the political system also plays a role. When general tax funds provide the financing for goods and services, the political process alone determines how much to supply.

The Growth of User Charges

User charges are increasingly relied upon as a source of federal funds. Between 1980 and 1991, user charges increased by 54 percent in constant dollars (1991=100). User charges include four distinct types of levies: user fees, regulatory fees, benefit-based taxes, and liability-based taxes. Between 1980 and 1991 (measured in constant dollars):

- User fees--payments made by individuals or businesses for goods or services provided by the government, consumed voluntarily, and not generally shared by other members of society--increased by 46 percent to more than $90 billion.

- Regulatory fees--charges that stem from the government's powers to regulate the economy and the activities of individuals--more than tripled to $4 billion.

- Benefit-based taxes--taxes dedicated to trust funds and levied on bases correlated in varying degrees with use of a publicly provided good or service--increased by 61 percent to nearly $23 billion.

- Liability-based taxes--excises dedicated to trust funds and levied for the purpose of abating hazards or compensating for injuries--starting from a small base, increased nearly sixfold to $2.5 billion.

Interagency Differences in Reliance on User Charges

Although the general increase in user charges has been substantial, it has not been uniform. Some laws limit or prohibit charges; others authorize charges that assure the complete recovery of costs. Thus, user charges today finance a larger share of the budgets of some, but by no means all, programs. In view of the diversity of the goods and services that the federal government provides, practices in setting user charges naturally vary widely. But even programs that are similar in nature may not assess charges for goods or services in the same way or with the same effect and thus may or may not recover program costs or encourage optimal use of scarce resources. Depending on the circumstances, such differences may reflect deliberate policy or long-standing practice.

The natures of the agencies that are most likely to be financed from user charges vary. Some are primarily involved in producing and selling products, such as power. Others--the Postal Service, for example--sell services. These programs have traditionally received most of their funding from their customers.

Beginning within the past decade, several regulatory agencies have derived most or all of their operating funds from user charges. In most cases, as a result of a change in law or administrative action, agencies have assessed fees for programs that previously had been financed from general funds. But some agencies--for example, the Environmental Protection Agency and the Food and Drug Administration--have levied new fees and specifically earmarked the funds for hiring new staff and expediting regulatory processes.

Despite the recent growth in regulatory charges, practices may vary from agency to agency. For activities that are similar in nature, federal agencies may in some cases be collecting fees that fully recoup and even exceed program costs, as in the case of the Securities and Exchange Commission; in other cases, such as the Commodity Futures Trading Commission, the government may be assessing virtually no charges. These differences have evolved over time and suggest that user charges for some services may increase.

Again, notwithstanding recent trends, the federal government's practices in charging for

the rights to use public lands and to extract natural resources vary widely. For example, the federal government charges market prices (through a lease-bidding process) for oil and gas leases on public lands (including the submerged lands of the Outer Continental Shelf). But charges for grazing on public lands, water resources, and hardrock mining claims are far below their market value and thus provide a subsidy that may encourage poor use of scarce resources. Fees for the use of federal recreational facilities administered by the Departments of Agriculture and Interior and the Army Corps of Engineers also are far below program and maintenance costs. All of these charges are for goods and services that benefit private parties but that all taxpayers are now subsidizing either partially or entirely. In these cases, too, the potential exists for increases in user charges.

Effects of Changes in Law and Budget Processes on User Charges

Most of the new and increased charges of the 1980s followed the passage of the Balanced Budget Act of 1985. As the search for new sources of funds intensified, changes in law and budget processes helped assure the enactment of new user charges.

Beginning with the Consolidated Budget Reconciliation Act of 1985, the legal basis for setting certain user charges expanded from reimbursing an agency's costs of providing services to financing all or a specified portion of an agency's budget. Previous statutes had set fees in relation to the costs of providing particular services to private beneficiaries, not to an agency's overall budget.

Recent decisions of the Supreme Court and of lower courts have upheld the broad user charge legislation enacted since 1985. Several Supreme Court cases in the past two decades have focused on the distinctions between fees and taxes and on the conditions for a constitutional delegation of authority from the Congress to executive agencies. In clarifying the constitutional issues that have been associated with user charges, these decisions provide a legal framework for expanding the scope of user charge financing.

Finally, the treatment of user charges in the budget differs from that of taxes levied on broad bases. Unlike most taxes, which flow into general revenues, most user charges are either offset against (that is, subtracted from) outlays or dedicated to trust or special funds for specific purposes.

Since 1985, policymakers have increasingly offset charges against outlays and, on occasion, devised fees that are much like taxes. This practice has developed for several reasons. The budget reports net outlays--the amount that remains after subtracting fees and other collections from gross outlays. Imposing fees that the budget measures as an offset against outlays thus allows supporters of a program to expand or maintain government services without increasing reported spending or revenues. Since offsetting collections reduce net outlays, a Congressional authorizing committee can meet its budget reconciliation targets by raising fees instead of cutting programs. For the same reason, the appropriations committees can impose or raise fees in order to comply with the discretionary spending limits in the Budget Enforcement Act.

The Outlook for User Charges

The Congress has adopted a budget resolution that sets substantial deficit reduction targets over the next five years. Increases in and extensions of user charges will help meet these targets. Since 1985, budget reconciliation measures have included new and increased

user charges. The Omnibus Budget Reconciliation Act of 1993 is no exception. It reinforces the trends of the past decade by imposing new fees and increasing or extending others. The Congress is considering additional proposals. At the same time, the executive departments and agencies can increase some fees through administrative action and without Congressional approval. Recent events suggest that efforts to recover the costs of running federal programs will continue and that federal user charges will increase in the 1990s.

Chapter One

Introduction: Fees, Taxes, and User Charges

Testifying at Congressional hearings in March 1987, then-Secretary of Commerce Malcolm Baldrige was asked how he distinguished between a fee and a tax. "I think it is simple," he replied. "If it is a Democratic proposal, it is a tax; if it is Republican, it is a user fee."[1] The jest notwithstanding, the question has confounded more than one legislator and been the subject of several legal decisions. The facts are that the meanings of the terms "user fee" and "user charge" are ambiguous, and the distinction between fees and taxes at times is unclear.

This study takes a broad view of user charges. In practice, the terms "user fee" and "user charge" have been applied to several means of raising funds for government programs by assessing their beneficiaries. For some policymakers and analysts, the terms refer only to fees, but for others they describe not only fees but taxes dedicated to trust funds that provide financing for specific purposes, such as gasoline excise taxes, which mostly support federal highway expenditures.

Federal agencies have defined user fees broadly, as prices "charged identifiable individuals or entities by the federal government for a service or good" that "the government controls," and narrowly, as prices imposed to recover the cost to the federal government of providing "special benefits to an identifiable recipient beyond those that accrue to the general public."[2] The narrower definition rests on a distinction between special benefits to individuals and businesses and general benefits to the public--a distinction that is often clearer in theory than in practice. The leasing of government-owned land to private firms, for example, clearly confers a special benefit; providing for the national defense is obviously a general benefit. But between these extremes lie a wide variety of services that may provide special benefits to particular individuals or businesses and general benefits to the public.

User charges represent an attempt to match those who pay for federal services with those who receive them. In the broadest sense, user charges also include assessments to lessen a burden that individuals or businesses impose (or might impose) on third parties. Liability-based charges are the mirror image of beneficiary-based charges and are an attempt to match those who pay for corrective actions with those who might cause the conditions requiring them. Like beneficiary-based charges, liability-based charges may take the form of fees or dedicated excise taxes.

This study covers beneficiary- and liability-based fees and taxes levied for private goods and for goods or services that may provide a mix of public and private benefits. It does not include fees or other collections that are asso-

1. House Committee on Appropriations, *Hearings Before the Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies*, part 6, *Department of Commerce*, 100th Cong., 1st Sess., (March 18, 1987), p. 91.

2. Administrative Conference of the United States, *Federal User Fees, Proceedings of a Symposium*, Thomas D. Hopkins, ed., p. 99; Office of Management and Budget, Circular A-25, "User Charges," *Federal Register*, vol. 52, no. 126 (July 1, 1987), p. 24891.

ciated with subsidy or loan programs and generally are accounted for separately in the federal credit budget; collections associated with one-time sales of government assets; fines, penalties, forfeitures, and other charges that are associated with breaches of law; and payroll taxes dedicated to the Social Security or Medicare trust funds. In general, payroll taxes have a broader base and are less discretionary than most user charges, since individuals and firms can avoid them only by avoiding most forms of employment.

The budget deficits of recent years have drawn attention to user charges as a means of funding federal programs. The approach has, in turn, raised issues of concern to policymakers and analysts. These issues--which are the focus of this study--include the differences between user charges and taxes levied on broad bases and the purposes for which user charges are most suitable; how user charges should be set; whether user charges are growing and, if so, for what types of programs; the legal distinctions between fees and taxes; the ways in which changes in law and budget processes have affected user charges; and the potential for the growth of user charges in the future.

Chapter Two

Definitions and Issues

User and user-related charges are fees or taxes that are based on benefits or liabilities. User charges are feasible for private goods and for a variety of quasi-public goods and services that the government can control by denying access to nonpayers or by prohibiting nonpayers from engaging in certain activities.

Unlike user charges, most taxes are unrelated to particular benefits or liabilities. It would be impracticable to impose user charges for purely public goods, such as national defense, because many people collectively consume the same amount of them and because excluding nonpayers from access to benefits would be difficult, if not impossible. But where the government controls a commodity, such as hydroelectric power, or a facility, such as Yellowstone National Park, it can charge users and deny access to nonpayers just as a private firm would. The government can also set conditions for doing business that include adherence to regulations and payment of associated costs. Thus, in regulating the nuclear energy industry, the government charges firms for reviewing construction permits, granting operating licenses, and conducting inspections of nuclear reactors--in other words, for services required for compliance with the law. Finally, the government levies taxes that are earmarked for trust funds or special funds and that are generally, if not perfectly, correlated with benefits to the payer or costs to society.

The economic and budgetary effects of user charges differ from those of taxes levied on broad bases. From an economic standpoint, the function of user charges is to allocate resources and distribute costs in line with benefits that the government provides or the costs that some activities may impose on society. By contrast, income and many other taxes bear little direct relationship to people's use of or benefits from public services.

Within the budget, user charges usually fund specific programs or agencies. Most taxes, apart from social insurance, flow into general revenues. Some user charges do also, but, more commonly, user charges are deducted from program or agency outlays or are dedicated to trust or special funds for specific purposes. From an operational standpoint, the distinction between a special fund and a trust fund is insignificant. In general, trust fund receipts are invested in Treasury debt securities and collect interest. Special fund balances are normally not so invested and do not earn interest. The funds provide a means for accounting for receipts and expenditures of earmarked revenues and do not have the fiduciary characteristics of true trusts.

The Varieties of User Charges

There are four distinct types of user charges: user fees, regulatory fees, benefit-based taxes, and liability-based taxes. Of these, user fees are the most significant in terms of current dollar volume, followed by benefit-based taxes, regulatory fees, and liability-based taxes in that order (see Figure 1).

User Fees

User fees are payments made by individuals or businesses for goods or services provided by the government, consumed voluntarily, and not generally shared by other members of society. User fees are levied for goods and services that are beneficiary based. Apart from being charged by the government, user fees are similar in kind, although not necessarily in amount, to payments made in ordinary business transactions in the private sector and often may be for the kinds of goods and services that the private sector also provides.

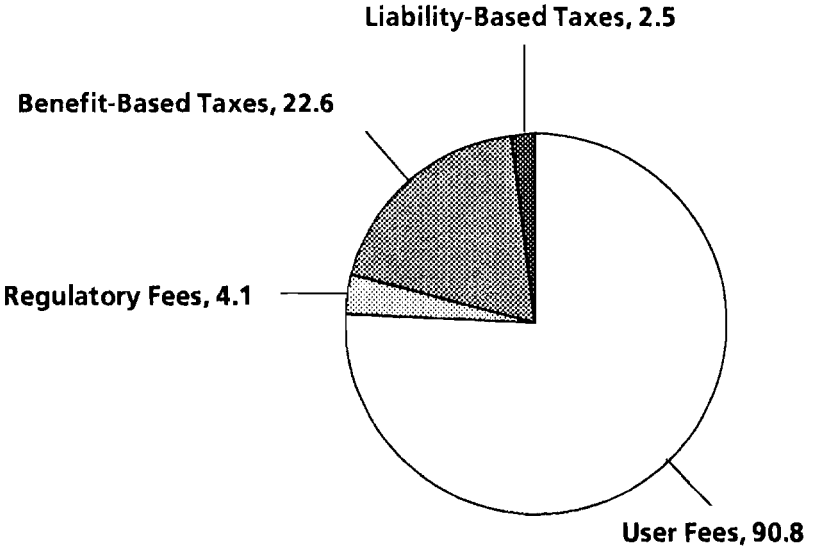
User fees include royalties on natural resources; canal, bridge, and highway tolls; insurance premiums; lease and rental payments; and charges for recurring sales of resources (such as water, minerals, and timber) and products (such as power), the use of federal land (such as for grazing livestock), the use of federal facilities and access to national parks, services (such as mail delivery, disposal of nuclear fuel, and enrichment of uranium), and permits and licenses not associated with regulatory programs.

Regulatory Fees

Regulatory fees are charges based on the government's power to regulate particular businesses or activities. These charges include fees for regulatory and judicial services; immigration, passport, and consular fees; Customs Service user fees; fees for testing, inspection, and grading services; patent, trademark, and copyright fees; and registration, filing, permit, and license fees associated with regulatory programs. In general, these charges--which may be beneficiary- or liability-based, or both--are for functions that are traditionally performed by government and only rarely by the private sector.

Regulatory fees stem from the powers that the government exercises as a sovereign state, such as the powers to levy taxes and duties and to regulate commerce. Regulatory fees in-

Figure 1.
User Charges in 1991 (In billions of dollars)



SOURCE: Congressional Budget Office.

clude charges for licenses, which the government may require as a condition for permitting a commercial activity. Regulatory fees also 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. Frequently, such charges are for activities undertaken in order to make sure that a firm has followed prescribed measures to avert environmental or other damage to public health and safety.

The government often sets safety standards for certain types of industrial activity and charges firms for the cost of inspecting their plants to assure compliance. From the standpoint of the regulated party, such services seem to benefit the payer little and thus the charges seem to be more like taxes than fees for service. From the standpoint of the federal government, however, such charges compensate for costs that a business imposes or might impose on society when it pollutes or otherwise damages a public resource. By comparison, when the government issues a passport or grants a patent, the benefit to an identifiable private recipient is clear. Although all regulatory fees stem from the sovereign power of government, the issue of who benefits from certain types of regulatory activity has been at times controversial (see Chapter 3).

Beneficiary-Based Taxes

Taxes on benefits, or beneficiary-based taxes, are charges levied on bases correlated in varying degrees with the use of a publicly provided good or service. Benefit taxes may be proxies for user fees and are usually dedicated to trust or special funds.

Most benefit taxes are related to transportation and nature conservation. More frequently than not, they are excises. For purposes of this study, excise and other taxes are user charges when the law creates a relationship between the collection of a tax on a product and the provision of a good or service. Generally, the relationship involves dedicating the tax to a trust or special fund for a purpose that directly or indirectly benefits the payer. For example:

- Taxes on gasoline, diesel fuel, gasohol, tires and inner tubes, truck and trailer sales, and annual taxes on highway vehicles (trucks) weighing more than 55,000 pounds are dedicated to the Highway Trust Fund, which finances the maintenance and the improvement of roads and bridges and supports highway safety and traffic control projects within the federal highway system.[1] The taxes on trucks and trailers, highway vehicles, and tires for heavy vehicles are intended to approximate charges for highway wear and tear. (A more exact relationship between charges and use of the highways would also take distance into account.) A mass transit account receives 1.5 cents per gallon of the gasoline tax. Fuels for farm use or for construction equipment are exempt from the tax. The National Recreational Trails Trust Fund, established in 1991, was authorized to receive, subject to appropriation, amounts equal to 0.3 percent of total Highway Trust Fund receipts for the year following its enactment and thereafter revenues corresponding to nonhighway recreational fuel taxes, up to a maximum of $30 million a year. To date, the Congress has not appropriated any funds to the account.

- Taxes on air passenger tickets, air cargo, noncommercial jet fuel and aviation gasoline, and a head tax on international departures are dedicated to the Airport and Airway Trust Fund, which finances airport construction and improvements, development of the airway system, and a portion of Federal Aviation Administration operations.

1. Revenues from the current 2.5 cents per gallon excise tax on highway motor fuels and on rail fuels are not user changes, since the taxes finance the government's general operations. Under the Omnibus Budget Reconciliation Act of 1990, they are retained in the general fund through September 30, 1995.

- Taxes on fuels used by vessels plying specified inland and intracoastal waterways are dedicated to the Inland Waterways Trust Fund and used for construction and rehabilitation of navigational facilities within these waterways.

- Taxes on the value of cargo loaded or unloaded at U.S. harbors, channels, and ports are dedicated to the operation and maintenance necessary for commercial navigation of U.S. ports and harbors.

- Taxes on motorboat fuels, electric outboard motors, sportfishing equipment, and sonar devices for finding fish are dedicated to the Aquatic Resources Trust Fund, which promotes boating safety and fish restoration. This fund has two accounts: one for boating safety, the other for sportfish restoration. Motorboat fuel taxes are transferred from the Highway Trust Fund to these accounts. Of the 14 cents per gallon tax on motorboat and small engine fuels, 11.5 cents goes into the Aquatic Resources Trust Fund, and the remainder goes into the general fund. The Land and Water Conservation Fund, administered by the Department of the Interior, receives $1 million a year of the revenues from motorboat fuels.

Beneficiary-based taxes differ from fees, not only in the structure of the charge, but also in the degree of connection between the payers of the charge and the benefits or services that are financed with the proceeds. Taxes are more likely than fees to be levied at uniform rates with less regard for differences in cost for facilities within a system or for differences in the use of the system. For example, nearly all purchasers of gasoline pay the motor fuels excise tax, even though individuals vary widely in their use of interstate highways. The charge is thus more loosely related to the benefit it provides than is, say, a highway toll. But it is more closely related to a benefit than, for example, the income tax.

Benefit taxes frequently involve some amount of cross-subsidy. A cross-subsidy occurs when one group pays fees that reflect more than its share of costs, while another group pays fees that reflect less than its share. In these cases, the higher-paying group is subsidizing the lower-paying group. Although typically less with fees, cross-subsidies may occur with either fees or benefit taxes. Thus, in this regard, taxes and fees are different in degree, not in kind.

Liability-Based Taxes

Another group of trust fund excise taxes are dedicated to paying down liabilities. Liability-based taxes are excises levied for the purpose of abating hazards or compensating for injuries. Where possible, the government collects damages from responsible parties. But at times, taxes on products that might have some connection with the cause of damages serve as proxies for recovering damages from responsible parties. Thus:

- Taxes on crude petroleum and feedstock (and equivalent import duties on crude petroleum and certain chemical derivatives) are dedicated to the Hazardous Substance Trust Fund (Superfund), which provides financing for coping with environmental damage caused by hazardous substances, including cleanup of contaminated sites. Superfund also receives revenues from an environmental tax on corporations equal to 0.12 percent of the modified alternative minimum taxable income of the corporation in excess of $2 million. In 1991, for the first time, the corporate tax was the largest single source of tax revenues for Superfund. In this study, user charges include these revenues.

- Additional taxes on gasoline, diesel and other motor fuels, methanol and ethanol fuels, aviation fuels, and fuels used by vessels in inland waterways are dedicated to

the Leaking Underground Storage Tank (LUST) Trust Fund, which covers cleanup costs when the party responsible is insolvent or fails to deal with the problem.

- Taxes on crude oil are dedicated to the Oil Spill Liability Trust Fund, which pays to clean up oil spills and covers claims for damages resulting from them. The tax is effective through December 30, 1994; however, if the unobligated balance of the oil spill fund is more than $1 billion at the end of any quarter, the tax rate will be zero for the following quarter. For the quarter beginning July 1, 1993, the tax rate was zero. If the balance in the fund is subsequently less than $1 billion at the end of a quarter, the tax rate will be 5 cents per barrel at the start of the quarter that begins 90 days after the close of the quarter for which the calculation was made.

- Taxes on domestically mined coal finance the Black Lung Disability Trust Fund, which was set up to compensate miners disabled by pneumoconiosis (black lung disease) or to recompense their survivors.

- Taxes on vaccines are dedicated to the Vaccine Injury Compensation Trust Fund, which provides funds to compensate people for injuries resulting from prescribed diphtheria, pertussis, tetanus, measles, mumps, rubella, and polio vaccines administered after October 1, 1988. The tax expired on January 1, 1993; the Omnibus Budget Reconciliation Act of 1993 extended it permanently.

The use of excise taxes to finance liabilities illustrates the trend toward using dedicated taxes to pay for environmental and other damage imposed on third parties. Liability-based taxes are likely to be reflected in consumer prices and may be said to represent an attempt--however imprecise--to include within the final prices of certain goods the costs imposed on society of producing or consuming them. In this respect, they are analogous to certain liability-based regulatory fees, just as benefit-based taxes are analogous to user fees.

Taxes levied on the source of an environmental danger may reduce the activity that causes the danger. Taxes levied on the sources of health or environmental hazards also may substitute for insurance programs. How much they do depends on the strength of the relationships between the taxes and the potential liabilities that they finance. The more direct the relationship, the more effective the tax will be in compensating for actual damage.

The strength of the relationships between current excise taxes and the liabilities they finance varies. For example, the excise taxes dedicated to Superfund are imposed on some, but not all, hazardous chemicals, and not on the waste produced in either manufacturing or using them. Thus, the user of the chemicals, having paid the tax, has no direct incentive to prevent or reduce pollution. The Superfund, leaking underground storage tank, and oil spill taxes finance control and cleanup once damage has occurred, but do nothing directly to reduce or prevent it. These taxes also fall short of functioning as insurance charges because they finance cleanup of damages that occurred before the taxes were enacted. The taxes levied for the Vaccine Injury Compensation Trust Fund, in contrast, cover prospective damages and, thus, more closely approximate insurance payments.

Policy Issues in Setting User Charges

User charges ideally are prices and are therefore rationing mechanisms for allocating the goods and services that the government provides. Some user charges, however, are much more like prices than others: some are closely

related to the costs of providing benefits; others are hardly related at all. User charges are also a means of assuring fairness by equitably distributing the burden of paying for government services among those who benefit from them.[2] The standards for evaluating user charges are based on their effectiveness as an allocative mechanism and an instrument for promoting fairness, and on the reasonableness of their administrative and compliance costs.

Of the array of goods and services that the federal government provides, some may be available through the private market. Some may have high one-time costs, so that only the government or a natural monopoly can provide them; or they are scarce resources, such as public lands; or are regulatory in nature. Some may benefit private parties only; others may have external benefits. The suitability of a charge will depend on both the nature of the product and the aims of public policy.

The Standards for Evaluating User Charges: Efficiency

How efficiently, or how well, the economic system allocates resources depends on how producers and suppliers of services set prices. A necessary condition for achieving efficiency of allocation is that prices of goods and services be equal to the marginal or incremental costs of producing them. People are likely to purchase a good until the value they place on the last unit they consume equals the price. If the price is set below marginal cost, consumers will demand too much of the good, and society will devote too many resources to its production, sacrificing other outputs of greater value. If the price of a good is greater than its marginal cost, consumers will demand less of it. When competitive markets are working well, prices naturally tend toward marginal costs and lead to efficient allocation of resources.

User charges can promote economic efficiency by providing the government with information on the amount of a good or service that it should supply. If they are appropriately set, user charges allocate goods and services to those who value the good the most, encourage use of more suitable or cheaper substitutes, and provide funds to replace subsidies. When the government offers no subsidies and provides goods and services that the private market might supply, a choice may exist between imposing user charges and transferring ownership and operation of a facility from the public to the private sector. User charges, if set at a price that just covers the cost of producing an additional unit, can provide information on the demand for a product and the revenue it will generate. This information, in turn, can help private firms determine whether to consider taking over a government function or to offer competing products.

Goods That Have High Fixed Costs. If the government sells goods that a competitive market might also supply, setting prices equal to marginal costs should result in an efficient allocation of resources. But often, the government provides goods or services that private firms do not supply efficiently. A competitive market generally functions poorly when larger firms can produce goods or services at lower costs than smaller firms. Under those circumstances, a single firm--a so-called natural monopoly--could dominate an entire market. Compared with the competitive ideal, the monopoly tends to produce too little at too high a price.

Producers of goods or services who have high fixed costs generally experience decreas-

2. For a general discussion of the purposes, advantages, and disadvantages of user charges, see Clayton P. Gillette and Thomas D. Hopkins, "Federal User Fees: A Legal and Economic Analysis," *Boston University Law Review*, vol. 67, no. 5 (November 1987), pp.795-874. Also, Joseph J. Cordes and C. Eugene Steuerle, "The Effects of Tax Reform on Budget, Tax, and Social Policymaking," in *Proceedings of the Eightieth Annual Conference on Taxation of the National Tax Association/Tax Institute of America* (November 1987), pp. 41-47; Werner Z. Hirsch, *The Economics of State and Local Government* (New York: McGraw-Hill, 1970), pp. 29-48; and O.H. Brownlee, "User Prices vs. Taxes," in *Public Finances: Needs, Sources, and Utilization*, A Report of the National Bureau of Economic Research (Princeton: Princeton University Press, 1961), pp. 421-432.

ing average costs of production and could suffer losses if they set prices equal to marginal costs. The problem arises because the cost of large fixed investments in plant and equipment varies little with the amount of output or use. Thus, the cost of producing an additional unit is small and will not cover fixed investment. Put another way, efficiency of use may conflict with efficiency of investment levels. Efficient use of a good or service requires marginal-cost pricing. But if prices are set below average costs, the project or program will not pay for itself, and in the case of goods that the federal government supplies, the shortfall would be financed by taxes that create other efficiency costs. Alternatively, if average costs are higher than marginal costs, potential consumers of the goods or services will be excluded, even if they are willing to pay enough to compensate suppliers for the extra costs.

The question then becomes whether to cover the deficit between marginal- and average-cost pricing and, if so, how. The alternatives for the government are (1) permit private firms to recoup their costs but regulate their prices; (2) provide subsidies to private firms; (3) create a publicly owned enterprise and provide subsidies, as necessary; and (4) create a publicly owned enterprise and set prices that recover costs. Electric power production, mass transport, and local communication services are typical of enterprises that are likely to be either heavily regulated or publicly owned. Among government-financed goods, investments in infrastructure, such as waterways, usually have high fixed and low marginal costs. The problem then becomes how to recover fixed costs without completely sacrificing efficient use.[3]

Two-part tariffs are one approach. These tariffs, which utilities often use, supplement charges for each unit of service with a flat charge that must be paid for any use of the service. In recent years, some federal regulatory agencies have used a combination of unit and flat charges to recover costs (see Chapter 5).

Other methods of recouping fixed costs include charging prices that exceed marginal costs, but only for consumers with inelastic demands, so that effects on use are minimal, or allowing a discount on extra use to consumers who pay a fixed charge. Pricing mechanisms include price discrimination, block rates, and differential pricing.

Price discrimination involves differentiating among users, based on the alternatives they have for a good or service. The users who can least easily substitute another good or service pay the highest price. "Ramsey pricing" (named after the economist who advanced the theory) is a technique that uses price discrimination. It involves charging users on the basis of their elasticities of demand (the percentage change in the quantity demanded in response to a percentage change in price). Users who have a low elasticity of demand (perhaps because they cannot easily substitute other goods) pay a higher price. Users who have the most alternatives pay the lowest prices. Thus, a utility might charge lower rates for commercial than for residential users. Price discrimination makes it possible to meet a revenue target without departing much from the patterns of use that would prevail under marginal-cost pricing.

Block rates involve charging a higher rate on the first few units, a lower rate on the next block, and so on. The higher rate helps cover fixed costs, while the lower rate on the last block is likely to reflect marginal costs. This permits people who have made a contribution to fixed costs to consume extra units at lower marginal costs.

Differential pricing may take several forms. A common practice when demand for a service varies widely over a 24-hour period, as it does for power or telephone service, involves charging higher prices at peak periods of use. This practice is a form of marginal-cost pricing since, at peak times, excess capacity declines,

3. For a detailed analysis of the issues involved in recovering the costs of investments in transportation infrastructure, see Congressional Budget Office, *Paying for Highways, Airways, and Waterways: How Can Users Be Charged?* (May 1992).

and the enterprise looks less and less like a decreasing-cost industry.

Resources That Have Scarcity Value. The federal government owns vast tracts of land and controls access to a wide variety of natural resources. These resources have scarcity value. In setting fees, rents for rights to use public lands, or royalties for the rights to extract natural resources, the concern is not to recover production costs, but to cover management and maintenance costs or to assess a charge that reflects the market value of the resource and thus encourages its optimal use. Establishing an efficient price might involve holding auctions, soliciting bids, or, if private markets offer similar goods, setting prices at comparable levels.[4]

Equity

In many cases, requiring that the people who benefit from a particular good or service pay for it is both efficient and fair. But rationing, whether by setting prices for goods and services or otherwise, is always potentially exclusionary. The question is, who is excluded and from what?

In setting charges, it is useful to distinguish between goods and services that the price system allocates and goods and services that the political system allocates. In general, the price system is best suited to allocating private goods. The political system is best suited to allocating public goods, but in the case of merit goods, for example, the state may also become involved in allocating private goods. Merit goods are public or private goods that the state allocates because it has decided that people should have access to them. They are frequently aimed at children or lower-income individuals and include such goods as housing for low-income families or the elderly.

In charging for nonmerit goods that confer only private benefits, the aim is to assess charges in line with benefits, so as to lessen the burden of taxpayers who derive no benefit from the good or service. If consumers of a service pay no charges or pay charges that are below the costs of providing it, the burden of financing the service shifts to others. Those burdened could be either unsubsidized consumers, who pay prices that are above costs, or taxpayers generally. In the case of nonmerit goods, eliminating cross-subsidies can be equitable and compatible with efficiency.

By contrast, in the case of merit goods, the goals of efficiency and equity may conflict. Society's definition of fairness could involve providing access to certain goods and services, such as health care, housing, or food, to people who otherwise could not afford to pay for them. Generally, the government provides such merit goods free of charge or at prices lower than necessary to recoup incremental costs (instead of simply giving lower-income people cash to spend according to their preferences). If the goal is to make certain goods and services more accessible to lower-income individuals, or to provide equal access to all, regardless of ability to pay, user charges that are based strictly on costs and benefits would be unsuitable. The alternative would be either to impose differential fees or to finance the good or service from general tax funds. In either case, individuals paying higher fees or taxes would subsidize individuals paying lower fees or taxes, with some resulting decline in efficiency.

Services That Provide a Mix of Public and Private Benefits

User charges frequently pay for activities that have both private and public benefits. In these instances, the efficient and equitable approach would be to charge for the benefits that are private. Regulatory activities are a good example of services that might provide either private or public benefits, or a mix of the two.

4. A previous Congressional Budget Office study, *Auctioning Radio Spectrum Licenses* (March 1992), discusses some of these issues in more detail.

Some of the federal government's regulatory fees are levied for services that confer a private benefit, such as patent and trademark registration or weighing and grading of food products. Firms often purchase services from the private market that are similar to the regulatory, inspection, and grading services that the government provides. For example, issuers of both corporate and municipal bonds hire special services to provide ratings and information for consumers. Similarly, in instances where the government imposes regulations but does not provide regulatory services to assure compliance, the regulated parties might hire private firms to do so (generally to avoid the penalties or costs of noncompliance). For example, the federal government has imposed a wide variety of regulations on the issuance of tax-exempt bonds. Without an opinion of bond counsel that the issue qualifies for tax exemption, the bonds are unsalable. Issuers thus hire private counsel to assure that bond offerings comply with regulations.

Setting Charges to Reflect External Benefits and Costs. In some cases, the private market provides goods or services that benefit not only direct consumers, but society at large. Such goods as drugs that prevent or cure contagious diseases are said to have external benefits; for example, public health. In other cases, producing or using a good may impose costs on society in the form of depletion of scarce public resources or damage to the environment. These are known as external costs; for example, pollution. The greater the external benefits or costs of private market production or consumption, the greater the rationale for the government to become involved by taking action to increase the availability of goods that provide external benefits and to decrease the availability of goods entailing external costs. Government intervention may take several forms, including subsidizing some activities and regulating others.

Setting Charges to Reflect External Benefits. In some cases, federal agencies assess fees for services that may have external benefits; for example, fees for drug certification and approval. In general, consumers of drugs benefit from knowing that the medications they take meet certain standards of safety and effectiveness. If the consumers of drugs were the sole beneficiaries of drug certification, the benefits would be private. But where drugs control or cure highly contagious diseases that have social as well as private costs, the benefits are also public. For example, people who have AIDS are highly susceptible to tuberculosis, which is airborne, contagious, and frequently resistant to antibiotics. Thus, the availability of drugs to prevent or cure AIDS would benefit not only those who have the disease or are at risk of contracting it, but would ultimately lessen the risk to the general public of drug-resistant strains of tuberculosis. In the interests of both equity and efficiency, the charges for drug certification and approval should reflect the mixed nature of the benefits. To a degree such charges do, since they cover only a portion of the federal government's costs.

Charging for External Costs. User charges enable the government to impose levies that in some way reflect external costs. The rationale for doing so is that efficient pricing of goods and services should include both the costs to the producing firm and the costs to society.

External costs may result from both investment and consumer activities. Air pollution, for example, is produced by industry and automobiles. The amount and cost of damage to the environment is difficult to measure and varies widely among regions. But if these could be determined, one efficient solution would be to impose a tax or a fee that would add the marginal external cost to the marginal private cost, so that the total marginal cost equals the price. This would raise prices and reduce the output of polluting goods and thereby lessen pollution. Similarly, to discourage travel in hours of peak activity, charges for using interstate highways could include the external costs of congestion.

The right to levy charges for pollution or other external costs stems from the power of the state to regulate the economy and protect the health and safety of its citizens. In exercising its powers, the government may set limits on property rights. How the government chooses to do so will determine who gets the charges or rents.

The government, in effect, may assert that it wholly owns the assimilative capacity of the environment and may charge polluters for using up any portion of it or causing any damage. The charges or rents would then go to the government. Or the government, in effect, may hold that within limits consistent with the health and safety of society, the assimilative capacity of the environment belongs to private parties. Therefore, it may grant permits to pollute up to specified levels (as in the case of the 1990 clean air legislation). Firms might then sell "pollution rights" to other firms in much the same way that owners of real property might sell "air rights" to real estate developers. (In many localities, zoning laws establish maximum heights and densities for new construction, and owners of existing buildings with heights and densities below the maximums have the option of selling their "unused" air space to developers of adjacent or nearby lots.) Such laws limit the effect of development on the environment. But assigning the right to pollute or to build up to a certain level to private parties allocates the rents to them, rather than to the government.

The federal government levies a number of charges for activities that it undertakes to reduce external costs. Liability-based taxes and many licensing and inspection fees reflect an attempt to include within the final prices of certain goods the costs imposed on society of producing or consuming them. If regulatory fees and liability-based taxes are reasonable proxies for the external costs of producing or consuming certain goods, they increase efficiency. Assessing the cost of potential damage to third parties is a more difficult undertaking, and the less direct the link between a fee or a tax and the activity that it finances, the less likely it is that the charge will contribute to economic efficiency (although the charge may represent a reasonable trade-off with other goals, such as administrative ease).

At times, firms have objected to paying regulatory fees on the grounds that the charges finance activities that seem to benefit the public as much as, if not more than, the paying firms and are therefore more like taxes. When so challenged, the federal government has frequently responded by pointing to the benefits that particular industries and consumers of their products derive from being regulated. From an economic perspective, however, the issue is not whether the industry benefits, but whether regulation is necessary to control external costs. If so, then charges for regulatory activities, unlike many taxes, may improve rather than worsen economic efficiency. The structure of a charge--whether it is a fee, a tax, or some other levy--has no economic significance, although it may have legal consequences (see Chapter 3).

User Charges Versus Broad-Based Taxes

User charges serve two functions: to allocate resources and distribute costs in line with benefits received. They should also raise funds in ways that are relatively easy to administer. User charges affect the allocation and distribution of resources differently than broad-based taxes and are therefore more suitable under certain circumstances. The degree of difference between user charges and broad-based taxes depends on how close the charge is to a true fee for a good or service; in other words, to how closely correlated the charge is to the benefit or the liability. When the correlation is close, the allocation of resources more accurately reflects the choices of individual consumers and producers; however, if the proceeds of user charges are subject to Congressional appropriation, the political system also plays a role.

When general tax funds provide the financing for goods and services, the political process

alone determines how much to supply. The political process is best suited for determining how public funds should be allocated to public goods, but, except in rare instances when consumer preferences are clear to policymakers, financing private goods with general tax funds can lead to poor allocation of resources and inequities. User charges are more likely to be efficient and equitable when benefits to the payer are direct and less likely to be so when external benefits are significant. When it is important to provide equal access to goods and services for all income groups, regardless of ability to pay, user charges are inappropriate.

Fees Versus Benefit (or Liability-Based) Taxes

Benefit taxes are similar in some respects to fees and broad-based taxes. Fees usually are levied for a specific service or good and priced accordingly. Thus, highway, bridge, or tunnel tolls might be high at some locations and lower at others, depending on a variety of factors. Conversely, taxes tend to be uniform throughout a system. Like fees, benefit taxes are related (at times loosely) to a good or service. Like broad-based taxes, benefit taxes are uniform throughout the country and therefore more likely, in practice, to involve cross-subsidies than fees. For this reason, benefit taxes usually create more losses of economic efficiency than fees. That need not be the case. If set too high or too low, fees can be inefficient and inequitable. And taxes can be efficient if the levy is on a product that is directly related to consumption of a government-supplied good or service. In practice, however, fees are more likely than taxes to be directly related to benefits or liabilities.

The choice between a fee or a benefit tax is often likely to hinge on ease of administration or collection. Where imposing direct charges is desirable, but too costly, a tax on a complementary product may make sense, assuming that it is administratively less complex and therefore less costly to collect. Dedicated taxes are often compromises that sacrifice some degree of the efficiency and equity of an ideal user charge to make sure that funds for a specific purpose will be available and not too costly to collect. Highway taxes, for example, generate sufficient revenue for the Interstate Highway System. Their shortcomings are that the charges do not reflect distance, congestion costs, pollution costs, or wear and tear by heavy vehicles. Consequently, some users overpay, while others underpay. A system of fees, if properly designed, would avoid the deficiencies of taxes.[5] In instances where fees are too difficult or costly to collect, however, the objective, from the standpoint of efficiency and equity, should be to design a tax that is as closely related as possible to the good that the government is providing.

At times, it is possible to design and enact a benefit- or liability-based tax that is closely correlated to use and is therefore reasonably efficient, equitable, and easy to collect and administer. The tax on vaccines dedicated to the Vaccine Injury Compensation Trust Fund is an example. Unlike the Superfund, LUST, oil spill, and Black Lung trust funds, which provide financing to compensate for damage that occurred before the creation of the trust funds, the Vaccine Injury Compensation Trust Fund is more like an insurance program in that it compensates for damages that occurred only after the establishment of the trust fund. Damages that occurred before its establishment are financed from general funds. Moreover, the tax rate per dose varies with each vaccine and is set to approximate potential future liabilities for damages that may occur from each particular vaccine. Compensation is on a no-fault basis; that is, no attempt is made to assign blame to or to recover damages from individual manufacturers.[6]

5. Congressional Budget Office, *Paying for Highways, Airways, and Waterways*, analyzes current charges for these purposes and suggests alternatives.

6. For a fuller discussion, see Nonna A. Noto and Louis Alan Talley, *Excise Tax Financing of Federal Trust Funds* (Congressional Research Service, January 5, 1993), pp. 14-15.

From the standpoint of both efficiency and equity, assessing responsible parties to compensate for damages is preferable to assessing current users for damages that others have caused in the past. Where possible, the government does seek compensation from the firms that caused the damage; but in many cases recoveries may be small because the offender is unknown or unidentifiable, no longer in business, or has insufficient assets to pay for damages. If the government is able to collect, the monies are deposited in the trust funds set up for the purpose.[7]

The ideal approach, however, ignores the difficulty that may be involved in collecting damages from responsible parties, which (assuming they do not go out of business) can include extensive legal costs and long delays. The next-best approach is to levy liability-based excise taxes that substitute for insurance premiums and reflect the potential external costs of the product, as in the case of the excise taxes on vaccines. But this approach requires general fund financing of past damages, which at times may be politically less acceptable than taxing specific industries.

The compromise is a tax that is loosely correlated to the benefit or liability it finances, as in the case of Superfund. Such a tax may be politically more acceptable than a broad-based tax and more feasible and easier to administer than an attempt to recover damages (or collect a fee), even though, as a user charge, it is less than ideal because payments by firms do not correspond closely to the social costs of their activities.

7. In the case of the Black Lung program, funds to compensate for damages may come from the general fund, the trust fund, or a former employer, depending on the date of the miner's last employment and the date the claim was filed. See Noto and Talley, *Excise Tax Financing*, p. 15.

Chapter Three

User Charges, the Congress, and the Courts

The practice of charging for government services is longstanding and has at times raised legal issues. Much of the debate over user charges and many of the legal challenges to them have focused on the distinction between fees and taxes. The distinction is unimportant from an economic standpoint (see Chapter 2). From a legal and a political standpoint, however, the distinction between fees and taxes and the definition of revenue measures are significant because they may bear on the constitutionality of certain charges and on jurisdictional issues within the Congress.

In the last 10 years, the Congress has enacted many new fees, increased others, and set some precedents. Taking note of the trend, policymakers, the press, and the public have frequently asked whether fees are not often taxes in disguise. The fact is that some are, but most are not.

The distinction between fees and taxes has a long history and has to do with issues concerning the constitutional delegation of legislative authority to executive agencies. Over the years, the Supreme Court and lower courts have heard challenges to many fees, handed down decisions that clarified the distinctions between fees and taxes, and issued criteria for drafting user charge legislation that meets constitutional requirements. The courts have ruled that:

- The legal distinction between fees and taxes is based on whether charges are levied for purely private benefits, or whether they confer public benefits that are independent of, rather than incidental to, private benefits.
- Regulation does not by itself constitute a service or benefit that provides a basis for assessing charges. But governmental action, such as issuing a license that qualifies a firm to enter an industry, is a benefit.[1] Regulatory charges for services that confer a private benefit, such as licenses or permits to enter an industry or engage in an activity, are fees. But charges for activities that confer a public benefit, such as regulation of radio and television broadcasting, are taxes.
- The Congress may delegate to agencies the authority to levy charges that require private beneficiaries to pay for services that confer a public benefit, provided the Congressional intent to do so is clear and the guidelines for setting charges are adequately set forth in the legislation. Under these circumstances, the distinction between fees and taxes is moot.

Federal User Charge Legislation

Many federal statutes impose user charges, but two have had particularly far-reaching effects on federal policy and practice. They are Title V of the Independent Offices Appropriation Act of 1952 (IOAA) and the Consolidated Budget Reconciliation Act of 1985

1. Clayton P. Gillette and Thomas D. Hopkins, "Federal User Fees: A Legal and Economic Analysis," *Boston University Law Review*, vol. 67, no. 5 (November 1987), p. 829.

(COBRA-85). The first statute gave agencies broad authority to levy charges on identifiable beneficiaries for goods and services. The second broadened the basis for setting certain charges from reimbursement for specific benefits to financing all or a specified portion of an agency's budget. This led not only to higher fees, but to changes in the nature of the charges.

Several of the fees set under the IOAA, and later under COBRA-85, provoked legal challenges. In deciding the cases brought under these statutes, the courts elaborated on the distinctions between fees and taxes and enunciated the conditions under which the Congress may constitutionally delegate authority under its taxing powers to executive agencies (and thus permit them to levy fees on private entities that may provide public benefits).

Federal User Charges Before the IOAA

The federal, state, and local governments have been assessing charges for goods and services since the early years of the republic. These have included charges for the federal Postal Service, which was one of the original cabinet agencies and generated net revenues until 1820, and state and local charges for the use of public wharves, river locks, and similar facilities.[2] By the beginning of the 20th century, federal agencies were charging for a variety of benefits and services. For example, the statute establishing the National Bureau of Standards in 1901 legally authorized charging fees for calibration, testing, and other services. The federal government has been charging fees for grazing on public lands since the early 1900s.

The practice of charging visitor fees in national parks began in 1908, when automobiles were first admitted to Mt. Rainier National Park. When the National Park Service was created in 1916, the Secretary of the Interior decided that revenues from the national parks should be sufficient to cover operation and maintenance costs and that the Congress should have to appropriate funds only for improvement. At the time, five national parks were collecting revenues that exceeded their maintenance costs.[3]

The belief that user charges should cover the maintenance costs of certain facilities has been a recurrent theme over the years. In his budget message to the Congress for 1941, Franklin D. Roosevelt wrote:

> I have always believed that many facilities made available to our citizens by the government should be paid for, at least in part, by those who use them. For example, I believe that in the case of parks, national forests, historic monuments, and so forth, small fees...should be charged to those who enjoy them. A start on this policy has been made....Another example is the $50,000,000 the government spends annually in the maintenance of dredged channels, buoys, lighthouses, lifesaving stations, and so forth. It would seem reasonable that some portion of these annual expenditures should come back in the form of small fees from the users of our lakes, channels, harbors, and coasts.[4]

Throughout the period following World War II, most budgets, regardless of which administration prepared them, have urged levying a variety of user charges to help finance federal programs.

2. General Accounting Office, *The Congress Should Consider Exploring Opportunities to Expand and Improve the Application of User Charges by Federal Agencies*, GAO/PAD-80-25 (March 20, 1980).

3. General Accounting Office, *Increasing Entrance Fees--National Park Service*, GAO/CED-82-84 (August 4, 1982).

4. *The Budget of the United States Government for the Fiscal Year Ending June 30, 1941*, p. xiii.

The Independent Offices Appropriation Act of 1952

In 1951, the Congress passed a broad statute--Title V of the Independent Offices Appropriation Act of 1952--authorizing federal agencies to set charges for goods and services by administrative regulation.[5] This statute set a precedent. Before its enactment, an agency could impose fees only if it had specific Congressional authorization to do so.

Background. In the early 1950s, interest in charging private beneficiaries for federal services had begun to mount in both the House and the Senate. In 1950, the Senate Committee on Expenditures in the Executive Departments submitted a report on the feasibility of establishing fees in 12 operating agencies. The report concluded that the opportunity existed for "the equitable transfer of many financial burdens from the shoulders of the taxpaying general public to the direct and special beneficiaries."[6] The report also made clear that the committee's focus was not on raising revenues, but solely on charging for services to "special interests" who received benefits "at the expense of all taxpayers."[7]

The following year, members of the Subcommittee on Independent Offices of the House Committee on Appropriations concluded that regulatory agencies such as the Federal Communications Commission (FCC) and the Interstate Commerce Commission should assess fees to recoup the costs of hearings, inspections, and other activities related to granting franchises, construction and other permits, and licenses. Accordingly, the subcommittee added to the appropriations bill a section permitting each agency "to appraise its own operations to see...[if] it would be possible to recapture for the government some of the costs" connected with regulatory activities "through the establishment of a schedule of fees."[8] The resulting provision, however, was not specifically related to regulatory agencies; its language was broad and applied to all agencies.

The Statute. Title V did not compel agencies to institute user charges, nor did it replace, modify, or repeal earlier user charge statutes, which had set fees for specific goods or services on an agency-by-agency basis. Rather, it charted a parallel course. As a rider to an appropriations bill, the measure received scant attention at the time of its enactment, and the agencies were slow in responding to it.[9]

Title V stated that it was "the sense of the Congress that any work, service, publication, ...benefit,...license, permit, [or] registration ...performed, furnished, provided,...or issued by any Federal agency...to or for any person (including...businesses)...shall be self-sustaining to the full extent possible." To that end, the IOAA authorized the head of each federal agency to prescribe by regulation "such fee, charge, or price" as may be necessary. The legislation stipulated that any fees set be "fair and equitable, taking into consideration direct and indirect cost to the government, value to the recipient, public policy or interest served, and other pertinent facts."[10]

Title V of the IOAA is thus an open-ended piece of legislation that lays out vague and inherently contradictory guidelines for setting prices. Charges set in order to make a service fully self-sustaining may not necessarily be fair. Similarly, charges based on direct and

5. 96 Stat. 1051, 31 U.S.C. 9701(a)(b) (1982). The IOAA, originally enacted in 1951, was revised in 1982. The changes were minimal.

6. Senate Committee on Expenditures in the Executive Departments, *Fees for Special Services*, Report No. 2120 (July 20, 1950), p. 15.

7. Ibid., p. 1.

8. Statement of Congressman Sidney Yates, *Congressional Record*, vol. 97, part 4, 82nd Cong., 1st Sess. (May 3, 1951), p. 4809.

9. "A New Approach to Agency Financing: New England Power and Clay Broadcasting," *Duke Law Journal*, vol. 157 (1973), p. 161.

10. The statutory language quoted here is from the legislation that was enacted on August 31, 1951, as cited in U.S. Code Congressional and Administrative Service, 82nd Cong., 1st Sess. (1951), Chapter 376, Section 501.

indirect costs may or may not indicate the value of benefits to the recipient. Finally, public policy interests might dictate charges that could be higher or lower than either costs or value to the recipient. Ultimately, the IOAA guidelines raised issues that only litigation could resolve. But more than 10 years passed before the first legal challenge to fees set under the IOAA surfaced, and more than 20 years passed before any cases reached the Supreme Court (see below).

Guidelines for Setting Charges. In 1959, the Bureau of the Budget issued a circular providing administrative guidelines for applying the law. The circular stressed that user charges should be assessed only for special benefits provided to identifiable recipients, and it defined special benefits as goods or services above and beyond any that accrue to the public at large. Specifically, the circular stated that the federal government provides "special benefits" whenever its products or services:

- Enable an individual or business to "obtain more immediate or substantial gains or values than those that accrue to the general public" (such as receiving "a patent, insurance, or guarantee..., or a license to carry on a specific activity or business");
- Contribute to "business stability" or "public confidence" in a business activity (for example, "inspection and grading of farm products or insuring deposits in commercial banks"); or
- Are performed at the request of or for the convenience of the recipient (for example, receiving a passport or visa).[11]

The circular required the agencies to submit annual reports on user charges to the Bureau of the Budget. But the bureau made little use of the reports. In time, it changed the reporting period from one year to five and in 1974 it dropped the reporting requirement altogether. The federal government issued its last report on user charges in 1967. Attached to it was a memorandum from President Lyndon Johnson urging agency and department heads to keep user charges current and to support user charge measures pending before the Congress.

In July 1993, the Office of Management and Budget (OMB) issued a revised circular rescinding the original. The revised guidelines not only apply to the user charges under the IOAA, they also provide guidance for the assessment of user charges under other statutes, to the extent permitted by law. Although the basic guidelines are similar, the revised circular is more explicit regarding the factors that agencies should take into account in determining the federal government's costs of providing goods, resources, or services. Among the factors included in the revised, but not in the original, circular are an annual rate of return equal to the average long-term Treasury bond rate on land, structures, equipment, and other capital resources. The new circular also specifies that "when a substantial competitive demand exists for a good, resource, or service," agencies should determine its market price using such commercial practices as "competitive bidding" or "by reference to prevailing prices in competitive markets" for goods or resources similar to those that the government provides (such as campsites or grazing lands).

User Charges in the 1980s and 1990s: Fees

Although the Congress had enacted specific fees before the IOAA and continued to do so afterwards, some new trends in user charge financing emerged during the 1980s, while others grew stronger. First, the legal basis for setting certain fees broadened from reimbursing an agency's costs of providing services to

11. Executive Office of the President, Bureau of the Budget, Circular A-25, "User Charges" (September 23, 1959); Office of Management and Budget, Circular A-25, "User Charges," *Federal Register*, vol. 52, no. 126 (July 1, 1987), p. 24891.

financing all or a specified portion of an agency's budget. Second, although the practice was established before the 1980s, the tendency to levy fees that were like excise taxes or duties became more marked. Finally, the federal government's tendency to charge private beneficiaries for the costs of regulating certain businesses and economic activities in the public interest, while not new, increased.

These trends became apparent after the enactment of the Balanced Budget Act of 1985. The Balanced Budget Act specified a series of declining annual deficit targets and created an automatic spending-reduction process (known as sequestration) to assure adherence to the targets. Subsequent legislation--notably the Reaffirmation Act of 1987 and, more recently, the Budget Enforcement Act of 1990 (BEA)--modified and extended the original targets and revised the spending-reduction process.

With the passage of the BEA, the focus shifted from deficit reduction to spending controls. The BEA set limits on discretionary spending for programs funded through annual appropriations and divided discretionary spending into three categories: international, defense, and domestic. The BEA set dollar limits on each of the three categories through 1993 and on total discretionary appropriations for 1994 and 1995. To make sure that new entitlement or receipt legislation does not increase the deficit, the BEA created a pay-as-you-go procedure that requires that decreases in revenues or increases in direct spending (spending controlled outside of the annual appropriations process) be offset either by increases in revenues or decreases in direct spending.[12]

12. For a fuller discussion of the Balanced Budget Act and the BEA, see Allen Schick, Robert Keith, and Edward Davis, *Manual on the Federal Budget Process*, 91-902 GOC (Congressional Research Service, December 24, 1991); and Congressional Budget Office, "The 1990 Budget Agreement: An Interim Assessment," CBO Paper (December 1990).

These efforts to reduce the deficit sparked a continuing search for new or increased fees. The sequestration process, which under the BEA extends through 1995, involves automatic, across-the-board spending cuts. Each year, OMB issues a sequestration report that estimates deficit and spending levels and calculates any required reductions. If reductions are necessary, the President can issue an order for sequestration. Since 1985, the Congress and federal agencies have added fees both to reduce recorded agency expenditures and to make it possible for programs to expand without increasing net outlays or raising taxes.

All of the budget reconciliation measures enacted from 1985 onwards contained significant new and increased fees.

Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985. If the IOAA was the first turning point in user charge legislation during the postwar period, the Consolidated Omnibus Budget Reconciliation Act of 1985 was the second. Among its many provisions, COBRA-85 authorized the Nuclear Regulatory Commission (NRC) to collect from its licensees annual fees equaling 33 percent of its annual operating costs; the Department of Transportation to charge fees that recovered the full costs of its pipeline safety program; the Customs Service to levy fees for processing passengers and conveyances entering the country; the Federal Communications Commission to institute a system of revised user fees; and the Department of Commerce to increase fees for nautical and aeronautical charts and other products.

By setting fees in relation to an agency's overall operating costs, rather than to the costs of providing particular services, the provisions relating to NRC charges set a precedent. Fees linked to an agency's budget, rather than to the costs of specific benefits, are more like revenue-raising measures than charges for services. With COBRA-85, the Congress for the first time established a statu-

tory link between fees and an agency's budget.[13] Earlier attempts under the IOAA at setting fees to recoup total budgetary costs had been struck down by the Supreme Court on the grounds that the measures exceeded the intent of the legislation, which was to charge for specific services to identifiable beneficiaries. When COBRA-85 was enacted, the NRC had been collecting fees under the IOAA that covered about 10 per cent of its costs. The *Statement of the Managers* accompanying COBRA-85 explained that the NRC's authority to collect the new annual charge was "separate and distinct from...[its] existing authority" under the IOAA in order to permit fuller cost recovery.[14]

The Omnibus Budget Reconciliation Act of 1986. Following the precedent set by COBRA-85, the Omnibus Budget Reconciliation Act of 1986 (OBRA-86) authorized the Coast Guard to charge fees for cargo ship inspection and measurement; the Customs Service to collect fees for processing imported commercial merchandise; and the Federal Energy Regulatory Commission "to assess and collect fees and annual charges...in amounts equal to all of the costs incurred" by the agency in any fiscal year. In passing this legislation, the Congress made no attempt to link fees to private benefits. Implicitly then, if any benefits accrued to the public, private beneficiaries would pay for them.

The Customs Service fees levied by COBRA-85 and OBRA-86 also are typical of the trends in user charges in recent years. In addition to raising significant revenues--amounting to $643 million in 1991--which are deposited in a Customs Services User Fee account, both fees are similar to taxes. The passenger-processing fee is in fact indistinguishable from an earmarked excise tax. The fee, which is included in ticket charges, covers the costs of screening for health, immigration, and smuggling, but it may also provide funds to cover commercial expenditures otherwise covered by the merchandise-processing fee, which is deposited into the same account. The merchandise-processing charge was conceptually closer to a user fee, but, as initially set, it brought in revenues that exceeded costs. In response to objections from the United States' trading partners, it was eventually modified (see Box 1).[15]

The Omnibus Budget Reconciliation Acts of 1987, 1989, and 1990. In recent years, legislation has strengthened the trends in user charge policies that began with the enactment of COBRA-85 and OBRA-86. The Omnibus Budget Reconciliation Act of 1987 (OBRA-87) increased the National Bureau of Standards calibration and reference materials fees, extended fee increases for the National Park Service, and established a fee for Internal Revenue Service (IRS) letter rulings and determinations that would vary with the type of request. OBRA-87 also raised the portion of the NRC's operating costs that had to be covered by user charges from 33 percent to 45 percent for 1988 and 1989. The Omnibus Budget Reconciliation Act of 1989 (OBRA-89) extended the requirement through 1990 and put forth a revised schedule of FCC charges.

Although it set no major precedents, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) enacted more new fees and increased more existing fees than any single previous piece of legislation. OBRA-90:

13. For an analysis of the significance of COBRA-85, see Gillette and Hopkins, "Federal User Fees," pp. 842-843.

14. *Congressional Record*, March 6, 1986, p. H879, as cited in U.S. House of Representatives *Report to Accompany H.R. 1549, Nuclear Regulatory Commission Authorization Act for Fiscal Years 1990 and 1991 Report 101-56* (May 17, 1989), p. 9.

15. For further information on Customs Service user fees, see Frederick M. Kaiser, *Customs Service User Fees* (Congressional Research Service, August 11, 1987); *The U.S. Customs Service: Recent Issues and Concerns* (Congressional Research Service, September 30, 1991), pp. 3-4; and "U.S. Customs Service User Charges: A Variety of Charges and Counter Charges," *Public Budgeting & Finance* (Autumn 1988), pp. 78-95; also, General Accounting Office, *U.S. Customs Service Merchandise Processing Fee: Examination of Costs and Alternatives*, Report to the Chairman, Committee on Ways and Means, House of Representatives (June 1990).

- Increased NRC fees to cover 100 percent of the agency's operating costs;
- Increased fees for the products and services of the National Oceanic and Atmospheric Agency;
- Increased tonnage charges collected from vessels arriving from foreign ports;
- Authorized increases in premiums for the Federal Deposit Insurance Corporation, the Federal Emergency Management Agency, and the Pension Benefit Guaranty Corporation;
- Levied a 69 percent surcharge on certain existing patent and trademark fees to cover more of the cost of the Patent and Trademark Office;
- Authorized the Coast Guard to collect direct fees for services, including inspecting and examining vessels, licensing mariners, and issuing certificates of registry and documentation;
- Authorized the Environmental Protection Agency to assess fees to offset the costs of its radon research program and to increase fees for other activities;
- Extended for five years the IRS user fees first enacted in OBRA-87;
- Levied new fees to recover the costs of inspecting common carrier passengers arriving in the United States for agricultural products and pests;
- Assessed new railroad safety fees;
- Assessed fees to recover the costs of processing appeals under the Coastal Zone Management Act;
- Reauthorized reclamation fees to clean up abandoned coal mines;
- Established new travel and tourism fees, which are levied against commercial air-

Box 1. Customs Service User Fees and the GATT

The Customs Service's merchandise-processing fee, enacted in the Omnibus Budget Reconciliation Act (OBRA) of 1986, raised an issue with the United States' trading partners regarding whether its purpose was to cover costs or to raise revenues. The rules of the General Agreement on Tariffs and Trade (GATT) generally prohibit fees on imports unless they are "commensurate with the cost of services rendered."[1] Import fees may not "represent an indirect protection to domestic products" or "a taxation...for fiscal purposes."[2] As initially set, the fee for processing imported merchandise was 0.22 percent ad valorem (according to its invoiced value) for the first year and 0.17 percent thereafter. The rates were set to approximate the cost of services so as to conform to the rules of the GATT. But the United States' trading partners, particularly Canada and the European Community, found the charges excessive and improperly based and protested them to a GATT panel.

In brief, the panel found that the fees exceeded the costs of services rendered and therefore were in effect a tax on imports that discriminated against them in favor of domestic products. In particular, the panel maintained that the ad valorem fee structure made it difficult to approximate costs because import shipments of equal value would not necessarily have similar processing costs. The panel also found that, contrary to GATT rules, the Customs Service had included in its import-processing costs the costs of processing airport passengers, collecting and transmitting export documentation, processing imports exempt from the fee, and carrying out international affairs activities of Customs officials stationed overseas. The panel issued its report in November 1987, and the GATT adopted it in February 1988.

As a member of the GATT, the United States is obliged to abide by the international organization's rulings. The Customs and Trade Act of 1990 (Public Law 101-382) attempted to do just that. Because of the difficulty of estimating processing costs, the legislation maintained the ad valorem rate of 0.17 percent, but limited the amount of fees to a minimum of $21 and a maximum of $400. OBRA-90 gave the Secretary of the Treasury the authority to adjust the ad valorem rate from 0.15 to 0.19 percent to compensate for revenue shortfalls or overruns. It also extended the merchandise-processing and other user fees through September 30, 1995. OBRA-93 extended them for an additional three years.

1. General Agreement on Tariffs and Trade, Article II, 2(c).
2. Ibid., Article VIII, 1(a).

lines and cruise ship lines transporting passengers to the United States, to offset the costs of the United States Travel and Tourism Administration (USTTA);

- Set new fees for owners of recreational vessels more than 16 feet long using U.S. navigable waters patrolled by the Coast Guard. The Congress subsequently passed legislation repealing these fees in favor of a fee for using the Federal Maritime Commission's Automated Tariff Filing and Information System. The President signed the bill (H.R. 2152) into law on November 2, 1992.

The increase in NRC fees to cover the agency's total budget authority exemplifies the trend in setting regulatory fees. The OBRA-90 conference report made clear that the conferees intended the NRC to recover through annual charges whatever expenses it could not attribute to individual licensees or classes of licensees.[16]

Although most of the charges enacted under OBRA-90 are straightforward user and regulatory fees, some are like benefit- or liability-based excise taxes or, in one case, like customs duties. Specifically:

- The travel and tourism fee is assessed on commercial carriers at the rate of $1 for each foreigner entering the United States and is imperfectly related to services that visitors may receive from the USTTA. Public Law 102-395, enacted in October 1992, required the USTTA to charge users of its services, products, and information fees that would produce an "additional $3 million to be deposited in the General Fund of the Treasury."

- OBRA's abandoned mine reclamation fees, which are levied on owners of coal mines and are based on the number of tons of coal produced, are like several liability-based taxes. The fees on current production cover the cost of previous damages.

- The act's tonnage charges are like customs duties. The charges are assessed against vessels entering the United States from any foreign port and are based on cargo-carrying capacity. In describing the provisions related to tonnage charges, the conference report on OBRA-90 uses the words "duties," "taxes," and "fees" interchangeably.[17]

User Charges in the 1980s and 1990s: Benefit- and Liability-Based Taxes

The search for new sources of funds has also led to increases in dedicated taxes. Benefit-based taxes dedicated to trust or special funds have increased, but the increases marked no significant changes in policy. Most of the trust fund benefit taxes were originally enacted before 1980: the Highway Trust Fund in 1956; the Airport and Airway Trust Fund in 1970; and the Inland Waterways Trust Fund in 1978. Since then, two new benefit-tax trust funds--the Harbor Maintenance Trust Fund in 1986 and the National Recreational Trails Trust Fund in 1991--have been created. The Harbor Maintenance Trust Fund is financed with taxes on the value of cargo loaded or unloaded at U.S. ports. The National Recreational Trails Trust Fund is authorized to receive revenues corresponding to nonhighway recreational fuel taxes, but to date no funds have been appropriated to it. The Aquatic Resources Trust Fund, which promotes boating safety and fish restoration and was enacted as part of the Deficit Reduction Act of 1984, is a successor to the Boating Safety Fund, established by the Federal Boat Safety Act of 1971.

16. U.S. House of Representatives, *Omnibus Budget Reconciliation Act of 1990, Conference Report to Accompany H.R. 5835*, Report 101-964 (October 27, 1990), pp. 962-963.

17. Ibid., pp. 1026-1027.

By contrast, the enactment of trust fund taxes dedicated to financing liabilities has been a pronounced trend in the past 15 years. The Black Lung Disability Trust Fund, enacted in 1978, was the first of these funds. The Hazardous Substance Superfund followed in 1980, and the Leaking Underground Storage Tank Trust Fund was enacted in 1986. The Vaccine Injury Compensation Trust Fund was enacted in OBRA-87, and the Oil Spill Liability Trust Fund in OBRA-89.

The rates on many trust fund excise taxes have increased several times in the last 10 years. Most recently, OBRA-90 raised the rates on highway, motorboat, and rail fuels, but, in a departure from previous policies, one-half of the increase in motor fuels taxes is retained in the general fund through September 30, 1995. The remainder of the increase is dedicated to the Highway and Aquatic Resources trust funds. OBRA-90 also raised the rates on Airport and Airway Trust Fund excise taxes and on Harbor Maintenance excise taxes. It also reimposed the LUST excise taxes and extended Superfund through the end of 1995.

Jurisdictional Issues in the Congress

Within the Congress, user charges have at times provoked jurisdictional disputes between committees in both Houses. In these instances, the focus of debate may be on whether the provision at issue is a revenue measure or on whether the charge in question is a fee, tax, or tariff (see Box 2). In recent years, the rules of the House of Representatives that govern jurisdiction over user charges have been invoked more frequently. From time to time similar issues have arisen in the Senate, although the rules there are less explicit.

In each chamber, the responsibility for distinguishing between fees and taxes and resolving jurisdictional issues between committees rests with the Presiding Officer or Chair, who generally relies on the advice of the Parliamentarian. The parliamentarians, in turn, have looked to the practices and precedents of the House or Senate and to relevant case law for guidance.

Under the rules and precedents of the House and the Senate, the Committee on Ways and Means and the Committee on Finance, respectively, have jurisdiction over "revenue measures generally."[18] A review of the statements of the presiding officers in each body leads to a definition of "revenue measures generally" that would include not only bills dealing with taxes and tariffs, but provisions for broad-based fees, assessments, or other charges.

Under the current rules of the House, the standing committees, other than Ways and Means, have no jurisdiction over tariffs and taxes, but may report out measures raising user fees, regulatory fees, and other charges. The Ways and Means Committee is entitled to a sequential referral of broad-based fees or other charges to finance activities that wholly or partially benefit the general public. The rules of the House--Clause 5(b), Rule XXI, first adopted on January 3, 1983, and subsequently adopted at the beginning of each new Congress--state that a "point of order...[may] be raised at any time against a provision in any bill or Senate Amendment...[that] contains a tax or tariff measure, unless that measure was reported by the Committee on Ways and Means."[19] (A point of order is a parliamentary device that members of a body may use to question whether an action under consideration is in violation of its rules. The effect of a sustained point of order under Clause 5(b), Rule XXI, is to delete a provision in a bill or an amendment automatically.)

18. U.S. House of Representatives, *Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, One Hundred Second Congress* (Revised to January 3, 1991), House Document 101-256 (1991), Rule X, Clause 1(v), p. 399; and United States Senate, *Standing Rules of the Senate* (Revised to March 1, 1990), Document 101-25, Rule XXV, Clause 1(i), p. 22

19. U.S. House of Representatives, *Constitution, Jefferson's Manual, and Rules*, Rule XXI, p. 624.

From 1983 to 1992, the Presiding Officer or Chair sustained points of order under Clause 5(b), Rule XXI, on several occasions. In most cases, the provision at issue would have directly affected tax or tariff laws. But a provision need not involve an amendment to the Internal Revenue Code or the Harmonized Tariff Schedule in order to meet the definition of a "tax or tariff measure." For example, during the debates on OBRA-89, members of the Committee on Ways and Means for the first time raised points of order against certain provisions that levied fees (and, thus, necessitated no changes in the Internal Revenue Code). In each case, the basis for the objection was that the fee was in effect a tax, and that the Committee on the Budget, which had reported the bill, had no jurisdiction over tax and tariff measures. The Chair sustained these points of order.

Among the charges at issue were a fee of $20 a passenger on vessels engaged in the U.S. cruise trade or that offered offshore gambling and an annual fee of $1 per acre on the holders of Outer Continental Shelf (OCS) leases. The proceeds from the passenger fee were to be deposited in the Harbor Maintenance Trust

Box 2.
Jurisdictional Issues Surrounding Revenue Measures, Taxes, and Fees

Jurisdictional issues involving user charges may arise in several contexts. Depending on the context, the issue may center on whether a provision is a revenue measure, a tax, or a fee.

Article I, Section 7, of the Constitution states that revenue measures shall originate in the House. On issues arising under Article I, Section 7, whether a provision is a "revenue measure" is the determining factor, not whether a proposed assessment is a fee or a tax. The power of the House to protect its institutional interests is absolute. Thus, if, in its opinion, a Senate bill or amendment infringes on its constitutional prerogative, the House may pass a resolution to that effect and return the bill to the Senate. This practice is known as "blue slipping" because such resolutions are printed on blue paper.[1] If the House does not "blue slip" a provision that might be a revenue measure, a legal challenge to it is possible on constitutional grounds.[2]

Under the rules of the House and the Senate, respectively, the Committee on Ways and Means and the Committee on Finance have jurisdiction over "revenue measures generally," which have been interpreted to include provisions not only for taxes and tariffs, but also for broad-based fees, assessments, or other charges. In addition, under the rules of the House (Clause 5(b), Rule XXI), a parliamentary challenge may be raised against tax or tariff provisions in bills or amendments proposed in the House or in Senate amendments, unless the measure was reported by the committee of jurisdiction (that is, the Committee on Ways and Means). Thus, the meaning of "revenue measures" may be the critical factor in issues of committee jurisdiction, while the distinction between fees and taxes or tariffs may affect rulings on points of order.

Article I, Section 8, of the Constitution reserves to the Congress certain powers, including the powers to tax; to levy duties, imposts, and excises; and to regulate commerce. In issues arising in the courts under Article I, Section 8, the relevant distinction may be between fees and taxes, duties, imposts, or excises. The validity of a statute that levies a charge, or empowers an agency to do so, may depend on whether the charge in question is a fee or a tax, duty, excise, or impost, as the Supreme Court has defined these terms.[3]

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1. House Committee on Ways and Means, *Overview of the Federal Tax System*, 1993 ed., WMCP: 103-17 (June 14, 1993), p. 10.

2. Several Supreme Court decisions deal with the meaning of the origination clause, including *Twin City Bank v. Nebeker*, 167 U.S. 196 (1897); *Millard v. Roberts*, 202 U.S. 429 (1906); *Rainey v. United States*, 232 U.S. 310 (1914); *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911); and *United States v. German Munoz-Flores* (May 21, 1990), *The United States Law Week-Supreme Court Opinions*, vol. 58, no. 45, pp. 58 LW 4563-4570.

3. See, for example, *Packet Company v. Keokuk*, 95 U.S. 80 (1877), and *National Cable Television Association v. United States*, 415 U.S. 336 (1974).

Fund and the Treasury's general fund. The Chair upheld the point of order on the grounds that the general public benefited from harbor maintenance and water safety and that charging one class of beneficiaries for these services constituted a tax. The proceeds of the OCS fee were to offset the costs of environmental research and protection programs related to the oceans. The Chair held that the fee was a tax that would have financed general functions of government and provided no specific benefit to the leaseholders.[20]

The Chair made clear that, in distinguishing between fees and taxes, he would examine the nature of a charge, rather than its label.[21] Based on case law, budget concepts, and members' arguments on the points of order, the Chair made the following distinctions between fees and taxes:

> User fees and regulatory fees...are paid by choice in that the party paying the fee has the option of not utilizing the governmental service or avoiding the regulated activity and thereby avoiding the charge. Furthermore, fees are collected merely to compensate the governmental entity for providing the service, or...for the expenses incurred in regulating the activity, such as processing the license application...[or] providing the requisite inspection, and are legitimate to the extent that the services for which they are imposed are sufficiently particularized as to justify distribution of the costs among a limited group--the "users"--of the services rather than the general public.
>
> On the other hand, taxes are collected in order to raise revenue to offset the general costs of government as well as to offset the costs of services provided to a more generalized group of beneficiaries.[22]

On January 3, 1991, the Speaker of the House, elaborating on jurisdictional concepts related to Clause 5(b), made clear that the Committee on Ways and Means was entitled to referral of measures providing for "broad-based fees:"

> Standing committees of the House, other than the Committees on Appropriations and Budget, have jurisdiction to consider user, regulatory and other fees, charges, and assessments levied on a class directly availing itself of, or directly subject to, a governmental service, program, or activity, but not on the general public....The fee must be paid by a class benefiting from the service, program, or activity, or being regulated by the agency....The fund that receives the amounts collected is not itself determinative of the existence of a fee or a tax. The Committee on Ways and Means has jurisdiction over revenue measures generally...is entitled to an appropriate referral of broad-based fees and could choose to recast such fees as excise taxes....The Chair intends to coordinate these principles with the Committee on the Budget and the Congressional Budget Office...so that budget scorekeeping does not determine...committee jurisdiction.[23]

In the Senate, the rules governing jurisdiction are less explicit. Thus, the basis for jurisdictional determinations is less clear. Again, when a bill is introduced, the Presiding Officer, on the advice of the Parliamentarian, refers it to the committee that has predominant jurisdiction. Although many legislative measures contain proposals that cut across committee jurisdictions, sequential referrals are in order only under limited circumstances and in practice are rare. Thus, the decision on the jurisdiction of a bill may turn on certain provisions to the exclusion of others. The Committee on Finance has sole jurisdiction over measures dealing with taxes, and from

20. *Congressional Record*, October 4, 1989, pp. H6619-6622.

21. Statement of the Chair in connection with points of order raised against provisions in H.R. 3299, *Congressional Record*, October 4, 1989, p. H6620.

22. Ibid.

23. *Congressional Record*, January 3, 1991, p. H31.

time to time, its members have objected when other committees have reported bills levying charges that were called fees but were otherwise like taxes.[24] Unlike the House, the Senate has no rule requiring sequential referrals of broad-based fees.

User Charges and the Courts

Two issues have dominated legal challenges to user charges: the distinction between fees and taxes and the delegation of legislative functions. Over the years, decisions of the Supreme Court and lower courts have drawn distinctions between fees and taxes and have set forth the conditions for the constitutional delegation of legislative functions. The rulings of the courts, particularly in recent years, provide the Congress with clear guidelines for drafting legislation that give agencies broad authority to impose fees.

The Constitution vests all legislative powers in the Congress of the United States;[25] authorizes the Congress to make all laws "necessary and proper" for executing its powers; reserves to the Congress certain powers, including the powers to tax, to levy duties, imposts and excises, and to regulate commerce;[26] and prohibits the states, without the consent of the Congress, from levying any duties or imposts on imports or exports or imposing any duty on tonnage.[27] The Congress may not transfer to others its essential legislative functions;[28] however, it may delegate authority to carry out legislative policy if it also enacts sufficient standards to guide an agency's actions and to make it possible for a court to determine whether an agency has followed Congressional policy.[29]

The validity of a statute that levies a charge or empowers an agency to do so may depend on whether the charge in question is a fee, tax, duty, excise, or impost, as the courts have defined these terms. Based on the constitutional enumeration of legislative powers, the courts have consistently looked upon fees as distinct from taxes, duties, excises, and imposts. Thus, the issue of whether a charge is permissible under the commerce or duty of tonnage clauses, or whether a legislative delegation of power is constitutional, may arise in the case of a tax, duty, excise, or impost, but not in the case of a fee.

The Issue of Fees Versus Taxes Before 1950

More than a century ago, the Supreme Court established precedents for distinguishing between fees--or charges for the use of property or services rendered--and taxes or duties, imposed as a matter of sovereign right.

The distinction between fees and taxes first surfaced as a legal issue in the 19th century in the case of *Packet Company v. Keokuk* (1877). That case dealt with the question of whether the city of Keokuk's charges for use of its wharves, based on the tonnage of the vessels, was an unconstitutional tax, impost, or excise on the use of interstate commerce or a violation of the prohibition on the right of states to assess tonnage duties. In this instance, the city's charges, although based on tonnage, were set to cover no more than the interest on the debt incurred for building and maintaining the wharf.

24. See, for example, *Congressional Record*, December 10, 1987, p. S17712.

25. The Constitution of the United States, Article I, Section 1.

26. Ibid., Article I, Section 8.

27. Ibid., Article I, Section 10, Clauses 2 and 3.

28. Ibid.

29. *Hampton & Company v. United States*, 276 U.S. 394 (1928) 409; *Panama Refining Company v. Ryan*, 293 U.S. 388 (1935); *Schechter Poultry Company v. United States*, 295 U.S. 495 (1935); *Yakus v. United States*, 321 U.S. 414 (1944).

The Supreme Court agreed with the plaintiff that, if the charge could be considered a tax, impost, or duty, it would be unconstitutional. It then considered the nature of the charge and concluded that providing a wharf at which vessels "may conveniently load or unload is rendering them a service," and that a "charge for services rendered, or for conveniences provided, is in no sense a tax or duty." The Court distinguished between a tax or duty "imposed by virtue of sovereignty" and a fee for services or use of property "claimed in right of proprietorship."[30]

Two years later, the Supreme Court upheld similar charges for the use of wharves at the port of St. Louis. The Court held that the charges were "not out of proportion to the advantages and benefits enjoyed," nor did the fees seem to be "exacted for the purpose of increasing the general revenue of the city beyond what was necessary to meet its outlay...in maintaining its wharves."[31] In 1886 and again in 1935, the Court considered similar cases and reached similar conclusions.

Legal Challenges to Fees Under the IOAA

The application of Title V of the IOAA brought forth new legal challenges to user charges. In general, the constitutionality of the statute was challenged, but the ultimate resolution of most cases rested on the meaning of the law. The constitutional issue centered on whether the charge or charges in question represented an appropriate delegation of authority from the Congress to the Executive. In other words, had the Congress validly delegated authority reserved to it under the Constitution and, if so, had it provided the agency or agencies with sufficient standards to guide their determinations? The statutory issue focused the scope of agency authority under the IOAA. Had Title V, in effect, delegated to the agencies discretionary authority to impose taxes; or had it merely authorized the agencies to levy fees for service? By focusing on the narrower issue of the statute's meaning, rather than on the broader constitutional issue of the delegation of legislative functions, the Supreme Court further refined the distinctions between fees and taxes.

The Federal Communications Commission's fee schedules were the first to face a major legal challenge under the IOAA. The FCC had begun collecting filing fees in 1964 to recover from applicants a portion of the costs of issuing them radio licenses. The plaintiff argued that the FCC's charges were an unconstitutional delegation of power from the Congress to the Executive on several counts. Prominent among these was the contention that the standards set forth in the statute were so diverse and conflicting that they effectively placed no limits on administrative discretion.

In *Aeronautical Radio, Inc. v. United States,* the Court of Appeals for the Seventh Circuit rejected the plaintiff's argument that Title V was an unconstitutional delegation of legislative power and upheld the fees.[32] The Court held that the standards of fairness and equity in Title V, "taking into consideration direct and indirect cost to the government, value to the recipient, [and] public policy...to be served," were sufficient to meet the requirement for a constitutional delegation of power.[33] The Court also held that the FCC's fees

30. *Packet Company v. Keokuk*, 95 U.S. 80 (1877). For a fuller discussion of the case, see David R. Siddall, "Application of Constitutional Delegation Standards Based Upon the 'Fee' or 'Tax' Dichotomy" (Congressional Research Service, June 23, 1982); also, Howard M. Zaritsky, "Legal Distinction Between a Tax and a Fee" (Congressional Research Service, April 6, 1981).

31. *Packet Company v. St. Louis*, 100 U.S. 423 (1879) 429. See also Siddall, "Application of Constitutional Delegation Standards."

32. *Aeronautical Radio, Inc. v. United States*, 335 F.2d 304 (7th Circuit 1964), cert. denied, 379 U.S. 966 (1965).

33. In general, the courts have upheld broad legislative delegations of power to federal agencies. The decision in *Aeronautical Radio, Inc. v. United States* cited several precedents, including *Yakus v. United States*, 321 U.S. 414 (1944), *Panama Refining Company v. Ryan*, 293 U.S. 388 (1935), and *Schechter Poultry Company v. United States*, 295 U.S. 495 (1935). See also *Mistretta v. United States*, 488 U.S. 361 (1988).

were consistent with Congressional policy and the petitioners had failed to demonstrate that the fees were arbitrary or that the FCC had exceeded its authority or disregarded guidelines.

In the early 1970s, the FCC again had to defend its fee schedules in the courts. The FCC's initial fees had been nominal, but, in the late 1960s, the Bureau of the Budget and the Congress urged higher fees to support the FCC's activities fully so that taxpayers would "not be required to bear any part of the load in view of the profits regulated" by the agency.[34] Responding to these pressures, the FCC in 1970 issued a schedule of fees designed to recoup all of the agency's regulatory costs from charges on licensees.

The FCC's new and less specific schedule of fees was unable to withstand legal challenge. The case against the fees rested on the basis for setting charges and the distinctions between public and private benefits. The new FCC charges included fees designed to recover all indirect and direct costs involved in supervising community antenna television systems. The Supreme Court invalidated the fees.

In *National Cable Television Association v. United States* (1974),[35] the Court said that payment of a fee implied a benefit of value to the recipient and was "incident to a voluntary act," such as "a request that a public agency permit an applicant to practice law or medicine or construct a house or run a broadcast station."[36] The decision clearly stated that payments unrelated to benefits received by the payer are taxes, not fees, and hence not authorized under the IOAA. The Court upheld the right of the FCC to charge fees under the IOAA as long as the fees were directly related to services that directly benefited the regulated parties. The FCC's fees, however, had been based on its total cost of regulating the industry. In the view of the Court, the main function of the FCC was "to safeguard the public interest in the broadcasting activities of members of the industry."[37] Assessments that recouped the FCC's oversight costs, in effect, required broadcasters to pay for "the protective services rendered the public."[38] Such assessments were taxes. The Supreme Court therefore directed the FCC to revise its fee schedule. In reaching its decision, the Court read Title V of the IOAA "narrowly as authorizing not a tax, but a fee," and thus deliberately avoided the broader constitutional issue of the transfer of legislative powers.[39]

A similar ruling resulted from a companion case, which challenged annual charges that the Federal Power Commission had levied on natural gas companies and electric utilities to recover some of its costs in administering the Federal Power and Natural Gas acts. In *Federal Power Commission v. New England Power Company* (1974), the Supreme Court held that the IOAA authorized only specific charges for specific services to identifiable recipients, not general assessments on entire industries.[40] The Court cited the Bureau of the Budget's circular, which stated that charges should not be levied "when the identification of the ultimate beneficiary is obscure and the service can be considered primarily as benefiting broadly the general public."[41]

In brief, the courts, citing the legislative history of the IOAA, have ruled that the statute authorizes agencies to collect fees, but not taxes, and that charges under the IOAA are permissible for goods or services provided to specific, private beneficiaries. The connection

34. U.S. House of Representatives Conference Report No. 91-649, p. 6, as cited in *National Cable Television Association v. United States*, 415 U.S. 336 (1974) 339.

35. 415 U.S. 336 (1974).

36. Ibid., 340.

37. Ibid., 341.

38. Ibid.

39. Ibid., 341-342.

40. *Federal Power Commission v. New England Power Company*, 415 U.S. 345 (1974).

41. Executive Office of the President, Bureau of the Budget, "User Charges."

between fee and benefit must be clear and direct and the public benefits, if any, must be purely "incidental" to the private benefits. If the public and private benefits are distinguishable and "independent," then, to the degree that a private entity pays for benefits that extend to the public, the charge is a tax. In *Central and Southern Motor Freight Tariff Association v. the United States*, the D.C. Circuit Court defined "incidental" as the antonym of "independent."[42]

Legal Decisions on Licensing Fees

Court decisions have indicated that the process of regulation by itself confers no benefit that would provide a basis for charging fees. But governmental action that qualifies a firm to enter an industry, such as issuing a permit or a license, is a benefit.[43] In the case of broadcast licenses, the issues are clear-cut. In issuing a license, the FCC grants the licensee a monopoly protected by federal law.

In *Mississippi Power and Light v. U.S. Nuclear Regulatory Commission* (1979), the Fifth Circuit Court indicated that a license confers benefits under virtually any circumstances. The petitioners argued that since any firm could establish a nuclear plant, market failure was not an issue; therefore, government regulation served no purpose other than to protect the public. The Fifth Circuit, however, ruled that "a license from the Nuclear Regulatory Commission is an absolute prerequisite to operating a nuclear facility."[44] Thus, the license conferred a special benefit and constituted sufficient basis for charging a fee. The decision enumerated some of the benefits that result from being licensed, such as the possibility that inspections might provide additional information on safety methods and procedures. But the crux of the decision was that if a firm voluntarily enters an industry, it assumes all associated obligations, including payment of fees.

Legal Challenges to Fees Under COBRA-85

Since 1985, the most significant legal challenges to user charges have turned on the right of the Congress to delegate authority under its taxing powers to executive agencies.

Following the NRC's adoption of the fees authorized in the Consolidated Budget Reconciliation Act of 1985, 31 nuclear power reactor licensees challenged the fees on the grounds that requiring the NRC to assess the annual charge constituted an unconstitutional delegation of the Congress's taxing power. In *Florida Power and Light Company et al. v. United States*, the U.S. Court of Appeals for the District of Columbia Circuit rejected the utilities' argument and upheld the NRC's rule.[45]

In upholding the NRC's fees, the court observed that the Supreme Court's decisions in *National Cable* and *New England Power* were based on the statute and legislative history of the IOAA. In those cases, the Supreme Court had avoided the issue of whether the delegation of power was constitutional by reading the statute "narrowly as authorizing not a tax

42. The distinction between "incidental" and "independent" public benefits was first made in a decision of the D.C. Circuit Court striking down an FCC fee schedule of 1975. In *Electronic Industries Association v. FCC* (1976), the D.C. Circuit Court stated: "Expenses incurred to serve some *independent* public interest cannot...be included in the cost basis for a fee, although the Commission is not prohibited from charging...the full cost of services rendered to an applicant which also result in some incidental public benefits." 554 F.2d 1115 (D.C. Circuit 1976), as quoted in Mark H. Graven, "Interstate Commerce Commission, Recoupment of Regulatory Costs Through User Fees," *The George Washington Law Review*, vol. 55, nos. 4 & 5 (May & August 1987), p. 1005. The rule was subsequently applied in *Mississippi Power & Light Company v. U.S. Nuclear Regulatory Commission*, 601 F.2d (5th Circuit 1979), and in *Central and Southern Motor Freight Tariff Association v. United States*, 777 F.2d (D.C. Circuit 1985).

43. Gillette and Hopkins, "Federal User Fees," p. 829.

44. 601 F.2d 223 (5th Circuit 1979).

45. 846 F.2d 765 (D.C. Circuit 1988).

but a fee."[46] By contrast, the Congressional intent to levy charges that would recover a specific percentage of the NRC's costs was clear in section 7601 of COBRA-85, and even if the charges constituted a tax, the NRC had imposed them in accordance with adequate Congressional guidelines. The utilities asked the Supreme Court to review the *Florida Power and Light* decision. On May 1, 1989, the court, having decided a similar case--*Skinner v. Mid-America Pipeline Company (MAPCO)*--a few days earlier, declined.

In *MAPCO*, the Supreme Court indicated that when fees are set not under the IOAA but by specific legislation, the guiding principle would be whether the Congress intended private beneficiaries to pay for public benefits and, if so, whether it had appropriately delegated powers to the Executive.[47] The case involved pipeline safety user fees.

In COBRA-85, the Congress gave the Secretary of Transportation the authority to set fees to cover the costs of administering the Pipeline Safety Act. The fees were to be related to usage and the Secretary was given the authority to set a schedule based on volume-miles, miles, revenues, or a combination. The Secretary set the schedule based on mileage, since it was most closely related to the cost of inspecting the pipelines. Mid-America Pipeline argued that because pipeline safety regulations confer public benefits, the fees were in fact taxes and the provisions authorizing the fees represented an unconstitutional delegation of the Congress's taxing powers to an executive agency. MAPCO contended that delegation of authority under the taxing power required stricter guidelines than other Congressional delegations of authority. After hearing the case, the Supreme Court ruled unanimously against MAPCO, reversing the decision of the U.S. District Court for the northern district of Oklahoma.

The Supreme Court's decision rested on the principle that although the power to tax is reserved to the Congress under the Constitution, the Congress may delegate discretionary authority if it also enacts sufficient standards to guide an agency in exercising that authority. In upholding the pipeline safety user fees, the Supreme Court ruled that even if the user fees were a form of taxation, the legislative intent to recover costs of services that did not directly benefit the regulated parties was clear and the legislative guidelines for doing so were adequate. In fact, the courts had upheld delegations of legislative authority when the legislative guidelines were considerably less specific.[48]

The more salient issue in the MAPCO case was not whether the pipeline user fee legislation met the normal requirements for delegation of authority, but whether the history and text of the Constitution, the past practices of the Congress, and the previous decisions of the Supreme Court provided a basis for subjecting delegation of authority under the taxing power to a stricter standard than under the other enumerated powers. The Supreme Court found no basis to support a dual standard and thus found the delegation of authority constitutional. Having done so, the Court saw no reason to address the issue of whether the pipeline safety user charges were fees or taxes.

46. 415 U.S. 336 (1974), 341.

47. *Samuel K. Skinner, Secretary of Transportation v. Mid-America Pipeline Company* (April 25, 1990), *The United States Law Week--Supreme Court Opinions*, vol. 57, no. 41, pp. 57 LW 4458-4462.

48. The *MAPCO* decision cited several cases, including *Yakus v. United States*, 321 U.S. 414 (1944) and *American Power and Light Company v. SEC*, 329 U.S. 90 (1946). *The United States Law Week--Supreme Court Opinions*, vol. 57, no. 41, p. 57 LW 4460.

Chapter Four

User Charges and the Budget

The current budgetary environment encourages appropriation committees to levy fees and deduct them from outlays, rather than credit them to federal revenues. This practice became more widespread after the enactment of the Balanced Budget Act of 1985 and, five years later, of the Budget Enforcement Act (BEA).

In 1967, a commission appointed by the President issued recommendations on budget concepts, including the budgetary treatment of federal collections. Although Executive and Congressional agencies have since followed these recommendations in principle, in practice, legal provisions and administrative procedures have at times departed from them, especially in recent years. Today, user charges may be critical in meeting deficit reduction targets without cutting back on programs. Consequently, the budgetary treatment of many user charges has changed.

Classifying Items in the Budget

Apart from proceeds of borrowing, all collections flowing from the public to the federal government are classified in the budget as governmental receipts (revenues) or as offsets against outlays (expenditures).

Budget Nomenclature

The guidelines for assigning budget items to the revenue or spending side are relatively straightforward, but the terms are confusing and likely to vary with the user. For example, governmental receipts--which generally consist of taxes, customs duties, and miscellaneous collections, including some fees--are also known as "budget receipts" and are referred to in Congressional budget resolutions as "federal revenues."

The general term for funds credited against outlays is "offsetting collections." Offsetting collections include interest, miscellaneous recoveries and refunds, and a wide variety of fees. Offsetting collections show up in the budget in two different ways.

Reimbursements to Appropriations. In some cases, the law specifies that a collection be offset within an expenditure account. Such collections are "reimbursements to appropriations." Reimbursements to appropriations are deposited as credits to the expenditure accounts that they finance. Depending on whether the funds originate from inside or outside the government, budget documents identify reimbursements to appropriations as "offsetting collections from federal sources" (including trust and off-budget funds) or as "offsetting collections from nonfederal sources." (Commonly, reimbursements to appropriations are referred to simply as "offsetting collections," thus adding to the confusion of terms.)

Offsetting Receipts. If the law does not specify that a collection be assigned to an expenditure account, it will go into a receipt account and be classified as an offset to budget outlays, not as a governmental receipt. Such collections are entitled "offsetting receipts," and, if they come from outside the govern-

ment, they are called "proprietary receipts from the public." Offsetting receipts, including proprietary receipts from the public, appear in the budget as negative outlays.[1]

User Charges Within the Budget Classification Scheme

User charges classified as budget or governmental receipts include benefit- and liability-based excise taxes and some fees. User charges classified as offsetting collections, which may be either reimbursements to appropriations from nonfederal sources or proprietary receipts from the public, consist only of fees. All benefit- and liability-based taxes are recorded as budget receipts. About 1 percent of all fees also are classified as budget receipts; the remainder are offsetting collections (see Box 3). The ratio of budget receipts to offsetting collections has changed little since 1980, but the nature of some of the fees that are now offset against outlays has changed.

Recommendations of the President's Commission on Budget Concepts. In 1967, a commission appointed by the President recommended guidelines on budget concepts, including the classification for budgetary purposes of funds flowing to the federal government. The commission's most important recommendation was that a unified budget replace competing budget concepts--which at the time included an administrative budget and a consolidated cash budget. Among its many other recommendations were several dealing with when to offset collections against expenditures and when to record them as budgetary receipts.

At the time that the commission issued its report, the classification of a collection depended entirely upon provisions of law. Over the years, classification of items had become inconsistent and the commission sought to

1. For a discussion of offsetting collections, see Thomas J. Cuny, "Offsetting Collections in the Federal Budget," *Public Budgeting and Finance* (Autumn 1988), pp. 98-99.

Box 3. Classification of Collections from the Public Within the Budget: A Summary

Funds flowing into federal coffers from the public may appear on the revenue side of the budget as governmental (or budget) receipts or on the spending side as offsetting collections. Offsetting collections include reimbursements to appropriations and proprietary receipts from the public.

Governmental (or Budget) Receipts

Taxes
- Income
  - Individual
  - Corporation
- Social insurance
- Estate and gift
- Excise, including benefit- and liability-based taxes, which are user charges

Customs duties and fees, including some that are dedicated to trust funds and are user charges

Miscellaneous receipts
- Taxes
- Deposit of earnings, Federal Reserve System
- Fines, penalties, and forfeitures
- Gifts and contributions
- Restitutions, reparations, refunds, and recoveries
- Regulatory fees

Offsetting Collections

Interest
Realization on loans and investments[1]
Sale of government property
Miscellaneous recoveries and refunds
User fees
- Charges for benefits and services
- Rents
- Royalties
- Sales of products

Regulatory fees that are required by law to be classified as offsetting collections

1. Only loan repayments before 1992 are recorded as offsetting collections. Under credit reform accounting, repayments of loans made after 1991 are not included in the budget totals; only the subsidy costs of loans made after 1991 are included in the budget totals.

remedy the problem. The commission examined the nature of a collection to determine its classification. Specifically, the commission recommended that collections from activities that were "essentially governmental in character, involving regulation or compulsion, should be reported as receipts."[2] But collections associated with activities "operated as business-type enterprises," or that were "market-oriented" should be included as offsets to related expenditures.[3] The commission distinguished between fees and levies charged for the "primary purpose of channeling the private demand for, and use of, valuable resources or materials that happened to be owned by the government" and "taxes designed to raise revenues for the government," or fees that were "incidental to government regulatory activities."[4] The basis for the distinction was the commission's conviction that budget receipts should reflect the activities that the government engages in by virtue of its powers as a sovereign state.

In examining federal collections, the commission identified the following types as basically governmental in character and recommended that they be treated as budget receipts: income, excise, franchise, and employment taxes; customs receipts; social insurance premiums (the commission recommended classifying those social insurance collections arising from the government's sovereign powers as budget receipts and those arising from noncompulsory insurance activities as offsetting collections); payments of excess earnings of the Federal Reserve System to the Treasury; gifts and contributions; patent and copyright fees; judiciary fees; immigration, passport, and consular fees; and registration and filing fees associated with regulatory activities.

The commission also recommended that the following types of collections be treated as offsets to expenditures: repayments of loans and advances; receipts of government enterprises and enterprise funds; permits and fees; hunting and grazing licenses and fees; interest, dividends, rents, and royalties; sales of products; sales of government property; and fees and charges for services and benefits of a voluntary character.[5]

The commission's recommendations were applied administratively (by Presidential direction) beginning with the budget for 1969. Thereafter, all collections except those arising from the sovereign powers of government were in principle offset against outlays. Where a provision of law authorizes the offset to occur within an expenditure account, the collections are reimbursements to appropriations. All other offsetting collections are offsetting receipts. There is no real difference between reimbursements to appropriations and offsetting receipts; both are offsetting collections.[6]

Classifying User Charges

Although the commission did not address the question of what constitutes user charges, its recommendations provide a guide for classifying them. Following its recommendations consistently would involve offsetting user fees against expenditures (either as reimbursements to appropriations or as proprietary receipts) because the fees are similar to charges for goods and services that the private market routinely provides, but that the government happens to own or control. Most regulatory fees and benefit taxes would be budget receipts because they are charges for services or benefits that stem from the government's exercise of its sovereign powers.

In practice, the commission's recommendations have usually served as a guide--at least to the extent that business-type fees are off-

2. *Report of the President's Commission on Budget Concepts* (October 1967), p. 65.

3. Ibid., p. 9.

4. Ibid., p. 69.

5. Ibid., pp. 64-71.

6. Cuny, "Offsetting Collections in the Federal Budget," pp. 98-99.

sets against outlays and taxes are always budget receipts. Although the commission's guidelines remain in force, provisions of law or administrative decisions are increasingly likely to intervene and lead to budget classifications that depart from the guidelines. Legal provisions always take precedence.

As a matter of administrative practice, the Office of Management and Budget usually follows the guidelines, but may depart from them. When the Congressional Budget Office (CBO) makes an independent judgment on budget classification, it follows the guidelines. But if OMB departs from the guidelines in classifying an item, CBO normally accepts the OMB treatment. The tendency to offset regulatory fees against outlays and, on occasion, to structure as fees charges that are much like taxes has been growing in recent years, particularly since the passage of the Balanced Budget Act.

The Budget Enforcement Act and scorekeeping rules encourage further departures from the guidelines. The BEA imposes different rules for discretionary and mandatory spending. Discretionary spending is subject to the annual appropriation process. Mandatory or direct spending (on entitlements, for example) is controlled outside of the annual appropriation process and falls under the jurisdiction of authorizing committees.

The BEA placed annual limits on discretionary spending and subjected mandatory spending to a pay-as-you-go (PAYGO) process, which requires that any increases in mandatory spending or decreases in budget receipts be offset by decreases in mandatory spending or increases in budget receipts. Thus, the Congress may increase funding for an entitlement program only if it cuts another entitlement or raises taxes, duties, or fees. Similarly, it may cut taxes only if it raises other taxes, duties, or fees or reduces entitlement spending. Under the BEA, combined changes in mandatory spending and taxation must not increase the deficit in any year.

Any of the federal government's income that is a budget receipt--whether a tax or a fee--is automatically subject to the PAYGO process. Income that is recorded as an offsetting collection may be discretionary or mandatory. A discretionary offsetting collection affects computations under the discretionary spending limits. A mandatory offsetting collection affects direct spending totals and becomes part of the PAYGO process.

Under current scorekeeping rules, a committee that cuts spending in a program gets credit for the savings (and an increase in offsetting collections is treated as a decrease in spending). Thus, for example, if an appropriation bill reduces spending by levying fees and offsetting them against outlays, the savings will count against the annual discretionary caps. Moreover, if an appropriation bill reduces outlays by increasing offsetting collections in an entitlement program (or in some other way), the savings also will be credited against the discretionary caps.[7] In other words, the savings are credited to the committee that introduces the measure, rather than to the committee that might have jurisdiction over the program. This practice encourages the appropriating committees to reduce spending. But it also alters jurisdictional boundaries between appropriating and authorizing committees, blurs distinctions between "discretionary" and "mandatory," and encourages efforts to levy fees and offset them against outlays, regardless of the nature of the charge. The only measures that are likely to be exempt from such efforts are provisions that actually amend the Internal Revenue Code, levy duties, or assess fines and penalties.

Under the Congressional Budget Act, CBO monitors the effects of legislative activity, periodically submitting to each house tabulations of levels of new budget authority, estimated outlays, and estimated revenues for the fiscal year in comparison with levels in the

7. U.S. House of Representatives, *Omnibus Budget Reconciliation Act of 1990, Conference Report to Accompany H.R. 5835*, Report 101-964 (October 27, 1990), p. 1173.

concurrent budget resolution for the fiscal year.

Trends in Budget Classification Since the Mid-1980s

Since the mid-1980s, the dominant trend in budget classification has been to offset against outlays as many fees as possible, regardless of their nature. Thus, many fees that if based on the recommendations of the President's Commission on Budget Concepts would be governmental receipts are now offsets against outlays. These fees are primarily for regulatory activities.

Consistency with budget concepts decreases as more regulatory fees are enacted and offset against outlays. Thus, although the official documents of the federal government maintain that income arising from the exercise of the government's sovereign powers generally is classified as budget receipts,[8] in the case of regulatory fees the exception is proving to be the rule. In 1980, one-third of all regulatory charges were offset against outlays; the remainder were classified as budget receipts. By 1991, nearly three-fourths of all regulatory charges were offset against outlays; the remainder were budget receipts (see Table A-7).

Several of the regulatory fees imposed since the mid-1980s have been offsets to outlays since their inception. Among them are:

- The fees of the Federal Energy Regulatory Commission (FERC) and the Department of Transportation's pipeline safety user fees. Both cover regulatory and inspection costs and are classified as proprietary receipts from the public.
- The Environmental Protection Agency's pesticide registration and licensing fees, which are classified as reimbursements to appropriations and proprietary receipts, respectively.
- The Federal Trade Commission's fees, which are classified as reimbursements to appropriations. (The Interstate Commerce Commission's fees, however, are classified as governmental receipts.)
- The Federal Communication Commission's fees, which are classified as proprietary receipts.
- The Department of Justice's immigration user and examination fees, which are classified as proprietary receipts. (The Department of State's immigration, passport, and consular fees are classified as governmental receipts).
- Customs Service user fees, which have been required by law to be classified as proprietary receipts ever since their enactment in 1986. (OMB sought to repeal the mandated classification because the fees, in effect, were customs duties. The Congress, however, chose not to enact the change.)

With the exception of the FERC fees, which date back to 1984, all of the above fees were imposed in the years following passage of the Balanced Budget Act of 1985.

Some fees that were originally classified as governmental receipts are now also offsets to outlays. For example:

- Patent, trademark, and copyright fees, which were governmental or budget receipts through 1982, are now credited to appropriation accounts.
- The Nuclear Regulatory Commission's fees were classified as governmental receipts through 1987, when they were reclassified as proprietary receipts.

8. *Budget of the United States Government, Fiscal Year 1993*, part 2, p. 15.

- The Security and Exchange Commission's registration and filing fees have traditionally been classified as governmental receipts, but when they were raised in 1990, the increases were classified as proprietary receipts. The increases were enacted in appropriation laws. The SEC registration fee is based on the dollar value of the offering and is therefore much like a tax. Most of the proceeds of SEC fees flow into general funds, along with tax revenues. The remainder, which is subtracted from the agency's outlays, is smaller and amounts to considerably less than the agency's gross outlays. Total fees, however, exceed outlays (see Chapter 5).

Recently, OMB began describing some collections as "offsetting governmental receipts." In line with the recommendations of the Commission on Budget Concepts, OMB distinguishes between "governmental receipts," which are "collections from the public that result from the exercise of the sovereign powers of the government," and "offsetting receipts," which are "derived either from business-type transactions with the public or from payments from one government account to another." OMB describes "offsetting governmental receipts" as those that are "governmental in nature but are required by law to be treated as offsetting."[9] The new term blurs distinctions in order to accommodate current practice. OMB is now calling the following charges "offsetting governmental receipts": immigration user and examination, FERC, Customs Service user, pipeline safety user, and tariff filing fees; and charges associated with reclamation facilities and the U.S. Travel and Tourism Administration.

Interest in offsetting fees against outlays and, on occasion, structuring as fees charges that are much like taxes has grown recently for several reasons. Because increases in offsetting receipts or collections count as reductions in spending, a Congressional authorizing committee can meet its reconciliation targets by raising fees instead of cutting programs. For the same reason, the appropriations committees can impose or raise fees to comply with the limits on discretionary spending. And, finally, although budget receipts can be earmarked by crediting them to a special fund or trust fund, offsetting the fees against outlays may seem simpler and more direct.

9. Office of Management and Budget, Circular No. A-11 (1991), p. 67.

The Relationship Between Charging Users and Earmarking Funds

The issues of charging for governmental services and earmarking funds are related, but separate. In the case of user charges, funds may or may not be dedicated to specific uses, but some relationship exists, by definition, between the fee or tax imposed and the benefit or service provided. In the case of earmarking, the link between payment and benefit may be direct--as is usual in the case of highway tolls--or nonexistent--as when state lottery profits are dedicated to education.

Earmarking funds and charging for governmental services raise similar concerns. Such devices may be means of promoting economic efficiency, or methods for eliciting support for tax increases or the equivalent. Fiscal experts have argued that earmarking is poor policy, since it makes the budgeting process more rigid and inhibits proper allocation of revenues among competing uses. But dedication of funds can also be much like the private-market practices of using the proceeds from the sale of goods and services to finance the costs of production. Thus, where specific fees or taxes represent payments for goods or services, which in turn are dedicated to funding the production or supply of the same goods or services, the charges may be both efficient (in terms of allocating resources) and equitable

Box 4.
Earmarked User Charges

User and regulatory fees may be dedicated to a specific use or be deposited in the general fund. Earmarked user charges may be deposited in any one of six different types of fund accounts:

- Public enterprise revolving funds receive amounts generated in a continuing cycle of business-type operations. These accounts are set up for governmental corporations, such as the Postal Service, that finance their operations primarily from the sale of their goods or services to the public.
- Intragovernmental revolving funds are primarily for the sale of goods and services within the federal government, but may also receive income from sales to the public.
- Nonrevolving trust fund accounts record the appropriated amount of funds collected for a specific purpose under a trust agreement or statute.
- Revolving trust fund accounts receive income usually generated in business-type operations in accordance with a trust agreement.
- Special fund accounts are established to record appropriated funds that are collected from a specific source, are earmarked by law for a specific purpose or program, and are not termed a trust fund account in the authorizing legislation.
- Finally, user charges may be deposited in a nonrevolving general fund account--as a reimbursement to appropriations.

In the case of reimbursements to appropriations, earmarking is automatic. In the case of proprietary receipts or taxes, setting up a trust fund or a special fund to receive the collections is necessary for earmarking to occur. In the absence of a specific law to the contrary, collections are credited to the general fund of the Treasury, without earmarking.

By definition, benefit taxes are dedicated either to a trust fund or to a special fund that provides financing for specific kinds of expenditures; in all other respects, benefit taxes are indistinguishable from other forms of taxes. Earmarked taxes may be imposed on bases that are related to the dedicated use, or on broader bases. The Omnibus Budget Reconciliation Act of 1990, which raised the gasoline excise tax, dedicated only part of the increase to the Highway Trust Fund; the remainder stays in the general fund (and thus, only a portion of the increase is a benefit tax or user charge).

Earmarking provides a source of funds for an account, but it does not guarantee an automatic appropriation of the proceeds of a user charge. Legislation requiring that the availability of the collections be approved in the appropriations process can assure some budget control. Thus, the dedication of funds to a specific purpose does not mean that the monies must or will be spent, unless the income is permanently appropriated.

(in terms of allocating costs in line with benefits received).[10]

Levying user charges and earmarking them might be a means of expanding programs or of substituting one form of funding for another. It may also assure a minimum level of funding over time, but amounts in trust funds or special fund accounts may not keep pace with program needs or spending plans (see Box 4).

Earmarking reduces budgetary flexibility, but not necessarily budgetary control, since the Congress may make the flow of funds subject to appropriation. It may be a means of raising funds that meets less political resistance than increasing general fund taxes, but it may also assure an automatic flow of funds to a program, regardless of whether the pro-

10. See William H. Oakland, "Earmarking and Decentralization," in National Tax Association/Tax Institute of America, *Proceedings of the Seventy-Seventh Annual Conference on Taxation, 1984* (Columbus, Ohio: NTA-TIA, 1985).

gram is generating net benefits. At best, earmarking can promote economic efficiency by reinforcing the link between charges and benefits; but establishing the link comes first, and if it is weak or nonexistent, earmarking will have no effect. In other circumstances, earmarking may result in overfunding of some programs at the expense of others, or, if dedicated revenues are below optimal funding levels, earmarking may not affect expenditures at the margin and therefore not affect the allocation of resources.

Chapter Five

The Growth of User Charges

Between 1980 and 1991, user charges, measured in constant dollars, increased by 54 percent, reaching a total of nearly $120 billion. The relative importance of user charges in the budget also increased. The growth, however, has not been uniform. User charges today finance a larger share of the budgets of some, but by no means all, programs.

Practices vary widely in setting user charges. Many of the differences grow out of the diversity of the goods and services that the federal government provides. But programs that are similar in nature may not assess charges for goods or services in the same way or to the same effect. Thus, despite overall trends, some charges may encourage optimal use of scarce resources to a greater degree or may recover more program costs than others. Several major programs that have assessed user charges for decades set prices at below-market levels and are therefore encouraging less than optimal use of scarce resources, or are failing to meet operating and maintenance costs. Below-market prices are common in charging for the use of public lands and the raw materials extracted from them, and for some transportation services.

Some programs are self-supporting, or nearly so. Some are primarily involved in producing and selling products, such as power. Others--the Postal Service, for example--sell services. These types of programs have traditionally received most of their funding from their customers.

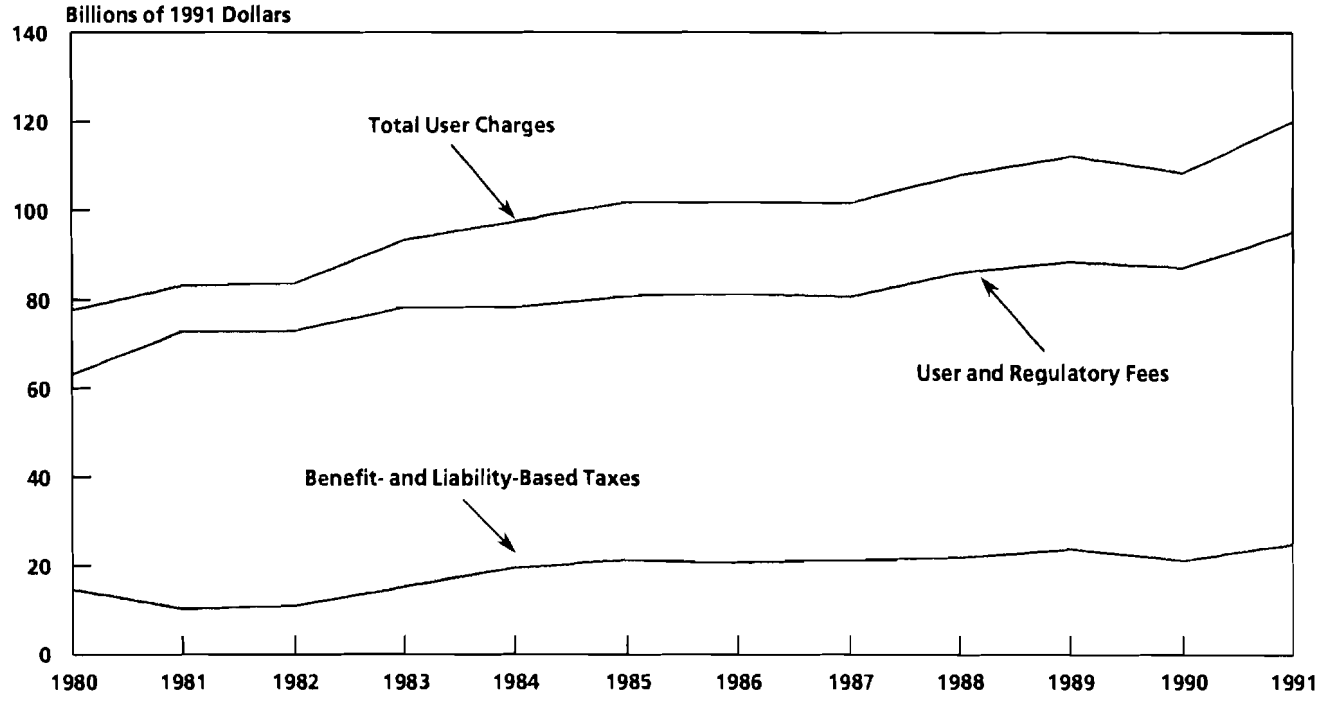
More recently--primarily since the mid-1980s--several regulatory agencies have derived most or all of their operating funds from user charges. A few regulatory agencies--notably the Environmental Protection Agency and the Food and Drug Administration--have set precedents by levying new fees and earmarking the funds for program expansion. But in most cases--either through a change in law or administrative action--agencies are assessing fees for programs that previously had been financed from general funds. Here, too, practices have evolved over time and thus may vary, even for activities that are similar in nature. In some cases, the federal government may be collecting fees that fully recoup and even exceed its costs; in others, it may be partially recovering costs; and in still other cases, it may be assessing no charges at all.

Nearly all federal departments and most major agencies levy fees for goods and services or operate programs that are financed by benefit- or liability-based taxes. Some departments, such as Agriculture, Energy, Interior, and to a lesser extent Commerce, assess charges for a wide array of goods and services. Other agencies, such as the Department of Education, assess few and relatively insignificant charges. Still others, such as Justice and State, also assess relatively few charges, but the collections that finance regulatory programs often are substantial.

A Note on the Data

It is difficult to obtain data on the growth of user charges because there is no central, comprehensive source of information. The Office of Management and Budget started collecting information on user fees from individual agen-

Figure 2.
User Charges, 1980-1991



SOURCE: Congressional Budget Office.

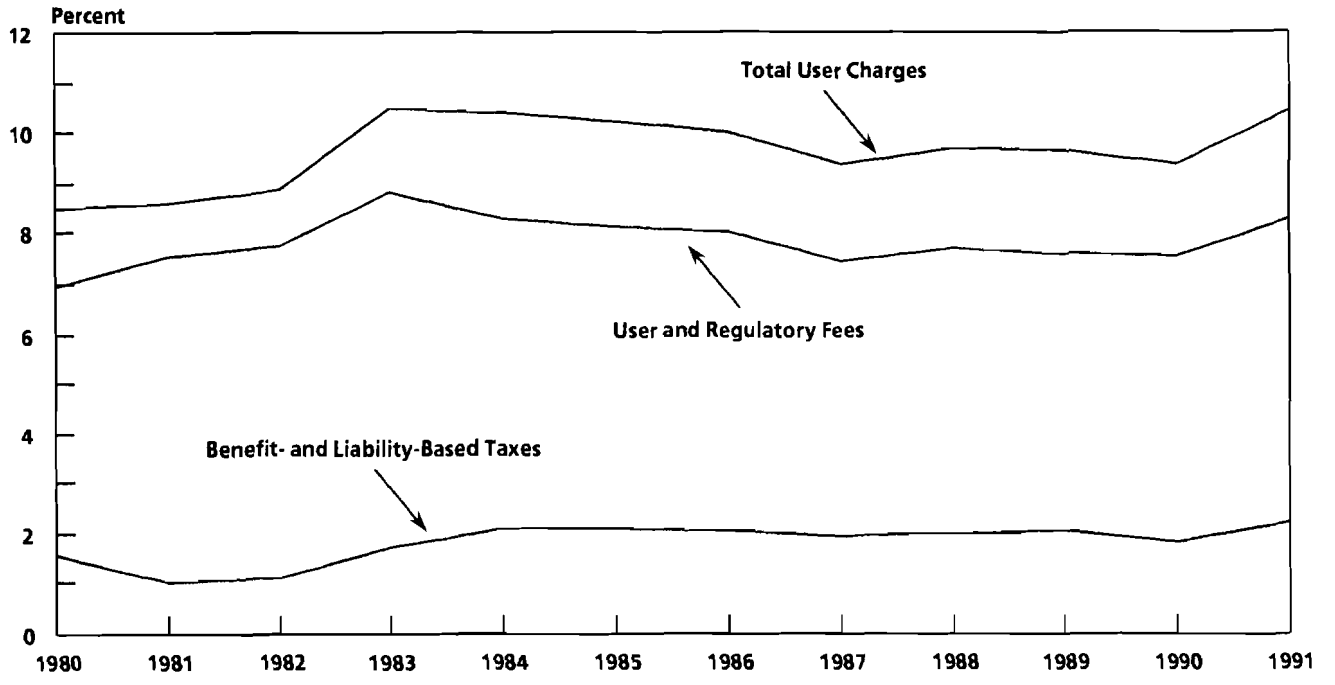
cies in 1959, but stopped in 1974 because, according to a report by the General Accounting Office (GAO), most of the information on fees that it received was incomplete and inaccurate.[1] The Congressional Budget Office's attempt to collect information from individual agencies revealed that few agencies have centralized data and in most cases information is available only from subagencies and field offices. The GAO had a similar experience in trying to obtain information about user fees from the Departments of Commerce and the Interior.[2] Collecting data on user charges from so many sources was beyond the scope of CBO's resources. Instead, CBO culled data from documents published by OMB and the Department of the Treasury, as well as from unpublished data, which these agencies supplied. When the nature of some collections was unclear, CBO sought additional information from agency staff. In the end, however, CBO strove not for absolute accuracy but consistency of judgment in determining whether or not collections were user charges.

The data that follow indicate the level of user charges in 1991 and their growth in dollars and in relation to federal financial resources. Federal financial resources are the funds available to the government from budget receipts (income taxes, social insurance taxes and contributions, excise and other taxes, customs duties, and miscellaneous receipts) and user charges that are offset against (that is, subtracted from) outlays. Measures of growth in the volume of user charges from 1980 to 1991 are adjusted for inflation and are in 1991 dollars. The adjustment is based on implicit price deflators for gross domestic product (GDP). (See Tables A-1, A-2, and A-4 to A-9 for data in nominal dollars for each year be-

1. General Accounting Office, *User Fees: Limited Survey of User Fees at the Departments of Commerce and Interior* (March 1990), p. 2.

2. Ibid., pp. 1-5.

Figure 3.
User Charges as a Share of Federal Financial Resources, 1980-1991



SOURCE: Congressional Budget Office.

NOTE: The trend line from 1982 to 1983 reflects a decline in on-budget receipts as well as some increases in collections from user charges, primarily receipts from oil and gas leases on the Outer Continental Shelf.

tween 1980 and 1991; see Table A-3 for a breakdown of user charges in relation to federal financial resources.)

The Big Picture, 1980-1991

The growth in user charges between 1980 and 1991 far outstripped that of federal financial resources or GDP. Over the period, federal financial resources increased by 26 percent and GDP rose by 28 percent. By comparison, user and regulatory fees increased by 50 percent, reaching nearly $95 billion in 1991. At the same time, benefit- and liability-based taxes increased by 74 percent to $25 billion (see Figure 2 and Table A-1).[3] The substantial increase in collections reflects a continuing trend toward charging for some types of governmental services. The totals, however, mask the extent to which charges for other types of goods and services have either stayed stable or declined.

As a share of federal financial resources, user charges accounted for 10.5 cents of each dollar in 1991, up from 8.5 cents in 1980. Fees increased from 6.9 cents to 8.3 cents of each dollar of federal financial resources; benefit- and liability-based taxes increased from 1.6 cents to 2.2 cents (see Figure 3 and Table A-3). If the relationship of fees to federal financial resources had remained unchanged since 1980,

3. Office of Management and Budget (OMB), *Budget of the United States Government and Object Class Analysis* (fiscal years 1981 to 1993); Department of the Treasury, Financial Management Service (FMS), *Combined Statement of Receipts, Expenditures and Balances of the United States Government* (fiscal years 1980 to 1983), and *United States Government Annual Report--Appendix* (fiscal years 1984 to 1991); and unpublished historical data on proprietary receipts from the public and budget receipts provided by OMB and FMS.

federal agencies would have collected $79 billion in fees in 1991--roughly $16 billion less than the actual amount. And if the relationship of benefit- and liability-based taxes to federal financial resources had remained the same, collections in 1991 would have been $18 billion--$7 billion less than the actual amount.

User Fees

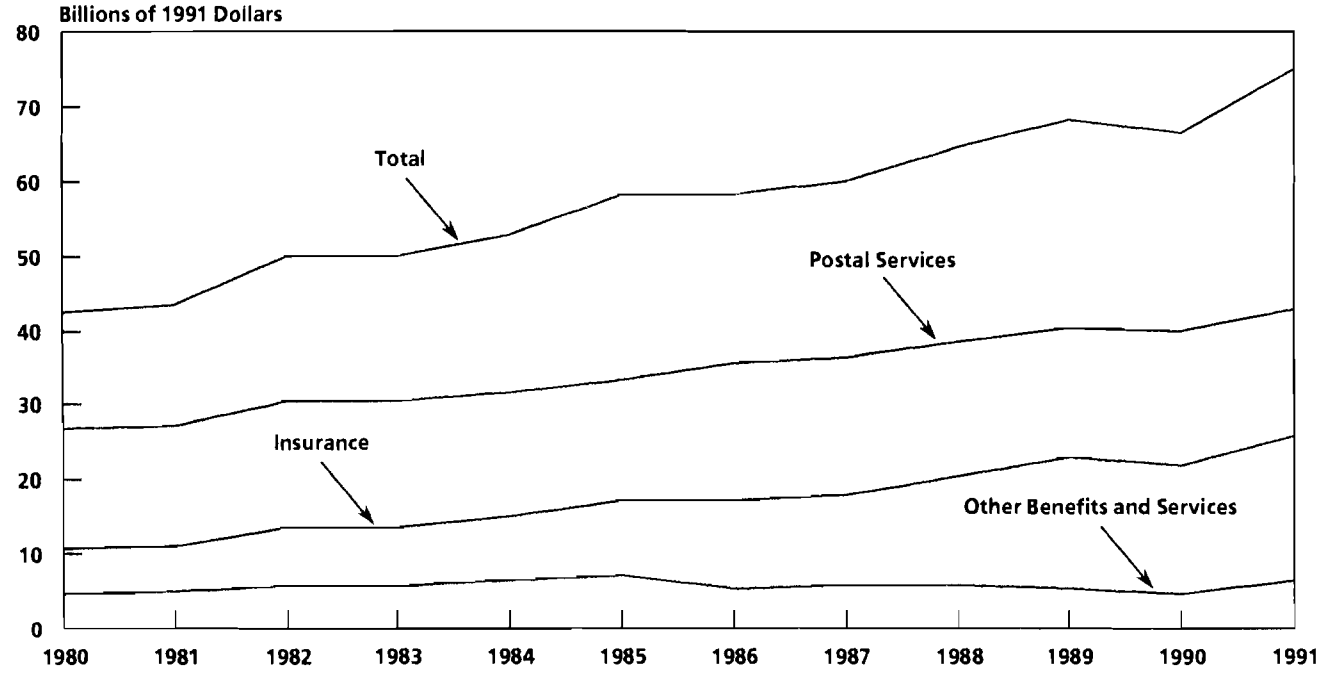
User fees--which consist largely of charges for benefits and services, rents, royalties, and sales of products--increased by 46 percent between 1980 and 1991 to $90.8 billion. The increase, however, was not uniform. As a share of federal financial resources and in absolute dollars, adjusted for inflation, some types of fees increased, while others declined (see Figures 4, 5, 7, and 8 and Table A-3).

Charges for Benefits and Services

Charges for benefits and services--which include most business-type fees other than rents, royalties, and product sales--increased by 77 percent to $75.1 billion in 1991. As a share of federal financial resources, they rose from 4.6 percent in 1980 to 6.5 percent in 1991. The increase resulted largely from collections for postal services and insurance premiums, which together accounted for 57 percent of all user charges in 1991, up from 49 percent in 1980 (see Figure 6).

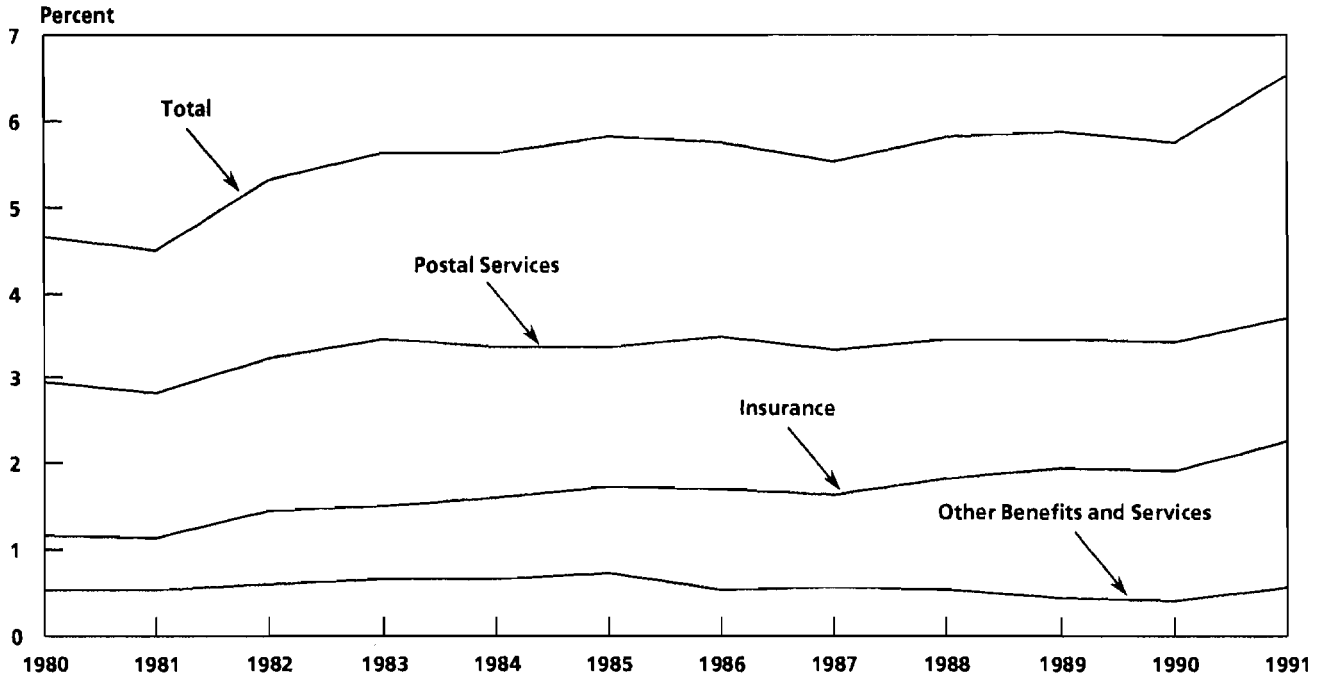
Postal Services. Postal services, which account for more than a third of all user charge collections, amounted to $42.6 billion in 1991, an increase of 58 percent since 1980. Postal services also increased as a share of federal financial resources from 3 percent in 1980 to 3.7 percent in 1991.

Figure 4.
Charges for Benefits and Services, 1980-1991



SOURCE: Congressional Budget Office.

Figure 5.
Charges for Benefits and Services as a Share of Federal Financial Resources, 1980-1991



SOURCE: Congressional Budget Office.

Insurance. Although collections from insurance premiums have increased and now account for more than one-fifth of all user charges, the data do not indicate either overall trends in charging for federal services or the budgetary significance of user charges. As a recent CBO study makes clear, only a detailed program-by-program analysis--which is outside of the scope of this report--can reveal which insurance programs will be able to meet future claims and which are underfunded.[4] Data on current premium collections are no measure of the problems of several programs, including not only depository insurance (the Resolution Trust Corporation, the Federal Deposit Insurance Corporation's Bank Insurance Fund, and the Federal Savings and Loan Insurance Corporation's Resolution Fund), but pension insurance (provided by the Pension Benefit Guaranty Corporation).

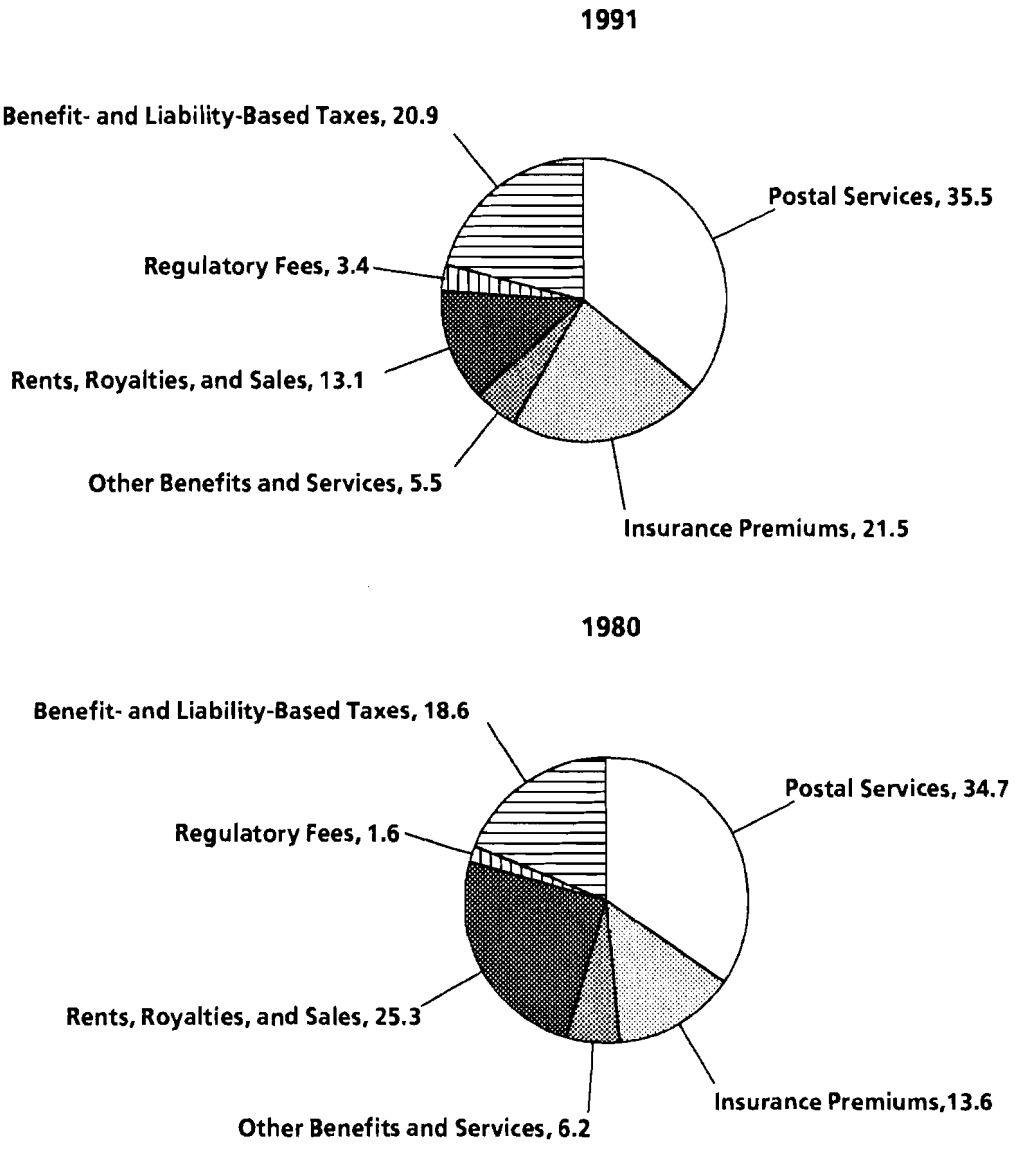
Whether an insurance fund is in good or bad shape depends on whether current and projected income is sufficient to meet projected liabilities, not on whether premiums are growing in absolute terms or in relation to budget receipts or program outlays. For example, in setting up the Pension Benefit Guaranty Corporation (PBGC), the Congress intended that it be self-supporting. The PBGC insures defined-benefit pension plans and thus guarantees that employees receive pension benefits in the event that employers' assets are insufficient to pay for them. PBGC's annual premiums have exceeded outlays since its creation in 1974, but premiums have not kept pace with the growth in liabilities caused by underfunded pension plans. PBGC's cumulative deficit was $2.5 billion in 1991; the agency estimates that its cumulative deficit by the end of 2002 could amount to $15.7 billion and might be as high as $27.8 billion.[5]

4. Congressional Budget Office, *Controlling Losses of the Pension Benefit Guaranty Corporation* (January 1993).

5. Pension Benefit Guaranty Corporation, *Annual Report 1992*, p. 13.

Federal insurance premiums, which amounted to $25.9 billion in 1991, increased as a share of federal financial resources from 1.2 percent in 1980 to 2.3 percent in 1991. Premiums from depository institutions account for part of the increase; these amounted to 0.1 percent of federal financial resources in 1980 and 0.6 percent in 1991. As for the rest, the main charges were for Supplementary Medical Insurance premiums (Medicare Part B); health insurance for federal employees, retirees, and veterans; life insurance for federal employees and veterans; premiums of the Pension Benefit Guaranty Corporation; and disaster insurance, particularly federal crop and national flood insurance (see Table A-4 for a breakdown of insurance charges in nominal dollars from 1980 to 1991). Federal insurance

Figure 6.
Composition of User Charges in 1980 and 1991 (In percent)



SOURCE: Congressional Budget Office.

programs are varied, not only in purpose, but also in design. Some, such as veterans' life, pension, and flood insurance, are generally financed from user charges; others, such as crop insurance, receive support from general funds.

Charges for Other Benefits and Services. Charges for benefits and services, other than for postal services and insurance, account for a relatively small and unchanging share of total user charges--6 percent in both 1980 and 1991. These charges, which amounted to $6.6 billion in 1991, increased over the period by 37 percent in constant dollars, but in relation to federal financial resources they were virtually flat, rising from 0.5 percent in 1980 to 0.6 percent in 1991 and fluctuating only slightly over the period (see Tables A-3 and A-5).

In addition to postal services and insurance, fees for benefits and services include many of the more familiar collections for research services, technical information, maps, charts, and data; agricultural marketing and trade promotion services; administrative and auditing services; soil conservation and flood control; reimbursements for construction; admission to national parks; and use of recreational facilities. Subagencies of the Departments of Agriculture, Commerce, and Interior provide and charge for many of these services. Within the Department of Commerce, the collections of the National Oceanic and Atmospheric Administration, the International Trade Administration, and the National Technical Information Service increased during the 1980s. Collections for most other services remained relatively stable.

Most of the charges for benefits or services are to specific individuals or businesses. Apart from postal services and insurance, providing goods and services may be only one aspect of the operation of an agency or a program; in these instances, charges would cover only a portion of an agency's expenditures. Without detailed program-by-program investigation and analysis, it is impossible to determine whether agencies are covering their costs of providing services or providing partial subsidies. For some programs, however, the situation is clear. For example, fees for the use of federal recreational facilities, administered by the Departments of Agriculture and Interior and the Army Corps of Engineers, are far below program and maintenance costs. The Forest Service manages 156 national forests; provides recreational facilities, including campsites; and maintains hiking trails. Apart from fees for campsite rentals, the facilities are free of charge, so that funding for management and maintenance comes largely from general tax revenues. The Army Corps of Engineers administers recreational areas and charges nominal camping fees.

Entrance fees to national parks constitute a small portion of the National Park Service's outlays for management of the parks and upkeep of the facilities. In many cases, relatively low fees result in overcrowding of the parks, congestion on park roadways, and increased pollution caused by heavy vehicular traffic. Raising fees to cover costs, however, might reduce access to a public resource. To date, the policy has been to subsidize the costs of park maintenance with general revenues.

Rents, Royalties, and Sales of Products

Rents, royalties, and sales of products, combined, brought in $15.8 billion in 1991 (see Figure 7). These charges represented 2.2 percent of federal financial resources in 1980, 2.1 percent in 1985, and 1.4 percent in 1991. They peaked at 3 percent in 1983, when rents and royalties from leases on the Outer Continental Shelf increased, and generally declined thereafter (see Figure 8). Rents, royalties, and sales accounted for about 25 percent of all user charges in 1980, compared with between 13 percent and 15 percent in the past few years. (See Table A-6 for a breakdown of collections from rents, royalties, and sales in nominal dollars).

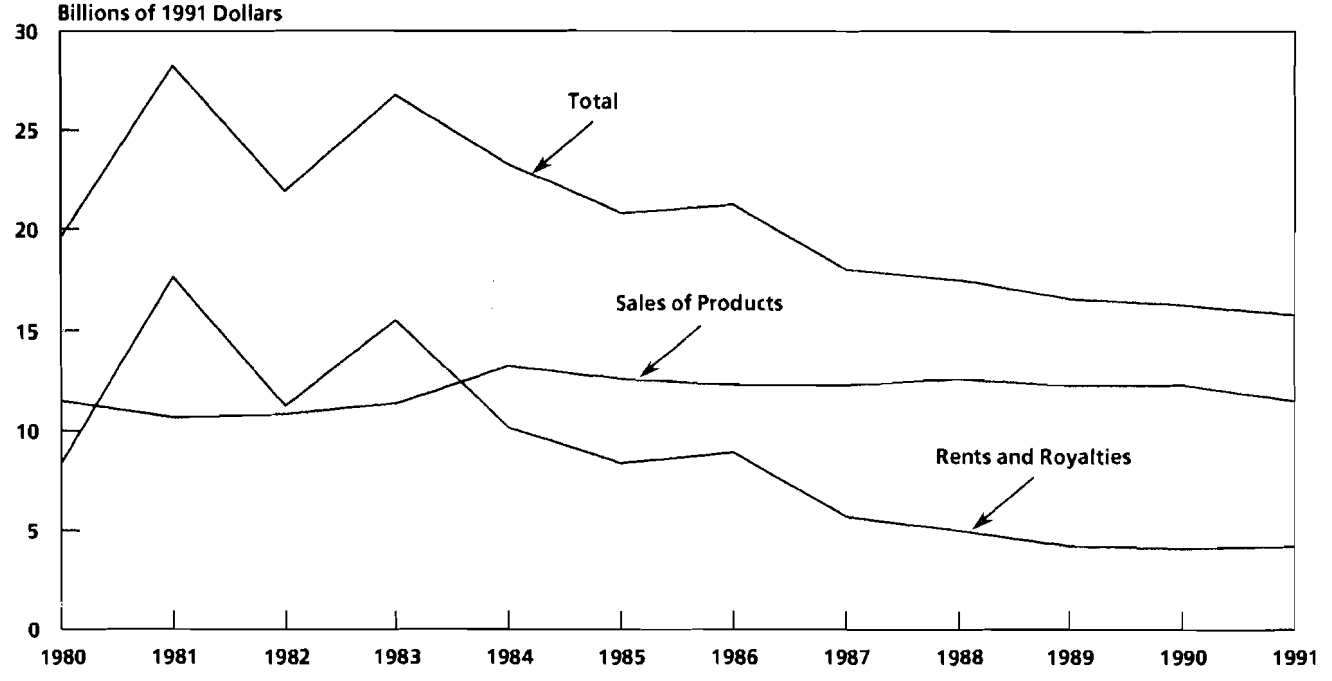
Rents and Royalties. By 1991, collections from rents and royalties had declined by nearly 50 percent from their 1980 levels to $4.2 billion, nearly $3.2 billion of which was for royal-

ties from exploration and extraction of resources from the Outer Continental Shelf. As a share of federal financial resources, rents and royalties accounted for only 0.4 percent of collections in 1991, down from 0.9 percent in 1980. Rents and royalties also are a declining share of total charges, representing only 4 percent of them in 1991, compared with 11 percent in 1980.

Collections for rents and royalties may reflect market demand or government policy regarding charging for certain benefits. (The absence of a central source for data on user fees makes it impractical to try to determine which user fee rates are periodically reviewed and adjusted and which are not.) Falling oil prices have caused much of the decline in rents and royalties. Apart from OCS royalties, however, the decline also reflects a failure to raise prices to correct for inflation, as with grazing fees for public lands and holding fees for hardrock mining claims on public lands (the latter are based on a law enacted in 1872). Fees for the use of federal lands for cattle grazing and the rights to exploit hardrock minerals are below market value and inconsistent with many of the charges that the government imposes on the rights to use other resources and extract other minerals.

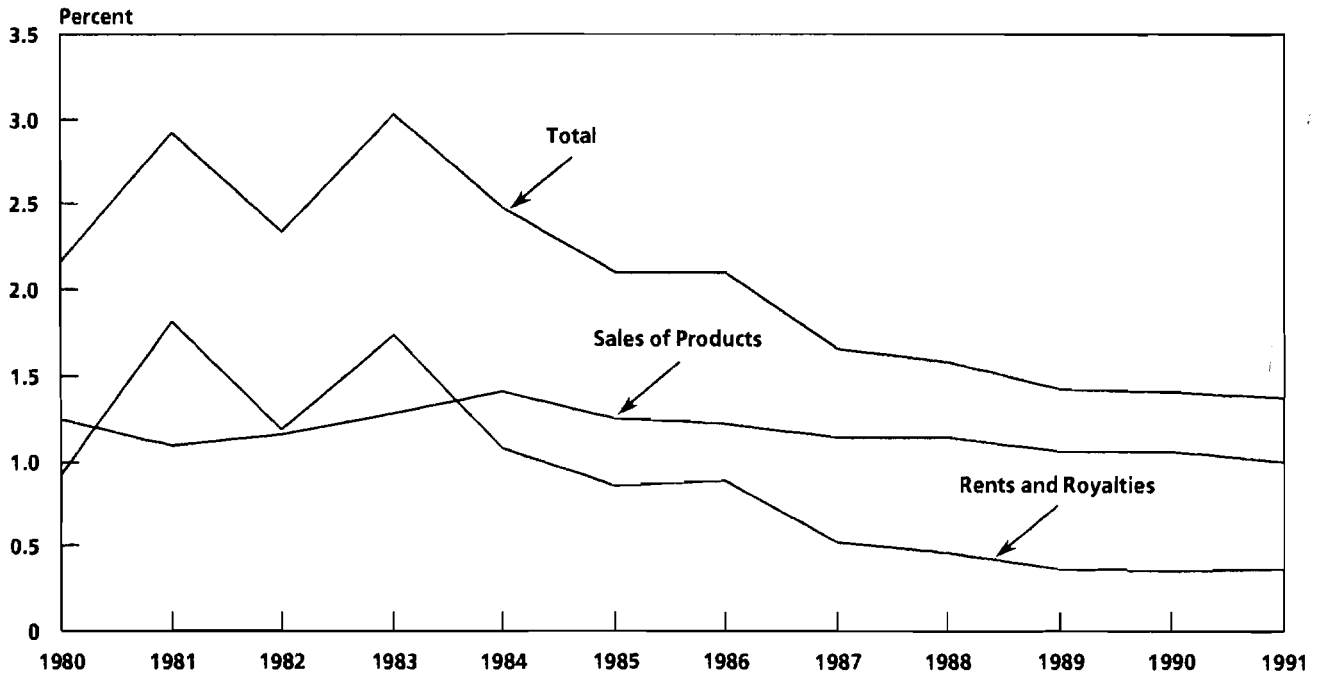
The federal government receives no royalties for hardrock minerals extracted from public lands, although it does get royalties for oil, gas, and coal. In addition, fees for hardrock mining claims are minimal. Under the Mining Law of 1872, prospectors could stake a claim and, for an annual development expenditure of $100, could mine and sell minerals (such as gold, silver, and copper) from public lands without paying any further fees or royalties to the federal government. The annual expenditure requirement remained unchanged for 120 years. Public Law 102-381, enacted in October 1992, substitutes for the expenditure requirement an annual rental fee for 1993 and 1994 of $100 for each claim on federal land. Anyone involved in exploration

Figure 7.
Rents, Royalties, and Sales of Products, 1980-1991



SOURCE: Congressional Budget Office.

Figure 8.
Rents, Royalties, and Sales of Products as a Share of Federal Financial Resources, 1980-1991



SOURCE: Congressional Budget Office.

work on less than 10 acres or who is producing minerals from 10 or fewer claims, however, may elect to meet the expenditure requirement rather than pay a rental, provided the claim was staked before October 1992.

Sales of Products. In constant dollars, sales of products, which amounted to $11.5 billion in 1991, were fairly flat between 1980 and 1991. Over the period, receipts from sales of timber decreased by 38 percent and receipts from sales of minerals and mineral products dropped by 78 percent. The decline in minerals receipts primarily reflects lower oil prices. Because of the sharp declines in mineral and timber sales, total sales of products by the federal government have declined as a share of federal financial resources from 1.3 percent in 1980 to 1 percent in 1991. As a share of total charges, sales have declined from 15 percent in 1980 to between 10 percent and 11 percent in recent years.

Some of the Department of Agriculture's largest collections from the public are receipts from the National Forests Fund and the Forest Service Cooperative Fund, primarily for timber harvesting and sales. In 1991, total timber sales from national forests of slightly more than $1 billion exceeded timber management, reforestation, construction of logging roads, payments to states, and other timber program costs by $200 million. In seven of the nine national forest regions, however, timber sales did not cover the government's costs of making the timber available for sale.[6]

Sales of power and other utilities by the Department of Energy and the Tennessee Valley Authority increased by 44 percent between 1980 and 1991 to $9.1 billion. Sales of products other than timber, minerals, and power are relatively insignificant.

6. Congressional Budget Office, *Reducing the Deficit: Spending and Revenue Options* (February 1992), p. 119.

Regulatory Fees

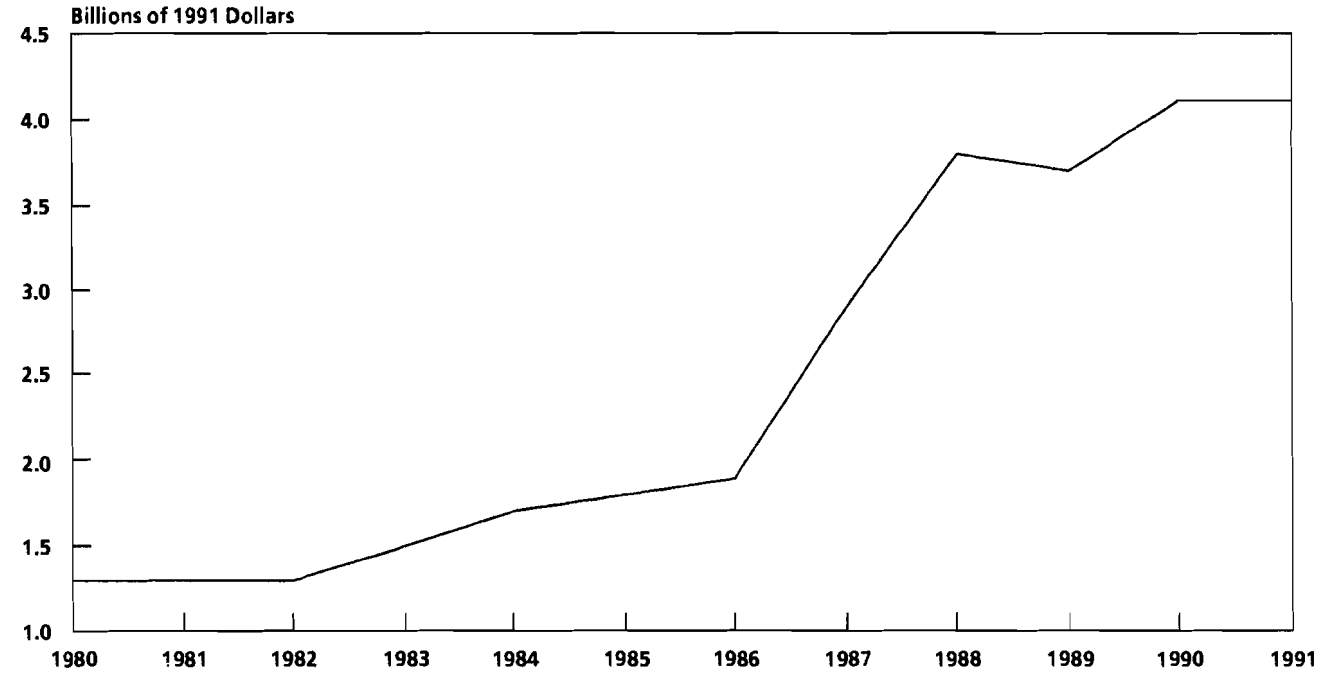
Regulatory fees more than tripled between 1980 and 1991, rising to $4.1 billion (see Figure 9). Regulatory fees constitute a small but growing share of total user charges, increasing from 2 percent in 1980 to 3 percent in 1991. As a share of federal financial resources, regulatory fees increased from 0.1 percent in 1980 to 0.4 percent in 1991 (see Figure 10 and Table A-3). Regulatory charges include patent and trademark fees, inspection and licensing fees, and filing and registration fees associated with a variety of regulatory programs. Environmental and energy-related programs accounted for slightly less than one-fourth of all regulatory fees. Regulatory charges also include immigration user and examination fees, passport and consular fees, Customs Service user fees, Internal Revenue Service ruling and determination fees, and fees for legal services (see Table A-7).

Major Developments

Although regulatory charges remain a small portion of total fees, in recent years they have made some programs--and even some agencies--almost, if not entirely, self-supporting.

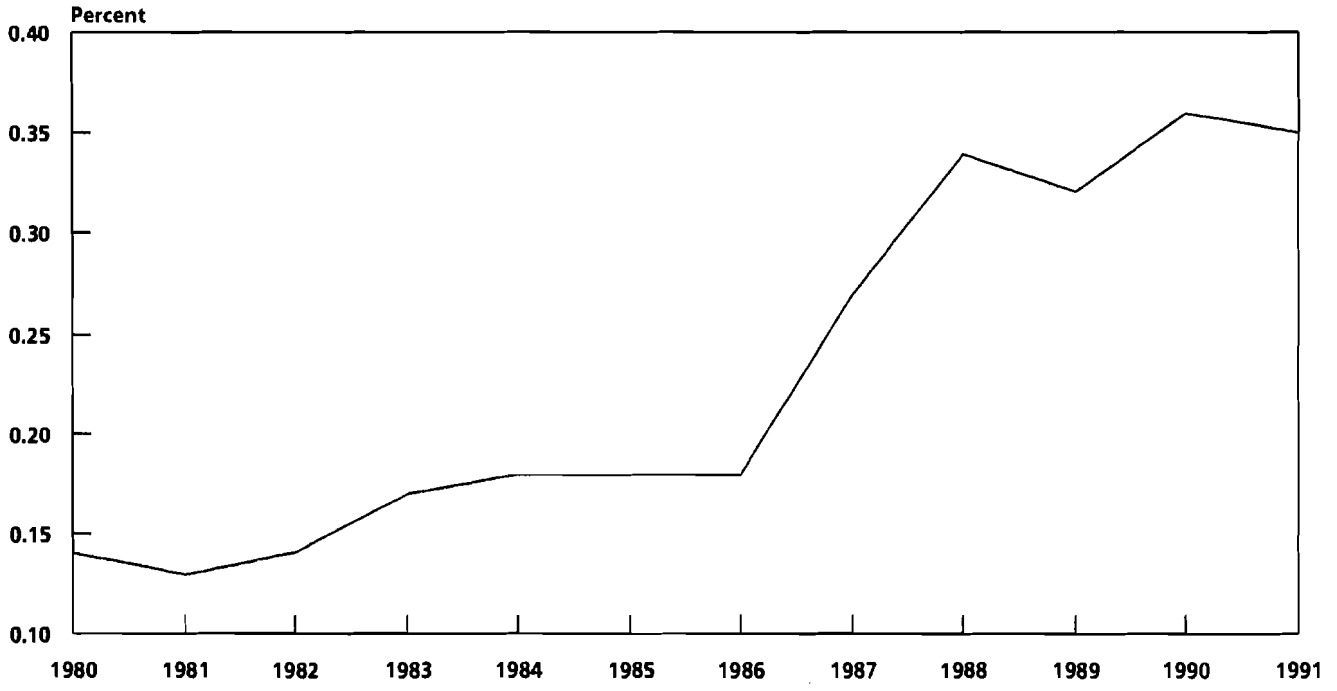
Immigration and Naturalization Service Fees. The Immigration and Naturalization Service (INS) has imposed three types of fees since 1986. The Immigration Legalization Fund, first authorized under the Immigration Reform and Control Act of 1986 and scheduled to expire in 1994, provides financing for an amnesty program that permits illegal aliens to become legal residents. The program began in 1987. Collections from illegal aliens seeking to become legal residents peaked the following year and, as expected, have since been declining. The INS also imposes immigration examination fees, which cover the costs of reviewing, processing, and adjudicating applications for anyone petitioning for residence in

Figure 9.
Regulatory Fees, 1980-1991



SOURCE: Congressional Budget Office.

Figure 10.
Regulatory Fees as a Share of Federal Financial Resources, 1980-1991



SOURCE: Congressional Budget Office.

the United States. The INS has been collecting immigration user fees since 1987. These fees--which come from a $5 assessment on airline tickets for travel to and from the United States--pay for all immigration inspections at U.S. airports. All three INS programs--immigration legalization, examination, and inspection--are fully financed from assessments. INS collections cover about one-third of its annual budget.

Premerger Filing Fees. The Department of Justice and the Federal Trade Commission (FTC) jointly review proposed mergers and assess premerger filing fees for the purpose. The fees, which the two agencies split, went into effect in 1990 and cover all costs associated with reviewing proposed mergers that might act against competition.[7] The Appropriations Act covering both the Department of Justice and the FTC for 1993 (Public Law 102-395) increased premerger filing fees to cover inflation and pay raises since the establishment of the fees in 1988. Public Law 102-395 also required the Attorney General to set fees to recover expenses of registering foreign agents and to recover the costs of confinement from any person convicted in a U.S. District Court and committed to the Attorney General's custody. The fees are equal to the average cost of one year of incarceration. (Individuals jailed for less than a year can receive a rebate of a prorated portion of the fee. The Attorney General can waive the fee or establish a lesser fee for persons who establish an inability to pay or who can demonstrate that a fee would unduly burden their dependents.)

Passport, Visa, and Consular Fees. The Department of State's charges consist primarily of passport, immigration (largely visa), and consular fees. Passport fees have increased substantially since 1980, but collections fluctuate considerably from year to year. Collections are likely to increase in 1993, when passports issued for 10-year periods in the 1980s come up for renewal. (The 10-year passport

7. 15 U.S.C. 18.

was established in 1982; previously passports were valid for five years. As a result, passport renewals in the late 1980s dropped sharply, and so did fee collections.) Passport, immigration, and consular fees are designed to cover the costs of issuing passports and immigrant and nonimmigrant visas and of providing consular services. Services for U.S. citizens overseas account for about 40 percent of the cost of a passport. The Department of State reviews and adjusts its fees every five years. The most recent increase took effect in 1992.

Patent and Trademark Fees. The Patent and Trademark Office (PTO) is the main source of funds for the Department of Commerce and accounted for more than two-thirds of its charges in 1991. A patent and trademark surcharge, enacted in 1990, alone yielded nearly $100 million in additional collections in 1991. Collections by the PTO came close to meeting the agency's annual budget in 1991 and 1992. It expects to obtain all of its funds from fees in 1993 and 1994.

The Department of Commerce is a dramatic example of the growth in fees as a source of program funds. Between 1980 and 1991, charges increased from $152 million, representing less than 3 percent of the department's outlays, to $505 million, representing more than 16 percent of its outlays in 1991. The rise in charges in relation to outlays resulted both from keeping outlays down and from increasing collections from the public, mostly for patents and trademarks. The collections of the National Oceanic and Atmospheric Administration, the International Trade Administration, and the National Technical Information Service also increased.

Treasury Department Fees. The Comptroller of the Currency collected nearly $300 million for bank supervisory services in 1991. The main additions to the Treasury's fees over the last decade have been Customs Service user fees and Internal Revenue Service ruling and determination fees.

Securities and Exchange Commission Fees. The Securities and Exchange Commission (SEC) collects registration fees that substantially exceed its outlays. In 1980, SEC registration fees amounted to about two-thirds of the agency's gross outlays. In 1986 and 1987, the share had climbed to well above 200 percent, and in 1991, was close to 150 percent.

The SEC's registration fee is based on the dollar value of the offering, Thus, in its structure, the fee is similar to a tax, and most fee proceeds flow into general funds, along with tax revenues. Beginning with fiscal year 1991, SEC appropriation acts have increased registration fees from 0.02 percent to 0.03 percent of the dollar value of the offering. The appropriation act for fiscal year 1993 (Public Law 102-395) authorizes the SEC, upon enactment of legislation amending the Investment Advisors Act of 1940, to collect up to $16 million in additional fees to recover the costs of registering, supervising, and regulating investment advisers and their activities.

Nuclear Regulatory Commission Fees. The Nuclear Regulatory Commission's (NRC's) fees cover its budget authority. The NRC and its predecessor, the Atomic Energy Commission, have been collecting licensing fees since 1968, based on the general authority granted to all agencies in the Independent Offices Appropriation Act (IOAA) of 1952 (see Chapter 3). In 1980, NRC's fees for license reviews and inspections covered 5 percent of its outlays. Beginning with the Consolidated Budget Reconciliation Act of 1985 (COBRA-85), the Congress gave the NRC the authority to levy annual charges on the operation of nuclear power reactors and thus to recover a larger share of its costs. Most recently, in 1990, the Congress authorized the NRC to levy licensing and inspection fees so that its budget is fully funded from fees. (The authority expires in 1996. Previous legislation--in 1985 and in 1987--had set the cost recovery rate initially at 33 percent and subsequently at 45 percent. In 1996, the ratio of coverage is scheduled to revert to 33 percent.) The fees levied under the agency's general authority cover specific licensing inspection services; annual fees levied on each reactor recover the cost of providing generic services to licensees,

such as research, rulemaking, and development of regulations.

Federal Energy Regulatory Commission Fees. The Federal Energy Regulatory Commission's (FERC's) fees, levied under the authority of the Federal Power Act, the IOAA and OBRA-86, also fully cover its budgetary costs. FERC regulates interstate aspects of the natural gas, oil pipeline, hydroelectric, and electric power industries. Its regulatory activities include setting and approving rates, issuing licenses and certificates for construction of facilities, and inspecting dams. (FERC regulates some 150 interstate natural gas pipeline companies, more than 9,700 natural gas producers, 130 common carrier oil pipeline companies, and more than 1,700 hydroelectric projects.) In addition to specific fees for reviewing various filings under the IOAA, FERC assesses annual charges on hydroelectric licensees and on regulated oil, gas, and electric firms. (The authority to collect annual fees from holders of licenses to generate electricity in order to cover the cost of administering the program dates from 1920.) Each year, FERC reviews its program costs and makes adjustments, as necessary, so that its annual charges are equal to its budget authority, less fees authorized under the IOAA.

Federal Communication Commission Fees. The Federal Communication Commission's (FCC's) fees also cover a substantial share of its costs. The Communications Act of 1934 established the public nature of the radio spectrum. The FCC assigns licenses to private parties who use the radio spectrum and charges fees to cover the cost of the application and licensing process. The Omnibus Budget Reconciliation Act of 1993 gives the FCC authority to auction licenses to use parts of the radio spectrum. The use of the radio spectrum includes traditional radio and television broadcasting, cable television, satellite and microwave communications, and cellular telephones.

The FCC's charges are based on authority granted the agency under COBRA-85. In 1985, fees covered less than 1 percent of the FCC's costs; in 1989, fees covered roughly half of the agency's costs. More recently, the share has dropped to around 40 percent--a result of lower collections and rising outlays. The FCC's outlays in 1991, measured in constant dollars, were 8 percent higher than in 1980. OBRA-93 increases the fees that the FCC charges for regulatory activities.

Some Recent Precedents

Both the Environmental Protection Agency (EPA) and the Food and Drug Administration (FDA) have recently set precedents in levying fees and earmarking them for the purpose of program expansion.

Environmental Protection Agency. EPA--apart from administering programs funded by the Hazardous Substance Superfund and the Leaking Underground Storage Tank Trust Fund--is responsible for regulating pesticides. This responsibility includes registering all pesticides to assess their safety and environmental impact. EPA charges a one-time registration fee for reviewing the active ingredients in pesticides and an annual fee to producers, based on the number of reregistrations they hold. The fees go into a special fund for "reregistration and expedited processing," set up in 1989, and are available for these purposes, without fiscal year limitation. EPA is using the funds to increase staff and improve its data management systems and internal procedures in order to expedite the processing of applications. EPA officials consider the earmarking of its fees to have been essential in securing industry's support for them. When the program expanded, fees increased from $8 million in 1988 to more than $100 million in 1991. The fees nonetheless finance a small fraction (less than 2 percent) of the Environmental Protection Agency's gross outlays.

Food and Drug Administration. In October 1992, the Congress authorized the FDA to impose user fees for drug certification and approval. Building on the EPA model, these fees set precedents in both formulation and structure. Under the new law, makers of prescrip-

tion drugs will pay a one-time fee for each new drug application and annual fees for each facility manufacturing prescription drugs and for each drug on the market. These fees are expected to bring in $330 million over the next five years. The new fees are the outgrowth of an agreement between the FDA, lawmakers and their staffs, and industry representatives. Under the resulting law, the FDA will dedicate the fees to hiring 600 new staff members by 1997 for the purpose of evaluating the safety and effectiveness of new pharmaceuticals. The fees will be a reimbursement to FDA appropriations and will be available without fiscal year limitation. In turn, the FDA has pledged to cut review times in half by 1997--to six months for high-priority drugs (such as those for AIDS and cancer) and to 12 months for all others.

The FDA has committed itself not only to a series of five-year goals, but to a set of interim goals, which include eliminating its backlog of drug applications in two years and hiring half of its new staff members by the first quarter of fiscal year 1995. The goals are set forth in letters from the Commissioner of Food and Drugs to the Chairman of the Energy and Commerce Committee of the House and the Chairman of the Labor and Human Resources Committee of the Senate. The law requires the FDA to submit annual reports to the committees on its progress toward meeting its goals. Such highly specific earmarking of fees and agency commitments is unprecedented and accounts for the drug industry's acceptance of fees that it had previously opposed.[8]

FDA officials have estimated that it costs an average of $10 million a month per drug for each additional month that a product is held off the market. Thus, speedier approvals could mean millions in additional earnings to the industry.[9] All parties saw the fees as a reasonable approach to eliminating a growing backlog of drug applications and speeding up drug approvals in a time of budgetary constraint. In the cases of the EPA and FDA fees, industry and government moved from an adversarial to a cooperative process in setting charges for regulatory services. Whether these cases signify a trend remains to be seen.

The Current State of Regulatory Charges

The trend toward charging for regulatory services has not affected regulatory agencies uniformly. In the case of the SEC, charges exceed budgetary outlays; in the case of the FERC and the NRC, charges are roughly equal to annual outlays; in the case of the FCC, charges partially cover outlays; and in the case of the Commodity Futures Trading Commission (CFTC) and the Consumer Product Safety Commission, fees are insignificant. In 1992, the Interstate Commerce Commission's fees covered about 12 percent of its outlays; the FTC's fees covered about 16 percent; and the FCC's fees covered approximately 40 percent (see Table 1). The proportion of FCC outlays that are covered by fees will increase when the provisions of OBRA-93 take effect.

In some cases, the differences among agencies may reflect their varying functions; in others, the activities may be similar, but the policies toward charging for services may be different. For example, most depository institutions--thrifts, credit unions, and nationally charted banks--pay for the costs of examining them. State-chartered banks regulated by the Federal Deposit Insurance Corporation (FDIC) do not. In its budget for fiscal year 1994, the Administration proposed that state-chartered banks reimburse the FDIC for the

8. Prescription Drug User Fee Act of 1992, H.R. 5952, 102nd Cong., 2nd Sess. (1992), pp. 2-3 and 18-19.

9. For summaries of the legislation and the process of working out the agreement that led up to it, see Philip J. Hilts, "Plan to Speed Approval of Drugs: Makers Would Pay Fees to U.S.," *The New York Times*, August 11, 1992, p. A1, and "Senate Passes Bill to Charge Makers for Drug Approval," *The New York Times*, October 8, 1992, p. A1; Bruce Ingersoll, "Plan to Speed Drug Approvals Clears Congress," *The Wall Street Journal*, October 8, 1992, p. B1; and Malcolm Gladwell, "Congress Approves Measure to Speed FDA Drug Approval," *The Washington Post*, October 8, 1992.

Table 1.
Fees and Gross Outlays of Selected Regulatory Agencies, 1992 (In millions of dollars)

Agency	Total Fees	Gross Outlays	Fees as a Percentage of Outlays
Commodity Futures Trading Commission	1.6	46.6	3
Consumer Product Safety Commission	0	40.7	0
Customs Service	669.9	1,937.0	35
Federal Communications Commission	50.7	129.0	39
Federal Energy Regulatory Commission	141.1	130.1	108
Federal Maritime Commission	0	17.0	0
Federal Trade Commission	13.8	84.7	16
Immigration and Naturalization Service	480.9	1,397.0	34
Interstate Commerce Commission	5.5	46.3	12
Nuclear Regulatory Commission	489.3	540.4	91
Patent and Trademark Office	428.0	389.0	110
Securities and Exchange Commission	400.3	228.8	175

SOURCES: *Budget of the United States Government, Fiscal Year 1994; Annual Report of the United States Government--Appendix, 1992.*

costs of examining them and that the CFTC levy fees to cover the costs of its operations.

Benefit- and Liability-Based Taxes

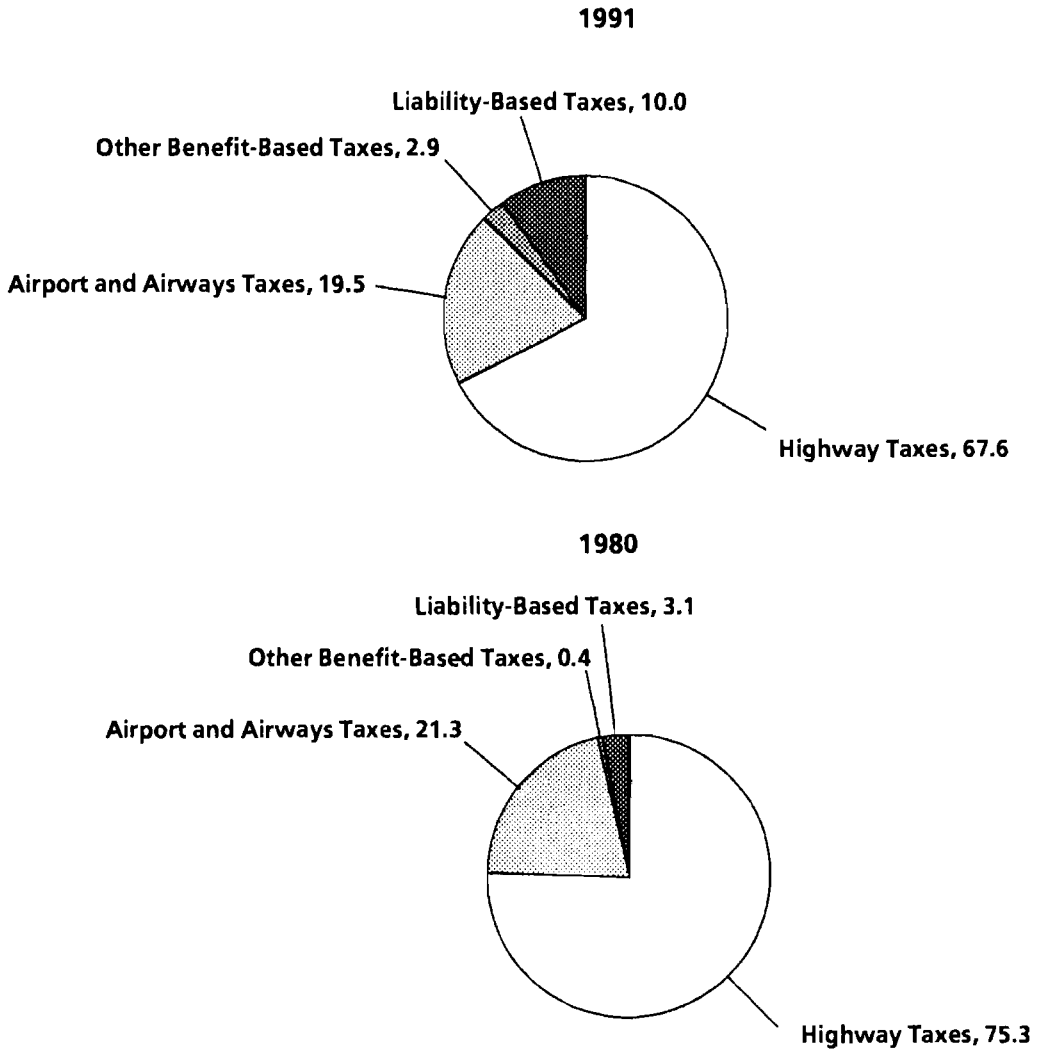
As sources of funds, dedicated taxes based on benefits and liabilities are less significant than fees, but are growing rapidly. In 1980, three trust funds and one special fund accounted for nearly all dedicated excise taxes. By 1991, dedicated taxes were flowing into nine trust funds and one special fund. In 1991, collections of taxes dedicated to special purposes other than highways and airports and airways were more than 10 times greater than in 1980.

Benefit-Based Taxes

Taxes based on benefits amounted to $22.6 billion and represented almost the same share of total user charges as in 1980--slightly less than 20 percent. Benefit-based taxes constituted 2 percent of federal financial resources in 1991, up from 1.5 percent in 1980. Taxes based on benefits are dedicated to the following trust and special funds: Highway, Airport and Airway, Aquatic Resources, Inland Waterways, Harbor Maintenance, and National Recreational Trails (which, to date, has received no appropriations).

The largest share of benefit taxes is allocated to the Highway Trust Fund, followed by the Airport and Airway Trust Fund (see Figure 11). The Highway Trust Fund, which dates from 1956, still accounts for more revenues than a combination of all of the other trust and special funds that are financed by benefit taxes; in constant dollars, collections in 1991 were 57 percent greater than in 1980. The Airport and Airway Trust Fund dates from 1971; in constant dollars, its collections in 1991 were 60 percent greater than in 1980. The Highway Trust Fund accounted for 78 percent of taxes based on benefits in 1980 and for 75 percent in 1991. The Airport and Airway Trust Fund accounted for 22 percent of taxes based on benefits in both 1980 and 1991. Of the $22.6 billion in benefit taxes collected in 1991, $17 billion went into the Highway Trust Fund and $4.9 billion into the Airport and Airway Trust Fund (see Table A-8). The other taxes based on benefits increased to $0.7 billion over the same period.

Figure 11.
Composition of Benefit- and Liability-Based Taxes in 1980 and 1991 (In percent)



SOURCE: Congressional Budget Office.

Benefit Taxes as a Source of Transportation Financing. Financing for many transportation programs is appropriated from excise tax trust funds--chiefly from the Highway and Airport and Airway trust funds, with smaller amounts from the Inland Waterways Trust Fund and the Boating Safety Account of the Aquatic Resources Trust Fund. Benefit-based excise taxes financed more than 70 percent of the Department of Transportation's outlays in 1991. In recent years, federal spending on highways has approximately equaled revenues from the trust fund.[10]

Charges for aviation services and use of the inland waterways are far below costs. Federal aviation revenues have consistently been below expenditures. Appropriations from the general fund finance about half of the Federal Aviation Administration's operations (including operation of the air traffic control system). Aviation excise taxes finance the remainder,

10. For a fuller discussion of transportation trust fund revenues, see Congressional Budget Office, *Paying for Highways, Airways, and Waterways: How Can Users Be Charged?* (May 1992).

including grants for airport improvements and airway system research, facilities, and equipment. General aviation aircraft pay a fuel tax and registration fees that cover a small portion of the costs that they impose on the system.

Liability-Based Taxes

The enactment of liability-based taxes in the past 15 years has represented a more pronounced departure from previous policy than the enactment of benefit-based taxes. Taxes based on liabilities have been dedicated to trust funds--Hazardous Substance Superfund, Leaking Underground Storage Tank, Oil Spill Response, Black Lung Disability, and Vaccine Injury Compensation--that finance compensation for damages to health or the environment. Liability-based taxes amounted to $2.5 billion in 1991, an increase of more than 450 percent since 1980. Starting from a small base, these taxes accounted for less than 1 percent of total charges and less than 0.1 percent of federal financial resources in 1980, compared with 2 percent of total charges and 0.2 percent of federal financial resources in 1991.

Chapter Six

The Outlook

Recent developments indicate a continuing commitment to reduce the deficit and a strong likelihood that user charges will grow. Between 1980 and 1991, the growth of user charges outpaced that of gross domestic product and federal financial resources. In the same period, user charges, measured in constant dollars (1991=100), increased by 54 percent. If user charges continue to grow at the same average annual rate for the remainder of the 1990s, they could account for more than 12 percent of federal financial resources by the year 2000, up from 10.5 percent in 1991.

Since 1985, budget reconciliation measures have included increases in user charges. Moreover, not only have user charges grown, but since the passage of the Consolidated Budget Reconciliation Act of 1985, the basis for assessing many of them has expanded. At one time, most user charges were limited to assessing private parties for special benefits; today, the objective, at least for some programs, is more likely to be total recovery of agency costs.

Although user charges have increased substantially, many federal programs continue to provide goods and services at no charge or at charges well below federal costs. Thus, the potential exists for further growth. The Omnibus Budget Reconciliation of 1993 increased several user charges and imposed some new ones, and proposals for extending and increasing others are under consideration by the Administration and the Congress.

In view of recent developments, further growth of user charges seems likely; it seems less likely that there will be new departures in charging for federal services. Such changes occurred only twice in the period following World War II--when the Independent Offices Appropriation Act of 1952 and COBRA-85 were enacted. The Omnibus Budget Reconciliation Act of 1990 increased more user charges than any other single piece of legislation, but otherwise set no precedents. Neither did OBRA-93. Similarly, current proposals suggest no major departures from the patterns of the past five years.

The potential for further growth of user charges, however, may be greatest in areas where growth was least evident in the past decade. The greatest growth in the past 10 years was in regulatory charges and in liability-based taxes. The areas of least growth were charges for benefits and services, other than for postal services and insurance; rents; royalties; and sales of products other than power. These charges include some of the more familiar user fees, such as entrance fees to national parks and recreation areas, fees for the use of federal lands, and charges for rights to extract natural resources from public property. In these and other areas, such as some transportation services--in particular, inland waterways and aviation--the federal government has set prices below market value or is not recovering its operating and management costs. OBRA-93 increased some charges for federal activities related to land and natural resource management and trans-

portation, and further increases are possible in the future through administrative action, as well as legislation.

Charges for regulatory activities will probably continue to grow, although at a slower pace. Whether future legislation will reflect a growing tendency to earmark increases in charges for agency expansion, as in the cases of the Environmental Protection Agency and the Food and Drug Administration, is an open question. Pending legislation (H.R. 2239) points to the possibility; it would more than double the Securities and Exchange Commission's authorized funding level and permit the agency to use the fees it collects to cover agency expenses. Most of the SEC's fees go into the general fund. Other proposed legislation would also set tighter restrictions on investment advisors and permit the SEC to impose a fee on them to pay for additional oversight personnel.

The Omnibus Budget Reconciliation Act of 1993

Following an established pattern, OBRA-93 imposed some new charges and increased or extended some existing charges. OBRA-93 included provisions to:

- Auction licenses to use sections of the electromagnetic spectrum;
- Require the Secretary of Health and Human Services to assess each state an administration fee related to the number of Supplementary Security Income payments that the federal government makes on behalf of the states and to charge for additional services;
- Increase entry and user fees for recreation facilities at sites under the control of the Departments of Agriculture and Interior and the Army Corps of Engineers;
- Increase fees on operators of radio, television, and commercial telephone communication facilities located on federal lands under the control of the Secretaries of Agriculture and Interior;
- Increase inspection fees for imported tea;
- Increase of the Federal Communications Commission's fees for regulatory activities;
- Extend through fiscal year 1998 the surcharges on patent and trademark application fees, tonnage duties, and Nuclear Regulatory Commission fees that had been scheduled under OBRA-90 to expire at the end of fiscal year 1995;
- Extend through fiscal year 1998 the $100 annual holding fee assessed on owners of mining claims on public lands;
- Extend Customs Service user charges through fiscal year 1988;
- Extend permanently the vaccine excise tax, which expired on January 1, 1993; and
- Extend through fiscal year 1999 the additional 2.5 cents a gallon tax on motor fuel enacted under OBRA-90 and, beginning October 1, 1995, transfer its revenues from the general fund to the Highway Trust Fund (the additional tax on railroad diesel fuel was lowered from 2.5 cents a gallon to 1.25 cents, effective October 1, 1995; these monies will continue to go into the general fund).

New Proposals

In addition to the provisions in OBRA-93, the Congress is considering new or increased fees as part of appropriation or authorization measures. Among the charges under consideration are proposals to permit the Library of Congress to levy fees to recover the costs of producing and distributing certain types of information products (S. 345) and to increase the royalty fees paid by companies that mine

hardrock minerals on federal land. Both the Senate and the House have proposed such measures (S. 433 and H.R. 918), but the amount of the increase in the House measure is substantially higher. For its part, the Administration has proposed or is considering changes in land management policies that could result in higher fees for grazing on public lands, increased royalties for mining of hardrock minerals, and higher charges for federal water resources.

Measures that the Congress has recently enacted or is now considering--and proposals that the Administration is considering--indicate that the trends of the 1980s and early 1990s towards increased user charge financing are likely to persist. Based on their potential, regulatory fees and liability-based taxes might continue to grow at a slower pace, while user fees and benefit-based taxes might grow at a faster pace. It is also likely that the Congress will emphasize increases in user charges over general fund financing to expand programs that provide goods or services to private beneficiaries or that compensate for real or potential damage to health or the environment. Finally, the prospect of health care reform raises the possibility of imposing new user charges in the form of fees or dedicated taxes to finance some portion of the revised system.

Appendix

Data on Federal User Charges, 1980 to 1991

The tables that follow provide data on federal user charges, by type, in nominal dollars and as a share of federal financial resources for each fiscal year from 1980 to 1991. The data are drawn from the *Budget of the United States Government* for fiscal years 1982 to 1993 and the Department of the Treasury's *Combined Statement of Receipts, Expenditures, and Balances of the United States Government* for fiscal years 1980 to 1983 and *Annual Report of the United States Government--Appendix* for fiscal years 1984 to 1991.

At times, fees for goods and services are difficult to identify in budget documents. Unpublished data provided by the Office of Management and Budget and the Department of the Treasury's Financial Management Service provided useful background and helped resolve some questions.

In undertaking the study, the Congressional Budget Office's objective was to provide a reasonably realistic measure of the magnitude and growth of user charge financing. The wide range of user charges, the broad scope of the project, and the absence of a central source of data made absolute accuracy, however desirable, an unrealistic goal.

Because the data in the following tables are in nominal dollars, they exaggerate the real growth (or, in some cases, understate or mask the real decline) of user charges. Table A-3, which presents data on user charges in relation to federal financial resources, is an exception. In the text, measures of growth in the volume of user charges from 1980 to 1991 are adjusted for inflation, based on implicit price deflators for gross domestic product (see Chapter 5).

Table A-1.
Total User Charges, by Type, 1980-1991 (In millions of dollars)

Charges	1980	1981	1982	1983	1984	1985
			Fees			
User Fees						
Benefits and services						
Postal services	16,401	18,373	21,696	22,679	24,422	26,805
Insurance premiums	6,422	7,408	9,726	9,977	11,569	13,810
Other	2,930	3,354	4,002	4,291	4,883	5,825
Subtotal	25,752	29,135	35,424	36,947	40,873	46,439
Rents, royalties, and sales of products						
Rents, royalties, and bonuses	5,049	11,796	7,865	11,474	7,796	6,761
Sales of products	6,939	7,076	7,703	8,394	10,205	9,993
Subtotal	11,988	18,872	15,568	19,868	18,001	16,754
Total	37,741	48,006	50,992	56,815	58,875	63,194
Regulatory Fees	774	834	922	1,091	1,311	1,423
Total Fees	38,515	48,841	51,914	57,906	60,185	64,617
			Taxes			
Benefit-Based	8,525	6,377	6,937	10,540	14,350	16,031
Liability-Based	272	365	735	724	788	861
Total Taxes	8,797	6,742	7,671	11,263	15,138	16,893
			Total User Charges			
Total	47,312	55,583	59,586	69,169	75,323	81,510

Table A-1.
Continued

Charges	1986	1987	1988	1989	1990	1991
			Fees			
User Fees						
Benefits and services						
Postal services	29,099	30,626	33,986	36,965	38,202	42,592
Insurance premiums	14,252	15,079	17,882	20,987	21,139	25,855
Other	4,454	5,025	5,035	4,863	4,512	6,613
Subtotal	47,805	50,730	56,903	62,815	63,853	75,060
Rents, royalties, and sales of products						
Rents, royalties, and bonuses	7,356	4,831	4,423	3,890	3,944	4,244
Sales of products	10,067	10,422	11,055	11,364	11,767	11,507
Subtotal	17,423	15,253	15,478	15,254	15,711	15,751
Total	65,228	65,983	72,382	78,069	79,564	90,811
Regulatory Fees	1,534	2,487	3,319	3,398	3,956	4,056
Total Fees	66,762	68,470	75,700	81,467	83,520	94,867
			Taxes			
Benefit-Based	16,308	16,388	17,703	19,740	18,029	22,612
Liability-Based	562	1,475	1,795	2,004	2,367	2,510
Total Taxes	16,870	17,863	19,499	21,745	20,397	25,122
			Total User Charges			
Total	83,633	86,333	95,200	103,212	103,917	119,988

SOURCE: Congressional Budget Office based on data from the *Budget of the United States Government* for fiscal years 1982-1993, Department of the Treasury, *Combined Statement of Receipts, Expenditures and Balances of the United States Government* for fiscal years 1980-1983, and *United States Government Annual Report--Appendix* for fiscal years 1984-1991.

NOTE: Table A-8 shows the amounts of user charges included in federal budget receipts and the amounts included in offsetting collections.

Table A-2.
Federal Financial Resources, 1980-1991 (In millions of dollars)

Collection	1980	1981	1982	1983	1984	1985
Budget Receipts	517,112	599,272	617,766	600,562	666,457	734,057
User Charges Classified as Offsetting Collections	37,999	48,285	51,296	57,225	59,339	63,707
Total	555,111	647,557	669,062	657,787	725,796	797,764

Table A-2.
Continued

Collection	1986	1987	1988	1989	1990	1991
Budget Receipts	769,091	854,143	908,954	990,691	1,031,321	1,054,272
User Charges Classified as Offsetting Collections	65,797	66,608	73,265	79,999	82,268	93,780
Total	834,888	920,751	982,219	1,070,690	1,113,589	1,148,052

SOURCE: Congressional Budget Office based on data from the *Budget of the United States Government* for fiscal years 1982-1993, Department of the Treasury, *Combined Statement of Receipts, Expenditures and Balances of the United States Government* for fiscal years 1980-1983, and *United States Government Annual Report--Appendix* for fiscal years 1984-1991.

NOTE: For consistency with the budget historical base, Customs Service user charges for the years 1986 to 1988 are included in the budget receipts totals, rather than as offsetting receipts.

Table A-3.
User Charges in Relation to Federal Financial Resources, 1980-1991 (In percent)

Charges	1980	1981	1982	1983	1984	1985
			Fees			
User Fees						
Benefits and services						
Postal services	3.0	2.8	3.2	3.4	3.4	3.4
Insurance premiums	1.2	1.1	1.5	1.5	1.6	1.7
Other	0.5	0.5	0.6	0.7	0.7	0.7
Subtotal	4.6	4.5	5.3	5.6	5.6	5.8
Rents, royalties, and sales of products						
Rents, royalties, and bonuses	0.9	1.8	1.2	1.7	1.1	0.8
Sales of products	1.3	1.1	1.2	1.3	1.4	1.3
Subtotal	2.2	2.9	2.3	3.0	2.5	2.1
Total	6.8	7.4	7.6	8.6	8.1	7.9
Regulatory Fees	0.1	0.1	0.1	0.2	0.2	0.2
Total Fees	6.9	7.5	7.8	8.8	8.3	8.1
			Taxes			
Benefit-Based	1.5	1.0	1.0	1.6	2.0	2.0
Liability-Based	0	0.1	0.1	0.1	0.1	0.1
Total Taxes	1.6	1.1	1.1	1.7	2.1	2.1
			Total User Charges			
Total	8.5	8.6	8.9	10.5	10.4	10.2

Table A-3.
Continued

Charges	1986	1987	1988	1989	1990	1991
			Fees			
User Fees						
Benefits and services						
Postal services	3.5	3.3	3.5	3.5	3.4	3.7
Insurance premiums	1.7	1.6	1.8	2.0	1.9	2.3
Other	0.5	0.5	0.5	0.5	0.4	0.6
Subtotal	5.7	5.5	5.8	5.9	5.7	6.5
Rents, royalties, and sales of products						
Rents, royalties, and bonuses	0.9	0.5	0.5	0.4	0.4	0.4
Sales of products	1.2	1.1	1.1	1.1	1.1	1.0
Subtotal	2.1	1.7	1.6	1.4	1.4	1.4
Total	7.8	7.2	7.4	7.3	7.1	7.9
Regulatory Fees	0.2	0.3	0.3	0.3	0.4	0.4
Total Fees	8.0	7.4	7.7	7.6	7.5	8.3
			Taxes			
Benefit-Based	2.0	1.8	1.8	1.8	1.6	2.0
Liability-Based	0.1	0.2	0.2	0.2	0.2	0.2
Total Taxes	2.0	1.9	2.0	2.0	1.8	2.2
			Total User Charges			
Total	10.0	9.4	9.7	9.6	9.3	10.5

SOURCE: Congressional Budget Office based on data from the *Budget of the United States Government* for fiscal years 1982-1993, Department of the Treasury, *Combined Statement of Receipts, Expenditures, and Balances of the United States Government* for fiscal years 1980-1983, and *United States Government Annual Report--Appendix* for fiscal years 1984-1991.

Table A-4.
Insurance Charges, 1980-1991 (In millions of dollars)

Premiums and Other Charges	1980	1981	1982	1983	1984	1985
Depository Institutions	695	829	1,818	1,379	2,019	3,658
Pension Benefit Guaranty Corporation	76	86	92	94	95	95
Federal Crop Insurance	103	158	321	303	231	343
National Flood Insurance Fund	154	228	279	297	366	356
Office of Personnel Management						
Employee health benefits	1,421	1,617	1,985	2,242	2,521	2,473
Employee life insurance	322	439	586	618	643	630
National Service Life Insurance	457	460	467	446	441	421
U.S. Government Life Insurance	5	4	3	1	0	0
Other Veterans' Insurance						
(Medical, life, disability, other)	227	230	302	324	295	257
SMI Premiums Collected for the Aged	2,637	2,987	3,460	3,834	4,463	5,042
SMI Premiums Collected for the Disabled	291	332	371	393	444	482
HI Premiums for the Uninsured	17	21	25	26	35	38
SMI Catastrophic Premiums	0	0	0	0	0	0
Other	18	17	17	20	16	14
Total	6,422	7,408	9,726	9,977	11,569	13,810

Table A-4.
Continued

Premiums and Other Charges	1986	1987	1988	1989	1990	1991
Depository Institutions	3,624	3,645	3,582	2,939	2,721	6,586
Pension Benefit Guaranty Corporation	216	284	482	624	681	764
Federal Crop Insurance	549	332	322	580	647	573
National Flood Insurance Fund	415	478	415	548	589	626
Office of Personnel Management						
Employee health benefits	2,294	2,393	2,826	3,209	3,364	3,453
Employee life insurance	686	668	728	774	832	905
National Service Life Insurance	441	442	422	410	398	417
U.S. Government Life Insurance	0	0	0	0	0	0
Other Veterans' Insurance						
(Medical, life, disability, other)	277	307	300	304	293	349
SMI Premiums Collected for the Aged	5,200	5,897	7,963	9,487	10,138	10,741
SMI Premiums Collected for the Disabled	500	582	793	945	995	1,066
HI Premiums for the Uninsured	40	40	42	42	113	367
SMI Catastrophic Premiums	0	0	0	1,117	361	0
Other	11	10	9	9	9	7
Total	14,252	15,079	17,882	20,987	21,139	25,855

SOURCE: Congressional Budget Office based on data from the *Budget of the United States Government* for fiscal years 1982-1993, Department of the Treasury, *Combined Statement of Receipts, Expenditures, and Balances of the United States Government* for fiscal years 1980-1983, and *United States Government Annual Report--Appendix* for fiscal years 1984-1991.

NOTES: All insurance premiums are offsetting collections; collections for most programs are reimbursements to appropriations, but some of them are offsetting receipts.

SMI = Supplementary Medical Insurance; HI = Health Insurance.

Table A-5.
Fees for Benefits and Services, Other Than for Insurance and Postal Services, 1980-1991 (In millions of dollars)

Charge	1980	1981	1982	1983	1984	1985
Charges for Uranium Enrichment	1,117	1,248	1,722	1,697	1,852	1,411
Fees for Disposal of Nuclear Fuel	0	0	0	65	330	1,795
Forest Service Cooperative Fund	147	153	105	170	231	235
Contributions and Advances, Rivers and Harbors, Army Corps of Engineers	41	81	63	44	54	50
Lower and Upper Colorado River Basin Development Funds	77	79	91	101	135	108
Geological Survey	64	68	72	72	85	85
Bureau of the Mint	33	42	43	72	84	84
Panama Canal Commission Tolls	381	410	440	398	406	416
Other	1,072	1,272	1,466	1,672	1,707	1,641
Total	2,930	3,354	4,002	4,291	4,883	5,825

Table A-5.
Continued

Charge	1986	1987	1988	1989	1990	1991
Charges for Uranium Enrichment	1,351	1,155	1,234	1,431	1,290	1,174
Fees for Disposal of Nuclear Fuel	368	441	472	519	576	605
Forest Service Cooperative Fund	203	254	296	294	260	252
Contributions and Advances, Rivers and Harbors, Army Corps of Engineers	49	62	154	130	136	121
Lower and Upper Colorado River Basin Development Funds	112	104	127	123	139	121
Geological Survey	72	77	81	84	15	14
Bureau of the Mint	43	120	97	92	103	78
Panama Canal Commission Tolls	437	441	469	440	486	514
Other	1,819	2,370	2,105	1,750	1,507	3,734
Total	4,454	5,025	5,035	4,863	4,512	6,613

SOURCE: Congressional Budget Office based on data from the *Budget of the United States Government* for fiscal years 1982-1993, Department of the Treasury, *Combined Statement of Receipts, Expenditures and Balances of the United States Government* for fiscal years 1980-1983, and *United States Government Annual Report--Appendix* for fiscal years 1984-1991.

NOTE: All of the items in this table are classified as offsetting collections; some are offsetting receipts, and some are reimbursements to appropriations.

Table A-6.
Rents, Royalties, Bonuses, and Sales of Products, 1980-1991 (In millions of dollars)

Charge	1980	1981	1982	1983	1984	1985
Rents, Bonuses, and Royalties						
Outer Continental Shelf	4,101	10,138	6,250	10,491	6,694	5,542
Other						
Rents and bonuses	169	187	282	113	128	145
Royalties	779	1,471	1,333	870	974	1,074
Total	5,049	11,796	7,865	11,474	7,796	6,761
Sales of Products						
Power and Other Utilities						
Bonneville Power Administration	560	797	1,388	1,851	2,611	2,829
Tennessee Valley Authority	2,894	3,365	3,439	3,635	3,963	4,094
Other	426	490	598	606	679	887
Subtotal	3,881	4,652	5,425	6,092	7,253	7,810
Timber and Other Natural Land Products	1,019	953	508	485	842	773
Minerals and Mineral Products	1,604	982	1,260	1,209	1,580	847
Sales of Commissary Stores	364	398	425	464	448	501
Other	71	90	85	144	82	62
Total	6,939	7,076	7,703	8,394	10,205	9,993
Total						
Total	11,988	18,872	15,568	19,868	18,001	16,754

Table A-6.
Continued

Charge	1986	1987	1988	1989	1990	1991
			Rents, Bonuses, and Royalties			
Outer Continental Shelf	4,716	4,021	3,548	2,930	3,004	3,150
Other						
Rents and bonuses	96	102	80	133	57	82
Royalties	2,544	708	795	827	883	1,012
Total	7,356	4,831	4,423	3,890	3,944	4,244
			Sales of Products			
Power and Other Utilities						
Bonneville Power Administration	2,637	2,482	2,694	2,697	2,719	2,888
Tennessee Valley Authority	4,304	4,816	5,020	5,060	5,738	5,565
Other	827	807	764	681	706	676
Subtotal	7,768	8,105	8,478	8,438	9,164	9,129
Timber and Other Natural Land Products	1,010	1,035	1,272	1,403	1,349	1,042
Minerals and Mineral Products	580	664	653	632	576	573
Sales of Commissary Stores	527	546	552	829	608	637
Other	182	72	100	62	70	125
Total	10,067	10,422	11,055	11,364	11,767	11,507
			Total			
Total	17,423	15,253	15,478	15,254	15,711	15,751

SOURCE: Congressional Budget Office based on data from the *Budget of the United States Government* for fiscal years 1982 to 1993, Department of the Treasury, *Combined Statement of Receipts, Expenditures and Balances of the United States Government* for fiscal years 1980 to 1983, and *United States Government Annual Report--Appendix* for fiscal years 1984 to 1991.

NOTE: All of the items shown in this table are classified as offsetting collections. Most of the collections from sales of power and other utilities and sales of commissary stores are reimbursements to appropriations, and most of the other collections are offsetting receipts. The collections from power sales do not include the charges of the Federal Energy Regulatory Commission, which are included with regulatory charges in Table A-7.

Table A-7.
Inspection, Licensing, and Other Regulatory Fees, 1980-1991 (In millions of dollars)

Fees	1980	1981	1982	1983	1984	1985
Offsetting Collections						
Immigration and Naturalization Service (INS) immigration user and examination fees	0	0	0	0	0	0
Patent and trademark fees and surcharge	0	0	0	83	99	107
Securities and Exchange Commission (SEC) fees	0	0	0	0	0	0
Nuclear Regulatory Commission (NRC) fees	0	0	0	0	0	0
Food and Drug Administration revolving fund for certification	7	8	7	3	3	3
Environmental Protection Agency revolving fund for certification, registration of pesticides, licensing	1	1	1	1	1	1
Antitrust premerger filing fees	0	0	0	0	0	0
Federal Communications Commission fees	0	0	0	0	0	0
Pipeline safety user fees	0	0	0	0	0	0
Federal Energy Regulatory Commission fees	0	0	0	0	40	43
Comptroller of the Currency fees	105	116	131	131	151	176
Office of Thrift Supervision fees	0	0	0	0	0	0
Customs Service user fees	0	0	0	0	0	0
Inspection of food and agricultural products	122	129	136	162	150	164
Other	25	25	28	31	21	20
Subtotal	259	279	304	410	464	513
Budget Receipts						
Immigration, passport, and consular fees	65	69	86	184	247	276
INS immigration legalization, examination, and user fees	0	0	0	0	0	0
Patent, trademark, and copyright fees	27	30	29	1	0	0
Registration and filing fees						
SEC	49	65	72	99	121	144
Other	51	73	33	27	120	134
NRC facility permits	17	9	11	15	13	76
Internal Revenue Service ruling and determination fees	0	0	0	0	0	0
Abandoned coal mine reclamation fees	199	192	222	196	215	223
Other permit and regulatory fees	107	116	166	160	130	57
Subtotal	516	556	618	681	846	910
Total	774	834	922	1,091	1,311	1,423

Table A-7.
Continued

Fees	1986	1987	1988	1989	1990	1991
Offsetting Collections						
Immigration and Naturalization Service (INS) immigration user and examination fees	0	0	0	0	232	389
Patent and trademark fees and surcharge	128	145	168	192	223	344
Securities and Exchange Commission (SEC) fees	0	0	0	0	25	37
Nuclear Regulatory Commission (NRC) fees	0	0	178	198	173	439
Food and Drug Administration revolving fund for certification	3	2	3	3	3	3
Environmental Protection Agency revolving fund for certification, registration of pesticides, licensing	1	1	1	22	35	18
Antitrust premerger filing fees	0	0	0	0	27	27
Federal Communications Commission fees	0	10	49	51	28	48
Pipeline safety user fees	8	9	9	10	10	11
Federal Energy Regulatory Commission fees	46	50	50	109	122	123
Comptroller of the Currency fees	191	200	206	233	250	274
Office of Thrift Supervision fees	0	0	0	0	334	258
Customs Service user fees	3	643	787	873	890	643
Inspection of food and agricultural products	164	181	186	199	202	217
Other	27	27	32	40	150	139
Subtotal	571	1,268	1,670	1,931	2,704	2,969
Budget Receipts						
Immigration, passport, and consular fees	236	307	401	247	224	187
INS immigration legalization, examination, and user fees	0	137	281	313	58	17
Patent, trademark, and copyright fees	1	0	0	0	1	1
Registration and filing fees						
SEC	215	264	249	241	208	222
Other	120	104	328	247	264	258
NRC facility permits	45	42	0	0	0	0
Internal Revenue Service ruling and determination fees	0	0	18	34	30	37
Abandoned coal mine reclamation fees	217	214	228	234	242	243
Other permit and regulatory fees	128	151	144	151	225	121
Subtotal	962	1,219	1,648	1,468	1,252	1,086
Total	1,534	2,487	3,319	3,398	3,956	4,056

SOURCE: Congressional Budget Office based on data from the *Budget of the United States Government* for fiscal years 1982 to 1993, Department of the Treasury, *Combined Statement of Receipts Expenditures and Balances of the United States Government* for fiscal years 1980 to 1983, and *United States Government Annual Report--Appendix* for fiscal years 1984 to 1991.

NOTE: As indicated above, regulatory charges are classified as budget receipts and offsetting collections. Some of the offsetting collections are offsetting receipts, and some are reimbursements to appropriations. The budget historical data base treats the Customs Service user fees as budget receipts (customs duties) for the years 1986 to 1988, but consistent with law, this table lists them as offsetting collections for all years.

Table A-8.
Benefit- and Liability-Based Taxes, 1980-1991 (In millions of dollars)

Tax	1980	1981	1982	1983	1984	1985
Benefit-Based Taxes						
Highway	6,620	6,305	6,744	8,297	11,743	13,015
Airport and airway	1,874	21	133	2,165	2,499	2,851
Inland waterway	0	20	30	29	39	40
Land and water conservation	31	11	30	24	56	0
Boating safety	0	20	0	25	0	0
Aquatic resources						
Motorboat fuels	0	0	0	0	13	67
Sportfishing equipment	0	0	0	0	0	38
Other	0	0	0	0	0	0
Customs duties	0	0	0	0	0	20
Harbor maintenance						
Customs duties	0	0	0	0	0	0
Subtotal	8,525	6,377	6,937	10,540	14,350	16,031
Liability-Based Taxes						
Black lung disability	272	237	491	494	518	581
Hazardous Substance Superfund						
Excise taxes	0	128	244	230	261	273
Corporate income taxes	0	0	0	0	0	0
Oil spill liability	0	0	0	0	0	0
Post-closure liability	0	0	0	0	9	7
Vaccine injury compensation	0	0	0	0	0	0
Leaking underground storage tank	0	0	0	0	0	0
Subtotal	272	365	735	724	788	861
Total	8,797	6,742	7,671	11,263	15,138	16,893

Table A-8.
Continued

Tax	1986	1987	1988	1989	1990	1991
Benefit-Based Taxes						
Highway	13,363	13,032	14,114	15,628	13,867	16,979
Airport and airway	2,736	3,060	3,189	3,664	3,700	4,910
Inland waterway	40	48	48	47	63	60
Land and water conservation	1	1	1	1	1	1
Boating safety	0	0	0	0	0	0
Aquatic resources						
Motorboat fuels	69	98	105	111	112	118
Sportfishing equipment	68	77	80	76	77	71
Other	0	0	0	0	0	71
Customs duties	31	19	22	47	29	28
Harbor maintenance						
Customs duties	0	53	144	166	180	374
Subtotal	16,308	16,388	17,703	19,740	18,029	22,612
Liability-Based Taxes						
Black lung disability	547	572	594	563	665	651
Hazardous Substance Superfund						
Excise taxes	15	635	698	883	818	810
Corporate income taxes	0	196	313	292	461	591
Oil spill liability	0	0	0	0	143	254
Post-closure liability	0	(1)	(9)	(1)	(1)	0
Vaccine injury compensation	0	0	74	99	159	81
Leaking underground storage tank	0	73	125	168	122	123
Subtotal	562	1,475	1,795	2,004	2,367	2,510
Total	16,870	17,863	19,499	21,745	20,397	25,122

SOURCE: Congressional Budget Office based on data from the *Budget of the United States Government* for fiscal years 1982-1993, Department of the Treasury, *Combined Statement of Receipts, Expenditures and Balances of the United States Government* for fiscal years 1980-1983, and *United States Government Annual Report--Appendix* for fiscal years 1984-1991.

NOTE: All of the collections in this table are recorded as budget receipts.

Table A-9.
Summary of User Charges, by Budget Classification Category, 1980-1991 (In millions of dollars)

Collection	1980	1981	1982	1983	1984	1985
Budget Receipts						
Benefit- and liability-based taxes	8,797	6,742	7,671	11,263	15,138	16,893
Regulatory fees classified as budget receipts	516	556	618	681	846	910
Subtotal	9,312	7,298	8,289	11,945	15,984	17,803
Offsetting Collections						
Offsetting receipts	12,190	18,815	17,122	21,222	19,505	19,550
Reimbursements to appropriations	25,809	29,470	34,174	36,003	39,834	44,157
Subtotal	37,999	48,285	51,296	57,225	59,339	63,707
Total User Charges	47,312	55,583	59,586	69,169	75,323	81,510

Table A-9.
Continued

Collection	1986	1987	1988	1989	1990	1991
Budget Receipts						
Benefit- and liability-based taxes	16,870	17,863	19,499	21,745	20,397	25,122
Regulatory fees classified as budget receipts	962	1,219	1,648	1,468	1,252	1,086
Subtotal	17,833	19,082	21,148	23,212	21,649	26,208
Offsetting Collections						
Offsetting receipts	19,011	18,040	20,654	23,281	23,172	24,639
Reimbursements to appropriations	46,789	49,211	53,398	56,718	59,096	69,141
Subtotal	65,800	67,251	74,052	79,999	82,268	93,780
Total User Charges	83,633	86,333	95,200	103,212	103,917	119,988

SOURCE: Congressional Budget Office based on data from the *Budget of the United States Government* for fiscal years 1982-1993, Department of the Treasury, *Combined Statement of Receipts, Expenditures and Balances of the United States Government* for fiscal years 1980-1983, and *United States Government Annual Report--Appendix* for fiscal years 1984-1991.

NOTE: For consistency with the budget historical base, Customs Service user charges for the years 1986 to 1988 are included in the budget receipts totals, rather than as offsetting receipts. In a few other cases, the classification of offsetting collections changed from one category to another over the course of this period. For the sake of consistency, this table includes the transactions in the same category for all years. Thus, for example, Panama Canal tolls are included here as reimbursements to appropriations for all years, whereas the budget treated them as offsetting receipts until 1987.

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