

VOLUME 11A, CHAPTER 4: “USER FEES”

SUMMARY OF MAJOR CHANGES

All changes are denoted by **blue font**.

Substantive revisions are denoted by an asterisk (*) symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by **bold, italic, blue and underlined font**.

The previous version dated **July 2016** is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
040103.D	Removed <u>Title 32, Code of Federal Regulations (C.F.R.), part 204</u> , “User Fees” due to the repeal of 32 CFR 204 in connection with the Regulatory Reform Task Force effort.	Deletion
040303.D	Removed “NOTE: For more information on user fees applicable to specific services or activities (e.g. information resources, recurring services, or lease or sale of property) please refer to <u>32 C.F.R. 204.5</u> ”, due to the repeal of 32 CFR 204 in connection with the Regulatory Reform Task Force effort.	Deletion

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CHAPTER 4

USER FEES

0401 GENERAL

040101. Overview

A user fee is a fee charged for goods or services provided by the Federal Government. User fees generally apply to federal activities that provide special benefits to identifiable recipients above and beyond what is normally available to the public. Collections are credited to the General Fund of the United States (U.S.) Department of the Treasury (hereafter referred to as Treasury) as miscellaneous receipts as required by [Title 31, United States Code, section 3302 \(31 U.S.C. § 3302\)](#), “Custodians of Money”, or if specific statutory authority is available, may be retained by the Component for a specific purpose (e.g., Agriculture and Grazing [\(10 U.S.C. § 2667\)](#), Forestry [\(10 U.S.C. § 2665\)](#), Recycling [\(10 U.S.C. § 2577\)](#), Royalties [\(10 U.S.C. § 3710c\)](#), and Licensing of Intellectual Property [\(10 U.S.C. § 2260\)](#) revenue programs). In many instances, Congress has provided specific authority to federal agencies to assess user fees in agency authorization or appropriations legislation. Where statutory authority is not available to assess specific user fees, the User Charge Statute [\(31 U.S.C. § 9701\)](#) authorizes agencies to assess user charges, with amounts collected to be credited to the Treasury as miscellaneous receipts. The User Charge Statute is a codification of a provision in Title V of the Independent Offices Appropriation Act of 1952, which provided broad authority to assess user fees or charges on identifiable beneficiaries by administrative regulation, such as those identified in paragraph 040103.

040102. Purpose

This chapter promulgates Department of Defense (DoD) policy regarding establishment and assessment of appropriate fees for authorized goods or services supplied by DoD Components. It provides information on the scope and types of activities subject to user charges and the basis upon which user charges are to be calculated. In addition, it provides guidance on Component implementation of user charges and the disposition of collections. This chapter does not apply to user fees associated with the Freedom of Information Act (FOIA) or the Privacy Act of 1974. For DoD policies regarding FOIA [\(5 U.S.C. § 552\)](#), “Public Information; Agency Rules, Opinions, Orders, Records, and Proceedings”, refer to Regulation [DoD 5400.7-R](#), “DoD Freedom of Information Act Program”. For DoD policies regarding the Privacy Act of 1974, refer to Regulation [DoD 5400.11-R](#), “DoD Privacy Program”.

040103. Authoritative Guidance

The accounting policy and related requirements prescribed by this chapter are in accordance with the applicable provisions of:

A. 31 U.S.C. § 9701, “Fees and Charges for Government Services and Things of Value.” This statute authorizes the head of each agency to prescribe regulations establishing the charge for a service or thing of value provided by an agency.

B. [31 U.S.C. § 3302](#), “Custodians of money.” This statute details the Federal Government’s custodial responsibilities of public money. Subsection (b) is the basis for the requirement that unless authorized by law, an agency may not retain and use money received from sources other than congressional appropriations; the money must instead be deposited in the Treasury.

C. [10 U.S.C. § 2667](#), “Leases: non-excess property of military departments and Defense Agencies.” This statute provides authority to the Secretary of Defense to lease non-excess real or personal property and accept either cash or an in-kind consideration as payment.

D. Office of Management and Budget ([OMB Circular No. A-25](#)), “User Charges.” This Circular establishes Federal policy regarding fees assessed for Government services and sale or use of Government goods or resources.

0402 RESPONSIBILITIES

040201. Under Secretary of Defense (Comptroller).

The Under Secretary of Defense (Comptroller) (USD(C)) will promulgate financial management policy governing user fees.

040202. DoD Components

Heads of DoD Components, or designees, will:

A. Identify the services and activities that will adopt and charge a user fee or accept an in-kind consideration.

B. Determine the extent of the special benefits provided as specified in paragraph 040301.C.

C. Apply the principles specified in paragraph 040303 in determining full cost or market price.

D. Publish user fees to be charged for services on schedules, lists, or tables posted on publicly available websites.

E. Review user fees biennially in accordance with OMB Circular No. A-25, to include:

1. Assurance that existing fees are adjusted to reflect unanticipated changes in costs or market values; and

2. A review of all other programs where fees are not being assessed to determine whether special benefits are being provided and whether fees should be charged for Government services or goods.

F. Publish and describe the results of the biennial review of user fees and any resulting proposals, such as adjustments to fee schedules, in the annual DoD Agency Financial Report required by the [Government Management and Reform Act of 1994](#) and the [Chief Financial Officers Act of 1990](#).

G. Ensure the requirements of [OMB Circular No. A-123](#), “Management’s Responsibility for Internal Control”, the Government Accountability Office (GAO)’s [GAO-14-704G](#), “Standards for Internal Control in the Federal Government (the “Green Book”)”, [DoDI 5010.40](#), “Managers’ Internal Control Program Procedures”, and appropriate audit standards are applied to user fee collections.

H. Maintain readily accessible records of:

1. The services or activities charging user fees or accepting in-kind considerations;
2. The extent of special services provided;
3. The exceptions to the general policy;
4. The cost information used to establish or calculate fees and the specific methods used in their determination. This information must be provided upon request to OMB for the evaluation of the fee schedules in accordance with the requirements in OMB Circular [No. A-11](#), “Preparation, Submission and Execution of the Budget”; and
5. The collections (i.e., cash or in-kind consideration) from each user fee imposed.

I. Initiate exception actions outlined in paragraph 040306. All such actions must be coordinated with the USD(C) prior to forwarding to OMB.

J. Develop legislative proposals as outlined in section 0404 when there are statutory prohibitions, restrictions, or limitations on the implementation, assessment or retention of user fees.

0403 USER FEES

040301. General Policy

A. The User Charge Statute establishes that it is the sense of Congress that each service or thing of value provided by a Federal agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the U.S. Government) is to be self-sustaining to the extent possible. Accordingly, the Head of each DoD Component or designee may prescribe regulations establishing the charge for a service or thing of value provided by the Component.

B. User fees should only be established and implemented if mandated by specific statutory authority, or when implemented under the authority of the User Charge Statute, the monetary benefits to the Federal Government of receipts collected significantly exceed the costs of collecting the fees. Since generating and maintaining reliable cost data is expensive, consideration must be given to the cost of personnel and related data gathering requirements, and the costs of implementing, maintaining, and using financial management systems when determining the level of cost detail required and whether or not monetary benefits exceed costs.

C. It is DoD policy not to compete unfairly with available commercial facilities in providing special services or in the sale or lease of property to private parties and agencies outside the Federal Government. However, when a service (or privilege) provides special benefits to an identifiable recipient, beyond those that accrue to the general public, a fee should generally be imposed to recover the full cost to the Federal Government for providing the special benefit (or the market price) except as otherwise approved by the USD(C) and authorized by the Director of the OMB. A special benefit will be considered to accrue, and a user fee should be imposed, when a Government service:

1. Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public (e.g. receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business of various kinds of public land use), or

2. Provides business stability or contributes to public confidence in the business activity of the beneficiary (e.g., insuring deposits in commercial banks), or

3. Is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (e.g., receiving a passport, visa, airman's certificate, or a Custom's inspection after regular duty hours).

040302. Applicability

None of the provisions in this chapter should be construed as giving authority for the sale or lease of property, or the rendering of special services. Actions to convey such special benefits must be authorized by separate authority. This user fee policy is applicable except when other statutes or directives specifically direct other practices or procedures, such as for:

A. Services to military personnel and civilian employees of the DoD provided in accordance with section 0405.

B. Products and services provided to military personnel, their families, and civilian DoD employees by DoD Nonappropriated Fund Instrumentalities (i.e., morale, welfare, and recreation (military and civilian), Military Services exchanges, lodging, supplemental mission funds, and special purpose central funds). Fees for such services are governed by DoD Instruction (DoDI) [1015.15](#), “Establishment, Management, and Control of Nonappropriated Fund Instrumentalities and Financial Management of Supporting Resources,” and other Office of the Secretary of Defense policy.

C. Sale or disposal of surplus property under specifically approved programs (please refer to Chapter 5).

D. Services furnished the general public relating to, or in furtherance of, the Armed Forces recruiting program.

E. Services furnished to representatives of the public information media in the interest of public understanding of the Armed Forces.

F. Armed Forces participation in public events. Fees for such participation are governed by the provisions of [DoDI 5410.19](#), “Public Affairs Community Relations Policy Implementation”.

G. Records made available to the public, under FOIA, pursuant to DoD 5400.7-R, “DoD Freedom of Information Act Program.” Fees for searches and copies of records are governed by Chapter 6 of DoD 5400.7-R.

H. Services furnished to non-Federal audio-visual media. Fees for such services are governed by the provisions of [DoDI 5410.15](#), “DoD Public Affairs Assistance to Non-Government, Non-Entertainment-Oriented Print and Electronic Media”.

I. Pricing of performance by DoD Working Capital Fund activities which must be in accordance with Volume 11B.

J. Foreign Military Sales of Defense articles and services which must be in accordance with Volume 15.

K. Records made available to requesters under the Privacy Act of 1974, pursuant to DoD 5400.11-R.

040303. Calculation of User Fees

All fees must be based on the full cost to the U.S. Government or market price, whichever applies. Additionally, whenever possible, fees must be set as rates rather than fixed dollar amounts in order to adjust for changes in costs to the Government or changes in market prices of the good, resource, or service provided.

A. Except as provided in paragraph 040306 and section 0405, a user fee should be imposed to recover the full cost to the Federal Government of providing the service, resource, or good when the Government is acting in its capacity as sovereign. “Full cost” includes all direct and indirect costs associated with providing a good, resource, or service. Full cost must be determined or estimated from the best available records, and new cost accounting systems should not be established solely for this purpose. These costs are outlined in Chapter 1, paragraph 010203 and include, but are not limited to, an appropriate share of:

1. Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement. Retirement costs should include all (funded or unfunded) accrued costs not covered by employee contributions as specified in OMB Circular No. A-11.

2. Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment. If imputed rental costs are applied, they should include:

a. Depreciation of structures and equipment (based on guidance contained in Volume 4, Chapter 6); and

b. An annual rate of return (equal to the average long-term Treasury bond rate) on land, structures, equipment and other capital resources used.

3. The management and supervisory costs.

4. The costs of enforcement, collection, research, establishment of standards, and regulation, including any required environmental impact statements.

B. User fees should be based on market prices when the Government is not acting in its capacity as sovereign and is leasing or selling goods or resources, or is providing a service (e.g., leasing space in federally owned buildings). Under these business-type conditions, user fees need not be limited to the recovery of full cost, must be based on market prices, and may yield net revenues. “Market price” means the price for a good, resource, or service that is based on competition in open markets, and creates neither a shortage nor a surplus of the good, resource, or service.

1. When a substantial competitive demand exists for a good, resource, or service, its market price will be determined using commercial practices, for example:

a. by competitive bidding; or

b. by reference to prevailing prices in competitive markets for goods, resources, or services that are the same or similar to those provided by the Government (e.g., campsites or grazing lands in the general vicinity of private ones) with adjustments as appropriate that reflect demand, level of service, and quality of the good or service.

2. In the absence of substantial competitive demand, market price will be determined by taking into account the prevailing prices for goods, resources, or services that are the same or substantially similar to those provided by the Government, and then adjusting the supply made available and/or price of the good, resource, or service so that there will be neither a shortage nor a surplus (e.g., campsites in remote areas).

C. Fees established in advance of performance should be based on the estimated cost of performance. Projected amounts must be reviewed the earlier of biennially or whenever significant changes in cost or value occur.

D. Internal management controls must be established in accordance with OMB Circular No. A-123, GAO's GAO-14-704G, and DoDI 5010.40 to ensure that user fees are developed, published on a publicly available website, and adjusted using current, accurate, and complete data. These controls must also ensure compliance with cash management and debt collection policies promulgated in Volume 5.

040304. Collection of User Fees

DoD Components should make every effort to keep the costs of collection to a minimum and collect fees electronically, via electronic funds transfer (EFT), and utilize, as applicable, the collection services provided by the Treasury's Bureau of the Fiscal Service (Fiscal Service) as described in Volume 5, Chapter 8 and outlined in the Treasury Financial Management, Volume 1, "Federal Agencies," [Part 5, Deposit Regulations](#).

A. In accordance with OMB Circular No. A-25, user fees must be collected in advance of, or simultaneously with, the rendering of services unless appropriations and authority are provided to allow for services to be provided on a reimbursable basis.

B. Although fees must be collected in advance absent statutory authority to provide services or special benefits on a reimbursable basis, Components may collect advance fee payments incrementally if variable costs such as personnel or utility costs are incurred incrementally over time and if the services or special benefit is susceptible to being provided on a severable basis.

040305. Disposition of User Fees

As required by 31 U.S.C. § 3302, an official or agent of the Government who receives money for the Federal Government from any source must deposit the money in the Treasury as soon as practicable. This law is generally referred to as the "Miscellaneous Receipts Statute". Accordingly, unless another statute provides otherwise, user fees collected under the authority of the User Charge Statute must be credited to the General Fund of the Treasury as miscellaneous receipts.

040306. Exceptions or Waiving of User Fees

A. The Head of each DoD Component or designee may make exceptions to the general policy if the provision of a free service is an appropriate courtesy to a foreign government or international organization; or comparable fees are set on a reciprocal basis with a foreign country.

B. The Head of each DoD Component or designee may recommend to OMB that exceptions to the general policy be made when:

1. The cost of collecting the fees would represent an unduly large part of the fee for the activity; or

2. Any other condition exists that, in the opinion of the agency head or his designee, justifies an exception.

C. All exceptions must be for a period of no more than four years unless renewed by the Head of each DoD Component or designee for exceptions granted under paragraph 040306.A. or OMB for exceptions granted under paragraph 040306.B after a review to determine whether conditions warrant their continuation.

D. Requests for exceptions and extensions under paragraphs 040306.B and 040306.C must be submitted to the Director of OMB.

0404 LEGISLATIVE PROPOSALS TO RETAIN AND USE FEES

040401. General Policy

If Components require modification of statutory prohibitions on assessment of user fee charges, they may propose remedial legislation to repeal the assessment prohibition or to authorize an exception. Similarly, Components may propose legislative authority to retain and use amounts collected as user charges. Such proposals are subject to requirements for preparation and submission established in [DoD Directive \(DoDD\) 5500.01](#), "Preparing, Processing, and Coordinating Legislation, Executive Orders, Proclamations, Views Letters, and Testimony". For additional guidance on submitting legislative proposals for approval or authorization to implement or modify a user fee program or to authorize retention and use of user fee collections, refer to OMB Circular No. A-25, paragraph 7.

040402. Authorities

Under the User Charge Statute, a statutory authority is required for DoD Components to retain and use user fees. Proposals requesting such authority may be appropriate when a user fee is levied in order to finance a service that is intended to be provided on a substantially self-sustaining basis and thus is dependent upon adequate collections.

A. The authority to use fees credited to an appropriation is generally subject to limits set in annual appropriations language. However, it may be appropriate to request exemption from annual appropriations control, if a provision of the service is dependent on demand that is irregular or unpredictable (e.g., a fee to reimburse an agency for the cost of overtime pay of inspectors for services performed after regular duty hours).

B. Legislative proposals that permit fees to be credited to accounts must be consistent with the full cost recovery guidelines contained in paragraph 040303. Any fees collected in excess of full cost recovery (i.e., under business-type conditions in which user fees are calculated based on market prices) are to be credited to the General Fund of the Treasury as miscellaneous receipts.

040403. Procedures

Legislative proposals must be submitted to OMB in accordance with the requirements of DoDD 5500.01 and [OMB Circular No. A-19](#), “Legislative Coordination and Clearance”. To ensure the proper placement of user fee initiatives in the budget account structure, DoD Components are encouraged to discuss proposals with OMB at an early stage of development. Further guidance may be obtained from the DoD General Counsel Office of Legislative Counsel’s website at: <https://ogc.osd.mil/olc/index.html>. Proposals to remove user fee restrictions or retain collections must:

A. Define, in general terms, the services for which fees will be assessed and the pricing mechanism that will be used.

B. Specify whether fees will be collected in advance of, or simultaneously with, the provision of service unless appropriations and authority are provided in advance to allow reimbursable services.

C. Specify where collections will be credited. Legislative proposals should not normally specify precise fees. The user fee schedule should be set by regulation to allow for the administrative updating of fees to reflect changing costs and market values.

0405 BENEFITS FOR WHICH NO FEE MUST BE ASSESSED

Military and Civilian Benefits

A. Documents and information requested by members of the U.S. Armed Forces as required by such personnel in their capacity as Service members.

B. Documents and information requested by members of the U.S. Armed Forces who are in a casualty status, or requested by their next of kin or legal representative.

C. The provisions of the address of record of a member or former member of the U.S. Armed Forces when the address is readily available through a directory (locator) service, and when the address is requested by a member of the U.S. Armed Forces or by a relative or a legal representative of a member of the U.S. Armed Forces or when the address of record is requested by any source for the purpose of paying monies or forwarding property to a member or former member of the U.S. Armed Forces.

D. Services requested by, or on behalf of, a member or former member of the U.S. Armed Forces and civilian personnel of DoD (where applicable) or, if deceased, his or her next of kin or legal representative that pertain to the provision of:

1. Information required to obtain financial benefits regardless of the terms of separation from the Service.

2. Documents showing membership and military record in the Armed Forces if discharge or release was under honorable conditions.

3. Information related to a decoration or award or required for memorialization purposes.

4. Information related to the review or change in type of discharge or correction of records.

5. Personal documents, such as birth certificates, when such documents are required to be furnished by the member.

6. Services that are furnished free in accordance with statutes or Executive Orders.

7. Information from or copies of medical and dental records or x-ray films of patients or former patients of military medical or dental facilities, when such information is required for further medical and dental care, and requests for such data are (a) submitted by an accredited medical facility, physician, or dentist; or (b) requested by the patient, his or her next of kin, or legal representative. Other requests subject to the Privacy Act of 1974 must be in accordance to Regulation DoD 5400.11-R.

8. Services requested by, and furnished to, a member of Congress for official use.

9. Services requested by state, territorial, county, or municipal government, or an agency thereof, that is performing a function related to or furthering a DoD objective.

10. Services requested by a court, when such services will serve as a substitute for personal court appearance of a military or civilian employee of DoD.

11. Services requested by a nonprofit organization that is performing a function related to or furthering an objective of the Federal Government or that is in the interest of public health and welfare, including education.
12. Services requested by donors in connection with the conveyance or transfer of a gift to DoD.
13. Occasional and incidental services (including requests from residents of foreign countries), that are not requested often, when it is determined administratively that a fee would be inappropriate for the occasional and incidental services rendered.
14. Administrative services offered by reference or reading rooms to inspect public records, excluding copies of records or documents furnished.
15. Services rendered in response to requests for classification review of DoD classified records, submitted under [Executive Order 13526](#), “Classified National Security Information”, and implemented by [DoD Manual 5200.01-R](#), “Information Security Program”. Such services consist of the work performed in conducting the classification review or in granting and completing an appeal from a denial of declassification following such review.
16. Services of a humanitarian nature performed in such emergency situations as life-saving transportation for non-U.S. Armed Forces patients, search and rescue operations, and airlift of personnel and supplies to a disaster site. This does not mean that inter- and intra-governmental agreements to recover all or part of costs should not be negotiated. Rather, it means the recipient or beneficiary will not be assessed a “user fee.”