



Answers to Questions for the Record Following a Hearing on the Nuclear Waste Fund Conducted by the Subcommittee on Environment and the Economy of the House Committee on Energy and Commerce

On December 3, 2015, the Subcommittee on Environment and the Economy of the House Committee on Energy and Commerce convened a hearing at which Kim Cawley, Chief of the Congressional Budget Office's Natural and Physical Resources Cost Estimates Unit, testified about the federal government's responsibilities and liabilities under the Nuclear Waste Policy Act. After the hearing, Chairman Shimkus and Congressman Murphy submitted questions for the record. This document provides CBO's answers.

Chairman Shimkus

Question. When the Department of Energy instituted the Nuclear Waste fee in the 1980s, it had to account for the cost to dispose of spent nuclear fuel generated prior to the passage of the Nuclear Waste Policy Act (NWPA). They did this by providing utilities the option to pay a onetime fee up front or defer payment. What is the current projected value of this onetime fee that has yet to be collected? How does CBO account for this outstanding fee using its cash basis scoring rules?

Answer. According to the Department of Energy (DOE), as of December 2015, the value of outstanding fees was \$2.8 billion—\$800 million in principal and \$2 billion in interest.¹

The NWPA established onetime fees to cover the costs of disposing of waste that was generated before the law was enacted. DOE provided utilities with options for paying that onetime charge, including the option to defer payment (in which case interest accrues on the outstanding fee). As of October 1, 2015, receipts from the onetime fees that remained unpaid and would become due once the agency began to remove waste amounted to about \$3.1 billion, DOE estimated.² (That estimate reflects DOE's assessment of amounts due under the specific terms of contracts with individual utilities; CBO did not calculate its own estimate.) In November 2015, one utility made a payment totaling \$309 million, lowering the outstanding

1. Information provided to the Congressional Budget Office by the Department of Energy in January 2016.
2. Department of Energy, *Fiscal Year 2015 Agency Financial Report*, DOE/CF-0144 (November 2015), <http://go.usa.gov/cjftY> (PDF, 5.31 MB).

balance.³ According to DOE, the current balance represents outstanding fees associated with 24 nuclear reactors owned by six different utilities. Interest accrues on the balances due from those onetime fees until the utilities pay them to the government; therefore, when the fees are paid, the amounts deposited will probably be significantly greater than the current balances due.

CBO's baseline projections for the 2016–2026 period do not include any further payments of onetime fees because CBO does not anticipate that the six utilities will pay them in the next 10 years. The federal budget records receipts from the onetime fees at the time they are collected. Although individual utilities can elect to pay them at any time, CBO does not expect most utilities to pay them until DOE begins to remove waste, and it does not expect DOE to start that process during the 10-year period covered by CBO's baseline projections. Under the NWPA, spending for the permanent geological disposal of nuclear waste is discretionary—that is, it is subject to annual appropriation acts—and lawmakers have not provided any new funding for such disposal since 2010. Even if the Congress provided such funding, CBO estimates that it would take DOE at least 10 years to complete the facilities necessary to enable it to begin to accept waste.

Congressman Murphy

Question. Mr. Cawley, will you please describe how CBO treats the \$1.1 billion in “interest” that is accounted for in DOE's audit of the Nuclear Waste Fund which was released on December 3? Does that “interest” actually increase the federal government's resources to fulfill the obligations of the NWPA?

Answer. The Nuclear Waste Fund is an accounting mechanism in the federal budget that records the cash flows associated with the civilian nuclear waste program. The NWPA authorizes the Secretary of the Treasury to invest unspent balances of the fund in nonmarketable Treasury securities. According to DOE, nearly \$1.4 billion in intragovernmental interest was credited to the fund in fiscal year 2015, bringing the fund's unspent balance to \$34.3 billion.⁴ In 2016, CBO estimates, an additional \$1.5 billion in interest earnings will be credited to the fund, bringing the fund's end-of-year balance to \$35.8 billion. Those interest payments are recorded in the budget (and in CBO's projections) as outlays of the Treasury and as receipts to the Nuclear Waste Fund; they therefore have no net effect on the budget.

Because the interest earnings attributable to such investments are intragovernmental transfers, they do not generate additional resources to fulfill the government's obligations under the NWPA. However, such amounts add to the sums that the NWPA authorizes to be appropriated for the civilian waste disposal program.

3. Information provided to the Congressional Budget Office by the Department of Energy in January 2016. See also Bureau of the Fiscal Service, Department of the Treasury, *Monthly Treasury Statement of Receipts and Outlays of the United States Government for Fiscal Year 2016 Through November 30, 2015, and Other Periods* (January 2016), <http://go.usa.gov/cEx3e> (PDF, 612 KB).

4. Department of Energy, Office of Inspector General, Office of Audits and Inspections, *Department of Energy Nuclear Waste Fund's Fiscal Year 2015 Financial Statement Audit*, Audit Report OAI-FS-16-03 (December 2015), <http://go.usa.gov/cEx5G>.

Question. How does the Congressional Budget Office treat the Judgment Fund in the context of the federal budget?

Answer. CBO's baseline projections for mandatory spending reflect the agency's best estimate of anticipated spending from the Judgment Fund over the next 10 years. For a given year, CBO generally assumes that overall spending from the fund will remain in line with the average amount of spending recorded in recent years. Currently, CBO projects such spending will total about \$30 billion over the next 10 years, including about \$5 billion in spending related to DOE's contractual liabilities to nuclear utilities.

The Judgment Fund is a permanent, indefinite appropriation from the Treasury that is available to pay claims and final judgments against the United States that cannot legally be paid from any other existing appropriation. The fund has no fiscal year limitations, and there is no need for the Congress to appropriate money to replenish it. The fund provides the authority for the government to pay for most court judgments and settlement agreements entered into by the Department of Justice to resolve actual or imminent lawsuits against the federal government—including those related to DOE's partial breach of its contractual obligations to permanently dispose of civilian nuclear waste.

Because spending from the Judgment Fund is governed by permanent authorizing law and is not contingent on annual appropriation acts, it is classified as mandatory (or direct) spending in the federal budget. Annual spending from the fund adds to overall budget deficits. Generally, agencies are not required to reimburse the Judgment Fund for payments made on their behalf unless the Congress appropriates money specifically for that purpose. Over the past five years, spending from the fund has averaged about \$3 billion annually, ranging from about \$1 billion in 2010 to \$5.5 billion in 2013.

