



Recommendation 87-4

User Fees

(Adopted June 12, 1987)

There is widespread interest in Congress and the Executive Branch in instituting user fees in certain government programs. Although a general user fee statute (31 U.S.C. 9701) dates to 1952, recent studies, including a report of the President's Private Sector Survey on Cost Control, have urged expanded application of such fees. In light of these developments, the Administrative Conference has undertaken a study of the user fee concept in cooperation with the Office of Management and Budget and other federal agencies.

The decision to institute a user fee for a particular service or good is a policy decision for Congress and the Executive Branch to determine, and the Conference does not address this subject. Nevertheless, when Congress or an agency establishes a user fee, that action should be based upon general principles that guide the setting and implementation of fees. The Conference, therefore, in this recommendation seeks to provide a set of such basic principles.

In this recommendation "user fee" means a price charged identifiable individuals or entities by the Federal government for a service or good which the government controls. The recommendation addresses only the institution and implementation of user fees to promote the efficient and fair allocation of government services and goods. Accordingly, the Conference does not address the imposition of charges intended primarily to enhance federal revenues or primarily to encourage or discourage behavior unrelated to resource allocation.

Recommendation

A. Benefits

A government service for which a user fee is charged should directly benefit fee payers. A service provided by the government as a condition to the pursuit of commercial or other activity (e.g., inspections) may properly be regarded as a benefit to the fee payer where it confers an advantage on the fee payer or lessens the fee payer's imposition of costs or risks on others or on society as a whole.



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B. Basic Considerations for Establishing Fee Levels

1. Market and Cost Considerations

When Congress or an agency establishes a user fee for a service or good provided by an agency, the fee should rest on market factors where possible. In the absence of a reliable market price, the fee normally should cover the agency's costs, including all related processing costs and that portion of other agency costs properly allocable to the service or good provided (such as anticipated capital replacement or repair costs).

2. Other Considerations

a. When criteria other than those set forth in paragraph 1 above (*e.g.*, national policy objectives, program goals or fairness) influence the decision to establish fees, the costs to be recovered, or the granting of waivers or reductions, agencies should explain the criteria used and the rationale for their selection.

b. Where third parties or the general public benefit significantly from a governmental service, user fees need not be set to recover fully the cost of providing that service. Agencies should consider the practicability to allocating costs between fee payers and others when determining the proportion of service costs to be recovered by user fees (as opposed to alternative financing mechanisms).

c. The fee level may be set without regard to the distribution of benefits among the customers, employees and owners of the fee payers. However, selection of the point of collection should take into account the costs of administration.

C. Disposition of Fee Receipts

The Conference takes no position on whether fee receipts should be deposited in the Treasury general fund or earmarked to a specific fund. In either event, agencies administering programs that collect fees should be provided with funds sufficient to provide adequate service. In enacting a user fee, Congress should specifically address the issue of how the proceeds are to be used.



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D. Implementation of Principles

Congress in revising or enacting user fee legislation, and the Office of Management and Budget in providing implementation guidance and other information on user fees to agencies, should incorporate the principles set out in this recommendation. Agencies should review their user fee statutes and existing programs to determine whether changes are necessary to implement these principles.

Citations:

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