FDA User Fee Act Reauthorization

Center Forward Basics
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Overview

The Food and Drug Administration (FDA) User Fee Acts (UFAs) and their reauthorizations have been crucial in ensuring that Americans have faster access to life-saving medications. First passed by Congress in 1992, these user fees have ensured that the FDA has the resources it needs to complete the review process for human drug and biological products in a timely manner. These UFAs have consistently been reauthorized every five years by Congress and have typically garnered strong bipartisan support.

This basic will provide an overview of the UFAs, including the Prescription Drug User Fee Act (PDUFA), the Generic Drug User Fee Act (GDUFA), the Biosimilar User Fee Act (BsUFA), the Medical Device User Fee and Modernization Act (MDUFA), as well as the current legislative outlook for the reauthorization process this year before they are set to expire in September 2022.

The FDA User Fee Acts Background

The AIDS and HIV epidemic during the 1980's drew criticism of the FDA's slow approval of AIDS treatments and led to critical changes in the drug review process. AIDS activists gathered outside of the FDA headquarters to draw attention to the public health crisis and the need for more rapid drug development and approval. Their efforts helped spur the FDA to prioritize AIDS medication through expedited approvals, which required greater funding and resources that later led to the creation of the UFAs.

In 1992, Congress passed PDUFA, which authorized the FDA to collect fees from biopharmaceutical companies which develop prescription drugs and biological products. These fees supplement the funds appropriated to the FDA to accelerate the review of New Drug Applications (NDAs) and Biologics License Applications (BLAs). Prior to the PDUFAs passage, it would often take the FDA more than two years to review new medicines.[1] The current review timeline for standard applications requires the FDA to review 90 percent of applications within ten months and for priority applications, 90 percent of applications within six months.[2] Since its enactment, PDUFA has been reauthorized six times and is in the process of being reauthorized by Congress for the seventh.

Following the initial enactment and second reauthorization of PDUFA, Congress enacted MDUFA. Ten years later, Congress passed two additional user fee programs, including GDUFA and BsUFA in 2012 as part of the FDA Safety and Innovation Act. Like PDUFA, the fees collected by the FDA from companies producing generic, biosimilar, and medical device products help ensure the FDA has the necessary resources to review the applications in a timely way. MDUFA has been reauthorized four times and is in the process of being reauthorized by Congress for a fifth. Both the GDUFA and BsUFA have been reauthorized twice and are in the process of being reauthorized by Congress for the third time.

Center Forward Basics

Center Forward brings together members of Congress, not-for profits, academic experts, trade associations, corporations and unions to find common ground. Our mission: to give centrist allies the information they need to craft common sense solutions, and provide those allies the support they need to turn those ideas into results.

In order to meet our challenges we need to put aside the partisan bickering that has gridlocked Washington and come together to find common sense solutions.

For more information, please visit www.center-forward.org

A full glossary of common health care terms can be found HERE.

[1] FDA: 1995 PDUFA Performance Report
[2] FDA: PDUFA Reauthorization Performance Goals FY 2018-2022

The FDA UFA Reauthorization Process

The user fee reauthorization process begins with the FDA holding public meetings on the user fee programs. Following these meetings, the FDA and leaders from industry negotiate the terms of the UFAs, including proposed user fees and certain performance benchmarks that the FDA will need to meet. These benchmarks typically include new initiatives to better facilitate FDA review, modify practices and programs, and other proposals.

For the PDUFA, GDUFA, and BsUFA reauthorizations, industry meets with the FDA's Center for Drug Evaluation and Research (CDER). For the MDUFA reauthorization, industry meets with the FDA's Center for Devices and Radiological Health (CDRH). The Center for Biologics Evaluation and Research (CBER) at the FDA is also involved in the negotiations on biologics and certain devices. Once negotiations between the industry and the FDA are finalized, they are released by the FDA for public comment. Once the public comment period closes, and the agreements between the FDA and the industry are finalized, they are then submitted to Congress.

The most recent user fee reauthorizations, including PDUFA VI, MDUFA IV, GDUFA II, and BsUFA II were reauthorized by Congress as part of the FDA Reauthorization Act of 2017 for five years and are set to expire on September 30, 2022. The current performance goal commitment letters for PDUFA VII, GDUFA III, and BsUFA III, which outline the final negotiated agreement between FDA and industry, were sent to Congress in early January 2022. The reauthorization of these UFAs would cover fiscal years (FY) 2023 through 2027.

PDUFA VII

The PDUFA VII performance goal letter outlines several new proposals, program enhancements, and hiring changes.

Under current law, FDA requires companies to conduct post-marketing studies following FDA approval to ensure drug safety. PDUFA VII would require FDA to expedite communications about their requirements, including study purpose, study design, timelines for review, and any specific details on risk.

The letter also calls for FDA to create a rare disease endpoint advancement (RDEA) pilot program. It is often difficult for rare disease drug developers to know which endpoints will show efficacy in treating a rare disease. This pilot program would offer additional engagement opportunities between the rare disease sponsors and the FDA to facilitate the development of new endpoints which would better measure efficacy and would address the challenges of clinical trial designs in smaller patient populations.

PDUFA VII calls for increased user fee funds to boost staffing at CBER to enhance the review of cell and gene therapy products. With an increase of cell and gene therapy development expected in coming years, PDUFA VII will help prepare FDA to quickly review and approve these therapies.

Under PDUFA VII, the FDA would also expand the Split Real-Time Application Review (STAR) program, currently available for oncology therapeutics, into additional therapeutic areas. This expansion would expedite patient access to existing therapies by splitting submission and review of required sections of marketing applications.

The FDA has proposed the creation of another new pilot program, the Advancing Real-world Evidence Program, in which the agency would identify approaches to generate real-world evidence (RWE). RWE can be used to support changes to

drug labeling, collect information about a drug's safety, efficacy and optimal use after approval, and capture clinical outcomes that reflect patient experience.

The FDA also calls to maintain funds for the Sentinel Initiative, which is a program that analyzes data to observe product safety. The FDA would enhance the program by understanding how RWE can be used to better understand the effectiveness of a product.

In PDUFA VII, the FDA has proposed to strengthen staff capacity and the engagement of external experts on reviewing patient experience data. This data is used to help inform drug development and evaluation based on patients' experiences, needs, and priorities, for what is known as patient-focused drug development (PFDD). The FDA has also proposed a public comment period on issues associated with PFDD, including how data should be submitted and evaluated.

PDUFA VII maintains the current review and approval timeline for new drug applications at six months for priority drugs and 10 months for standard drugs. However, sponsors will have additional opportunities to engage with FDA throughout the drug development process in addition to the pilot programs noted above. A new Type D meeting will enable FDA and sponsors to engage in focused conversations about innovative approaches or unique challenges that will allow for earlier issue resolution and improved understanding of what is required to ensure stronger applications for review. FDA will also codify a process where sponsors can submit clarifying questions to the FDA following a meeting to better ensure aligned understanding of expectations and requirements.

PDUFA VII calls for increased user fee funds to boost staffing at CBER to enhance the creation and development of gene therapy products. In total, the FDA would hire a total of 210 full-time positions in FY 2023, 79 in FY 2024, 44 in FY 25, 15 in FY 2026, and four in FY 2027.

PDUFA VII also calls for training of FDA staff and a public workshop to discuss and share best meeting practices that will inform the publication of updated guidance documents describing how to conduct and prepare for meetings that are productive, informative, and serve to advance clinical development programs and review processes more consistently. In support of innovation, FDA will provide timelines and expand the Initial Targeted Engagement for Regulatory Advice (INTERACT) pre-Investigational New Drug Applications (INDs) meetings to include clinical development programs intended to be reviewed by CDER as well as CBER that have a novel challenges where early engagement with the FDA is critical to avoiding delays in advancing entry into to the clinic.

GDUFA III

GDUFA III calls for several changes to the program, including new generic drug application review goal deadlines, enhanced guidance and petition review deadlines, and an increase in hiring at the FDA for the generic drug review program.

The FDA will maintain the generic product application review dates and will act on those applications within 10 months post-submission. Under GDUFA III, the FDA will extend the review date by 15 months if the sponsor informs the FDA that they are not ready for inspection when submitting the application. If the sponsors are ready within the 15-month extension, the sponsors can change the date of their inspection to an earlier time. The FDA will extend the goal date by an additional 15 months if the sponsor does not alert the FDA that they are prepared for the inspection.

The letter calls for the FDA to create new guidance to prompt the development of complex generic products. The FDA will issue this new guidance on 50 percent of complex new drug products within two years after they are approved, and 75 percent of complex drug products within three years of approval.

Generic drug applicants can submit an application for a generic drug that differs from the listed drug in its administration, dosage, strength, by submitting a suitability petition. These petitions show that a proposed generic drug will be a substitute for the listed drug, despite these differences. The petition will need to show that the generic drug is the same class and has the same therapeutic effect as the listed drug.[3] Under GDUFA III, the FDA will be required to respond to suitability petitions earlier, with a goal of responding to the petitions six months after completing its assessment, with up to a maximum of 50 petitions completed for the year, starting in FY 2024 and increasing the number of petition reviews through FY 2027.

GDUFA III would implement new meetings in the review cycle for generic drug applications. Sponsors of complex generic drug applications will be able to receive a mid-cycle review meeting to inquire about any of the deficiencies that are noted by the FDA during the review of the application. The FDA would also be required to hire 128 new staff for the generic drug review program in FY 2023.

BsUFA III

BsUFA III updates the biosimilar drug application review goal dates, creates new meetings and inspection tools in the application review cycle, would advance interchangeable biosimilar development, and would increase hiring at the FDA for the biosimilar drug review program.

Under BsUFA III, the FDA maintains the current review and approval timeline for new biosimilar drug applications and will act on 90 percent of the applications within 10 months of the 60-day filing date, and will review and act on 90 percent of submitted applications within six months of the submission of the application.

Additionally, BsUFA III would create a new Type 2a meeting between sponsors and the FDA. This meeting would focus on a specific set of issues that would require input from no more than three review divisions at the FDA. Sponsors will need to have a BIA or Biological Product Development meeting in order to request this Type 2a meeting first. The FDA's goal outlined in the letter will be to schedule these Type 2a meetings within 60 days of the request.

The FDA will also be required to publish a series of guidance to help advance the development of interchangeable biosimilars. Interchangeable biosimilars are products that have been shown to have no clinical difference from a reference biologic, or a biological product that's already been approved by the FDA.[4] These products are helpful for patients because they can generally be substituted at the pharmacy or provided in hospitals when the reference biologic is prescribed. To date, the FDA has only approved two interchangeable biosimilars.

The FDA will also continue to remotely request records for inspection during the application review process and will issue draft guidance on the use of these remote inspection tools beyond the COVID-19 pandemic. The FDA will also hire 13 new staff for the biosimilar drug review program in FY 2023 and

[3] FDA Law Blog: ANDA Suitability Petitions
[4] FDA: Biosimilar and Interchangeable Products

one staff member in FY 2024.

MDUFA V

The negotiations between the FDA and the medical device industry were stalled due to a disagreement on the scope of the MDUFA user fees. The medical device industry has called for MDUFA V to refine the program, while the FDA has sought to expand it and boost the program's funding. The FDA reportedly reached an agreement with industry recently on a framework for MDUFA V and released a draft commitment letter. The FDA is scheduled to hold a public meeting in April for feedback on the proposal. The final MDUFA V recommendations will be sent to Congress next month after the FDA considers input from the public.

Looking Ahead

With negotiations of all four UFAs complete and transmitted to Congress the Senate Committee on Health, Education, Labor, and Pensions (HELP) and the House Committee on Energy and Commerce (E&C) will hold hearings to discuss the contents of the reauthorization packages for PDUFA, BsUFA, MDUFA, and GDUFA programs.

Expiration of these user fee programs is scheduled for September 30, 2022. Typically, Congress passes user fee reauthorization legislation in the summer prior to the September 30 deadline. Passing this legislation earlier helps avoid disruptions at the FDA, particularly with the review of new drugs, products, and devices, and helps maintaining a sufficient level of staffing at the agency. The user fee reauthorization process provides a crucial opportunity for Congress, stakeholders, patients, and the FDA to consider the agency's performance, and allocate resources to ensure the FDA succeeds in its mission to advance public health.

Additional Key Terms

- Biologics License Application (BLA): is a request for permission to introduce, or deliver for introduction, a biologic product into interstate commerce.
- Biosimilar Drug: A biological drug that is highly similar and has no clinically meaningful differences from an existing FDA-approved reference product.
- Generic Drug: A medication created to be the same as an already marketed brand-name drug in dosage form, safety, strength, route of administration, quality, performance characteristics, and intended use.
- Interchangeable Biosimilar: An interchangeable product is a biosimilar product that meets additional requirements.
- New Drug Application (NDA): The NDA application is the vehicle through which drug sponsors formally propose that the FDA approve a new pharmaceutical for sale and marketing in the U.S.
- Priority Drug: A Priority Review designation means FDA's goal is to take action on an application within 6 months, which is earlier than the 10-month goal for standard drugs.
- Real-world Evidence: The clinical evidence regarding the usage and potential benefits or risks of a medical product derived from an analysis of real-world data, such as electronic health records and product and disease registries.
- Reference Biologic: A reference product is the single biological product, already approved by FDA, against which a proposed biosimilar product is compared.
- Standard Drug: A Standard Review designation means FDA's goal is to take action on an application within 10 months.

Additional Resources

- FDA: PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2023 Through 2027
- FDA: GDUFA Reauthorization Performance Goals and Program Enhancements Fiscal Years 2023-2027
- FDA: Biosimilar Biological Product Reauthorization Performance Goals and Procedures Fiscal Years 2023 Through 2027
- FDA: PDUFA Lays the Foundation: Launching Into the Era of User Fee Acts
- FDA: Real-world Evidence
- FDA: Biologics License Application Process
- FDA: New Drug Application