

# **FY 2017 BSUFA FINANCIAL REPORT**

REQUIRED BY THE

## **BIOSIMILAR USER FEE ACT OF 2012**

**FOOD AND DRUG ADMINISTRATION  
DEPARTMENT OF HEALTH AND HUMAN SERVICES**



**U.S. FOOD & DRUG  
ADMINISTRATION**

## EXECUTIVE SUMMARY

The Biosimilar User Fee Act of 2012 (BsUFA) requires the Food and Drug Administration (FDA or the Agency) to report annually to Congress on the financial aspects of BsUFA implementation. Required under BsUFA, this report covers fiscal year (FY) 2017. This is the fifth BsUFA Financial Report, and the final report under the first authorization of BsUFA (BsUFA I).

BsUFA specifies that the following two legal conditions must be satisfied each year for FDA to collect and spend biosimilar biological product user fees:

1. The fee amounts FDA may collect for each fiscal year must be specified in that year's appropriation acts.
2. FDA must allocate a minimum of \$20,000,000 in non-user fee appropriations, multiplied by the adjustment factor applicable to that fiscal year, for the process for the review of biosimilar biological product applications.

FDA met the two legal conditions in FY 2017, and this report explains how they were satisfied. The statements and tables in the report also provide data on biosimilar biological product user fee collections, expenditures, and carryover balances.

In FY 2017, FDA had net collections of \$28.8 million in BsUFA fees, spent \$32.7 million in user fees for the BsUFA program, and carried a balance of \$48.7 million forward to support the BsUFA program in future fiscal years. In FY 2017, FDA supported the BsUFA program with both BsUFA fees (59 percent) and non-user fee appropriations (41 percent).

BsUFA fees and non-user fee appropriations in FY 2017 supported 199 full-time equivalents, including salaries and operational expenses to support the staff responsible for the BsUFA program. Detailed program accomplishments can be found in the FY 2017 BsUFA Performance Report.

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## 1: BACKGROUND

The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Biosimilar User Fee Act (BsUFA) (Title IV of the Food and Drug Administration Safety and Innovation Act), authorizes the Food and Drug Administration (FDA or the Agency) to collect user fees from the biosimilar biological product industry to supplement the non-user fee appropriations that the Agency spends on the process for the review of biosimilar biological product applications. FDA spends fee revenues and non-user fee appropriations to hire, support, and maintain personnel for the review of biosimilar biological product applications, and to help ensure that safe and effective biosimilar biological products reach the American public more quickly.

BsUFA was reauthorized in 2017 (BsUFA II) with the support of the pharmaceutical industry, public stakeholders, the Administration, and Congress.

Under BsUFA I, fees are assessed for certain activities in connection with biosimilar biological product development, for review of certain types of applications and supplements for biosimilar biological products, for approved biosimilar biological products, and for establishments where approved biosimilar biological products are made.<sup>1</sup>

There are three types of fees for activities in connection with biosimilar biological product development: the initial biosimilar biological product development (BPD) fee, the annual BPD fee, and the reactivation fee. The initial BPD fee for a product is due when the sponsor submits an investigational new drug (IND) application that FDA determines is intended to support a biosimilar biological product application or within 5 calendar days after FDA grants the first BPD meeting for the product, whichever occurs first. The initial BPD fee rate for a fiscal year is equal to 10 percent of the fee rate established under the Prescription Drug User Fee Act (PDUFA) for a human drug application requiring clinical data for that fiscal year. A sponsor who has paid the initial BPD fee for a product is considered to be participating in FDA's BPD program for the product.

Once a sponsor has paid the initial BPD fee for a product, the annual BPD fee for the product is due on October 1 beginning in the next fiscal year. The annual BPD fee is assessed for the product each fiscal year until the sponsor either submits a marketing application for the product that is accepted for filing or discontinues participation in FDA's BPD program for the product not later than August 1 of the preceding fiscal year. The annual BPD fee rate for a fiscal year is also equal to 10 percent of the fee rate established under PDUFA for a human drug application requiring clinical data for that fiscal year.

The reactivation fee is assessed on a sponsor who previously discontinued participation in FDA's BPD program for a product, but wants to rejoin the BPD program for that same product. This fee is due when the sponsor submits an IND that FDA determines is intended to support a biosimilar biological product application or within 5 calendar days after FDA grants the sponsor's request for a BPD meeting for the product, whichever occurs first. The reactivation fee is equal to 20 percent of the fee rate established under PDUFA for a human drug application requiring clinical data for that fiscal year. Annual BPD fees will resume beginning in the fiscal year after the fiscal year in which the reactivation fee was paid.

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<sup>1</sup> Descriptions of fees in this report are specific to BsUFA I. Changes to this scheme occurred in BsUFA II; FDA published FY 2018 biosimilar biological product user fee rates on September 14, 2017, in the Federal Register (<https://www.gpo.gov/fdsys/pkg/FR-2017-09-14/pdf/2017-19493.pdf>).

In addition to the fees for biosimilar biological product development, under BsUFA I, sponsors must pay fees for certain marketing applications and supplements; fees must also be paid on approved biosimilar biological products and the establishments where they are manufactured in final dosage form. Application and supplement fees are due upon submission of the application or supplement. Establishment and product fees are due annually on October 1. The application fee is equal to the human drug application fee under PDUFA, minus the cumulative amount of BPD and reactivation fees already paid for the product that is the subject of the application. The supplement fee is half the amount of the application fee. Establishment and product fee rates are equal to the human drug establishment and product fee rates under PDUFA.

BsUFA requires FDA to submit a financial report to Congress no later than 120 days after the end of each fiscal year. The financial report addresses the implementation and use of biosimilar biological product user fees by FDA during the period October 1, 2016, through September 30, 2017. This report discusses the legal conditions that must be satisfied for FDA to collect and spend biosimilar biological product user fees each year and describes how FDA met those requirements. Additionally, this report presents summary statements of FY 2017 fee collections, carryover balances, obligations of user fees, and the total costs associated with the BsUFA program supported by both user fees and non-user fee appropriations.

## **2: LEGAL CONDITIONS**

BsUFA imposes two legal conditions that must be satisfied for FDA to collect and spend biosimilar biological product user fees. A summary of how each of these legal conditions was satisfied in FY 2017 is shown below.

**Legal Condition 1** – The amount of user fees collected for each fiscal year must be specified in that year’s appropriation acts. The Consolidated Appropriations Act, 2017 (Public Law 115-31), which the President signed on May 5, 2017, made appropriations through September 30, 2017, for the salaries and expenses account of FDA. It specified that \$22,079,000 shall be derived from BsUFA fees, and that BsUFA fees collected in excess of this amount are also appropriated for FDA. Thus, in FY 2017, the first legal condition was satisfied.

**Legal Condition 2** – FDA may not spend BsUFA fees in a fiscal year unless it allocates a minimum of \$20,000,000 in appropriated funds (excluding user fees), multiplied by the adjustment factor applicable to that fiscal year, for the BsUFA program. The specified minimum level for FY 2017 is \$21,342,840. In FY 2017, FDA allocated and obligated \$23,096,373 in appropriated funds (excluding user fees) for the BsUFA program. Since FDA allocated and obligated more than the specified minimum amount in FY 2017, the second legal condition was satisfied.

### **References**

Detailed explanations and calculations of how each of these legal conditions was satisfied in FY 2017 are described in section 4.1 - Appendix A.

### 3: FINANCIAL INFORMATION

#### 3.1 – User Fee Collections

##### Introduction

BsUFA I authorizes FDA to assess and collect user fees for certain activities in connection with biosimilar biological product development, for submission of specified applications and supplements, for approved biosimilar biological products, and for establishments that produce approved biosimilar biological products.

User fee collections are reported in the year the fee was originally due—referred to as the cohort year. For example, a fee originally due in FY 2016, even if it is received in FY 2017, is attributed to FY 2016 collections. Totals reported for each fiscal year are net of any refunds for the cohort year. To ensure the quality of the information provided in this financial report, FDA will annually update prior year numbers.

FDA issues invoices for annual BPD fees in August for fees due on October 1 and in November of the same year for BPD fees that became due after the initial invoices were issued. FDA issues invoices for product and establishment fees twice a year. For fees due on October 1, the invoices are issued in August; for product and establishment fees due that were not previously billed and paid, the invoices are issued in November after the close of the fiscal year.

The receivables for FY 2017 are from uncollected BPD fees. After 90 days of attempting to collect the delinquent debt, FDA turns these receivables over to the Program Support Center (PSC), Department of Health and Human Services, for further attempts at collection. After 120 days of the debt being outstanding, PSC turns the debt over to the United States Treasury for further collection efforts.

##### Data

Table 1 provides the total user fees collected during the past 2 fiscal years.

**TABLE 1: BIOSIMILAR BIOLOGICAL PRODUCT USER FEE COLLECTIONS BY FEE SOURCE  
AS OF SEPTEMBER 30, 2017**

<b>Fees Collected</b>	<b>FY 2016</b>	<b>FY 2017</b>
BPD Fees	\$16,381,980	\$15,897,180
Application Fees	\$5,206,733	\$14,416,810
Establishment Fees	\$1,170,400	\$1,024,400
Product Fees	\$572,250	\$293,250
<b>Total Collections</b>	<b>\$23,331,363</b>	<b>\$31,631,640</b>
<b>Fees Receivable</b>	<b>FY 2016</b>	<b>FY 2017</b>
BPD Fees Receivable	\$0	\$611,430
Application Fees Receivable	\$0	\$0
Establishment Fees Receivable	\$0	\$0
Product Fees Receivable	\$0	\$0
<b>Total Receivables</b>	<b>\$0</b>	<b>\$611,430</b>

Numbers have been rounded to the nearest dollar.

## **References**

Balances carried over from year to year are described in section 3.3 - Carryover Balances.

A table of BsUFA fee rates is provided in section 4.2 - Appendix B.

## 3.2 – User Fee Obligations

### Introduction

BsUFA fees may be expended only for costs necessary to support the “process for the review of biosimilar biological product applications,” as defined in BsUFA. For ease of reading, the “process for the review of biosimilar biological product applications” is referred to as the “BsUFA program” in this report. For more information on the allowable and excluded costs, see section 4.3 - Appendix C.

Fluctuations in object class obligations are due to variations in programmatic operations from year to year. As a result, increases or decreases in specific categories do not necessarily indicate growth or reductions in the overall BsUFA program.

### Data

Table 2 provides a breakdown of user fee obligations by expense category during the past 2 fiscal years. In FY 2017, FDA obligated \$32,717,670 in biosimilar biological product user fees to support the BsUFA program.

**TABLE 2: BIOSIMILAR BIOLOGICAL PRODUCT USER FEE OBLIGATIONS  
BY OBJECT CLASS EXPENSE CATEGORY BREAKDOWN  
AS OF SEPTEMBER 30, 2016 AND 2017**

<b>Object Class Expense Category</b>	<b>FY 2016</b>	<b>FY 2017</b>
<b>Personnel Compensation Benefits</b>		
Full-time permanent	\$5,713,736	\$9,591,535
Other than full-time permanent	\$466,521	\$2,582,484
Other personnel compensation	\$194,469	\$1,176,017
Military personnel	\$175,636	\$710,657
Special personnel services payments	\$688	\$4,913
Civilian personnel benefits	\$1,612,098	\$4,204,015
Military personnel benefits	\$105,609	\$370,412
Benefits former personnel	\$0	\$0
<b>Total Personnel Compensation and Benefits</b>	<b>\$8,268,757</b>	<b>\$18,640,033</b>
<b>Non-Pay Costs</b>		
Travel & transportation of persons	\$65,803	\$343,487
Transportation of things	\$0	\$0
Rent payments to the General Services Administration (GSA)	\$0	\$461,000
Rent payments to others	\$360	\$0
Communications, utilities, & miscellaneous	\$0	\$8,100

<b>Object Class Expense Category</b>	<b>FY 2016</b>	<b>FY 2017</b>
Printing & reproduction	\$0	\$40,402
<b>Other contractual services:</b>		
Consulting services	\$195,859	\$552,880
Other services	\$1,750,880	\$4,476,651
Purchases of goods & services from Government accounts	\$1,567,653	\$4,489,646
Operations & maintenance of facilities	\$0	\$50,000
Research & development contracts	\$0	\$0
Operations & maintenance of equipment	\$83,616	\$501,138
Subsistence & support of persons	\$0	\$0
Supplies & materials	\$790,242	\$1,565,638
Equipment	\$492,846	\$1,448,695
Land & structure	\$0	\$0
Grants, subsidies, & contributions	\$0	\$140,000
Insurance claims & indemnities	\$0	\$0
Interest account	\$0	\$0
Receivables – collected	\$0	<b>\$0</b>
<b>Total Non-Pay Costs</b>	<b>\$4,947,257</b>	<b>\$14,077,637</b>
<b>Total Obligations</b>	<b>\$13,216,014</b>	<b>\$32,717,670</b>

Numbers have been rounded to the nearest dollar.

## References

Additional information on BsUFA program costs can be found in section 3.5 – Total BsUFA Program Costs.

### 3.3 – Carryover Balances

#### Introduction

BsUFA user fees collected, appropriated, and not obligated at the end of a fiscal year remain available to FDA in future fiscal years. These funds are referred to as carryover balances. The operations in FY 2017 resulted in a net decrease of the carryover balance of \$3,838,303—from \$52,561,611 to \$48,723,308.

Table 3 reflects the amount of fees collected net of any refunds or other adjustments that occurred during each fiscal year for all cohort years combined, and the amount obligated during the fiscal year. The numbers do not include any accounts receivable. Therefore, the numbers for FY 2016 and FY 2017 may differ from the numbers in Table 1 in section 3.1 – User Fee Collections, which reflect the total net collections for the cohort years only.

Obligations in Table 3 include any recoveries and deobligations from prior years, which may cause differences from Tables 2 and 6. In FY 2017, FDA recovered \$39,497 in BsUFA deobligations.

#### Data

Table 3 captures FDA’s carryover balances since the enactment of BsUFA in FY 2013.

**TABLE 3: BIOSIMILAR BIOLOGICAL PRODUCT USER FEE COLLECTIONS, OBLIGATIONS, AND CARRYOVER BALANCES BY FISCAL YEAR**

Program	Fiscal Years	Beginning Carryover	Net Collection	Obligations	Year-End Carryover
BsUFA	2013	\$0	\$6,464,085	\$0	\$6,464,085
	2014	\$6,464,085	\$14,141,179	\$2,317,402	\$18,287,862
	2015	\$18,287,862	\$22,843,508	\$2,266,797	\$38,864,573
	2016	\$38,864,573	\$26,913,052	\$13,216,014	\$52,561,611
	2017	\$52,561,611	\$28,839,871	\$32,678,174	\$48,723,308

Numbers have been rounded to the nearest dollar

### 3.4 – Reserves and Balance Available for Allocation

#### Introduction

BsUFA's carryover balance in FY 2017 is \$48,723,308. There are anticipated claims on this balance that are described below. After subtracting these claims, FDA's total remaining carryover balance is \$48,223,308.

#### Data

Table 4 provides a summary of carryover balances as of September 30, 2017, and anticipated claims on those balances.

**TABLE 4: SUMMARY STATEMENT OF BIOSIMILAR BIOLOGICAL PRODUCT USER FEE CARRYOVER BALANCE AS OF SEPTEMBER 30, 2017**

Status of Carryover Funds	Amount	Notes
Total Carryover Balance	\$48,723,308	
Reserve for Refunds	(\$500,000)	A
<b>Remaining Carryover Balance</b>	<b>\$48,223,308</b>	

Numbers have been rounded to the nearest dollar.

#### Notes

- A. Prudent operations require that a reserve be kept aside for potential refunds. For that purpose, a total of \$500,000 is being set aside.

### 3.5 – Total BsUFA Program Costs

#### Introduction

There are four organizations that support the BsUFA program: Center for Drug Evaluation and Research (CDER), Center for Biologics Evaluation and Research (CBER), Office of Regulatory Affairs (ORA), and FDA Headquarters (HQ). The BsUFA program is supported by both user fee and non-user fee appropriations.

#### Data

Table 5 shows the full cost of the BsUFA program (user fees and non-user fee appropriations) during the past 5 fiscal years by FDA organizational components (CDER, CBER, ORA, and HQ). The percentages spent in the various FDA components have remained essentially stable over time, with CDER at approximately 88 percent, CBER at approximately 1 percent, ORA at approximately 4 percent, and HQ at approximately 7 percent.

**TABLE 5: BSUFA PROGRAM – HISTORICAL TREND OF TOTAL COSTS BY ORGANIZATION  
AS OF SEPTEMBER 30 OF EACH FISCAL YEAR**

Fiscal Year	Total Spent	Spent by CDER	CDER %	Spent by CBER	CBER %	Spent by ORA	ORA %	Spent by HQ	HQ %
2013	\$28,040,547	\$24,759,346	88%	\$1,097,336	4%	\$0	0%	\$2,183,865	8%
2014	\$23,391,649	\$21,087,708	90%	\$490,174	2%	\$0	0%	\$1,813,767	8%
2015	\$34,817,217	\$30,604,475	88%	\$39,841	0%	\$1,136,046	3%	\$3,036,855	9%
2016	\$45,569,430	\$40,284,316	88%	\$203,767	1%	\$1,516,990	3%	\$3,564,356	8%
2017	\$55,814,043	\$48,863,293	88%	\$155,952	1%	\$2,629,013	4%	\$4,165,785	7%

Numbers have been rounded to the nearest dollar

Table 6 provides the total amount spent on the BsUFA program for the last 5 fiscal years as well as the dollar amount and percentage derived from fees and non-user fee appropriations. As expected, the percentage derived from user fees has risen over time.

**TABLE 6: BSUFA PROGRAM – HISTORICAL TREND OF TOTAL COSTS BY FUNDING SOURCE  
AS OF SEPTEMBER 30 OF EACH FISCAL YEAR**

Fiscal Year	Total Spent	Spent from Appropriations	Appropriations Percent	Spent from BsUFA Fees	BsUFA Fee Percent
2013	\$28,040,547	\$28,040,547	100%	\$0	0%
2014	\$23,391,649	\$21,074,247	90%	\$2,317,402	10%
2015	\$34,817,217	\$32,550,420	93%	\$2,266,797	7%
2016	\$45,569,430	\$32,353,416	71%	\$13,216,014	29%
2017	\$55,814,043	\$23,096,373	41%	\$32,717,670	59%

Numbers have been rounded to the nearest dollar.

## References

An expense category breakout of the FY 2016 and FY 2017 dollar amounts spent from BsUFA fees is provided in Table 2 in section 3.2 – User Fee Obligations.

The development of the costs associated with the BsUFA program is described in more detail in section 4.4 – Appendix D.

### 3.6 – Full-Time Equivalent

#### Introduction

Full Time Equivalent (FTE) is a measure of a paid staff year devoted to the BsUFA program. In this table, an FTE does not represent an accounting of individual people, but rather an estimate of labor hours expended on BsUFA activities on an FTE basis.

#### Data

Table 7 presents total FTE levels that support the BsUFA program by FDA organizational components (CDER, CBER, ORA, and HQ) for the last 5 fiscal years, paid from both user fee and non-user fee appropriations. Staff in the consolidated shared services organizations (facilities, procurement, information technology (IT) services, etc.) are included in the FTE levels for the various components.

**TABLE 7: HISTORICAL TREND OF TOTAL FTEs UTILIZED BY ORGANIZATION  
AS OF SEPTEMBER 30 OF EACH FISCAL YEAR**

Fiscal Year	CDER	CBER	ORA	HQ	Total
2013	87	4	0	7	98
2014	70	1	0	7	78
2015	137	0	5	11	153
2016	155	1	5	13	174
2017	173	1	11	14	199

Numbers have been rounded to the nearest full FTE

#### References

The development of the costs associated with the BsUFA program is described in more detail in section 4.4 – Appendix D.

## **4: APPENDICES**

### **4.1 – Appendix A: Conditions for Assessment and Use of Fees**

#### **Introduction**

The FD&C Act, as amended by BsUFA, specifies two legal conditions that must be met each fiscal year for FDA to collect and spend biosimilar biological product user fees. This appendix provides detailed descriptions of these conditions and explanations of how FDA met these conditions in FY 2017. A summary of the legal conditions is provided in section 2 – Legal Conditions.

#### **Adjustment Factor**

To determine whether the legal conditions are satisfied, FDA must calculate and incorporate adjustment factors in the assessment of the second condition. The term “adjustment factor” is defined for purposes of BsUFA I as follows:<sup>2</sup>

The term ‘adjustment factor’ applicable to a fiscal year that is the Consumer Price Index for all urban consumers (Washington-Baltimore, DC-MD-VA-WV; Not Seasonally Adjusted; All items) of the preceding fiscal year divided by such Index for September 2011.

The Consumer Price Index (CPI) for September 2016, the September of the fiscal year preceding FY 2017, was 157.572. The CPI for September 2011 was 147.658. Dividing the CPI of September 2016 by the CPI of September 2011 yields an adjustment factor of 1.067142 (rounded to the sixth decimal place) for FY 2017.

#### **Legal Condition 1**

The first legal condition, provided in section 744H(e)(2)(A) of the FD&C Act, as amended by BsUFA and prior to reauthorization of BsUFA in 2017, states:

Subject to subparagraphs (C) and (D), the fees authorized by this section shall be collected and available in each fiscal year in an amount not to exceed the amount specified in appropriation Acts, or otherwise made available for obligation for such fiscal year.

The Consolidated Appropriations Act, 2017 (Public Law 115-31), which the President signed on May 5, 2017, made appropriations for FDA salaries and expenses, through September 30, 2017. It specified that \$22,079,000 shall be derived from BsUFA fees, and that BsUFA fees collected in excess of this amount are also appropriated for FDA. Therefore, the first legal condition was satisfied.

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<sup>2</sup> See section 744G(1) of the FD&C Act, as amended by BsUFA and prior to reauthorization of BsUFA in 2017.

## Legal Condition 2

The second legal condition, provided in section 744H(e)(2)(B) of the FD&C Act, as amended by BsUFA and prior to reauthorization of BsUFA in 2017, states:

The fees authorized by this section shall be available for a fiscal year beginning after fiscal year 2012 to defray the costs of the process for the review of biosimilar biological product applications (including such costs for an additional number of full-time equivalent positions in the Department of Health and Human Services to be engaged in such process), only if the Secretary allocates for such purpose an amount for such fiscal year (excluding amounts from fees collected under this section) no less than \$20,000,000 multiplied by the adjustment factor applicable to the fiscal year involved.

The second legal condition requires FDA to allocate a minimum of \$20,000,000 in non-user fee appropriations, multiplied by the adjustment factor applicable to that fiscal year (1.067142 in FY 2017), for the costs of the BsUFA program.

In FY 2017, FDA obligations from appropriations (excluding user fees) for the BsUFA program were \$23,096,373, which exceeded the required minimum of \$21,342,840 by \$1,753,533. Therefore, the second legal condition was satisfied, and the full amount of fees collected for FY 2017 will be retained for FDA to spend in subsequent fiscal years on the BsUFA program.

## 4.2 – Appendix B: Fees and Waivers

### BsUFA Fee History

BsUFA I established the following fee types and directs FDA to set the BsUFA fee rates for each fiscal year – (1) the initial and annual BPD fee rates for a fiscal year are equal to 10 percent of the fee rate established under PDUFA for an application requiring clinical data for that fiscal year; (2) the BPD reactivation fee is equal to 20 percent of the fee rate established under PDUFA for an application requiring clinical data for that fiscal year; and (3) the application,<sup>3</sup> establishment, and product fee rates under BsUFA are equal to the application, establishment, and product fee rates under PDUFA, respectively. BsUFA II implemented updates to the fee structure beginning in FY 2018.

Table 8 shows the user fee rates that FDA published for the past 5 fiscal years.

**TABLE 8: TRENDS IN BPD, APPLICATION, ESTABLISHMENTS, AND PRODUCT FEES<sup>4</sup>**

Fiscal Year	Initial and Annual BPD Fees	Reactivation BPD Fees	Establishment Fees	Product Fees	Application - Requiring Clinical Data - Fees	Supplement - Requiring Clinical Data - Fees	Notes
2013	\$195,880	\$391,760	\$526,500	\$98,380	\$1,958,800	\$979,400	
2014	\$216,910	\$433,820	\$554,600	\$104,060	\$2,169,100	\$1,084,550	
2015	\$233,520	\$467,040	\$569,200	\$110,370	\$2,335,200	\$1,167,600	
2016	\$237,420	\$474,840	\$585,200	\$114,450	\$2,374,200	\$1,187,100	
2017	\$203,810	\$407,620	\$512,200	\$97,750	\$2,038,100	\$1,019,050	A

Application fees can differ in each instance due to previously paid BPD fees subtracted from the application fee rate.

### Notes

- A. Fee rate decrease was a result of the \$124,065,726 offset taken in FY 2017 for PDUFA; BsUFA II fees will not reference PDUFA.

### BsUFA Program Waivers

BsUFA provides for a waiver of the application fee for the first biosimilar biological product application submitted by a small business or its affiliate. For purposes of this waiver provision, the term “small business” means an entity that has fewer than 500 employees, including employees of affiliates, and does not have a drug product that has been approved under a human drug application (as defined in section 735 of the FD&C Act) or a biosimilar biological

<sup>3</sup> Under section 744H(a)(2)(A) of the FD&C Act, as amended by BsUFA and prior to reauthorization of BsUFA in 2017, if a sponsor that submits a biosimilar biological product application has previously paid an initial BPD fee, annual BPD fees, and/or reactivation fees for the product that is the subject of the application, the fee for the application is reduced by the cumulative amount of these previously paid fees.

<sup>4</sup> FDA published FY 2017 biosimilar biological product user fee rates on July 28, 2016, in the Federal Register (<https://www.gpo.gov/fdsys/pkg/FR-2016-07-28/pdf/2016-17800.pdf>).

product application (as defined in section 744G(4)) and introduced or delivered for introduction into interstate commerce. See section 744H(c) of the FD&C Act, as amended by BsUFA and prior to reauthorization of BsUFA in 2017. In FY 2017, FDA did not grant any small business waivers for BsUFA fees.

## **4.3 – Appendix C: Allowable and Excluded Costs for the BsUFA Program**

### **Introduction**

Section 744G of the FD&C Act, as amended by BsUFA, defines the term “process for the review of biosimilar biological product applications” and the costs that may be included in that process, collectively referred to as the BsUFA program in this document. Fees may only be spent for activities that are included in this definition, although fee-generating activities are only a small subset of the activities that are included in this definition. FDA identifies those activities that are applicable to the BsUFA program in this appendix. In Appendix D, FDA describes how the costs for the BsUFA program are developed, based on the allowable activities identified below.

### **BsUFA Program Costs**

#### **Included Activities**

Section 744G(13) of the FD&C Act defines the term “process for the review of biosimilar biological product applications” to mean the following activities of FDA with respect to the review of submissions in connection with biosimilar biological product development, biosimilar biological product applications, and supplements:

- A. The activities necessary for the review of submissions in connection with biosimilar biological product development, biosimilar biological product applications, and supplements.
- B. Actions related to submissions in connection with biosimilar biological product development, the issuance of action letters which approve biosimilar biological product applications or which set forth in detail the specific deficiencies in such applications, and where appropriate, the actions necessary to place such applications in condition for approval.
- C. The inspection of biosimilar biological product establishments and other facilities undertaken as part of FDA’s review of pending biosimilar biological product applications and supplements.
- D. Activities necessary for the release of lots of biosimilar biological products under section 351(k) of the Public Health Service Act.
- E. Monitoring of research conducted in connection with the review of biosimilar biological product applications.
- F. Postmarket safety activities with respect to biologics approved under biosimilar biological product applications or supplements, including the following activities:
  - i. Collecting, developing, and reviewing safety information on biosimilar biological products, including adverse-event reports.
  - ii. Developing and using improved adverse-event data-collection systems, including IT systems.

- iii. Developing and using improved analytical tools to assess potential safety problems, including access to external databases.
- iv. Implementing and enforcing section 505(o) of the FD&C Act (relating to post-approval studies and clinical trials and labeling changes) and section 505(p) of the FD&C Act (relating to risk evaluation and mitigation strategies).
- v. Carrying out section 505(k)(5) of the FD&C Act (relating to adverse-event reports and postmarket safety activities).

All costs represented by the above activities are collectively referred to in this report as costs for “the process for the review of biosimilar biological product applications.”

Section 744G(9) of the FD&C Act defines the term “costs of resources allocated for the process for the review of biosimilar biological product applications” as the expenses in connection with the BsUFA program for:

- A. Officers and employees of FDA, contractors of FDA, advisory committees, and the costs related to such officers, employees, and committees, and to contracts with such contractors;
- B. Management of information and the acquisition, maintenance, and repair of computer resources;
- C. Leasing, maintenance, renovation, and repair of facilities and acquisition, maintenance and repair of fixtures, furniture, scientific equipment, and other necessary materials and supplies; and
- D. Collecting fees under section 744H and accounting for resources allocated for the review of submissions in connection with biosimilar biological product development, biosimilar biological product applications, and supplements.

### **Excluded Activities**

The following types of products are not subject to BsUFA fees, and FDA excludes from the BsUFA program activities in connection with the following types of applications for licensure under section 351(k) of the Public Health Service Act:

- Applications that cite as the reference product a product approved before September 1, 1992, that is either a bovine blood product for topical application or a large-volume parenteral drug;
- Allergenic extract products;
- Whole blood or a blood component for transfusion;
- In vitro diagnostic biological products; and
- A biological product for further manufacturing use only.

## **Excluded Process Activities**

BsUFA fees may not be spent on the following types of activities:

- Enforcement policy development not related to sections 505(o) and (p) of the FD&C Act;
- Post-approval compliance activities not related to the enforcement of sections 505(o) and (p) of the FD&C Act;
- Advertising review activities once marketing of the product has begun;
- Inspections unrelated to the review of covered applications, unless undertaken for the enforcement of sections 505(o) and (p) of the FD&C Act; and
- Research unrelated to the BsUFA program.

## 4.4 – Appendix D: Development of Costs for the BsUFA Program

### General Methodology

The costs associated with the BsUFA program are based on obligations attributed to CDER, CBER, ORA, and HQ. These organizations correspond to the cost categories presented as follows:

Cost Category	FDA Organization
Costs for the review of biosimilar biological product applications and supplements (including costs in connection with FDA's BPD program)	CDER and CBER
Field Inspection and Investigation Costs	ORA
Agency General and Administrative Costs	HQ

The costs for each component are shown in Table 5. They were derived using time-reporting systems in CDER, CBER, and ORA, and were calculated for HQ as described in more detail in this appendix. Using the definitions of costs and activities included in the BsUFA program, as explained in Appendix C, the cost categories within each organization listed above were identified as parts of the biosimilar biological product application review process.

### Center Costs

Costs of the BsUFA program are tracked for each organizational component in CDER and CBER, usually at the division level. Most FDA components involved in the BsUFA program perform a mixture of activities—some within the scope of the BsUFA program, and some not. FDA groups its organizational components into three categories:

- direct review and laboratory,
- indirect review and support, and
- Center-wide costs.

The allocation of costs for each category is discussed below.

### Direct Review and Laboratory

Employees in all components of CDER and CBER, other than those noted below as Center indirect review and support components, are required to report their time for a total of 8 weeks (2 weeks per quarter) each fiscal year in activity-based time reporting systems. The activities in the systems allow identification of the nature of the activity, so that time reported can be separated into allowable and excluded activities as defined by BsUFA. The average percentage of time reported on the BsUFA program in CDER and CBER is applied to all costs incurred for the entire fiscal year in those Centers. This method provides an estimate of each Center's costs incurred while conducting the BsUFA program in FY 2017.

## **Indirect Review and Support**

Indirect review and support components provide the infrastructure for the review process. In CDER, these components include portions of the Office of the Center Director, the Office of Strategic Programs, the Office of Management, the Office of Communications, and the Office of Executive Programs. In CBER, these components include portions of the Office of the Center Director, Office of Management, and the Office of Communications, Outreach, and Development. Most employees of these components do not report their time.

FDA assumes the time of management and administrative personnel supporting the BsUFA program is equivalent to the proportion of time Center employees in direct review and laboratory components spend on the BsUFA program. Thus, the average percentage of time expended on BsUFA program activities for all direct review and laboratory components in FY 2017 was applied to all costs incurred for the entire fiscal year by the indirect review and support components.

## **Center-Wide Costs**

A number of Center-wide and Agency-wide expenses are paid from the central accounts of the Center or of FDA rather than from funds allocated to a specific Center, division, or office within the Center. These costs include rent, telecommunications and utility costs, some computer equipment and support costs, and costs of the Office of Shared Services, which supports all FDA programs and activities. A percentage of these Center and FDA-wide costs are chargeable to the BsUFA program. That percentage is either a specific amount that is supported by independent documentation or is the amount of time reported for allowable activities (direct and indirect) in the Center, as a percentage of total time reported for all Center direct and indirect activities.

As in prior years, resources expended in FY 2017 by the Office of Shared Services to support the BsUFA program are reported as if they were incurred in CDER, CBER, ORA, or HQ.

## **Field Inspection and Investigation Costs**

ORA incurs all field inspection, investigation, and laboratory analyses costs. ORA costs are incurred in both district offices (the “field”) and headquarters offices, which are tracked in the Field Accomplishment and Compliance Tracking System (FACTS). FACTS is a time and activity tracking system that captures time spent in a variety of categories, including inspections of manufacturing facilities, investigations of clinical studies, and analytical testing of samples, which are all part of the BsUFA program.

Table 9 summarizes the calculation of ORA costs for the BsUFA program for FY 2016 and FY 2017.

Total direct hours reported in FACTS are used to calculate the total number of FTEs required by ORA to perform these activities. In addition to the direct time, an allocation of support time is also included to represent the work done by ORA administrative and management personnel.

The Agency multiplies the total number of FTEs used in the BsUFA program by the average salary and benefits cost in ORA to arrive at ORA salary and benefits costs for work that is within the scope of the BsUFA program.

The Agency then allocates ORA obligations for operations and other costs to the BsUFA program based upon the ratio of user fees related FTEs to total ORA FTEs.

ORA costs for the BsUFA program described below include costs paid from non-user fee appropriations and costs paid from fee revenues.

**TABLE 9: ORA COSTS OF THE BSUFA PROGRAM  
AS OF SEPTEMBER 30, 2016 AND 2017**

<b>Cost Component</b>	<b>FY 2016</b>	<b>FY 2017</b>
FTE Utilized	5	10
ORA Average Salary and Benefits	\$124,404	\$128,889
Total Salary and Benefits	\$622,020	\$1,340,446
Operating and Other Costs <sup>5</sup>	\$894,970	\$1,288,567
<b>Total</b>	<b>\$1,516,990</b>	<b>\$2,629,013</b>

Numbers have been rounded to the nearest dollar

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<sup>5</sup> Other costs are central, GSA, rent, rent-related and shared services costs that are applicable to the BsUFA program.

## Agency General and Administrative Costs

The Agency general and administrative costs include all costs incurred in FDA's HQ that are attributable to the Office of the Commissioner and all other FDA headquarters components that are not Centers or ORA. For the purpose of these calculations, HQ is considered to comprise the following offices:

- Immediate Office of the Commissioner
- Office of the Counselor to the Commissioner
- Office of Policy, Planning, Legislation, and Analysis
- Office of External Affairs
- Office of the Executive Secretariat
- Office of the Chief Counsel
- Office of Minority Health
- Office of Women's Health
- Office of the Chief Scientist (excluding the National Center for Toxicological Research)
- Office of Operations
- Office of Foods and Veterinary Medicine (excluding the Center for Food Safety and Applied Nutrition and the Center for Veterinary Medicine)
- Office of Medical Products and Tobacco (excluding CDER, CBER, the Center for Devices and Radiological Health, and the Center for Tobacco Products)
- Office of Global Regulatory Operations and Policy (excluding ORA)
- Office of Laboratory Science and Safety

In summary, the HQ costs include all of FDA except for the six product-oriented Centers, ORA, and the National Center for Toxicological Research.

The HQ costs applicable to the BsUFA program were calculated using a method prescribed by the Division of Cost Determination Management, Office of Finance, Office of the Secretary, Department of Health and Human Services. The method uses the percentage derived by dividing total HQ costs by the total FDA salary expenses (excluding benefits) after subtracting the salary expense (excluding benefits) from HQ. That percentage is then multiplied by the total salaries (excluding benefits) applicable to the BsUFA program in CDER, CBER, and ORA to derive the applicable Agency general and administrative costs.

Using this methodology, FDA dedicated \$4,165,785 in general and administrative costs to the BsUFA program in FY 2017. The costs are total costs obligated from user fee and non-user fee appropriations and are approximately 7 percent of the FY 2017 BsUFA program costs.