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# FEDERAL FEES, FINES, AND PENALTIES

## Observations on Agency Spending Authorities

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# GAO Highlights

Highlights of [GAO-17-268T](#), a testimony before the Subcommittee on Government Operations and the Subcommittee on Health Care, Benefits, and Administrative Rules, Committee on Oversight and Government Reform, House of Representatives

## Why GAO Did This Study

Congress exercises its constitutional power of the purse by appropriating funds and prescribing conditions governing their use. Through annual appropriations and other laws that constitute permanent appropriations, Congress provides agencies with authority to incur obligations for specified purposes. The federal government receives funds from a variety of sources, including tax revenues, fees, fines, penalties, and settlements. Collections from fees, fines, penalties, and settlements involve billions of dollars and fund a wide variety of programs.

The design and structure—and corresponding agency flexibility and congressional control—of these statutory authorities can vary widely. In many cases, Congress has provided agencies with permanent authority to collect and obligate funds from fees, fines, and penalties without further congressional action. This authority is a form of appropriations and is subject to the fiscal laws governing appropriated funds. In addition, annual appropriation acts may limit the availability of those funds for obligation. Given the nation’s fiscal condition, it is critical that every funding source and spending decision be carefully considered and applied to its best use.

This testimony provides an overview of key design decisions related to the use of federal collections outlined in prior GAO reports, with examples of specific fees, fines, and penalties from GAO reports issued between September 2005 and November 2016.

View [GAO-17-268T](#). For more information, contact Heather Krause at (202) 512-6806 or [krauseh@gao.gov](mailto:krauseh@gao.gov) or Edda Emmanuelli Perez at (202) 512-2853 or [emmanuellipereze@gao.gov](mailto:emmanuellipereze@gao.gov).

December 1, 2016

# FEDERAL FEES, FINES, AND PENALTIES

## Observations on Agency Spending Authorities

## What GAO Found

GAO’s prior work has identified four key design decisions related to how fee, fine, and penalty collections are used that help Congress balance agency flexibility and congressional control.

### Key Design Decisions for Use of Collections

#### Use of collections

What Congressional action triggers the use of collections?	What is the period of availability for the collections?	For what purposes may the collections be used?	To what degree will Congress limit the amount of collections that can be used?
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Source: GAO | GAO-17-268T

One of these key design decisions is the congressional action that triggers the use of collections. The table below outlines the range of structures that establish an agency’s use of collections and examples of fees, fines, and penalties for each structure.

### Design Decision on Agency Use of Fees, Fines, and Penalties and Related Examples

Design decision: Congressional action triggering use of collections	Example of fee, fine, or penalty
Collections deposited to the Treasury as miscellaneous receipts	Civil monetary penalty payments from financial institutions received by certain financial regulators
Collections dedicated to the related program with availability subject to further appropriation	Food and Drug Administration prescription drug user fees
Collections dedicated to the related program and available without further congressional action (i.e., a permanent appropriation)	National Park Service fees
Collections available based on a combination of these authorities	Department of Justice Drug Enforcement Administration Diversion Control fees

Source: GAO analysis of applicable laws | GAO-17-268T

As GAO has previously reported, these designs involve different tradeoffs and implications. For example, requiring collections to be annually appropriated before an agency can use the collections increases opportunities for congressional oversight on a regular basis. Conversely, if Congress grants an agency authority to use collections without further congressional action, the agency may be able to respond more quickly to customers or changing conditions. Even when an agency has the permanent authority to use collections, the funds remain subject to congressional oversight at any point in time and Congress can place limitations on obligations for any given year.

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Chairmen Meadows and Jordan, Ranking Members Connolly and Cartwright, and Members of the Subcommittees:

We are pleased to be here today to discuss our prior work on federal fees, fines, penalties, and settlements. Congress exercises its constitutional power of the purse by appropriating funds and prescribing conditions governing their use. As you know, through appropriations, Congress provides agencies with budget authority to make financial obligations for specified purposes. An appropriations act is the most common means of providing appropriations; however, Congress may provide appropriations through other laws as well.

The federal government receives funds from a variety of sources during the fiscal year, including tax revenues, federal fees, fines, penalties, and settlements. Collections from fees, fines, penalties, and settlements fund a wide variety of programs integral to our nation's security, to the security of our financial system, and to the protection of our natural resources and involve billions of dollars annually. For example, some user fees—including U.S. Postal Service charges for stamps and other fees, Medicare premiums, and Tennessee Valley Authority proceeds from the sale of energy—exceed \$1 billion in annual collections. Annual collections of fines and penalties fluctuate. For example, the federal government collected civil penalties paid in connection with the 2010 Deepwater Horizon oil spill ranging from about \$400 million in fiscal year 2013 to about \$160 million in fiscal year 2016.

The design and structure—and corresponding agency flexibility and congressional control—of statutory authorities for fees, fines, penalties, and settlements can vary widely. In many cases, Congress has provided agencies with permanent authority to collect and obligate for specific purposes funds from sources such as fees, fines, and penalties without further congressional action. Such authorities are part of a broader category of budget authority provided in laws other than appropriations acts, which also includes contract and borrowing authorities, as well as spending on entitlement programs such as Social Security. These collections, known as “offsetting collections” are a form of appropriation and are subject to the fiscal laws governing appropriated funds. Although the laws authorizing permanent budget authority make them available for obligation without further legislative action, it is not uncommon for annual appropriation acts to include limitations on the obligations to be financed by these collections. Given the nation's fiscal condition, it is critical that every funding source and spending decision be carefully considered and applied to its best use.

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Our testimony provides an overview of key design decisions and statutory authorities and controls related to the availability of funds collected from federal fees, fines, and penalties. In preparing this testimony, we relied on our September 2013 and May 2008 reports on the design of federal user fees and our February 2015 report on Department of Justice alternative funding sources, and drew examples from other work on specific fees, fines, and penalties that we issued between September 2005 and November 2016.<sup>1</sup> Detailed information about the scope and methodology used to conduct this work can be found in each of the issued products. We conducted the work on which this statement is based in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

The federal government receives amounts from numerous sources in addition to tax revenues, including user fees, fines, penalties, and intragovernmental fees. Whether these collections are dedicated to a particular purpose and available for agency use without further appropriation depends on the type of collection and its specific authority.<sup>2</sup>

- *User fees:* User fees are fees assessed to users for goods or services provided by the federal government. They are an approach to financing federal programs or activities that, in general, are related to some voluntary transaction or request for government services above and beyond what is normally available to the public. User fees are a broad category of collections, whose boundaries are not clearly

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<sup>1</sup>GAO, *Federal User Fees: Fee Design Options and Implications for Managing Revenue Instability*, [GAO-13-820](#) (Washington, D.C.: Sept. 30, 2013), *Federal User Fees: A Design Guide*, [GAO-08-386SP](#) (Washington, D.C.: May 29, 2008), and *Department of Justice: Alternative Sources of Funding Are a Key Source of Budgetary Resources and Could Be Better Managed*, [GAO-15-48](#) (Washington, D.C.: Feb. 19, 2015). A full list of our related work is included at the end of this statement.

<sup>2</sup>Unless otherwise authorized by statute, an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury without deduction for any charge or claim. 31 U.S.C. § 3302(b) (also known as the miscellaneous receipts statute),

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defined.<sup>3</sup> They encompass charges for goods and services provided to the public, such as fees to enter a national park, as well as regulatory user fees, such as fees charged by the Food and Drug Administration for prescription drug applications. Unless Congress has provided specific statutory authority for an agency to use (i.e., obligate and spend) fee collections, fees are deposited to the Treasury as miscellaneous receipts and are generally not available to the agency.<sup>4</sup>

- *Fines, penalties, and settlement proceeds*: Criminal fines and penalty payments are imposed by courts as punishment for criminal violations. Civil monetary penalties are not a result of criminal proceedings but are employed by courts and federal agencies to enforce federal laws and regulations. Settlement proceeds result from an agreement ending a dispute or lawsuit. As with user fees, unless Congress has provided specific statutory authority for an agency to use fines, penalties, and settlements, those collections are deposited as miscellaneous receipts and are generally not available to the agency.
- *Intragovernmental fees* are charged by one federal agency to another for goods and services such as renting space in a building or cybersecurity services. Unlike user fees, fines, and penalties, unless Congress has specified otherwise, agencies generally have authority to use intragovernmental fees without further appropriation.<sup>5</sup>

In 2013, we identified six key fee design decisions related to how fees are set, used, and reviewed that, in the aggregate, enable Congress to design fees that strike its desired balance between agency flexibility and congressional control.<sup>6</sup> Four of the six key design decisions relate to how

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<sup>3</sup>The legal distinction between a “fee” and a “tax” can be complicated and depends largely on the context of the particular assessment. Whether a particular assessment is statutorily referred to as a tax or a fee is never legally determinative. Instead, federal courts will examine the structure and the context of the assessment’s application.

<sup>4</sup>Fees assessed under the authority of the Independent Offices Appropriation Act of 1952 (codified at 31 U.S.C. § 9701), rather than under a specific authorizing statute, must be deposited to the Treasury as miscellaneous receipts and are not available to the agency or program that collected the fees, unless otherwise authorized by law.

<sup>5</sup>For example, the Economy Act, 31 U.S.C. § 1535 and 1536, is a statutory exception to the miscellaneous receipts statute, authorizing a performing agency to credit reimbursements to the appropriation or fund charged in executing its performance.

<sup>6</sup>[GAO-13-820](#).

the fee collections are used and in 2015 we reported that they are applicable to fines and penalties (see figure 1).<sup>7</sup>

**Figure 1: Key Design Decisions for the Use of Federal Fees, Fines, and Penalties**



	Key design questions	Options increasing agency flexibility	Options increasing congressional control
<b>Use of collections</b>	What Congressional action triggers the use of collections?	Offsetting collection authority	Offsetting receipt authority Government receipt authority
	What is the period of availability for the collections?	No year	Limited year
	For what purposes may the collections be used?	Broadly defined uses	Narrowly defined uses
	To what degree will Congress limit the amount of collections that can be used?	No limit	Limit set in statute

Source: GAO | GAO-17-268T

Congress determines the availability of collections by defining the extent to which an agency may use (i.e., obligate and spend) them, including the availability of the funds, the period of time the collections are available for obligation, the purposes for which they may be used, and the amount of collections that are available to the agency.

- **Availability.** Congressional decisions about the use of a fee, fine, or penalty will determine how the funds will be considered within the context of all federal budgetary resources. Collections are classified into 3 major categories: offsetting collections, offsetting receipts, or

<sup>7</sup>GAO-15-48.

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governmental receipts. Funds classified as offsetting collections can provide agencies with more flexibility because they are generally available for agency obligation without further legislative action. In contrast, offsetting receipts and governmental receipts offer greater congressional control because, generally, additional congressional action is needed before the collections are available for agency obligation.

- *Time.* When Congress provides that an agency's collections are available until they are expended, agencies have greater flexibility and can carry over unobligated amounts to future fiscal years. This enables agencies to align collections and costs over a longer time period and to better prepare for, and adjust to, fluctuations in collections and costs. Funds set aside or reserved can sustain operations in the event of a sharp downturn in collections or increase in costs. Carrying over unobligated balances from year to year, if an agency has multi- or no-year collections, is one way agencies can establish a reserve.
- *Purpose.* Congress sets limits on the activities or purposes for which an agency may use collections. Congress has granted some agencies broad authority to use some of their collections for any program purpose, but has limited the use of other collections to specific sets of activities. Narrower restrictions may benefit stakeholders and increase congressional control. On the other hand, statutes that too narrowly limit how collections can be used reduce both Congress's flexibility to make resource decisions and an agency's flexibility to reallocate resources. This can make it more difficult to pursue public policy goals or respond to changing program needs, such as when the activities intended to achieve the purposes of the related program change.
- *Amount.* Congress determines the specific level of budget authority provided for a program's activities by limiting the amount of collections that can be collected or used by the agency; however, these limits can also pose challenges for the agency. For example, when a fee-funded agency is not authorized to retain or use all of its fee collections and no other funding sources are provided, the agency may not have the funds available to produce the goods or services that it has promised or that it is required to provide by law.

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## Design Options Related to Agency's Access to and Use of Its Collections

Our design guides can help Congress consider the implications and tradeoffs of various design alternatives. One key design element is whether the funds will be (1) deposited to the Treasury as miscellaneous receipts for general support of federal government activities, (2) dedicated to the related program with availability subject to further appropriation, (3) dedicated to the related program and available without further congressional action, or (4) available based on a combination of these authorities.

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## Collections Deposited to the Treasury as Miscellaneous Receipts

Some authorities to collect fees, fines and penalties specify that the funds will be deposited to the Treasury as miscellaneous receipts. These funds are not dedicated to the agency or program under which they were collected; they are used for the general support of federal government activities. For example,

- *Penalties from financial institutions:* Civil monetary penalty payments collected from financial institutions by certain financial regulators, including the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, are deposited to the Treasury as miscellaneous receipts. In March 2016, we reported that, from January 2009 through December 2015, financial regulators and components within the Department of the Treasury deposited \$2.7 billion to the Treasury as miscellaneous receipts from enforcement actions assessed against financial institutions for violations related to anti-money laundering, anti-corruption, and U.S. sanctions programs requirements.<sup>8</sup>
- *Federal Communications Commission (FCC) Application Fees:* The FCC regulates interstate and international communications by radio, television, wire, satellite, and cable, and telecommunications services for all people of the United States. FCC collects application fees from companies for activities such as license applications, renewals, or requests for modification. As we reported in September 2013, these fees are deposited to the Treasury as miscellaneous receipts.<sup>9</sup>

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<sup>8</sup>GAO, *Financial Institutions: Fines, Penalties, and Forfeitures for Violations of Financial Crimes and Sanctions Requirements*, [GAO-16-297](#) (Washington, D.C.: Mar 22, 2016).

<sup>9</sup>[GAO-13-820](#).



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## Dedicated Collections with Availability Subject to Further Appropriation

Some fees, fines, and penalties cannot be used by an agency without being further appropriated to the agency. For example,

- *Customs and Border Protection's (CBP) Merchandise Processing Fee:* Importers of cargo pay a fee to offset the costs of "customs revenue functions" as defined in statute, and the automation of customs systems. CBP deposits merchandise processing fees as offsetting receipts to the Customs User Fee Account, with availability subject to appropriation. In July 2016, we reported that in fiscal year 2014 merchandise processing fee collections totaled approximately \$2.3 billion.<sup>10</sup>

Requiring an appropriation to make the funds available to an agency increases opportunities for congressional oversight on a regular basis. When the amount of collections exceeds the amount of the appropriation, however, unobligated collection balances that are not available to the agency may accumulate. For example,

- *Security and Exchange Commission (SEC) Fees:* When SEC collects more in Section 31 fees than its annual appropriation, the excess collections are not available for obligation without additional congressional action.<sup>11</sup> In September 2015, we reported that at the end of fiscal year 2014, the SEC had a \$6.6 billion unavailable balance in its Salaries and Expenses account because the fee collections exceeded appropriations.<sup>12</sup>
- *Environmental Protection Agency (EPA) Motor Vehicle and Engine Compliance Program (MVECP) Fees:* MVECP fee collections are deposited into EPA's Environmental Services Special Fund.<sup>13</sup> As we

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<sup>10</sup>GAO, *DHS Management: Enhanced Oversight Could Better Ensure Programs Receiving Fees and Other Collections Use Funds Efficiently*, [GAO-16-443](#) (Washington, D.C.: Jul. 21, 2016).

<sup>11</sup>National securities exchanges and the Financial Industry Regulatory Authority (FINRA) pay Section 31 transaction fees to SEC, generally based on the sales of securities (15 U.S.C. § 78ee).

<sup>12</sup>In 2015 we reported that, according to SEC officials, this large unavailable balance resulted from historical features of its Section 31 fee structure that are no longer in place. GAO, *Federal User Fees: Key Considerations for Designing and Implementing Regulatory Fees*, [GAO-15-718](#) (Washington, D.C.: Sept. 16, 2015).

<sup>13</sup>A *Special Fund Receipt Account* is a receipt account credited with collections that are earmarked by law but included in the federal funds group rather than classified as trust fund collections. These collections are presented in the President's budget as either governmental (budget) receipts or offsetting receipts.

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reported in September 2015, according to officials, Congress had not appropriated money to EPA from this fund for MVECP purposes.<sup>14</sup> EPA instead received annual appropriations which may be used for MVECP purposes. As a result, the unavailable balance of this fund steadily increased and totaled about \$370 million at the end of fiscal year 2014.

- *U.S. Army Corps of Engineers Harbor Maintenance Fee:* The authorizing legislation generally designates that the purpose for the fee collections is harbor maintenance activities but, as we reported in February 2008, fee collections have substantially exceeded spending on harbor maintenance.<sup>15</sup> In July 2016, we reported that the Harbor Maintenance Trust Fund had a balance of over \$8 billion at the end of fiscal year 2014.<sup>16</sup>
- *U.S. Patent and Trademark Office (USPTO) Fees:* In September 2013, we reported that in some years Congress chose not to make available to USPTO the full amount of its collections which, according to USPTO officials, contributed to USPTO's inability to hire sufficient examiners to keep up with USPTO's workload and invest in technology systems needed to modernize the USPTO.<sup>17</sup> According to USPTO officials, patent fee collections can only be used for patent processes, and trademark fee collections can only be used for trademark processes, as well as to cover each processes' proportionate share of the administrative costs of the agency. USPTO officials stated that patent and trademark customers are typically two distinct groups and this division helps to assure stakeholders that their fees are supporting the activities that affect them directly.

Some programs include mechanisms to link the amount of collections with the amount of collections appropriated to the program, over time. For example,

- *Food and Drug Administration (FDA) Prescription Drug User Fees:* If FDA prescription drug user fee collections are higher than the amount of the collections appropriated for the fiscal year, FDA must adjust fee rates in a subsequent year to reduce its anticipated fee collections by

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<sup>14</sup>[GAO-15-718](#).

<sup>15</sup>GAO, *Federal User Fees: Substantive Reviews Needed to Align Port-Related Fees with the Programs They Support*, [GAO-08-321](#) (Washington, D.C.: Feb. 22, 2008).

<sup>16</sup>[GAO-16-443](#).

<sup>17</sup>[GAO-13-820](#).

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the excess amount.<sup>18</sup> In March 2012, we reported that in fiscal year 2010, Prescription Drug User Fee Act user fees collected by FDA—including application, establishment, and product fees—totaled more than \$529 million, including over \$172 million in application fees.<sup>19</sup>

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## Dedicated Collections Available without Further Congressional Action

Legislation authorizing a fee, fine, or penalty may give the agency authority to use collections without additional congressional action. We refer to the legal authorities that provide agencies with permanent authority to both collect and obligate funds from sources such as fees, fines, and penalties as “permanent funding authorities.”<sup>20</sup> Agencies with these permanent funding authorities have varying degrees of autonomy, depending in part on the extent to which the statute limits when, how much, and for what purpose funds may be obligated. Some examples include the following:

- *National Park Service (NPS) Fees:* NPS fees include recreation fees—primarily entrance and amenity fees—and commercial service fees paid by private companies that provide services, such as operating lodges and retail stores in park units. In December 2015, we reported that in fiscal year 2014 the NPS collected about \$186 million in recreation fees and about \$95 million in commercial service fees.<sup>21</sup>
- *U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) Agricultural Quarantine Inspection (AQI) Fees:* The

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<sup>18</sup>21 U.S.C. 379h(g)(4).

<sup>19</sup>GAO, *Prescription Drugs: FDA Has Met Most Performance Goals for Reviewing Applications*, [GAO-12-500](#) (Washington, D.C.: Mar. 30, 2012).

<sup>20</sup>We will be issuing a report on permanent funding authorities later this month. As mentioned earlier, permanent funding authorities are part of a broader category of budget authority provided in laws other than appropriations acts. We last published an inventory of budget accounts with spending authority and permanent appropriations in 1996. At that time, we reported that agencies identified 558 budget accounts as having spending authority and permanent appropriations. In our 1998 update to that inventory, we determined that 20 of the 558 budget accounts identified by agencies in the 1996 report did not possess spending authority and permanent appropriations. See GAO, *Budget Issues: Inventory of Accounts with Spending Authority and Permanent Appropriations, 1996*, [GAO/AIMD-96-79](#) (Washington, D.C.: May 31, 1996) and *Budget Issues: Inventory of Accounts With Spending Authority and Permanent Appropriations, 1997*, [GAO/OGC-98-23](#) (Washington, D.C.: Jan. 19, 1998). We are currently updating this inventory.

<sup>21</sup>GAO, *National Park Service: Revenues from Fees and Donations Increased, but Some Enhancements Are Needed to Continue This Trend*, [GAO-16-166](#) (Washington, D.C.: Dec. 15, 2015).

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AQI program provides for inspections of imported agricultural goods, products, passenger baggage, and vehicles to prevent the introduction of harmful agricultural pests and diseases. APHIS is authorized to set and collect user fees sufficient to cover the cost of providing and administering AQI services in connection with the arrival of commercial vessels, trucks, railcars, and aircraft, and international passengers.<sup>22</sup> AQI fee collections are available without fiscal year limitation and may be used for any AQI-related purpose without further appropriation. In March 2013, we reported that in fiscal year 2012, AQI fee collections totaled about \$548 million.<sup>23</sup>

- *Environmental Protection Agency (EPA) Superfund Settlements:* Under the Superfund program, EPA has the authority to clean up hazardous waste sites and then seek reimbursement from potentially responsible parties. EPA is authorized to retain and use funds received from certain types of settlements with these parties in interest-earning, site-specific special accounts within the Hazardous Substance Superfund Trust Fund. EPA generally uses these funds for future cleanup actions at the sites associated with a specific settlement or to reimburse appropriated funds that EPA had previously used for response activities at these sites. In January 2012, we reported that as of October 2010 EPA held nearly \$1.8 billion in unobligated funds in 947 open special accounts for 769 Superfund sites.<sup>24</sup>
- *Tennessee Valley Authority Collections (TVA):* The TVA, the nation's largest public power provider, has authority to use payments it receives from selling power to the public without further appropriation. In October 2011, we reported that TVA had annual revenues of about \$11 billion.<sup>25</sup>
- *Presidio Trust Collections:* The Presidio Trust, a congressionally chartered organization, manages The Presidio, an urban park in San

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<sup>22</sup>Section 2509(a) of the Food, Agriculture, Conservation, and Trade (FACT) Act of 1990, 21 U.S.C. 136a.

<sup>23</sup>GAO, *Agricultural Quarantine Inspection Fees: Major Changes Needed to Align Fee Revenues with Program Costs*, [GAO-13-268](#) (Washington, D.C.: Mar. 1, 2013).

<sup>24</sup>GAO, *Superfund: Status of EPA's Efforts to Improve Its Management and Oversight of Special Accounts*, [GAO-12-109](#) (Washington, D.C.: Jan. 18, 2012).

<sup>25</sup>GAO, *Tennessee Valley Authority: Full Consideration of Energy Efficiency and Better Capital Expenditures Planning Are Needed*, [GAO-12-107](#) (Washington, D.C.: Oct. 31, 2011).

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Francisco, and sustains its operations in part by rental income from residential and commercial buildings on its grounds.<sup>26</sup>

Agencies can also be authorized to retain intragovernmental fees charged to other agencies in exchange for a good or service. Some agencies are fully supported by intragovernmental fees; for others, intragovernmental fees are one of their sources of funds.

- *Federal Protective Service (FPS) Fees*: The FPS is a fully fee-funded organization authorized to charge customer agencies fees for security services at federal facilities and to use those offsetting collections for all agency operations. In July 2016, we reported that, at the end of fiscal year 2014, FPS had an unobligated balance of approximately \$193 million and that FPS had not established targets to determine the extent to which that balance was appropriate to fund its operations.<sup>27</sup>
- *Federal Aviation Administration (FAA) Franchise Fund Customer Fees*: FAA's Administrative Services Franchise Fund provides goods and services—including training and specialized aircraft maintenance—to customer agencies on a fee-for-service basis.<sup>28</sup>
- *National Park Service Fees (NPS)*: NPS collections include intragovernmental fees, as well as user fees and appropriations. For

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<sup>26</sup>GAO, *Congressionally Chartered Organizations: Key Principles for Leveraging Nonfederal Resources*, [GAO-13-549](#) (Washington, D.C.: June 7, 2013). Congress has chartered independent organizations which are authorized to receive and retain financial and nonfinancial resources from nonfederal partners to help meet their core mission and goals. Presidio Trust funds are deposited to a public enterprise fund account, a type of revolving fund that conducts cycles of businesslike operations—mainly with the public—in which proceeds from the sale of products or services are used to finance spending, usually without requirement for annual appropriations. See GAO, *A Glossary of Terms Used in the Federal Budget Process* (Supersedes AFMD-2.1.1), [GAO-05-734SP](#) (Washington, D.C.: Sept. 1, 2005).

<sup>27</sup>[GAO-16-443](#).

<sup>28</sup>FAA is authorized to retain an amount not to exceed 4 percent of the total annual income to the fund as a reserve; amounts in excess of the reserve limitation are to be transferred to the Treasury. See Pub. L. No. 104-205, title I, Sept. 30, 1996, 110 Stat. 2957 (now appears as 49 U.S.C. § 40113 note). Franchise funds are a type of intragovernmental revolving fund that provides common administrative services benefitting other federal entities. *Intragovernmental Revolving Fund Accounts* are appropriation accounts authorized to be credited with collections from other federal agencies' accounts that are earmarked to finance a continuing cycle of business-type operations. For our work on FAA's Administrative Services Franchise Fund, see GAO, *Revolving Funds: Additional Pricing and Performance Information for FAA and Treasury Funds Could Enhance Agency Decisions on Shared Services*, [GAO-16-477](#) (Washington, D.C.: May 10, 2016).

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example, in October 2016, we reported that NPS received funding from the Department of the Army to contract with the National Symphony Orchestra for holiday concerts on the U.S. Capitol Grounds.<sup>29</sup>

Even when an agency has a permanent authority to use collections, collections remain subject to congressional oversight at any point in time and Congress can place limitations on obligations for any given year. For example,

- *U.S. Citizenship and Immigration Services (USCIS) Fees:* USCIS is authorized to charge fees for adjudication and naturalization services, including a premium-processing fee for employment-based petitioners and applicants. The House Report to the fiscal year 2008 Department of Homeland Security Appropriations Bill, H.R. 2638, directed USCIS to allocate all premium-processing fee collections to information technology and business-systems transformation. In January 2009, we reported that, consistent with this directive, USCIS's 2007 fee review stated that the agency intended to use all premium processing collections to fund infrastructure improvements to transform USCIS's paper-based data systems into a modern, digital processing resource.<sup>30</sup> In July 2016, we reported that USCIS estimated that the unobligated carryover balance for the premium processing fee could grow to \$1.1 billion by fiscal year 2020, as fee collections are expected to exceed Transformation initiative funding requirements in fiscal years 2015 through 2020.<sup>31</sup>
- *Department of Justice's (DOJ) Crime Victims Fund (CVF) Fines and Penalties:* Criminal fines and penalties collected from offenders, among other sources, are deposited in the CVF and can be used without further appropriation to fund victims' assistance programs and directly compensate crime victims. In February 2015, we reported that in fiscal years 2009 through 2013, annual appropriations acts limited the CVF amounts the DOJ's Office of Justice Programs may obligate for these purposes.<sup>32</sup>

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<sup>29</sup>GAO, *U.S. Capitol Grounds Concerts: Improvements Needed in Management Approval Controls over Certain Payments*, [GAO-17-44](#) (Washington, D.C.: Oct. 25, 2016).

<sup>30</sup>GAO, *Federal User Fees: Additional Analyses and Timely Reviews Could Improve Immigration and Naturalization User Fee Design and USCIS Operations*, [GAO-09-180](#) (Washington, D.C.: January 23, 2009).

<sup>31</sup>[GAO-16-443](#).

<sup>32</sup>[GAO-15-48](#).

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## Collections with a Combination of Different Authorities

In some cases, Congress has provided agencies with permanent authority to use a portion of collections and designated other portions of the collections for another use or to be deposited to the Treasury as miscellaneous receipts.

- *Bureau of Land Management (BLM) Grazing Fees:* Since the early 1900s, the federal government has required ranchers to pay a fee for grazing their livestock on millions of acres of federal land located primarily in western states. The relevant authorities designate a portion of the grazing fees collected by the BLM for range improvement, a portion to states, and a portion to be deposited to the Treasury as miscellaneous receipts.<sup>33</sup> For example, in September 2005, we reported that in fiscal year 2004 the BLM collected about \$11.8 million in grazing fees, half of which was deposited to a special fund receipt account in the Treasury for range rehabilitation, protection, and improvements.<sup>34</sup> Of the other half of the collections, about \$2.2 million was distributed to states and counties and about \$3.7 million was deposited to the Treasury as miscellaneous receipts.
- *Department of Housing and Urban Development (HUD) Mutual Mortgage Insurance Fund Settlement:* HUD's Mutual Mortgage Insurance Fund receives payments resulting from violations related to single-family programs. The primary purpose of the Mutual Mortgage Insurance Fund is to pay lenders in cases where borrowers default on their loan and the lender makes a claim for mortgage insurance benefits. In November 2016, we reported on a case involving False Claims Act violations and loans backed by HUD's Federal Housing Administration (FHA) in which a portion of the settlement was paid to the company that filed a complaint in regard to the False Claims Act

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<sup>33</sup>Under the Federal Land Policy and Management Act of 1976, 50 percent or \$10 million, whichever is greater, of fees collected in a year for grazing on BLM lands managed under the Taylor Grazing Act and the Act of August 28, 1937, and on Forest Service land in the 16 western states, are to be credited to a special fund receipt account in the Treasury for range rehabilitation, protection, and improvements. In addition, under the Taylor Grazing Act, the Act of August 28, 1937, and the Bankhead-Jones Farm Tenant Act, BLM also distributes a portion of grazing fee collections to states and the Treasury.

<sup>34</sup>GAO, *Livestock Grazing: Federal Expenditures and Receipts Vary, Depending on the Agency and the Purpose of the Fee Charged*, [GAO-05-869](#) (Washington, D.C.: Sept. 30, 2005).

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on behalf of the government.<sup>35</sup> The other FHA-related settlement proceeds were divided among, and deposited to, the Mutual Mortgage Insurance Fund, the Treasury as miscellaneous receipts, and DOJ's Three Percent Fund.

- *DOJ Drug Enforcement Administration (DEA) Diversion Control Fees:* The first \$15 million of fees collected each year from DEA registrants such as manufacturers, distributors, dispensers, importers, and exporters of controlled substances (such as narcotics and stimulants) and certain listed chemicals (such as ephedrine) is deposited to the Treasury as miscellaneous receipts. As we reported in February 2015, fees collected beyond \$15 million are available to the agency and obligated to recover the full costs of DEA's diversion control program.<sup>36</sup>
- *DOJ Three Percent Fund Penalties:* Most civil penalties resulting from DOJ litigation are eligible to be assessed up to a 3 percent fee disbursed to DOJ's Three Percent Fund—which is primarily used to offset DOJ expenses related to civil debt collection.<sup>37</sup> The remainder of the civil penalty amount collected may be deposited to the Treasury as miscellaneous receipts or to another account. For example, in February 2015, we reported on a civil settlement involving fraud against the U.S. Postal Service. Of the \$13 million that was awarded to the U.S. Postal Service, DOJ deposited \$390,000 into the Three Percent Fund.<sup>38</sup>

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Chairmen Meadows and Jordan, Ranking Members Connolly and Cartwright, and Members of the Subcommittees, this concludes our

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<sup>35</sup>GAO, *Financial Institutions: Penalty and Settlement Payments for Mortgage-Related Violations in Selected Cases*, [GAO-17-11R](#) (Washington, D.C.: Nov. 10, 2016). In accordance with the *qui tam* provisions of the False Claims Act, a person or company that files suit for violations of the False Claims Act on behalf of the government is entitled to receive between 15 percent and 25 percent of the amount recovered by the government through the *qui tam* action. See 31 U.S.C § 3730(d).

<sup>36</sup>[GAO-15-48](#).

<sup>37</sup>See Pub. L. No. 107-273, § 11013, 116 Stat. 1758, 1823 (2002) (codified at 28 U.S.C. § 527 note). The Three Percent Fund is available for expenses related to processing and tracking civil and criminal debt collection litigation. Thereafter, it is available for financial systems and debt collection–related personnel, administrative, and litigation expenses. Available amounts are determined by calculating 3 percent of eligible amounts collected.

<sup>38</sup>[GAO-15-48](#).



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prepared statement. We would be pleased to respond to any questions you may have at this time.

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## GAO Contact and Staff Acknowledgments

If you or your staff members have any questions about this testimony, please contact Heather Krause, Acting Director, Strategic Issues at (202) 512-6806 or [krauseh@gao.gov](mailto:krauseh@gao.gov) or Edda Emmanuelli Perez, Managing Associate General Counsel, Office of General Counsel at (202) 512-2853 or [EmmanuelliPerezE@gao.gov](mailto:EmmanuelliPerezE@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. GAO staff who made key contributions to this testimony are Susan J. Irving, Director; Julia Matta, Assistant General Counsel for Appropriations Law; Susan E. Murphy, Assistant Director; Laurel Plume, Analyst-in-Charge; and Amanda Postiglione, Senior Attorney. Allison Abrams, Dawn Bidne, Elizabeth Erdmann, Chris Falcone, Valerie Kasindi, and Jeremy Manion also contributed.

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