Testimony of

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Before the

Senate Committee on

Health, Education, Labor, and Pensions

"FDA User Fee Agreements:

Advancing Medical Product Regulation and

Innovation for the Benefit of Patients"

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Chair Murray, Ranking Member Burr and Members of the Committee:

Thank you for holding today's hearing on the reauthorization of the Food and Drug Administration's (FDA) user fee programs and for the opportunity to testify about the critical role the Generic Drug User Fee Amendments (GDUFA) and the Biosimilar User Fee Act (BsUFA) hold in increasing patient access to more affordable generic and biosimilar medicines. My name is David Gaugh, Senior Vice President for Sciences and Regulatory Affairs at the Association for Accessible Medicines (AAM). I am a licensed pharmacist with more than two decades of experience working in and around the generic and biosimilar medicines industry, and I represented the industry in the initial development and in both subsequent renewals of the generic and biosimilars user fee agreements.

AAM and its Biosimilars Council are the nation's leading trade association for the manufacturers and distributors of FDA-approved generic and biosimilar prescription medicines. Today, generic and biosimilar medicines comprise 90% of prescriptions in the United States at only 18% of total drug spending.[1] AAM's members provide more than 52,000 jobs at nearly 150 facilities and manufacture more than 60 billion doses of generic medicines in the United States every year.[2] Our core mission is to improve lives by advancing timely access to high-quality, more affordable safe and effective generic and biosimilar medicines.

In today's testimony, I will highlight the success of the FDA's generic and biosimilars programs in significantly increasing patient access to lower-cost medicines and, in turn, dramatically lowering the cost of prescription drugs for America's patients and our health care system over the last 10 years; outline the improvements made to the public-private partnership embodied in GDUFA III and BsUFA III; and discuss how congressional approval of the FDA user fee programs for the next five years (FY2023-2027) will benefit patients and increase their access to more affordable treatments.

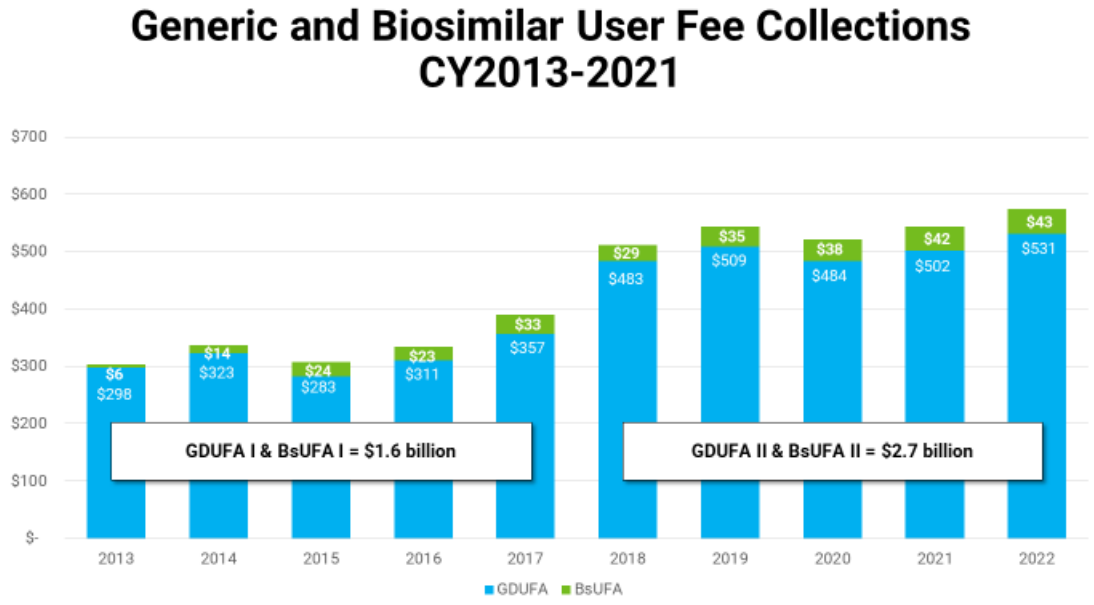
AAM and its Biosimilars Council strongly support congressional reauthorization of GDUFA and BsUFA as negotiated and without changes. Timely approval of the FDA user fee agreements ensures patients will continue to benefit from new, more affordable generic and biosimilar medicines. The GDUFA III and BsUFA III commitment letters were carefully negotiated to balance program enhancements and resource requirements provided to FDA. The agreements include a year-over-year capacity planning adjuster (CPA) that allows FDA to automatically add additional full-time equivalent (FTE) resources when increased workload criteria exceed expectations. Therefore, AAM would have concerns about adding policies into the reauthorization package that require additional FTEs to implement if the package does not also include corresponding appropriations. Adding such policies would increase industry's year-over-year costs beyond what was negotiated and agreed to with FDA.

[1] AAM, "The U.S. Generic & Biosimilar Medicines Savings Report," October 2021 (link).
[2] AAM, "A Blueprint for Enhancing the Security of the U.S. Pharmaceutical Supply Chain," October 2021 (link).

GDUFA and BsUFA at 10 Years

Ten years ago, Congress created the FDA's user fee programs for generic and biosimilar medicines when it enacted GDUFA and BsUFA as part of the FDA Safety and Innovation Act of 2012. For generic drugs, the number of applications submitted to the FDA had increased substantially since enactment of the Hatch-Waxman Act. Prior to GDUFA, FDA's review of abbreviated new drug applications (ANDA) was often slow and unpredictable. For biosimilar medicines, FDA's licensure pathway for these new treatments had been created in 2010 as part of the Biologics Price Competition and Innovation Act (BPCIA). With passage of the first GDUFA and BsUFA iterations in 2012, Congress helped ensure FDA would have sufficient resources to carry out its mission.

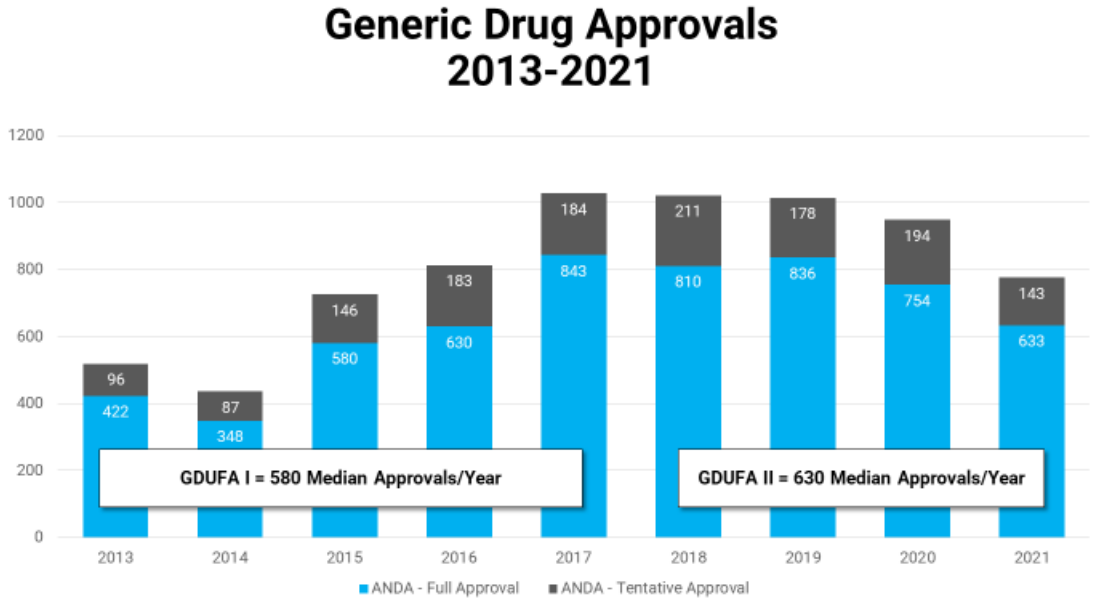
Congressional authorization of the FDA's generic and biosimilars user fee programs in 2012 and reauthorization in 2017 substantially increased the resources available to the Agency to review applications. More than $4 billion in supplemental user fees from generic and biosimilars developers was and will be provided as a result.[3]



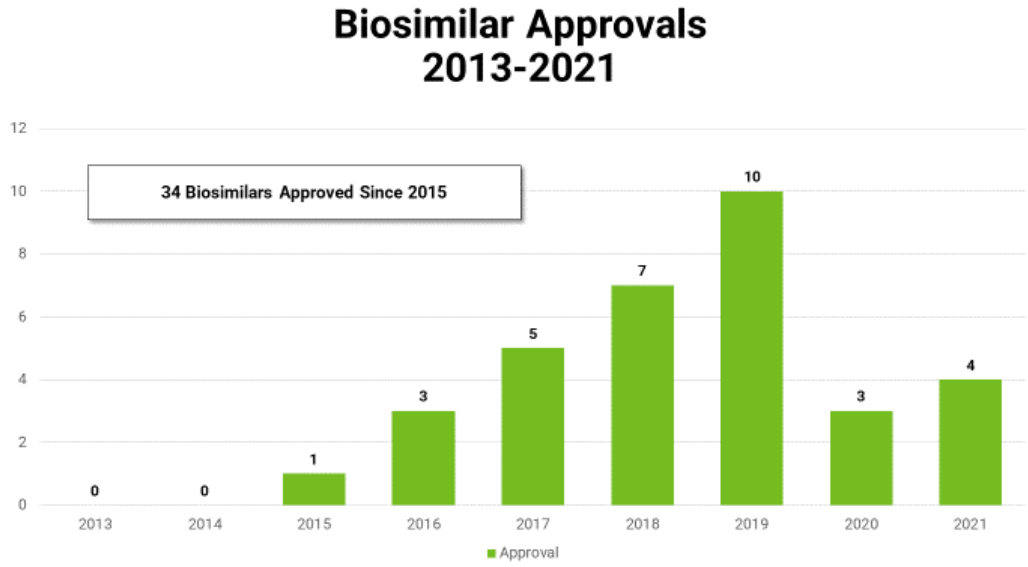
With the additional resources, FDA was able to increase efficiencies and approval of generic drugs increased significantly, with full and tentative approvals exceeding 1,000 in fiscal years 2017, 2018 and 2019. The median number of ANDA approvals has

[3] AAM Analysis of FDA's FY2014 – FY2020 GDUFA and BsUFA Financial Reports and Five-Year Financial Plans (2021 Update). FDA's reports are available at https://www.fda.gov/about-fda/user-fee-reports/user-fee-financial-reports.

increased over time as a result of GDUFA I and GDUFA II.[4] The partnership between FDA and the generic industry has enhanced the overall stability and predictability of the GDUFA program and accelerated the timely review of ANDAs, increasing access to quality affordable generic medicines.



Following the creation of the biosimilars pathway and subsequent development of the biosimilars program, FDA licensed the first biosimilar in 2015 and has now licensed 34 biosimilars in the U.S.[5] Biosimilar medicines are safe, effective and more affordable

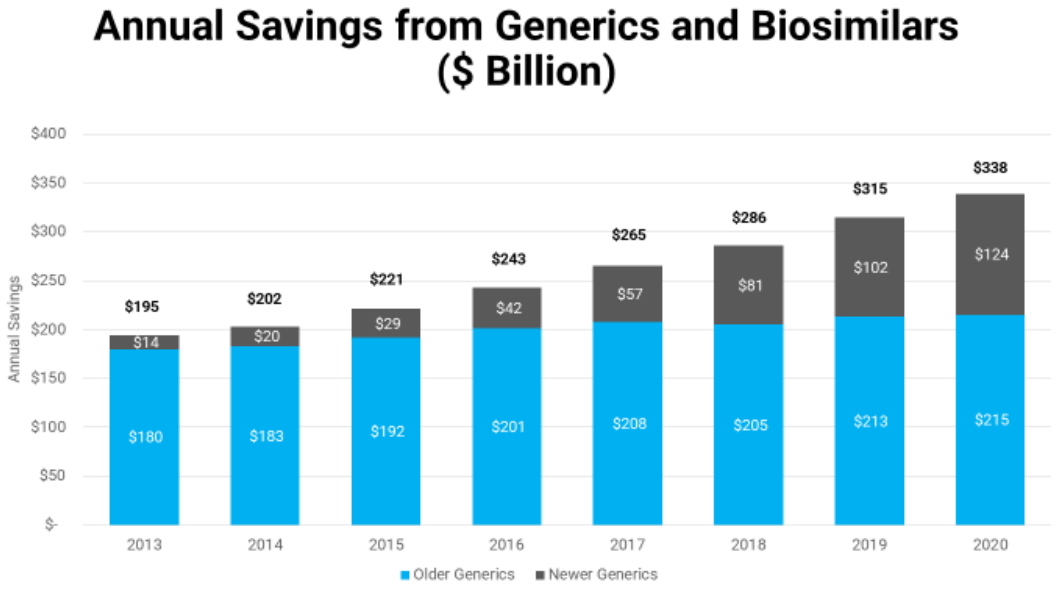


[4] AAM Analysis of the FDA Office of Generic Drug Annual Reports (2015-2020) and Activities Report of the Generic Drug Program (FY13-FY15, FY21). FDA's reports are available at https://www.fda.gov/drugs/generic-drugs/annual-reports.
[5] Biosimilars Council, "FDA Biosimilars Approvals," March 2022 (link).

treatments for patients and, with 21 products launched and available to patients, biosimilars are already delivering on their promise of lower costs and expanded patient access to care.

With FDA approval, the introduction of new generic and biosimilar medicines leads to competition in the pharmaceutical market – and the result is a significant reduction in the cost of prescription drugs for patients. Experience shows drug prices decline rapidly when generics enter the market.[6] According to FDA, prices fall as generics enter the market – by an average of 39% when there is only one generic and by nearly 80% when four or more generics enter the market.[7] Evidence with biosimilar medicines is similar with an average cost savings of nearly 50%.[8] Importantly, biosimilar competition also results in lower brand biologic costs – by more than 25% on average.[9]

Over the last 10 years, generics and biosimilars provided more than $2 trillion in savings – including $469 billion from new generics and more than $12 billion from biosimilars – to patients and the U.S. health care system.[10] In addition to the cost savings provided, patient access to life-saving treatments is broadened as the price of medicine falls. A recent analysis of Medicare Part D from the Congressional Budget Office noted "the number of standardized prescriptions dispensed for generic drugs more than doubled from 2009 through 2018."[11]



[6] IMS Institute for Healthcare Informatics, "Price Declines after Branded Medicines Lose Exclusivity in the U.S.," January 2016 (link).
[7] FDA, "New Evidence Linking Greater Competition and Lower Generic Drug Prices," December 2019 (link).
[8] AAM Analysis of Average Sales Price Files, January 2022.
[9] Ibid.
[10] Ibid., AAM Generic & Biosimilar Savings Report.
[11] CBO, "Prescription Drugs: Spending, Use, and Prices," January 2022 (link).

GDUFA and BsUFA aim to put FDA's generic and biosimilar drug programs on firm financial footing by enabling FDA to assess user fees to fund critical and measurable enhancements and, in turn, bringing greater predictability and timeliness to the review of applications. As a direct outcome, the generic and biosimilars drug programs have increased patient access to safe, effective and affordable quality medicines.

GDUFA III Enhancements

FDA plays a critically important role in making lower-cost, high-quality generic medicines available to patients. FDA reviews ANDAs submitted by generic drug manufacturers (ANDA sponsors). To receive FDA approval, data submitted in an ANDA must generally demonstrate that the generic drug is bioequivalent to the Reference Listed Drug (RLD), more commonly known as the innovator or brand product.

The GDUFA commitment letter specifies various fees the FDA sets and can collect from manufacturers, such as ANDA applications, Drug Master Files (DMF), and facility and program fees.[12] The fees paid by the generic drug industry aid FDA's ability to meet agreed-upon performance goals and commitments, such as timely reviews and other regulatory activities. FDA also provides annual reports to Congress on its performance.[13] The increases in transparency and communication are important to FDA's ability to meet the commitments, which enhance the overall stability and predictability of the GUDFA program.

The negotiated GDUFA III performance goals will further strengthen and build upon the progress made and lessons learned from GDUFA I and GDUFA II. Let me take a moment to highlight five areas – advancing approvals, complex generics, inspections, suitability petitions and sustainability – where we believe the FDA's generic drug program will be enhanced with congressional ratification of GDUFA III.

Advancing Approvals

GDUFA III includes important performance goals that will maintain FDA's rigorous ANDA review standards, building upon and improving the review process to increase timely patient access to high-quality, lower-cost generic medicines. For example, the newly negotiated provision known as "imminent action" will allow the FDA to extend a goal date by up to 60 days if, in FDA's judgment, an approval or tentative approval of the application is imminent. This commitment will mitigate the need to add additional review cycles unnecessarily and delay approvals over minor, easily resolvable issues.

[12] AAM, "The Generic Drug User Fee Amendments (GDUFA III)," October 2021 (link); FDA, "GDUFA Reauthorization Performance Goals and Program Enhancements Fiscal Years 2023-2027," October 2021 (link).
[13] FDA, GDUFA Performance Reports, FY2015 – FY2020 (link).

Complex Generics

Complex generics are generic versions of brand-name drugs that have complex active ingredients, routes of administration, drug-device combinations or formulations. These drugs are more difficult to develop due in part to the lack of FDA product-specific guidance. Congress and FDA helped spur competition for complex products by including provisions in the previous user fee authorizations to increase product-specific guidance publication and meetings with FDA during the product development phase. GDUFA III builds on this success through performance goals to facilitate the development and publication of product-specific guidances for complex generic products – increasing transparency and understanding of FDA's expectations to allow for a more predictable review process.

Inspections

Generic and biosimilar developers support FDA's inspections program. One of the original purposes of GDUFA was to provide resources for FDA to conduct facility inspections. Under the inspections process, FDA typically inspects a facility and identifies deficiencies. The facility has a specified timeframe to address and correct the identified deficiencies and subsequently request a reinspection from FDA. In some cases, extended time passes from when a facility performs the corrective actions to resolve the deficiencies and the time period when FDA can reinspect. Delays in reinspection lead to significant delays in the review process. GDUFA III enhances the efficiencies of the inspection process by helping ensure reinspection occurs within a specified timeframe.

Suitability Petitions

Suitability petitions are required to be submitted to FDA when a generic drug manufacturer intends to seek approval of an ANDA for a drug that differs from the reference brand product in terms of the active ingredient (for a combination product), route of administration, strength and/or dosage form. Current law requires FDA to grant or deny suitability petitions within 90 days from petition submission. That deadline, however, is rarely met. This results in delays to generic market entry. GDUFA III includes performance goals and resources to facilitate the FDA's ability to conduct a timely review of suitability petitions. These new resources will help FDA meet these goals, including conducting completeness assessments within 21 days from petition submission and using agreed upon metrics to prioritize petition reviews.

Sustainability of Resources

Under GDUFA II, FDA committed to developing a Resource Capacity Planning (RCP) capability to optimize resources and better anticipate future resource needs. GDUFA III provides an additional tool to further enhance the utility of the RCP to allow FDA to better forecast resource needs via the Capacity Planning Adjustment (CPA). The CPA will help promote sustainability for both FDA and industry by allowing FDA to increase full-time employee needs as workload increases. In turn, the CPA will provide

predictability for generic developers through a 3% cap to prevent significant fluctuation in fees and minimize the financial barriers for smaller generic manufacturers.

BsUFA III Enhancements

Similar to FDA's generic drug program, FDA helps ensure that America's patients can gain access to high-quality, more affordable biological products in the form of biosimilars. FDA reviews abbreviated biologics license applications (BLA) submitted by biosimilar developers. In order for a biosimilar to be licensed, data submitted in a BLA must demonstrate the biosimilar drug product is "highly similar" to the brand-name reference biologic and there are no clinically meaningful differences in safety, purity or potency.

BsUFA allowed FDA to assess and collect fees from developers and manufacturers that submit BLAs for FDA's review. The negotiated commitments enhance and improve the review process to facilitate timely access to biosimilar medicines and ensures the Agency has the necessary resources to fulfill the agreed upon commitments. FDA also provides annual reports to Congress on its performance.[14]

The negotiated BsUFA III performance goals will further strengthen and build upon the progress made and lessons learned from BsUFA I and BsUFA II.[15] Let me highlight several enhancements to FDA's biosimilars program: supplement reviews, meeting management, regulatory science and interchangeability, inspections, use of carryover funds and IT modernization. I will briefly describe each.

BLA Supplements

Biosimilar developers can submit supplements to modify an approved BLA, for example, updating labeling with new safety information or changes to indications. Under BsUFA III, FDA commits to accelerating supplement reviews for safety labels, extrapolation, label carve-in and carve-outs and new pharmacokinetic data.

Meeting Management

Biosimilar developers participate in meetings with FDA to gain insight into the agency's expectations and perspectives on different issues. These meetings help facilitate a predictable and efficient review process. BsUFA III includes commitments to: add a new type of meeting to get feedback on focused questions; make meetings more efficient; help provide FDA with sufficient information in advance of meetings; and obtain rapid clarification of meeting minutes.

[14] FDA, BsUFA Performance Reports, FY2013 – FY2020 (link).
[15] AAM, "Key Elements of BsUFA III," September 2021 (link); FDA, "Biosimilar Biological Product Reauthorization Performance Goals and Procedures Fiscal Years 2023 Through 2027," September 2021 (link).

Regulatory Science and Interchangeability

As of March 2022, FDA has licensed two interchangeable biosimilars. In order to achieve the interchangeable designation, a biosimilar must produce the same clinical result as the brand-name biologic. With the interchangeable designation and subject to state law, a pharmacist may dispense an interchangeable biosimilar when a brand-name biologic is prescribed without intervention from the provider. BsUFA III will help manufacturers to develop more interchangeable biosimilars through the new Regulatory Science Program's demonstration project. These demonstration projects will also evaluate mechanisms to streamline overall biosimilars development. Findings from the demonstration projects will inform a comprehensive strategy to advance interchangeability and the development of future guidance documents.

Remote Inspections

FDA uses alternate tools to conduct inspections and supplement its ability to assess manufacturing facilities remotely. Due to the COVID-19 pandemic, FDA used these alternate tools to request records and documentation from its regulatory partners. Under BsUFA III, FDA commits to issuing guidance on the use of alternative inspection tools.

Use of Carryover Funds

Any remaining user fees collected by FDA but not yet spent are carried over to the next year. Under BsUFA III, FDA commits to reducing the carryover balance from 39 weeks to 21 weeks over a three-year period.

IT Modernization

FDA continues to modernize the Agency's IT capabilities. BsUFA III will further FDA's efforts. For example, FDA will modernize and move the Electronic Submissions Gateway to the cloud to help improve transparency and communication.

COVID-19 and FDA's Use of Remote Inspections

Given Congressional interest about lessons learned from the COVID-19 pandemic and this Committee's leadership in driving forward solutions to prepare the country for future public health emergencies, I do want to take a moment to share the experience of AAM's members in regard to FDA inspections over the last two years. Manufacturing facility inspections are an essential part of evaluating applications to market all FDA-approved pharmaceuticals, including brand-name, generic, and biosimilar medicines. When FDA does not conduct inspections in a timely manner, approvals and patient access to new treatments, as well as more affordable options, can be delayed.

During the last two years, there have been significant disruptions to the inspections program. In March 2020, FDA announced that it was suspending domestic and foreign inspections due to the COVID-19 pandemic. The Agency focused only on "mission-critical" inspections, a narrow category that does not include inspections tied to most drug applications. As the pandemic subsided in mid-2021, FDA attempted to resume all domestic inspections. However, with the rise of the Omicron variant in December 2021, FDA reverted to performing only mission-critical inspections and did not resume a normal domestic inspection schedule until February 2022.

These inspection disruptions have had a significant effect on our members' ability to obtain timely approval of more affordable generics and biosimilars. By FDA's account, as of the end of FY2021—the most recent data available to AAM at the time of this hearing—**52** human drug application decisions remain "delayed solely due to a pending inspection or facility assessment."[16] The tally of 52 likely underestimates the extent of the delays, as it excludes applications that might have had a minor issue unrelated to an inability to inspect. Inspections for biosimilar applicants are also impacted, including biosimilars for brand-name biologics like Humira®.[17] Prompt inspection of such facilities is urgently needed.

Under existing authorities FDA has several alternatives to physically inspecting facilities, including: (1) obtaining inspection records remotely; (2) requesting information and records from applicants, facilities, and other inspected entities; (3) conducting remote interactive evaluations (real-time video interactions with facilities that cover the same ground as inspections); and (4) relying on inspections conducted by trusted foreign regulatory authorities under the Mutual Recognition Agreements (MRA). FDA, however, infrequently uses these alternatives. For example, FDA informed AAM that, as of December 2021, it had conducted **only five** remote interactive evaluations.

AAM recognizes the important role inspections play in FDA's ability to assess the overall quality of applications. Our members also share the Agency's concerns about public health and preventing the spread of COVID-19 among FDA and manufacturing facility employees. The interruptions caused by COVID-19, however, delayed and denied patients prompt access to new therapies and generic and biosimilar choices that would lower drug costs. If new COVID-19 variants emerge, or if there is a future pandemic, FDA's inspections could be paused again.

AAM believes FDA should expand the use of remote interactive evaluations and use them more frequently in place of a physical inspection, in addition to using alternative tools in place of an in-person inspection to verify corrective actions for a site that had received a warning letter. Specifically, we recommend requiring FDA to evaluate alternatives when an in-person inspection is not possible. Should FDA determine that an alternative to an in-person inspection cannot be used, the Agency should be required to

[16] FDA, "An Update to the Resiliency Roadmap for FDA Inspectional Oversight," November 2021 (link).
[17] Center for Biosimilars, "FDA Delays Review of Alvotech's AVT02 Adalimumab Biosimilar Candidate," September 2021 (link).

inform the applicant which alternatives were considered and the reasons why an in-person inspection was deemed necessary. We believe this additional transparency and accountability will encourage FDA to perform its critical mission without delay, while preserving the Agency's discretion and judgment to require in-person inspections when necessary.

Conclusion

Patient access to generic and biosimilar medicines has never been more critical. Over the last 10 years, GDUFA and BsUFA significantly increased the resources available to FDA for review of generic and biosimilars applications. The benefit of this partnership between FDA and industry is clear: record levels of generic drugs were approved in 2017-2019, and more than 30 biosimilar medicines were licensed. The end result is lower prescription drug costs for America's patients. Since the establishment of FDA's generic and biosimilars programs in 2012, patients and the U.S. health care system have saved more than $2 trillion – including $469 billion from new generics and more than $12 billion from biosimilars. Congressional passage of GDUFA and BsUFA, along with their reauthorization in 2017, made this possible.

GDUFA III and BsUFA III build on this success. The user fee agreements incorporate lessons learned, include enhancements to ensure the timely review of applications and provide FDA with sufficient resources over the next five years (FY23-27). GDUFA III and BsUFA III are the culmination of months of negotiations, have been subject to public review and comment, and represent a careful balance between stakeholders. AAM and its Biosimilars Council strongly support congressional reauthorization of GDUFA and BsUFA as negotiated and without changes. Timely approval of the FDA user fee agreements ensures patients will continue to benefit from new, high-quality and more affordable generic and biosimilar medicines. We look forward to working with members of both parties to accomplish this goal.

Thank you again for the opportunity to testify on this important issue. I look forward to answering your questions.