

**Agencies Reported Fiscal Year 2010 Total Fee Collections and Adherence to the CFO Act and OMB Circular No. A-25
Guidance on Reviewing and Discussing Results of Biennial Fee Reviews**

Dollars in millions

| Agency | Reported FY 2010 total fee collections | Reported percentage of fees and charges reviewed ^a | Reported percentage of fees and charges reviewed biennially and discussed in CFO annual documents |
|---|---|---|--|
| Department of Health and Human Services | \$31,545 | 84% | 30% |
| Department of the Treasury | 9,789 | 97 | 67 |
| Department of Homeland Security | 8,784 | 87 | 96 |
| Department of Agriculture | 3,991 | 100 | 100 |
| Department of Energy | 2,498 | 86 | 0 |
| Department of Commerce | 2,136 | 83 | 65 |
| Department of State | 1,896 | 100 | 73 |
| Department of Interior | 1,320 | 6 | 5 |
| Department of Justice | 777 | 71 | 65 |
| Social Security Administration | 370 | 100 | 100 |
| Department of Transportation | 214 | 89 | 0 |
| Department of Labor | 164 | 90 | 0 |
| Environmental Protection Agency | 84 | 100 | 29 |
| National Aeronautics and Space Administration | 61 | 83 | 0 |
| Department of Veterans Affairs | 51 | 80 | 47 |
| Small Business Administration | 16 | 100 | 100 |
| Office of Personnel Management | 8 | 0 | 0 |
| General Services Administration | 6 | 50 | 0 |
| United States Agency for International Development | 5 | 0 | 0 |
| Nuclear Regulatory Commission | 2 | 100 | 50 |
| Department of Housing and Urban Development | 0.043 | 100 | 0 |

Source: GAO summary of agency-reported data.

^aThe third column, "reported percentage of fees and charges reviewed" is generally inclusive of fees and charges reported in the fourth column as reviewed biennially and discussed in CFO annual documents.

Agencies were inconsistent in their ability to provide documentation for their fee reviews. For example, the Department of Agriculture provided documentation of reviews for all of its fees, while a few agencies did not provide any documentation. Even for agencies that provided documentation however, GAO found the reviews contained varying levels of detail and analysis, potentially limiting their value to decision makers. For one agency, it was not clear when the reviews had been conducted. GAO has previously reported that decision makers must understand the decisions and tradeoffs made when designing fees to achieve specific policy goals and the costs of these decisions in determining if the policy goals were being met. Finally, most of the reporting agencies (16 out of 23) reported reviewing at least some of their non-fee-funded programs for opportunities to initiate new fees for government services or goods.

Without regular comprehensive reviews, agencies and Congress may miss opportunities to make improvements to a fee's design which, if left unaddressed, could contribute to inefficient use of government resources. For example, fee reviews could help ensure that fees are properly set to cover the total costs of those activities which are intended to be fully fee-funded, thus eliminating the need for direct appropriations for those activities. Fee reviews may also

- allow agencies and Congress to identify where similar activities are funded differently; for example, one by fees and one by appropriations. One such example is the export control system, in which the State Department charges fees for the export of items on the U.S. Munitions List, while the Commerce Department does not charge fees for those items exported under its jurisdiction. Fee reviews may thereby assist in eliminating or managing inconsistent or overlapping funding sources for similar activities; and
- be a useful step toward examining whether the activities themselves are duplicative or overlapping.

As GAO reported in September 2007, fragmentation exists in the Department of Homeland Security's One Face at the Border program, which integrated the customs, agriculture, and immigration air passenger inspection programs and is funded by three separate fees and general fund appropriations, creating administrative, operational, and oversight challenges. GAO also reported in February 2008 that fragmentation in Harbor Maintenance Fee administration between the Army Corps of Engineers and Department of Homeland Security's U.S. Customs and Border Protection inhibits oversight. Further, regular reviews increase congressional and agency awareness of federal program costs, and therefore may increase incentives to reduce costs where possible.

Actions Needed and Potential Financial or Other Benefits

Federal agencies reported collecting nearly \$64 billion in federal user fees and charges in fiscal year 2010. Regular fee reviews can help the Congress and federal agencies identify opportunities to revise fees in ways that enhance user funding of goods or services above and beyond what is normally available to the public, and can be a useful step towards examining whether the activities themselves are duplicative or overlapping. GAO has ongoing work evaluating federal user fee reviews and opportunities to initiate new fees for government services or goods. The Director of the Office of Management and Budget (OMB) should use its budget reviews to ensure that agencies

- review their fee-funded programs biennially, as required by the CFO Act and consistent with GAO's User Fee Design Guide, to help identify opportunities to improve the (1) efficiency, equity, revenue adequacy, and administrative burden of the fee design and (2) alignment of fee collections with program costs over time; and

-
- review their non-fee-funded programs on a regular basis, in accordance with OMB Circular No. A-25 guidance, and discuss the results in their CFO annual report. Regular reviews of non fee-funded programs can help agencies and Congress determine whether programs funded with general fund revenues could be fully or partially funded with user fees.

Further, the Director of OMB could direct agencies to

- use a framework such as GAO's User Fee Design Guide when designing or redesigning user fees.

Agency Comments and GAO's Evaluation

GAO provided a draft of this report section to OMB as well as the Departments of State, Commerce, and Homeland Security. OMB as well as the Departments of State and Commerce provided technical comments, which were incorporated as appropriate. The Department of Homeland Security responded that it generally agreed.

OMB said that two of our three recommended actions—that is, that OMB use its budget reviews to (1) ensure that agencies review their fee-funded programs biennially and (2) review their non fee-funded programs—seem unnecessary. OMB Circular No. A-11 guidance directs agencies to comply with the user fee review requirements in OMB Circular No. A-25 and the CFO Act. OMB did not comment on our third recommended action.

As we note above, agencies review less than half of the fees that they charge, and report the reviews of less than one-third of the fees charged. In addition, as noted above, 16 out of the 23 agencies told us that they review at least some of their non fee-funded programs to determine whether fees should be assessed.

GAO continues to believe that the recommended actions have merit. Especially in light of the significant impact user fees can have on the federal treasury given the current budgetary outlook, we believe that OMB should do more to ensure that agencies comply with OMB's own guidance. We have added clarifying language regarding OMB's direction to agencies. As part of its routine audit work, GAO will track the extent to which progress has been made to address the identified actions and report to Congress.

How GAO Conducted Its Work

The information contained in this analysis is based on findings from the products listed in the related GAO products section, as well as work GAO conducted between May 2011 and February 2012. GAO surveyed 24 agencies covered by the CFO Act to obtain (1) the number of fees the department or agency administered, (2) the basis for setting the fee amounts, (3) the aggregate amount of fees collected for fiscal year 2010, (4) the most recent CFO Act/OMB Circular No. A-25 review date, (5) documentation of fee reviews, and (6) in cases where reviews were not

conducted, the reasons why. Because this was not a sample survey, there are no sampling errors. However, the practical difficulties of conducting any survey may introduce nonsampling errors, such as variation in how respondents interpret questions and their willingness or ability to offer accurate responses. GAO took steps to minimize nonsampling errors. For example, prior to surveying agencies, GAO pretested the survey with three agencies with differing numbers of fees, as well as varying values of total collections, to ensure that GAO's questions were clear and that the definitions used in the survey were correct and understandable to the respondents. GAO revised the final survey instrument based on the pretest results. Since this was a self-administered survey using a spreadsheet completed by the respondents, there was no need to have data entered by another party, thus eliminating another source of error. Finally, all calculations used in the analysis of the data were reviewed by another GAO analyst. GAO did not independently verify survey responses provided by the 23 agencies. GAO did not verify that the results of these fee reviews and any resulting proposals were discussed in the CFO annual report, per OMB Circular No. A-25. Some fees have more specific, statutorily-set review and reporting requirements, and are therefore not subject to the CFO Act's or OMB Circular No. A-25's biennial review. As a result, GAO did not independently verify whether agencies reported all of the applicable user fees.

Related GAO Products

Budget Issues: Better Fee Design Would Improve Federal Protective Service's and Federal Agencies' Planning and Budgeting for Security. GAO-11-492. Washington, D.C.: May 20, 2011.

Budget Issues: Electronic Processing of Non-IRS Collections Has Increased but Better Understanding of Cost Structure Is Needed. GAO-10-11. Washington, D.C.: November 20, 2009.

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.

Federal User Fees: A Design Guide. GAO-08-386SP. Washington, D.C.: May 29, 2008.

Federal User Fees: Substantive Reviews Needed to Align Port-Related Fees with the Programs They Support. GAO-08-321. Washington, D.C.: February 22, 2008.

Federal User Fees: Key Aspects of International Air Passenger Inspection Fees Should Be Addressed Regardless of Whether Fees Are Consolidated. GAO-07-1131. Washington, D.C.: September 24, 2007.

Contact Information

For additional information about this area, contact Susan J. Irving at (202) 512-6806 or irvings@gao.gov.

44. Internal Revenue Service Enforcement Efforts

Enhancing the Internal Revenue Service's enforcement and service capabilities can help reduce the gap between taxes owed and paid by collecting billions in tax revenue and facilitating voluntary compliance.

Why This Area Is Important

The financing of the federal government depends largely on the Internal Revenue Service's (IRS) ability to collect federal taxes every year, which totaled \$2.34 trillion in 2010. For the most part, taxpayers voluntarily report and pay their taxes on time with no direct enforcement and little interaction with IRS. However, the size and persistence of the tax gap—estimated in 2012 for the 2006 tax year to be a \$385 billion difference between the taxes owed and taxes IRS ultimately collected for that year—highlight the need to make progress in improving compliance by those taxpayers who do not voluntarily pay what they owe. IRS's enforcement of tax laws remains on GAO's high-risk list.

Given that tax noncompliance ranges from simple math errors to willful tax evasion, no single approach is likely to fully and cost-effectively address the tax gap. A multifaceted approach to improving compliance—one that covers both IRS's enforcement and taxpayer service programs and also leverages external resources such as tax whistleblowers—could increase legally owed revenue collection by billions of dollars and result in cost savings for IRS. Without continued attention to IRS's enforcement and taxpayer service efforts, taxpayers could feel that the tax system is not administered fairly and not everyone is paying their fair share, which could undermine voluntary compliance.

What GAO Found

GAO identified a range of areas where IRS can improve its programs which can help it collect billions in tax revenue, facilitate voluntary compliance, or reduce IRS's costs. These include pursuing stronger enforcement through increasing third-party information reporting and identifying and pursuing abusive tax avoidance transactions;¹ making more use of external resources such as tax whistleblowers to prevent and detect compliance problems; and improving telephone and online services provided to taxpayers.

- *Expanding third-party information reporting improves taxpayer compliance and enhances IRS's enforcement capabilities.* The tax gap is due predominantly to taxpayer underreporting and underpayment of taxes owed. At the same time, taxpayers are much

¹Abusive tax avoidance transactions range from tax schemes based on clearly frivolous arguments to highly technical and abusive tax shelters.

more likely to report their income accurately when the income is also reported to IRS by a third party. By matching information received from third-party payers with what payees report on their tax returns, IRS can detect income underreporting, including the failure to file a tax return.

As GAO reported in August 2008, one area where information reporting could be expanded is payments made to contractors (payees) by owners of rental real estate (third-party payers). Like other businesses entities, under current law, taxpayers who rent out real estate are required to report to IRS expense payments for certain services, such as payments for property repairs, as long as their rental activity is considered a trade or business (which includes activities engaged in for profit as well as activities by certain nonprofits). However, the law does not clearly spell out how to determine when rental real estate activity is considered a trade or business. Consequently, determining whether an information return should be filed requires a case-by-case analysis of when rental real estate is, or is not, a trade or business depending on the facts and circumstances for each taxpayer. As GAO reported in August 2008, without clear statutory language, it may be difficult for payers with rental real estate activity to determine if they are required to report certain expense payments to IRS, and as a result, it is possible that some third-party payers who should report do not. Expanding information reporting to cover payment for services by all owners of rental real estate would provide clarity on reporting requirements and improve payee compliance.

In another case, as GAO reported in November 2010, under existing law, businesses (payers) must report to IRS payments for services they made to unincorporated persons or businesses, but payments to corporations generally do not have to be reported. Extending reporting to cover payments to corporations for services would increase payee compliance. Congress enacted a more expansive regime in March 2010, covering goods as well as services, and repealed it in 2011. GAO believes the more narrow extension to include services, but not goods, provided by corporations—which would match the provision for unincorporated persons or businesses—remains an important option for improving compliance.²

²In March 2010, pursuant to the Patient Protection and Affordable Care Act, information reporting requirements were expanded to cover payments for goods as well as services and payments to corporations. Pub. L. No. 111-148, § 9006. Later in September 2010, pursuant to the Small Business Jobs Act of 2010 information reporting requirements were expanded to include landlords who have generally not been considered to be engaged in a trade or business. Pub. L. No. 111-240, § 2101. These provisions were repealed by the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011. Pub. L. No. 112-9, §§ 2(a), 3 (2011).

In 2010, the Joint Committee on Taxation estimated revenue increases for a 10-year period from third-party reporting of (1) rental real estate service payments to be \$2.5 billion and (2) service payments to corporations to be \$3.4 billion.

- *Pursuing abusive tax avoidance transactions has been a long-standing tax evasion problem that results in potentially billions of dollars in tax losses.* As GAO reported in May 2011, IRS had incomplete data on the results of abusive tax avoidance transaction (ATAT) related enforcement efforts, so it is unable to assess the effectiveness of these efforts. More could also be done to ensure compliance with ATAT disclosure requirements. For example, while investigations of those who promoted ATATs were often closed without penalties or injunctions to stop promoters, IRS had incomplete data on why these investigations were closed. During fiscal year 2011, IRS started tracking the amount of additional taxes collected as a result of taxpayer audits, where ATATs were at least one of the audited issues, but the amounts collected from ATAT issues alone could not be isolated.

Pursuant to the American Jobs Creation Act of 2004, IRS expanded requirements for both promoters and taxpayers to disclose their use of certain transactions and enhanced penalties for improper disclosure—failure to disclose, delinquent disclosure, and incomplete disclosure. However, as GAO reported in May 2011, IRS did not know whether it received all the disclosures it should have from taxpayers and did not verify the completeness of those disclosures it received. IRS also did not track how quickly all those who promoted ATATs provided lists of their investors when either required or requested. Without complete data on enforcement outcomes or full disclosure from promoters and taxpayers, IRS is less able to assess the effectiveness of ATAT enforcement efforts, make informed resource allocation decisions, or identify transactions that merit auditing or penalties.

- *Leveraging external resources such as tax whistleblowers can contribute to taxpayer compliance.* GAO reported in August 2011, IRS did not collect or report complete data on, nor have a systematic process to manage the timeliness of, processing claims from whistleblowers, in part, because of how it set up its claims tracking system. As a result, claims alleging millions or potentially billions of dollars in tax noncompliance may not receive the attention or resources they need. Moreover, without complete and accurate data or processes to follow up on claims that exceed established review time targets, IRS may not be able to identify aspects of the program that could be improved to more effectively address noncompliance. Collecting and reporting such data could also improve the transparency of the program, which may result in additional whistleblowers coming forward.
- *Improving taxpayer services can benefit voluntary compliance by making it easier for taxpayers to pay what they owe.* As GAO reported

in December 2011, determining the costs and benefits of enhancing certain services for taxpayers, such as providing more automated telephone applications, could lead to faster service for taxpayers and lower IRS costs. Similarly, GAO also reported that completing a comprehensive online services plan might include an assessment of and justification for giving taxpayers the ability to access and update account information online, which may simultaneously improve taxpayer services and lower IRS's costs. In addition to reducing costs, providing more automated taxpayer services could increase revenue collection by supporting greater voluntary compliance and allow resources to be shifted to other priorities.

Actions Needed and Potential Financial or Other Benefits

GAO continues to suggest Congress consider expanding third-party information reporting, which improves taxpayer compliance, by amending the Internal Revenue Code. GAO recommended that Congress may wish to

- make owners of rental real estate subject to the same payment reporting requirements regardless of whether they engaged in a trade or business under current law (GAO-08-956); and
- require payers to report service payments to corporations, thereby reducing payers' burden to determine which payments require reporting (GAO-11-218T, GAO-09-238).

IRS has agreed with and taken action on some GAO recommendations—for example, by providing taxpayers with rental real estate activity additional guidance on their reporting obligations. However, other recommendations remain to be addressed. Specifically, to increase revenue, reduce costs, and promote voluntary compliance, GAO recommended that IRS:

- track the examination results for ATAT versus non-ATAT issues separately and check whether taxpayers filed all required ATAT-related disclosure forms (GAO-11-493);
- collect and report more information on the whistleblower program and establish a process to follow up on claims that exceed review time targets (GAO-11-683);
- determine the costs and benefits of creating automated telephone applications and automate those where benefits exceed the costs (GAO-12-176); and
- finalize a more comprehensive plan for online services, including an assessment of granting taxpayers the ability to update their account information online (GAO-12-176).

These actions can lead to increased revenue collections and cost savings totaling billions of dollars, which would help reduce the \$385 billion tax

gap. Although precise estimates of total cost savings are not available, for just the two congressional actions cited above, the Joint Committee on Taxation estimated revenue increases of \$5.9 billion over 10 years. As part of its routine audit work, GAO will continue to track the extent to which progress has been made to address the identified actions and report to Congress.

Agency Comments and GAO's Evaluation

GAO provided a draft of its previously issued reports to IRS for review and comment. IRS generally agreed with GAO's recommendations on checking taxpayer ATAT filing obligations, return preparer oversight, and whistleblower information and processing but has not yet completed the recommended actions. IRS said it will consider reporting summary whistleblower statistics and improving online taxpayer services. Finally, IRS agreed that the recommendations regarding tracking ATAT issues and determining the costs and benefits of automating selected telephone applications had merit, but that resources for tracking or telephone automation were not available.

How GAO Conducted Its Work

The information contained in this analysis is based on findings from the products listed in the related GAO products section.

Related GAO Products

2011 Filing Season: Processing Gains, but Assistance Could Be Enhanced by More Self-Service Tools. GAO-12-176. Washington, D.C.: December 15, 2011.

Tax Whistleblowers: Incomplete Data Hinders IRS's Ability to Manage Claim Processing Time and Enhance External Communication. GAO-11-683. Washington, D.C.: August 10, 2011.

Abusive Tax Avoidance Transactions: IRS Needs Better Data to Inform Decisions about Transactions. GAO-11-493. Washington, D.C.: May 12, 2011.

High Risk Series: An Update. GAO-11-278. Washington, D.C.: February 2011.

Small Businesses: Tax Compliance Benefits and Opportunities to Mitigate Costs on Third Parties of Miscellaneous Income Reporting Requirements. GAO-11-218T. Washington, D.C.: November 18, 2010.

Tax Gap: IRS Could Do More to Promote Compliance by Third Parties with Miscellaneous Income Reporting Requirements. GAO-09-238. Washington, D.C.: January 28, 2009.

Tax Gap: Actions That Could Improve Rental Real Estate Reporting Compliance. GAO-08-956. Washington, D.C.: August 28, 2008.

Contact Information

For additional information about this area, contact Michael Brostek or James R. White at brostekm@gao.gov or whitej@gao.gov or (202) 512-9110.

45. Medicare Advantage Payment

The Centers for Medicare & Medicaid Services could achieve billions of dollars in additional savings by better adjusting for differences between Medicare Advantage plans and traditional Medicare providers in the reporting of beneficiary diagnoses.

Why This Area Is Important

In fiscal year 2010, the federal government spent about \$113 billion on the Medicare Advantage program, a private plan alternative to the original Medicare program that covers about a quarter of Medicare beneficiaries. Medicare Advantage plans are paid a fixed monthly amount to provide beneficiaries with the same services as traditional Medicare. Most of these plans receive larger payments than would be required to provide traditional Medicare services. This allows them to provide additional services not covered by traditional Medicare.

The Centers for Medicare & Medicaid Services (CMS), the agency that administers Medicare, adjusts payments to Medicare Advantage plans based on the health status of each plan's enrollees. This adjustment is intended to provide higher payments for sicker patients and lower payments for those who are less sick. CMS calculates a risk score—which is a relative measure of health status—for every beneficiary. The risk score is based on a beneficiary's demographic characteristics, such as age and gender, and major medical conditions. To obtain information on the medical conditions of beneficiaries in traditional Medicare, CMS generally analyzes diagnoses—numerically coded by providers into Medicare defined categories—on the claims that providers submit for payment. For beneficiaries enrolled in Medicare Advantage plans, which do not submit claims, CMS requires plans to submit diagnostic codes for each beneficiary. Analysis has shown that risk scores are higher for Medicare Advantage beneficiaries than for beneficiaries in traditional Medicare with the same characteristics, and CMS has taken steps to reduce Medicare Advantage payments, saving \$2.7 billion in 2010.

What GAO Found

Risk scores for beneficiaries with the same demographic characteristics and health conditions should be identical, regardless of whether the beneficiaries are in a Medicare Advantage plan or traditional Medicare. This will be true if Medicare Advantage and traditional providers code medical diagnoses with the same level of reliability and completeness. However, Medicare Advantage plans and providers in traditional Medicare may code diagnoses differently. Medicare Advantage plans have a financial incentive to ensure that all relevant diagnoses are coded, as this can increase beneficiaries' risk scores and, ultimately, payments to the plans. Many traditional Medicare providers are paid for services rendered, and providers have less incentive to code all relevant diagnoses. If Medicare Advantage risk scores are higher than traditional Medicare scores for beneficiaries with the same demographic characteristics and medical conditions simply because Medicare Advantage diagnostic coding is more comprehensive, then CMS's

payment adjustment will not be accurate and Medicare Advantage payments will be too high.

Policymakers have expressed concern that risk scores for Medicare Advantage beneficiaries have grown at a faster rate than those for traditional Medicare beneficiaries, and some believe that systematic differences in coding diagnoses have contributed to this growth. The Deficit Reduction Act of 2005 directed CMS to conduct an analysis and adjust risk scores for differences in coding practices, to the extent that such differences could be identified in 2008, 2009, and 2010. The Health Care and Education Reconciliation Act of 2010 directed CMS to continue adjusting risk scores until the agency implements risk adjustment using Medicare Advantage data. In 2010, CMS estimated that 3.41 percent of Medicare Advantage risk scores were due to differences in diagnostic coding practices, and it reduced the scores by 3.41 percent, thereby saving \$2.7 billion.

As GAO reported in January 2012, three major shortcomings exist in CMS's method for adjusting Medicare Advantage payments to reflect differences in diagnostic coding practices between Medicare Advantage and traditional Medicare. A revised methodology that addressed these shortcomings could have saved Medicare between \$1.2 billion and \$3.1 billion in 2010 in addition to the \$2.7 billion in savings that CMS's 3.41 percent adjustment produced—a total savings of between \$3.9 billion and \$5.8 billion. GAO expects savings in 2011 and future years will be greater. However, CMS has continued to use, or plans to use, its 2010 adjustment of 3.41 percent in 2011 and 2012.

First, CMS did not use the most recent data for its estimates. For 2010, the agency did not incorporate in its estimates 2008 data, the most recent data available. Similarly, the agency did not incorporate 2009 and 2010 data as it became available to update its estimates for 2011 and 2012. The most recent risk score data used by CMS in any of these estimates was 2007.

Second, CMS assumed that the annual impact of coding differences remained constant relative to coding differences from 2004 to 2007, despite evidence that the impact was increasing over time. Although CMS's 2010 estimate accounted for the cumulative impact of coding differences over the 3 prior years, CMS did not account for any additional years of accumulated impact in its 2011 or 2012 estimates.

Third, CMS only accounted for differences in age and mortality between the Medicare Advantage and traditional Medicare populations. GAO accounted for additional beneficiary characteristics, such as sex, diagnoses as a proxy for health status, Medicaid enrollment status, beneficiary residential location, and whether the original reason for Medicare entitlement was disability, thereby improving the accuracy of the estimate.

Actions Needed and Potential Financial or Other Benefits

CMS could enhance its efforts to estimate effects of coding differences between Medicare Advantage and traditional Medicare and realize even greater cost savings than the \$2.7 billion that it has identified. GAO demonstrated a methodology which incorporated additional data and identified additional savings—\$1.2 billion to as much as \$3.1 billion in payment reductions to Medicare Advantage plans. In January, 2012, GAO made the following recommendations:

To help ensure appropriate payments to Medicare Advantage plans and improve the accuracy of the adjustment made for differences in coding practices over time, the Secretary of Health and Human Services should direct the Administrator of CMS

- incorporate the most recent data available in its estimates and identify and account for all years of diagnostic coding differences that could affect the payment year for which any adjustment is made;
- take into account the upward trend of annual impact of coding differences in its estimates; and
- account, insofar as possible, for all relevant differences in beneficiary characteristics between the Medicare Advantage and traditional Medicare populations.

Agency Comments and GAO's Evaluation

GAO provided a draft of its January 2012 report to the Department of Health and Human Services. The Department of Health and Human Services did not comment on GAO's recommendations but provided general and technical comments, which were incorporated as appropriate. The Department of Health and Human Services characterized GAO's results as "similar" to those obtained by CMS, and found GAO's methodological approach and findings informative.

How GAO Conducted Its Work

The information contained in this analysis is based on findings from the report listed in the related GAO product section. GAO estimated the impact of coding differences between Medicare Advantage and traditional Medicare on Medicare Advantage risk scores and payment to plans. GAO compared risk score growth for Medicare Advantage beneficiaries with an estimate of what risk score growth would have been if they had been in traditional Medicare.

Related GAO Product

Medicare Advantage: CMS Should Improve the Accuracy of Risk Score Adjustments for Diagnostic Coding Practices. GAO-12-51. Washington, D.C.: January 12, 2012.

Contact Information

For additional information about this area, contact James C. Cosgrove at (202) 512-7114 or cosgrovej@gao.gov.

46. Medicare and Medicaid Fraud Detection Systems

The Centers for Medicare & Medicaid Services needs to ensure widespread use of technology to help detect and recover billions of dollars of improper payments of claims and better position itself to determine and measure financial and other benefits of its systems.

Why This Area Is Important

GAO has designated Medicare and Medicaid as high-risk programs, in part due to their susceptibility to improper payments—estimated to be about \$65 billion in fiscal year 2011.¹ As the administrator of these programs, the Centers for Medicare & Medicaid Services (CMS) is responsible for safeguarding them from loss and for performing functions intended to help ensure the integrity of the programs, such as reviewing paid claims to identify patterns that may indicate cases of fraud, waste, and abuse, or other payment errors. These and other program integrity functions are conducted by CMS staff and several types of contractors.

To integrate data about all types of Medicare and Medicaid claims and improve its ability to detect fraud, waste, and abuse in these programs, CMS initiated two information technology programs: the Integrated Data Repository (IDR) and One Program Integrity (One PI). IDR is intended to provide a centralized repository of claims data for all Medicare and Medicaid programs, and One PI is a set of tools that enables CMS's program integrity contractors and staff to access and analyze data retrieved from IDR. The intent of these programs is to provide enhanced capabilities and support to help CMS achieve goals for improving outcomes of its program integrity initiatives. Among other things, these enhancements are intended to improve CMS's ability to detect and recover funds lost to improper payments, and according to CMS officials, are expected to provide financial benefits of more than \$21 billion by the end of fiscal year 2015.

What GAO Found

As GAO reported in June 2011, CMS had developed and begun using both IDR and One PI, but was not yet positioned to identify, measure, or track benefits realized from these programs. Although IDR had been implemented and in use since 2006, it did not include all the data that were planned to be incorporated by fiscal year 2010. Specifically, while IDR included most types of Medicare claims data, it did not include the Medicaid data needed to help analysts detect improper payments of Medicaid claims. IDR also did not include data from other CMS systems that store and process data related to the entry, correction, and

¹Improper payments may be made as a result of several causes, such as submissions of duplicate claims or fraud, waste, and abuse.

adjustment of claims prior to payment. These data are needed to help the agency's program integrity analysts prevent improper payments. According to program officials, the data were not incorporated because of obstacles introduced by delays in funding and technical issues. Specifically, funding to support activities to incorporate data from the other CMS systems was not approved until summer 2010. In November 2011, program officials stated that they had begun incorporating these data in September 2011 and planned to make them available to program integrity analysts in spring 2012.

Regarding the Medicaid data, IDR officials stated that they did not account for difficulties and resulting delays associated with integrating into IDR the various types and formats of data stored in disparate state systems. Further, the agency did not finalize plans or develop reliable schedules for its efforts to incorporate these data. In particular, program officials did not consider certain risks and obstacles, such as technical challenges, as they developed schedules for implementing IDR. Until it does so, CMS may face additional delays in making available all the data that are needed to support enhanced program integrity efforts.

Additionally, CMS developed and deployed to users its One PI system—a web-based portal that is to provide CMS program integrity analysts a single point of access to data contained in IDR, along with tools for analyzing those data. Nonetheless, few program integrity analysts were using the system. Specifically, One PI program officials planned for 639 analysts to be using One PI by the end of fiscal year 2010; however, only 41—less than 7 percent—were actively using the portal and tools as of October 2010.

According to program officials, the agency had not trained its broad community of analysts to use the system because of delays introduced when they took time to redesign initial training plans, which were found to be insufficient. Specifically, the initial plan provided training for the use of the One PI system and IDR data in a 3-and-a-half-day course, whereas the redesigned plan includes courses on each of the components and allows trainees time to use them to reinforce learning before taking additional courses. Because of these delays, the initial use of the system was limited to a small number of CMS staff and contractors. In updating the status of the training efforts in November 2011, CMS officials reported that a total of 215 program integrity analysts had been trained and were using One PI.² However, until program officials finalize plans and schedules for training all intended users and expanding the use of One PI, the agency may continue to experience delays in reaching widespread use of the system and realizing expected financial benefits.

²We did not validate the data provided in November 2011.

Further, while CMS made some progress toward its goals to provide a single repository of data and enhanced analytical capabilities for program integrity efforts, the agency was not positioned to identify, measure, or track financial benefits or progress toward meeting program goals as a result of its efforts. Specifically, although IDR program officials stated that they avoided technology costs as a result of implementing IDR, they did not identify financial benefits of using IDR based on the recovery of improper payments.

According to agency officials, CMS expected to realize more than \$21 billion in benefits as a result of using One PI from 2006 through 2015. These benefits were expected to accrue as CMS's broad community of program integrity analysts used the systems to identify increasing numbers of improper payments. However, these officials further stated that because the agency did not meet its goal for widespread use of One PI, there were not enough data available to quantify benefits attributable to the use of the system. In this regard, we found that CMS did not produce outcomes that positioned the agency to identify or measure financial benefits, or to gauge its progress toward achieving the \$21 billion in benefits that it expected.

CMS officials also did not develop quantifiable measures that could be used to determine whether the agency was making progress toward meeting program goals through the use of One PI. For example, performance measures for one PI included increases in the detection of improper payments for Medicare Parts A and B claims. However, program integrity officials stated that measures were not quantified because they had not identified ways to determine the extent to which increases in the detection of errors could be attributed to the use of One PI. Additionally, the limited use of the system did not generate enough data to quantify the amount of funds recovered from improper payments.

Actions Needed and Potential Financial or Other Benefits

To better position the agency to measure, gauge, and take actions to help ensure the program's success toward achieving the \$21 billion in financial benefits that program integrity officials projected, GAO recommended in June 2011 that the Administrator of CMS

- finalize plans and schedules for incorporating additional data into IDR that consider risks and obstacles to the program;
- implement and manage plans for incorporating data into IDR to meet schedule milestones;
- establish plans and schedules for training all program integrity analysts who are intended to use One PI;
- establish and communicate deadlines for program integrity contractors to complete training and use One PI in their work;
- conduct training in accordance with plans and deadlines;

-
- define any measurable financial benefits expected from the implementation of IDR and One PI; and
 - establish measures for IDR and One PI that gauge progress toward meeting program goals.

Agency Comments and GAO's Evaluation

GAO provided a draft of its June 2011 report to CMS for review and comment. CMS agreed with all of GAO's recommendations and identified steps agency officials were taking to implement them. GAO expects to conduct additional work to determine whether CMS has addressed its recommendations and identified financial benefits and progress toward meeting agency goals resulting from the implementation of IDR and One PI for program integrity purposes. As part of its routine audit work, GAO will track agency actions to address these recommendations and report to Congress.

How GAO Conducted Its Work

The information contained in this analysis is based on findings from the products listed in the related GAO products section. GAO reviewed IDR and One PI system and program management plans and other documents and compared them to key practices. GAO also interviewed program officials, analyzed system data, and reviewed reported costs and benefits.

Related GAO Products

Fraud Detection Systems: Centers for Medicare and Medicaid Services Needs to Expand Efforts to Support Program Integrity Initiatives. GAO-12-292T. Washington, D.C.: December 7, 2011.

Fraud Detection Systems: Centers for Medicare and Medicaid Services Needs to Ensure More Widespread Use. GAO-11-475. Washington, D.C.: June 30, 2011.

Contact Information

For additional information about this area, contact Valerie C. Melvin at (202) 512-6304 or melvinv@gao.gov.

47. Border Security

Delaying proposed investments for future acquisitions of border surveillance technology until the Department of Homeland Security better defines and measures benefits and estimates life-cycle costs could help ensure the most effective use of future program funding.

Why This Area Is Important

Securing the Arizona portion of the approximately 2,000-mile southwest border that the United States shares with Mexico—while keeping illegal flows of people and drugs elsewhere under control—is a top priority for the Department of Homeland Security's (DHS) U.S. Customs and Border Protection (CBP).

Following the 2011 cancellation of CBP's costly Secure Border Initiative Network (SBInet), CBP has taken steps to develop and implement a new Arizona Border Surveillance Technology Plan (the Plan) for the remainder of the Arizona border. This Plan is the first step in a multiyear, multibillion-dollar effort to secure the southwest border. The Plan is intended to guide the identification, acquisition, and deployment of additional surveillance technology, as well as any modifications needed to adjust them to varying terrain along the Arizona border to enhance situational awareness of illegal intrusions. CBP requested \$242 million to fund the new Plan for fiscal year 2012 and estimates that the total costs of acquiring and maintaining all of the proposed new systems for the Arizona border over their expected 10-year life cycle will be about \$1.5 billion.

CBP began development of SBInet in 2005 as a combination of surveillance technologies that relied primarily on radar and camera towers to create a "virtual fence" along the southwest border in order to enhance CBP's capability to detect, identify, classify, track, and respond to illegal breaches at and between land ports of entry. After 5 years and a cost of nearly \$1 billion, SBInet systems are now deployed along the 53 miles of Arizona's 378-mile border with Mexico that represent the highest-risk area for illegal entry attempts.

Since its inception, SBInet experienced continued and repeated technical problems, cost overruns, and schedule delays, which raised serious questions about the program's ability to meet CBP's needs for surveillance technology along the border. GAO issued 26 reports and testimonies identifying operational and program management weaknesses that contributed to SBInet's performance shortfalls, including cost overruns and schedule slippages. For example, as GAO reported in November 2008 and June 2010, deficiencies existed in CBP's timely preparation and completion of key acquisition documents essential to setting operational requirements, identifying and mitigating risks, and establishing the cost, schedule, and performance requirements of the

project and the technology to be delivered.¹ In May 2010, GAO concluded that it was unclear whether the department's pursuit of SBl^{net} was a cost-effective course of action, and whether it would produce expected results on time and within budget. In part based on these concerns, the Secretary of Homeland Security announced the cancellation of further procurements of SBl^{net} systems in January 2011.

Given the previously reported challenges and eventual cancellation of SBl^{net}, and the fact that similar challenges could affect CBP's current plan to acquire and deploy surveillance technology, GAO analyzed CBP's business case for its new initiative. This business case is important in light of DHS's overall management of acquisitions. GAO has reported that DHS faces significant challenges in managing its acquisitions, including programs not meeting their cost, schedule, and performance expectations. Further, strengthening its acquisition management process would help DHS to deliver critical mission capabilities that meet identified needs on time and within budget, including helping to reduce the cost overruns and schedule delays that DHS continues to experience in many of the major acquisition programs GAO has reviewed.²

What GAO Found

CBP's proposed approach is at an increased risk of not cost-effectively accomplishing its goal in support of Arizona border security because CBP has not provided support for its business case for investing in the Plan. As GAO reported in November 2011, CBP has taken some steps to develop a business case for the Plan, but the agency has not (1) documented the analysis justifying the specific types, quantities, and deployment locations of border surveillance technologies proposed in the Plan in accordance with *Standards for Internal Control in the Federal Government*; (2) defined the mission benefits or developed performance metrics to assess its implementation of the Plan; or (3) developed a robust life-cycle cost estimate that can be relied on for the purposes of budget requests for fiscal year 2012 and beyond.

CBP program officials developed and proposed the Plan without documenting the analysis justifying the specific types, quantities, and deployment locations of border surveillance technologies proposed in the Plan. These technologies include a mix of currently employed technologies, such as unattended ground sensors, as well as new alternatives, such as Integrated Fixed Tower systems (that include fixed towers, cameras and radar, a data communications network, facilities

¹GAO, *Department of Homeland Security: Billions Invested in Major Programs Lack Appropriate Oversight*, GAO-09-29 (Washington, D.C.: Nov. 18, 2008) and *Department of Homeland Security: Assessments of Selected Complex Acquisitions*, GAO-10-588SP (Washington, D.C.: June 30, 2010).

²GAO, *Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, GAO-11-318SP (Washington, D.C.: Mar. 1, 2011) and GAO-10-588SP.

upgrades, information displays, and an information management system). According to the Plan, CBP will begin acquiring and deploying three Integrated Fixed Tower systems in Arizona in 2012, with two others to be deployed by 2015, depending on funding availability. *Standards for Internal Control in the Federal Government* call for agencies to promptly record and clearly document transactions and significant events to maintain their relevance and value to management in controlling operations and making decisions and to ensure that agency objectives are met. The senior CBP official responsible for the program's acquisitions told GAO that he believed the process used to develop and support the plan justified acquisition decisions called for in the Plan. However, documenting the analysis justifying the specific types, quantities, and deployment locations of border surveillance technologies proposed in the Plan would allow an independent party to confirm the process followed, and to assess the validity of the decisions made.

The Secretary of Homeland Security reported to Congress in January 2011 that the Plan is expected to provide situational awareness for the entire Arizona border by 2014. However, CBP officials have not yet defined the expected benefits or developed measurable and quantifiable performance metrics which could show progress toward achieving that goal.³ In September 2011, CBP officials reported that they are developing new measures to determine whether and how investments impact border security. They acknowledged that since large investments have been made in border security, it is critical to assess the impacts these investments have had on improving border security, as well as projecting the additional impact future investments will have on their ability to manage the borders. However, CBP officials had not yet determined the key attributes of these new measures. The Clinger-Cohen Act of 1996 and Office of Management and Budget (OMB) guidance emphasize the need to ensure that information technology investments produce tangible, observable improvements in mission performance.⁴ Additionally, the GPRA Modernization Act of 2010 (GPRAMA) established a new, cross-cutting, and integrated framework for achieving results and improving government performance.⁵ Without defining the expected benefit or establishing metrics, CBP's ability to assess the effectiveness of the Plan as it is implemented may be limited.

³According to OMB Circular A-11, performance measurement should include program accomplishments in terms of outputs (quantity of products or services provided) and outcomes (results of providing outputs in terms of effectively meeting intended agency mission objectives), as well as indicators, statistics or metrics used to gauge program performance. See OMB, *Preparation, Submission, and Execution of the Budget*, Circular A-11 (Washington, D.C.: August 2011).

⁴Clinger-Cohen Act of 1996, 40 U.S.C. §§ 11101-11703, and OMB Circular A-130, *Management of Federal Information Resources* (Washington, D.C., Nov. 30, 2000).

⁵Pub. L. No. 111-352, 124 Stat. 3866 (2011).

Finally, while CBP officials have taken steps to develop a cost estimate for the Plan, because they did not determine a level of confidence around the estimate, it may not be realistic or sufficient for the purposes of budget requests for fiscal year 2012 or beyond. GAO reported that CBP's cost estimate did not fully comply with related best practices. GAO's *Cost Estimating and Assessment Guide* and OMB guidance emphasize that reliable cost estimates are important for program approval and continued receipt of annual funding. High-quality cost estimates should be well documented, comprehensive, accurate, and credible.⁶ Specifically, GAO reported that CBP officials took steps to develop a comprehensive and accurate cost estimate. However, the actual data used to determine the estimate were not always shown. As a result of insufficient documentation, the validity and reliability of the estimate cannot be verified. In addition, because CBP officials did not follow other best practices for cost estimation, the estimate for the plan is likely to be unrealistic. Until CBP determines a robust life-cycle cost estimate for the Plan in accordance with best practices, it will be difficult for CBP to provide reasonable assurance regarding the reliability of CBP's expected future cost estimates for border surveillance technology.

Actions Needed and Potential Financial or Other Benefits

To increase the likelihood of successful implementation of the Arizona Border Surveillance Technology Plan, minimize performance risks associated with the new approach, help justify program funding, and increase the reliability of CBP's cost estimate, GAO recommended in November 2011 that the Commissioner of CBP

- determine the mission benefits to be derived from implementation of the plan,
- develop and apply key attributes for metrics to assess program implementation; and
- update its cost estimate for the Plan using best practices.

In addition, Congress may wish to consider

- limiting future program funding until CBP has more fully defined the benefits and costs of its new Plan for Arizona. As part of our routine audit work, we will track agency actions to address these recommendations and report the results to Congress.

⁶GAO, *Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Capital Program Costs*, GAO-09-3SP (Washington, D.C.: March 2009).

Agency Comments and GAO's Evaluation

GAO provided a draft of its November 2011 report as well as this report section for review and comment. DHS agreed with GAO recommendations and identified steps officials planned to take to implement them, along with estimated dates for their completion. Regarding the recommendations that CBP determine the mission benefits to be derived from implementation of the Plan and develop and apply key attributes for metrics to assess the program's implementation, DHS concurred and stated that CBP plans to develop a set of measures by April 30, 2012, that will assess the effectiveness and mission benefits of future technology investments. Such action should address the intent of the recommendations. Regarding the recommendation related to updating CBP's life-cycle cost estimate using best practices, DHS concurred and stated that CBP was preparing individual project cost estimates for the two largest elements of the Plan and will complete these actions by April 30, 2012. While these actions are positive steps, they do not fully address the recommendation that DHS implement best practices for cost estimates for the entire Plan, which is still needed to fully understand the impacts of integrating these separate projects.

How GAO Conducted Its Work

This information contained in this analysis is based on findings from the products listed in the related GAO products section. GAO reviewed key program planning documents CBP relied on to support its new approach to identifying, acquiring, and deploying surveillance technology and compared them with requirements in DHS acquisition regulations. GAO also interviewed CBP officials responsible for assessing the need for and documenting the cost, operational effectiveness and suitability of proposed systems to support its Arizona Border Surveillance Technology Plan, and for identifying appropriate metrics to assess progress in border security. GAO reviewed cost and budget documents CBP relied on to support cost estimates for technology alternatives and interviewed program officials and contractors responsible for estimating the cost of future investments in surveillance technology, specifically the life-cycle approach, requirements development and management, test management, and risk management. GAO also compared this information to relevant federal guidance and leading industry practices.

Related GAO Products

Arizona Border Surveillance Technology: More Information on Plans and Costs Is Needed Before Proceeding. GAO-12-22. Washington, D.C.: November 4, 2011.

Border Security: Preliminary Observations on the Status of Key Southwest Border Technology Programs. GAO-11-448T Washington D.C.: March 15, 2011.

Secure Border Initiative: DHS Needs to Strengthen Management and Oversight of Its Prime Contractor. GAO-11-6. Washington, D.C.: October 18, 2010.

Secure Border Initiative: DHS Needs to Reconsider Its Proposed Investment in Key Technology Program. GAO-10-340. Washington, D.C.: May 5, 2010.

Secure Border Initiative: DHS Needs to Address Testing and Performance Limitations That Place Key Technology Program at Risk. GAO-10-158. Washington, D.C.: January 29, 2010.

Secure Border Initiative: Technology Deployment Delays Persist and the Impact of Border Fencing Has Not Been Assessed. GAO-09-1013T. Washington, D.C.: September 17, 2009.

Secure Border Initiative: DHS Needs to Address Significant Risks in Delivering Key Technology Investment. GAO-08-1148T. Washington, D.C.: September 10, 2008.

Secure Border Initiative: Observations on the Importance of Applying Lessons Learned to Future Projects. GAO-08-508T. Washington, D.C.: February 27, 2008.

Secure Border Initiative: SBInet Planning and Management Improvements Needed to Control Risk. GAO-07-504T. Washington, D.C.: February 27, 2007.

Contact Information

For additional information about this area, contact Rebecca Gambler at (202) 512-6912 or gambler@gaio.gov.

48. Passenger Aviation Security Fees

Options for adjusting the passenger aviation security fee could further offset billions of dollars in civil aviation security costs.

Why This Area Is Important

According to the President's 2011 *National Counterterrorism Strategy*, aviation security and screening is an essential tool in the country's ability to detect, disrupt, and defeat plots to attack the homeland.¹ Civil aviation security includes, among other things, screening passengers and their carry-on and checked baggage for explosives, weapons, and other prohibited items. To help offset the costs associated with providing this security, the Aviation and Transportation Security Act authorized the Transportation Security Administration (TSA) to impose two security-related fees: a passenger security fee and an air carrier security fee (Aviation Security Infrastructure Fee).²

TSA imposed the passenger security fee—a uniform fee on passengers of U.S. and foreign air carriers originating at airports in the United States—in February 2002 at \$2.50 per enplanement, capped at \$5.00 per one-way trip, which are the maximum amounts allowed under the Aviation and Transportation Security Act. In addition, in February 2002, TSA imposed the air carrier security fee—a fee imposed on air carriers to further offset the costs of civil aviation security and capped at the amount paid by air carriers for screening passengers and property in calendar year 2000.³

The fees collected offset amounts appropriated to TSA for aviation security. In his fiscal year 2012 budget request, the President requested that Congress increase the passenger security fee but did not request an increase in the air carrier fee. In light of the administration's focus on the passenger security fee and the possibility that the basis for calculating the cost to air carriers for screening passengers and property in 2000 could

¹*National Strategy for Counterterrorism* (Washington, D.C.: June 28, 2011).

²See Pub. L. No. 107-71, § 118(a) (2001) (codified as amended at 49 U.S.C. § 44940). In general, the fees collected offset the account that finances the activities and services for which the fee is imposed. Specifically, the fees collected offset amounts appropriated to TSA's "aviation security" account. See, e.g., Department of Homeland Security Appropriations Act, 2010, Pub. L. No. 111-83 (2009). See also 49 U.S.C. § 44940(f)(1).

³See 49 U.S.C. § 44940(a)(2) (authorizing the collection of the air carrier fees if passenger security fee collections were insufficient to pay for the costs of providing civil aviation security services). TSA collected approximately \$280 million in air carrier fees in fiscal year 2010 and expects to have collected an estimated \$420 million in fiscal year 2011 and each fiscal year thereafter.

remain in dispute, for the purposes of this summary, GAO will focus on options for offsetting aviation security costs related to the passenger fee.⁴

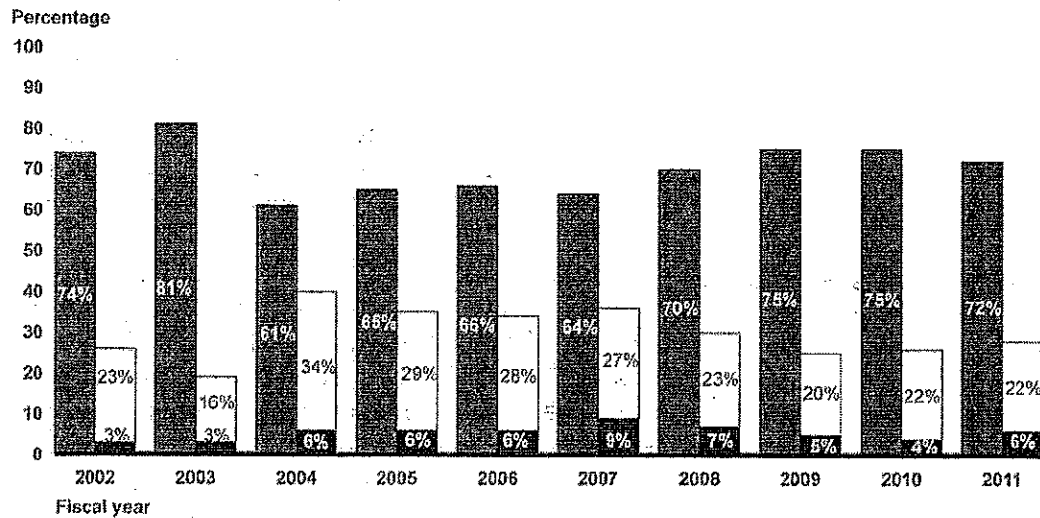
In the 10 years since TSA imposed the passenger security fee, TSA has developed additional measures to help mitigate potential risks to the nation's civil aviation security system, such as enhanced passenger screening technologies, among other programs, which have contributed to increases in the costs of aviation security to the federal government.

What GAO Found




Several options exist for revising passenger security fees to help further offset civil aviation security costs. From fiscal years 2002 through 2011, TSA collected about \$18 billion in passenger and air carrier security fees, compared to the approximately \$63 billion appropriated for aviation security activities over the same time frame; thus, security fees offset about 29 percent of amounts appropriated for aviation security-related activities during this time frame. The figure below shows the difference between the funds appropriated for aviation security and the aviation security fees collected since fiscal year 2002.

⁴See, e.g., *Southwest Airlines, Co. v. Transp. Sec. Admin.*, 650 F.3d 752 (D.C. Cir. 2011) (denying airlines' petition for review of TSA's determination to use \$420 million as the basis for its calculation of the cost to air carriers for screening passengers and property in calendar year 2000). As of this most recent ruling by the Court of Appeals, it remains unclear if air carriers will continue to dispute the amount of the fee imposed by TSA.

Difference between TSA's Annual Appropriations and Aviation Security Fees Collected, from Fiscal Years 2002 through 2011



Funding sources for TSA aviation security programs (dollars in millions)

| | | | | | | | | | | | | Total |
|---|---|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|
|  | Amounts Appropriated to TSA for Aviation Security | 4,340 | 7,662 | 4,775 | 5,516 | 5,876 | 6,403 | 6,180 | 7,630 | 7,231 | 7,231 | 62,844 |
|  | Passenger Security Fees Collected | 995 | 1,200 | 1,600 | 1,616 | 1,660 | 1,710 | 1,420 | 1,506 | 1,558 | 1,598 | 14,863 |
|  | Air Carrier Fees Collected | 133 | 253 | 283 | 307 | 350 | 573 | 412 | 407 | 282 | 400 | 3,400 |

Source: GAO analysis of TSA data.

Notes: For the purposes of GAO's analysis, TSA identified the total amounts appropriated to TSA for aviation security-related programs and activities, including Federal Air Marshals, threat assessments, and some support costs. Due to statutory and other limitations, TSA did not collect a full year's worth of fees in fiscal years 2002 through 2004. In addition, beginning in fiscal year 2005, and each fiscal year thereafter, the first \$250 million in passenger security fees collected have been designated to the Aviation Security Capital Fund, except for fiscal year 2008, when an additional \$250 million in fee collections were designated to the Checkpoint Screening Security Fund. See 49 U.S.C. §§ 44923(h), 44940(i). The figure above excludes amounts designated for the Aviation Security Capital Fund or the Checkpoint Screening Security Fund from "passenger security fees collected" and does not include these amounts in "amounts appropriated to TSA." Percentages may not add to 100 due to rounding.

The importance of closely aligning fees to the cost of the service provided has been widely documented. As GAO previously reported in May 2008 about user fee design, agencies should review their fees on a regular basis to ensure that they, Congress, and stakeholders have complete information on the costs of federal programs, and that fees are appropriately aligned to program costs and activities, among other

things.⁵ Further, GAO's report stated that user fees can be designed to reduce the burden on taxpayers to finance the portions of activities that provide benefits to identifiable users above and beyond what is normally provided to the public. The International Civil Aviation Organization also issued guidance regarding cost recovery for airport charges.⁶ This guidance provides information to consider when setting fees, including fees related to aviation security, and determining the extent to which fees should offset security costs. According to International Civil Aviation Organization officials, costs should be a key consideration in setting fees and governments or airports, with input from relevant stakeholders, may consider increasing security fees when costs increase. For example, following the September 11, 2001, terrorist attacks, the government of Canada imposed an Air Travelers Security Charge of \$12.00 per one-way trip to cover the costs of aviation security services.⁷ This fee was reviewed and reduced each year from 2003 through 2006 to reflect increases in passenger enplanements, revenue, and tax reductions, while it was increased in 2010 to \$7.48 to reflect increased expenditures for deploying upgraded checked baggage screening systems, among other things.⁸

In recent years, several options have been considered for increasing the passenger aviation security fee. However, the fee has not been increased since it was imposed in February 2002. The table below provides a

⁵In addition, pursuant to the Chief Financial Officers Act of 1990, agencies must review fees and other charges for services and things of value biennially, and based on these reviews make recommendations, as appropriate, on revising the fees to reflect costs incurred. See 31 U.S.C. § 902(a)(8). Similarly, OMB Circular A-25 provides that each agency will review user charges biennially. These reviews include (1) assuring that existing charges are adjusted to reflect unanticipated changes in costs or market values, and (2) reviewing of all other agency programs to determine whether fees should be assessed for government services or the user of government goods or services. In accordance with OMB guidance, TSA reviews the passenger security fee, which is a user fee, biennially, but TSA does not have authority to adjust the fee beyond the maximum amount established in statute, if warranted.

⁶International Civil Aviation Organization, *Policies on Charges for Airports and Air Navigation Services* (Doc 9082), Eighth Edition, 2009. The International Civil Aviation Organization is a specialized agency of the United Nations that sets standards and regulations related to aviation safety, security, and aviation environmental protection, among other things.

⁷The Canadian Air Transport Security Authority, created after September 11, 2001, is a governmental entity responsible for providing core civil aviation security functions, such as screening passengers and baggage at Canadian airports. The Air Travelers Security Charge is imposed on flights departing from any of the 89 airports regulated by the Canadian Air Transport Security Authority. GAO did not compare the costs of civil aviation security in Canada to those in the United States.

⁸The amount of Air Travelers Security Charges imposed on travelers varies depending on flight segment, such as domestic (one-way), domestic (round-trip), transborder (to the United States), and other international flights. The fee is charged to passengers who use airports in which the Security Authority performs security-related services. Dollar amounts shown above are in Canadian dollars. When converted to U.S. dollars, the Air Travelers Security Charge would have been \$7.56 in 2002 and \$7.36 in 2010.

description of the proposed options presented from various sources for increasing the passenger security fee.

Options to Increase the Passenger Aviation Security Fee

| Source | Description of option | Potential for addressing the difference between amounts appropriated and fees collected |
|--|--|---|
| President's Deficit Reduction Plan (September 2011) | The administration proposed increasing the passenger fee to \$7.50 per one-way trip by 2017 through incremental \$0.50 increases. | The plan estimates that this option would collect an additional \$8.8 billion over 5 years and \$24.9 billion over 10 years. According to the plan, over 10 years, \$15 billion of these collections would be directed for debt reduction and the remaining collections would be used to offset TSA appropriations. |
| Congressional Budget Office (CBO) (March 2011), President's Debt Commission (November 2010), and House Budget Committee (April 2011) | In late 2010 and 2011, CBO and the President's Debt Commission advanced similar options in which the passenger fee would be increased to a flat rate of \$5.00 per one-way trip. The House Budget Committee also included this option in its concurrent resolution on the budget for fiscal year 2012. | CBO estimates that this option would increase annual fee collections by about \$2 billion, on average, or about \$10 billion over 5 years. TSA officials stated that TSA is supportive of the CBO and President's Debt Commission option because it would enable them to more closely meet their goal of offsetting 80 percent of the federal government's aviation security costs through fee collections. |
| TSA Fiscal Year 2012 Budget Request (February 2011) | In its fiscal year 2012 budget request, TSA proposed incrementally increasing the passenger security fee to \$5.50 per enplanement by 2014, with an \$11 per one-way trip maximum. | The fiscal year 2012 budget request for TSA includes an option to increase the current \$2.50 fee by \$1.50, offsetting appropriations by \$590 million in 2012. In addition, the option assumes \$0.50 and \$1.00 increases in 2013 and 2014, respectively. When fully implemented in 2014, TSA anticipates that this option will increase annual passenger fee collections by \$2.3 billion. |
| TSA's goal for security fee collections (February 2009) | TSA officials stated that their goal is ultimately to offset 80 percent of amounts appropriated to TSA for aviation security-related programs and activities through fee collections. To achieve this goal, TSA would need to increase the passenger security fee to about \$7.00 per enplanement, capped at \$14 per one-way trip, according to GAO's analysis. | Increasing the fee to offset 80 percent of the amounts appropriated to TSA for aviation security-related programs and activities would represent an average annual increase of about \$4 billion in passenger fee collections, depending on appropriations. |

Source: GAO analysis of TSA, CBO, OMB, and President's Debt Commission data.

Note: Estimates for future years are based on available enplanement data and are subject to change.

In addition to the options noted above, the passenger security fee could also be adjusted for inflation. OMB Circular A-25 provides that biennial reviews assure that existing charges are adjusted to reflect unanticipated changes in costs or market values. GAO also reported on issues to consider when setting user fees such as whether fee collections are projected to change with inflation. According to GAO's analysis, an inflation adjustment to the existing passenger security fee would result in

an increase of approximately \$0.50,⁹ increasing the fee from \$2.50 to about \$3.00 per enplanement, capped at \$6 per one-way trip. Adjusting the fee for inflation would represent an average annual increase of about \$410 million in passenger fee collections.

Industry association officials representing key aviation stakeholders—including airport executives, airlines, and passengers—from four of the five associations GAO interviewed have expressed general opposition to a passenger security fee increase for various reasons, such as the argument that aviation security is a federal responsibility and therefore associated costs should be borne by the government. One association noted that the burden of subsidizing these costs should not fall solely on passengers. Officials with three of the five aviation industry associations GAO interviewed also stated that the demand for air travel could be impacted if aviation security fees were increased. However, TSA officials stated that TSA does not expect its fiscal year 2012 proposal to increase the passenger security fee to \$5.50 per enplanement (capped at \$11.00 per one-way trip) to have a significant impact on travelers' demand to fly since the proposal suggests modest, incremental increases to the fee.

In addition, GAO's review of the economic literature and related analysis suggests that the demand for air travel is somewhat elastic to price changes,¹⁰ though TSA's proposed fee increase to \$5.50 per enplanement by 2014 constitutes a small proportion of the average price of a one-way trip,¹¹ which is about \$210 as of calendar year 2010, according to the U.S. Department of Transportation.¹² Moreover, the responsiveness of travelers to changes in air travel prices depends on several factors such as distance traveled, nature of the trip (nonbusiness versus business), and the availability of alternative travel modes (for example, rail, road, etc.). GAO's analysis of TSA's fiscal year 2012 budget proposal to incrementally increase the passenger security fee to \$5.50 per enplanement by 2014 shows that when demand effects are taken into account, total enplanements from fiscal years 2012 through 2014 could be reduced by 1 percent or about 26 million passengers over

⁹GAO's inflation adjustment factor is derived from the Consumer Price Index (for urban consumers) compiled by the Bureau of Labor Statistics using 2002 as the base year. GAO divided the annual Consumer Price Index for 2010 by that of 2002 to get the adjustment factor for 2010.

¹⁰See D.W. Gillen, W.G. Morrison, and C. Stewart, *Air Travel Demand Elasticities: Concepts, Issues, and Management*, Department of Finance, Government of Canada (January 2003).

¹¹Note that this is the fare for a whole trip; since a trip may entail more than one enplanement, the fee increase as a percentage of enplanement fare would be slightly higher but still very small.

¹²The average ticket price reflects a weighted average price of domestic and international flights.

this 3-year period.¹³ This would reduce expected fee collections by about \$120 million, or 3 percent of the \$4.4 billion in additional fees collected over this period.¹⁴

Actions Needed and Potential Financial or Other Benefits

Increasing the passenger security fee could help further offset billions of dollars in the federal budget for aviation security programs and activities in outlying fiscal years. Therefore, Congress, working with the Administrator of TSA, may wish to consider

- increasing the passenger security fee according to one of the options identified in this summary. Options to increase the fee include the President's Deficit Reduction Plan option (\$7.50 per one-way trip by 2017); the CBO, President's Debt Commission, and House Budget Committee option (\$5.00 per one-way trip); TSA's Fiscal Year 2012 Budget Request option (\$5.50 per enplanement by 2014); TSA's goal to ultimately offset 80 percent of federal aviation security costs through fee collections (according to GAO analysis, this option would increase the fee to about \$7.00 per enplanement); as well as adjusting the fee for inflation (according to GAO analysis, this option would increase the fee to about \$3.00 per enplanement). These options could increase fee collections from about \$2 billion to \$10 billion over 5 years.

Agency Comments and GAO's Evaluation

GAO provided a draft of this report section to DHS for review and comment. DHS provided technical comments, which were incorporated as appropriate.

How GAO Conducted Its Work

The information contained in this analysis is based on findings from products listed in the related GAO products section and additional work GAO conducted. To address the issues discussed here, GAO analyzed (1) available documentation and guidance on TSA's aviation security fees and programs, (2) TSA's historical revenue data for aviation security fees from fiscal years 2002 through 2011, and (3) TSA estimates of applicable enplanement data for fiscal years 2012 through 2014. GAO compared

¹³In this context, demand elasticity refers to the degree to which the demand for air travel changes with price. Our analysis assumes a demand elasticity of -1.122. This is the median of 254 estimates from 21 studies analyzed in a 2003 study conducted by the Department of Finance, Government of Canada. See D.W. Gillen, W.G. Morrison, and C. Stewart. In addition, a 2007 study claims that this demand is less elastic (less responsive to price changes especially when those price changes apply to all national routes). The 2007 study estimates this national level elasticity to be -0.8. In this case, the reduction in total enplanements could be even lower. See Intervistas Consulting Group, *Estimating Air Travel Demand Elasticities*, Final Report (December 2007).

¹⁴Note that the reduction in enplanements by 26 million could also result in some lost revenues from excise and segment taxes levied on air travel. GAO estimated this to be about \$295 million.

this data with other supporting documents, when available, to determine data consistency and reasonableness. On the basis of these efforts, GAO concluded that the data are sufficiently reliable for the purposes of this summary. GAO also analyzed various options to raise the passenger security fee, including the Obama administration's February 2009 budget request for fiscal year 2010, CBO's August 2009 option, and the President's Debt Commission report.

To develop the option to adjust the fee for inflation, GAO analyzed OMB Circular A-25 and GAO's May 2008 report, which includes issues to consider when setting user fees such as whether fee collections are projected to change with inflation. GAO also reviewed OMB Circular A-25 and relevant provisions of the Chief Financial Officers Act related to the setting and periodic review of user fees. GAO further interviewed officials with the International Civil Aviation Organization and analyzed policy guidance regarding international policies and best practices for the development and periodic review of aviation-related fees. To provide information on comparable fee structures and approaches in which fees are periodically adjusted, GAO analyzed documentation and analysis regarding Canada's Air Travelers Security Charge, including documentation of fee adjustments and associated demand elasticity analysis. GAO also discussed the current aviation security fee structure and options for modifying these fees with TSA officials; officials from five industry associations representing passengers, airports, and international groups; and officials from three organizations with subject matter expertise in aviation issues. GAO selected these associations because they represent key stakeholders—passengers, airports, and airlines—that could be affected by a fee increase.

Related GAO Products

Federal User Fees: A Design Guide. GAO-08-386SP. Washington, D.C.: May 29, 2008.

Aviation Fees: Review of Air Carriers' Year 2000 Passenger and Property Screening Costs. GAO-05-558. Washington, D.C.: April 18, 2005.

Contact Information

For additional information about this area, contact Steve Lord at (202) 512-4379 or lords@gao.gov.

49. Immigration Inspection Fee

The air passenger immigration inspection user fee should be reviewed and adjusted to fully recover the cost of the air passenger immigration inspection activities conducted by the Department of Homeland Security's U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection rather than using general fund appropriations.

Why This Area Is Important

International air passengers arriving in the United States are subject to an immigration inspection to ensure that they have legal entry and immigration documents. Immigration inspection activities are conducted by U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP). The immigration fee is set in statute at \$7 per passenger. The collections are available to pay for all expenses incurred in providing inspection and pre-inspection services.¹ The statute also directed the agency to report to the Congress every 2 years on the status of the Immigration User Fee Account, including balances, and recommend fee adjustments that may be required to ensure that the collections equal, as closely as possible, the cost of providing these services. However, ICE has not yet analyzed air passenger immigration inspection fee data to identify what fee adjustments, if any, are necessary.

Passengers pay the immigration inspection fee when they purchase their airline tickets. Fee collections—which GAO estimates were about \$600 million² in fiscal year 2010—are available to ICE and CBP to pay for costs incurred in providing inspection and pre-inspection services, and are intended to be divided between ICE and CBP according to the costs of the immigration inspection activities for which each agency is responsible. Air passenger immigration inspection fee collections do not recover the total costs of these inspections. However, because immigration inspection costs and collections have not recently been comprehensively reviewed, it is unknown (1) whether collections are appropriately distributed between ICE and CBP and (2) the extent to which fee collections fail to cover air passenger immigration inspection costs, especially for ICE's inspection activities.

What GAO Found

Air passenger immigration fee collections did not fully cover CBP's costs in fiscal years 2009 and 2010. According to ICE officials, although ICE does not track air passenger costs separately from sea passenger costs, ICE's portion of total air and sea passenger collections did not cover

¹8 U.S.C § 1356(d).

²Because ICE does not analyze air passenger collections information separately, GAO estimated ICE's collections using CBP's data and the allocation rate between ICE and CBP.

ICE's total air and sea passenger costs in fiscal years 2007 through 2009.³ As a result, in recent years, CBP and ICE have relied on general fund appropriations (in fiscal year 2010 alone, this amounted to over \$120 million for CBP and an unknown amount for ICE) to help fund activities for which these agencies have statutory authority to fund with user fees.

Air Passenger Immigration Inspection Fee Costs and Collections

| | Fiscal year 2008 | | Fiscal year 2009 | | Fiscal year 2010 | |
|--|---|---------------|--|---------------|---|----------------|
| | ICE | CBP | ICE | CBP | ICE | CBP |
| Air passenger immigration inspection collections | \$115,522,669 (GAO estimate) ^a | \$549,547,391 | \$98,917,337 (GAO estimate) ^a | \$470,554,955 | \$103,865,917 (GAO estimate) ^a | \$494,095,613 |
| Air passenger immigration inspection costs | Unknown ^b | \$524,016,131 | Unknown ^b | \$523,576,731 | Unknown ^b | \$620,348,927 |
| Difference | Unknown | \$25,531,260 | Unknown | -\$53,021,776 | Unknown | -\$126,253,314 |

Source: GAO analysis of ICE and CBP data.

^aBecause ICE does not separately analyze air passenger collections data, GAO estimated ICE's collections using CBP's data and the user fee allocation rate between ICE and CBP. This estimate does not replace the actual data which would be found in a fee review.

^bICE provided immigration inspection cost data for both air and sea passengers, but not specific data for air passengers.

The air passenger immigration inspection fee has not been recently comprehensively reviewed, and the rate, which is set in statute, has not been adjusted since fiscal year 2002. As GAO reported in May 2008, regular, comprehensive fee reviews could prevent misalignment between fees and the activities they support. Comparing ICE and CBP cost and collection information could help determine the extent to which collections cover costs and the appropriate share of collections for each agency. Further, GAO reported in its May 2008 User Fee Design Guide that regular reviews also help to increase awareness about program costs—and therefore increase incentives to reduce costs where possible.

As GAO reported in September 2007, while CBP reviewed its share of air passenger inspection costs, ICE had not reviewed its share of these costs, and ICE and CBP do not have a process to determine how the immigration user fee would be split between them. In that report, GAO recommended that the Secretary of Homeland Security report on ICE's activity costs to ensure the immigration fee is divided between ICE and CBP according to their respective immigration inspection activity costs and to develop a legislative proposal to adjust the air passenger immigration inspection fee if it was found to not recover the costs of

³As of January 2012, ICE officials said they were evaluating fiscal year 2010 data and did not know whether collections covered costs for that year.

inspection activities. The Department of Homeland Security agreed with GAO's recommendations.

Since 2006, GAO has requested that ICE and CBP provide a comprehensive review showing the extent to which fee collections cover their air passenger immigration inspection costs. CBP provided GAO with this analysis for its share of the immigration inspection activities. ICE only provided aggregate costs for air and sea ports of entry. Agency officials said that ICE cannot provide this information because it does not separately analyze air passenger amounts. Absent such information, the extent to which total air passenger fee collections cover total air passenger costs, and whether these collections are appropriately distributed between ICE and CBP, is unknown.

Actions Needed and Potential Financial or Other Benefits

To determine the extent to which air passenger immigration inspection fees are aligned with the costs of inspection activities, which could enable fee adjustments to reduce reliance on general fund appropriations, Congress may wish to require the Secretary of the Department of Homeland Security to fully implement the recommendations from GAO's September 2007 report, including to

- require ICE and CBP to regularly report on the total cost of air passenger immigration inspections and the amount of associated fee collections;
- adjust the fee as needed so that collections are aligned with total inspection costs, if it is determined that total immigration fee collections do not cover total immigration inspection costs;⁴
- direct ICE to amend its cost study methodology to determine the extent to which air passenger fee collections cover reimbursable activities;⁵ and
- direct ICE and CBP to establish a regular schedule to review and coordinate on the costs of their respective air passenger immigration inspection activities, and revise the proportion of the fee received by each agency accordingly.

⁴In September 2007, GAO recommended that, if air passenger immigration inspection activity costs exceed collections, the Secretary of Homeland Security should develop a legislative proposal in consultation with Congress to adjust the immigration fee to recover costs as closely as possible, per statute. As of November 2011, this recommendation remains open pending the completion of ICE's cost study.

⁵In September 2007, GAO recommended that the Secretary of Homeland Security complete development of and report on ICE's activity costs to ensure the air passenger immigration inspection fee is divided between ICE and CBP according to their respective proportion of air passenger immigration inspection activity costs. As of November 2011, this recommendation remains open pending the completion of ICE's cost study.

Taking these four actions would allow ICE and CBP to better align air passenger immigration inspection fee revenue with the costs of providing these services and achieve cost savings by reducing the reliance on general fund appropriations.

Agency Comments and GAO's Evaluation

GAO provided a draft of this report section for to the Department of Homeland Security for review and comment. The department agreed with the material facts as presented. ICE supplied GAO with its Immigration User Fee Account cost studies for fiscal years 2007, 2008, and 2009, which showed its combined immigration inspection fee costs for air and sea inspections. ICE said that it will update its methodology for determining Immigration User Fee Account air and sea costs and will conduct additional analysis to separate the air and sea immigration fee collections and costs. ICE estimates that the revised analysis for fiscal year 2010 will be completed by March 31, 2012. Further, ICE said that it will continue to work with GAO and CBP to close the remaining recommendations outlined in GAO reports concerning the Immigration User Fee Account.

How GAO Conducted Its Work

The information contained in this analysis is based on findings from the products listed in the related GAO products section as well as additional work GAO conducted. GAO reviewed documents from ICE and CBP. In addition, GAO requested fiscal year 2010 cost and collections data from ICE and CBP and used data from CBP.

Related GAO Products

Federal User Fees: A Design Guide. GAO-08-386SP. Washington, D.C.: May 29, 2008.

Federal User Fees: Key Aspects of International Air Passenger Inspection Fees Should Be Addressed Regardless of Whether Fees Are Consolidated. GAO-07-1131. Washington, D.C.: September 24, 2007.

Contact Information

For additional information about this area, contact Susan J. Irving at (202) 512-6806 or irvings@gao.gov.