Federal agencies charge user fees as part of many programs. A “user fee,” for purposes of this Recommendation, is any fee that an agency (1) charges for a good or service that the agency provides to the party paying the fee or (2) collects from a regulated entity to support a regulatory program that benefits the entity. User fees serve many purposes, for example, to shift the costs of a program from taxpayers to those persons or entities whom the program benefits most directly, to supplement general revenue, or to incentivize or discourage certain behavior.

Agencies have assessed user fees since this country was founded. Congress enacted the Independent Offices Appropriations Act (IOAA) in 1952, giving agencies broad authority to charge user fees in connection with specific goods or services that benefit identifiable persons or entities. The Bureau of the Budget, the predecessor to the Office of Management and Budget (OMB), issued Circular A-25 in 1959 to implement the IOAA. Since 1982, when the President’s Private Sector Survey on Cost Control urged expanded application of user fees, Congress and agencies have increasingly relied on user fees, instead of or in addition to general revenue, to fund federal programs.

In 1987, the Administrative Conference adopted Recommendation 87-4, User Fees, which identified basic principles for Congress and agencies to consider in establishing user fee programs and setting fee levels. Recommendation 87-4 stated that a “government service for

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which a user fee is charged should directly benefit fee payers.” It also identified principles intended to efficiently and fairly allocate government goods and services.3

There have been significant developments since ACUS last addressed this topic in 1987. Congress and agencies have continued to expand the collection of and reliance on user fees,4 and OMB updated Circular A-25 in 2017 to update federal policy regarding fees assessed for government services, resources, and goods; provide information on which activities are subject to user fees and the basis for setting user fees; and provide guidance for implementing and collecting user fees.

Today, user fee programs serve many purposes and vary significantly in their structure. Some are established by a specific statute. Such statutes may specify the fee amount, provide a formula for calculating fees, or prescribe a standard for the agency to use in establishing reasonable fees (e.g., full or partial cost recovery). Some statutory authorizations are permanent, while others sunset and require periodic reauthorization. Other programs are established by agencies on their own initiative under the IOAA or other authority. Some programs charge fees to persons or entities in exchange for a specific service or good, while others charge fees to regulated entities to support regulatory programs. Some fees are transactional, while others are paid on a periodic basis. Some fees are set to achieve economic efficiency, while others are set to promote equity or advance other values, goals, and priorities. Other statutes may also provide rules that would apply to a user fees program unless Congress specifies otherwise; one example is the Miscellaneous Receipts Act, which requires that money received by the government from any source be deposited into the U.S. Treasury.5

In designing a user fee program, congressional and executive-branch policymakers must also consider possible negative consequences such as the potential for fees to adversely affect the quality of agency decision making or its appearance of impartiality; their potential to affect the behavior of private persons and entities in unintended ways; the impact of the fees on low-

4 Lietzan, supra note 1, at 3.
income people and members of historically underserved communities; or the agency’s revenue
stability.

Given expanded reliance on user fees, the development of new models for user fee
programs, and updated guidance on user fees from OMB, the Conference decided to revisit the
subject. This Recommendation represents the Conference’s current views on the objectives,
design, and implementation of user fee programs by Congress and agencies. In particular, this
Recommendation encourages congressional and executive-branch program designers to engage
meaningfully with interested potentially impacted persons when they design, implement, and
review user fee programs. The Conference has consistently emphasized the potential for public
engagement to help program designers obtain more comprehensive information, enhance the
legitimacy of their decisions, and increase public support for their decisions.

**RECOMMENDATION**

**General Considerations**

1. Program designers in Congress and the executive branch should identify the purpose(s) of
   an agency’s user fee program, such as shifting the costs of a program from taxpayers to
   those persons or entities whom the program benefits most directly, supplementing general
   revenue, or incentivizing or discouraging certain behavior, and design statutes and rules
   to serve such purpose(s). Program designers should also consider whether such
   purpose(s) support or oppose the imposition of user fees and related waivers, exemptions,
   or reduced rates.

2. When establishing a user fee-funded program, designers should consider whether any
   feature of the program might inadvertently affect agency decision making or be perceived

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6 This Recommendation does not address whether agencies may or should draw on user fee receipts absent
   congressional authorization or outside the process for congressional appropriations, nor does it address what
   constitutional limits, if any, may apply to fee-supported agency activities even when congressionally approved.

   2146 (Feb. 6, 2019); see also Admin. Conf. of the U.S., Office of the Chair, Statement of Principles for Public
   Engagement in Agency Rulemaking (rev. Sept. 1, 2023); Admin. Conf. of the U.S., Recommendation 2023-2,
   Virtual Public Engagement in Agency Rulemaking, 88 Fed. Reg. 42,680 (July 3, 2023); Admin. Conf. of the U.S.,
as creating a conflict of interest at the agency, especially in novel user fee structures and
instances in which an agency collects user fees from entities that it regulates, and whether
any steps should be taken to mitigate those effects.

3. Program designers should also consider whether a user fee may have a negative or
beneficial effect on the behavior of individuals and entities subject to that fee as well as
the potential public benefits and costs.

Considerations for Congress

4. When Congress enacts a specific statute, separate from the Independent Offices
Appropriations Act, authorizing an agency to collect user fees, it should specify, as
applicable:

a. The manner for setting fee levels. Congress should determine whether it is
preferable to specify the amount of the fee, with or without adjustment for
inflation, or a formula for calculating it, or alternatively whether it is preferable to
give the agency greater discretion to determine the appropriate fee (e.g., to
achieve a particular purpose or to recover some or all of the costs of providing a
good or service or administering a program);

b. Any circumstances in which the agency may or must not charge a fee or,
conversely, may or must waive or reduce the fee amount. Congress should
determine whether it is preferable to collect the same fee from all users (e.g., for
reasons of fairness or administrative efficiency) or, alternatively, whether
reducing or eliminating fees for certain users would promote equity, reduce
barriers to market entry, incentivize desirable behavior, or produce some other
socially beneficial outcome;

c. Any required minimum process for setting or modifying fees, either the notice-
and-comment rulemaking process set forth in 5 U.S.C. § 553 or an alternative
process, including requirements for public engagement;

d. Any authorizations, limitations, or instructions on the manner in
which the agency may collect fees;

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5.

Whenver Congress decides to create a new statutory user fee program, it should reach out to relevant agencies for technical assistance early in the legislative drafting process and it should consider stakeholder input.

**Considerations for Agencies**

6. Whenever an agency establishes a new user fee program or sets fees under an existing program, it should do so consistent with 5 U.S.C. § 553, unless Congress has specified otherwise. Opportunities for public participation should reflect the considerations addressed in Recommendations 2018-7, *Public Engagement in Rulemaking*, 2021-3,
Early Input on Regulatory Alternatives, and 2023-2, Virtual Public Engagement in Agency Rulemaking, including the time and resources available to the agency to conduct such public participation opportunities.

7. When engaging with the public regarding user fees, agencies should clearly communicate to the public the purpose of its user fee program. Agencies should be transparent with the public, which can be accomplished through, among other things, identification of and engagement with stakeholders, public participation at early stages such as during cost and demand forecasting and the budget formulation process, and providing information on the agency’s user fee program, budget proposals, and fee setting process.

8. Agencies should maintain an easily-accessible page on their websites describing all of their user fee-funded programs, identifying and explaining the fees, and providing links to supporting documentation, such as the governing sections of the United States Code and the Code of Federal Regulations, and recent notices in the Federal Register.

9. Agencies should conduct regular reviews, consistent with Recommendation 2021-2, Periodic Retrospective Review, of their user fee programs to ensure the programs are meeting their purposes and that the fees are adequate. Agencies should also assess other resulting consequences or effects of the programs, such as those described in Paragraphs 2 and 3.