



U.S. Department  
of Transportation  
Federal Aviation  
Administration

# Advisory Circular

**Subject:** Sharing Aircraft Operating  
Expenses in Accordance with  
14 CFR § 61.113(c)

**Date:** 2/25/20

**AC No:** 61-142

**Initiated by:** AFS-800

**Change:**

- 1 PURPOSE OF THIS ADVISORY CIRCULAR (AC).** This AC provides guidance on how a pilot may share flight expenses with passengers in a manner consistent with Title 14 of the Code of Federal Regulations (14 CFR). It responds to Section 515 of the FAA Reauthorization Act of 2018 (Public Law [115-254](#)) and sets forth the Federal Aviation Administration's (FAA) longstanding position with regard to the regulations governing expense-sharing flights and the manner in which those flights relate to operations that require a 14 CFR part [119](#) Operating Certificate.

The material in this AC is advisory in nature and does not constitute a regulation. This guidance is not legally binding in its own right and will not be relied upon by the Department of Transportation as a separate basis for affirmative enforcement action or other administrative penalty. Conformity with this guidance document (as distinct from existing statutes and regulations) is voluntary only, and nonconformity will not affect rights and obligations under existing statutes and regulations. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. This document describes acceptable means, but not the only means, for demonstrating compliance with the applicable regulations. The FAA will consider other means of compliance that an applicant may elect to present. While these guidelines are not mandatory, they are derived from extensive FAA and industry experience in determining compliance with 14 CFR part [61](#).

The content of this AC does not change or create any additional regulatory requirements, nor does it authorize changes in, or permit deviations from, existing regulatory requirements.

- 2 AUDIENCE.** This AC applies to pilots exercising private pilot privileges who wish to share the costs of operating an aircraft during a flight with passengers. Specifically, this AC applies to those pilots sharing expenses under part 61, § [61.113\(c\)](#) and broadly applies to those pilots operating under other part 61 expense-sharing provisions, including §§ [61.101](#) and [61.315](#).<sup>1</sup>

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<sup>1</sup> See §§ 61.101(a)(2) (Recreational Pilot); 61.113(c), (d), and (e) (Private Pilot); 61.315(b) (Sport Pilot).

**3 WHERE YOU CAN FIND THIS AC.** You can find this AC on the FAA’s website at [http://www.faa.gov/regulations\\_policies/advisory\\_circulars](http://www.faa.gov/regulations_policies/advisory_circulars).

#### **4 RELATED DOCUMENTS.**

**4.1 Code of Federal Regulations (CFR).** The following part 61 sections are related to this AC. You can download the full text of these regulations at the U.S. Government Publishing Office e-CFR website (<http://www.ecfr.gov>). You can order a paper copy by sending a request to the U.S. Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402-0001; by calling (202) 512-1800; or by sending a request by facsimile to (202) 512-2250.

- Section [61.101\(a\)\(2\)](#) and (e) (Recreational).
- Section [61.113\(a\)](#) and (c) (Private).
- Section [61.133\(a\)\(1\)](#) (Commercial).
- Section [61.167](#) (Airline Transport Pilot (ATP)).
- Section [61.315\(b\)](#) (Sport).

**4.2 Advisory Circulars (AC).** AC [120-12A](#), Private Carriage Versus Common Carriage of Persons or Property, published April 24, 1986, is related to the guidance in this AC. If AC 120-12A is revised after publication of this AC, you should refer to the latest version for guidance, which can be downloaded from the FAA website at [http://www.faa.gov/regulations\\_policies/advisory\\_circulars/](http://www.faa.gov/regulations_policies/advisory_circulars/).

**4.3 Legal Interpretations.** Legal interpretations issued by the FAA’s Office of the Chief Counsel can be found at [https://www.faa.gov/about/office\\_org/headquarters\\_offices/agc/practice\\_areas/regulations/Interpretations/](https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/regulations/Interpretations/).

#### **5 DEFINITIONS.**

**5.1 Air Carrier.** A person who undertakes directly by lease, or other arrangement, to engage in air transportation.<sup>2</sup>

**5.2 Air Commerce.** Interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.<sup>3</sup>

**5.3 Commercial Operator.** A person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property, other than as an air carrier or foreign air carrier or under the authority of 14 CFR part [375](#). Where it is doubtful that an operation is for “compensation or hire,” the test applied is whether the carriage by air is

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<sup>2</sup> Per 14 CFR part [1](#), § [1.1](#).

<sup>3</sup> Per § 1.1.

merely incidental to the person's other business or is, in itself, a major enterprise for profit.<sup>4</sup>

- 5.4 Compensation.** Receipt of anything of value that is contingent upon the pilot acting as pilot in command (PIC) of an aircraft.
- 5.5 Common Carriage.** A holding out of a willingness to transport persons or property from place to place for compensation or hire. The "holding out" that makes a person a common carrier can be done in many ways; there is no specific rule or criteria as to how it is done.
- 5.6 Operating Expenses.** Costs directly arising from the use of an aircraft for the purpose of air navigation including the piloting of aircraft with or without the right of legal control (as owner, lessee, or otherwise).
- 5.7 Private Pilot.** A person who holds a private pilot certificate issued under the requirements of part 61 subpart [E](#). A private pilot is subject to the privileges and limitations outlined in § 61.113. Generally, a private pilot may not act as PIC for compensation or hire.
- 5.8 Pro Rata.** Proportionately, according to a certain rate, percentage, or proportion.

## 6 GENERAL DISCUSSION.

- 6.1 General Rule.** The FAA regulates nearly every aspect of private and commercial flight, including certification and regulation of pilots and their operations. For example, refer to Title 49 of the United States Code (49 U.S.C.) §§ [44701](#), [44703](#), and [44705](#). When money is exchanged for transportation, the public expects, and the FAA demands, a higher level of safety for the flying public.

As a general rule, private pilots may neither act as PIC of an aircraft for compensation or hire nor act as PIC of an aircraft carrying persons or property for compensation or hire. Refer to § 61.113(a). Conversely, a person who holds an ATP Certificate or a Commercial Pilot Certificate may act as PIC of an aircraft for compensation or hire and may carry persons or property for compensation or hire if the pilot is qualified in accordance with part 61 and the requirements that apply to the operation being conducted (e.g., 14 CFR part [135](#)). Refer to §§ 61.133(a) and 61.167(a).

- 6.2 Exception.** Section 61.113(b) through (h) contains seven exceptions to the general prohibition against private pilots acting as PIC for compensation or hire referred to in paragraph 6.1 above. This AC primarily discusses the expense-sharing exception contained in § 61.113(c), which permits a pilot to share the operating expenses of a flight with passengers provided the pilot pays at least his or her pro rata share of the operating expenses of that flight. Those operating expenses are limited to fuel, oil, airport expenditures, or rental fees. The § 61.113 exceptions also apply to ATP Certificate and Commercial Pilot Certificate holders who are exercising private pilot privileges.

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<sup>4</sup> Per § 1.1.

**6.3 Distinction Between Pilot Privileges and Operational Authority.** The privileges and limitations conferred upon pilots are separate and distinct from the operational authority required to conduct the flights. A person who holds an ATP Certificate or a Commercial Pilot Certificate may act as PIC of an aircraft operated for compensation or hire and may carry persons or property for compensation or hire. However, most of these commercial operations require the operator to hold a certificate under part 119 authorizing such operations. Therefore, in addition to ensuring compliance with the applicable pilot privileges and limitations in part 61, a pilot must also ensure that the appropriate operational authority has been granted prior to conducting any operation. Unless there is a valid exception from operational certification,<sup>5</sup> pilots may not engage in common carriage unless they are operating in accordance with an Air Carrier Certificate or Operating Certificate issued under part 119.

## **7 EXPENSE SHARING UNDER § 61.113(c).**

**7.1 Sharing Expenses.** A private pilot may not pay less than the pro rata share of the operating expenses of a flight with passengers, provided those expenses involve only fuel, oil, airport expenditures, or rental fees. A pilot exercising private pilot privileges who accepts any reimbursement that exceeds the pilot's pro rata share of the operating expenses of a flight would be paying less than the pilot's pro rata share, and thus would be violating the limits of the expense-sharing provision of § 61.113(c). Additionally, § 61.113(c) permits reimbursement of expenses only from the passengers on the flight.

**7.1.1** A pilot exercising private pilot privileges may share expenses with passengers within the constraints of § 61.113(c). However, the pilot cannot conduct any commercial operation under part 119 or the less stringent operating rules of part [91](#) (e.g., aerial work operations, crop dusting, banner towing, ferry or training flights, or other commercial operations excluded from the certification requirements of part 119).

**7.1.2** Pilots must be aware that, unless an exception applies, any operation that meets all the elements of common carriage—i.e., (1) the holding out of a willingness to (2) transport persons or property (3) from place to place (4) for compensation or hire—is subject to part 119 certification and must be conducted under the regulatory provisions of part [121](#) or [135](#).<sup>6</sup> Therefore, private pilots who want to share expenses under § 61.113(c) must not “hold out” to the public or a segment of the public as being willing to furnish transportation to any person who wants it. Holding out is discussed in more detail in paragraph [10](#).

**7.1.3** Furthermore, a private pilot cannot avoid the compensation component of common carriage by relying on the narrow expense-sharing exception to the general prohibition against private pilots acting as PIC for compensation or hire. For this reason, in assessing

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<sup>5</sup> Section [119.1\(e\)](#) identifies certain operations not subject to certification.

<sup>6</sup> To be clear, a commercial pilot or ATP, like a private pilot, must abide by the requirements of common carriage. Unless a valid exception from operational certification applies, in order to hold out as being able to transport persons or property for compensation or hire, a commercial pilot or ATP must be operating in accordance with an Air Carrier Certificate or Operating Certificate issued under part 119. Otherwise, such pilots would be exercising private pilot privileges and subject to the limitations associated therewith.

whether a particular operation involves common carriage, the FAA has consistently interpreted § 61.113(c) to mean that a private pilot have a common purpose with his or her passengers and to have his or her own reason for traveling to the destination.<sup>7</sup> The U.S. Court of Appeals for the District of Columbia Circuit affirmed this interpretation and recognized the FAA’s “common purpose test” as a limitation on the expense-sharing provision of § 61.113(c).<sup>8</sup> Common purpose is discussed in more detail in paragraph 9.

**7.2 Allowed Expenses.** The only operating expenses that may be shared are specifically listed in § 61.113(c). Those expenses are fuel, oil, airport expenditures, or aircraft rental fees.

**7.3 Prohibited Expenses.** Any expenses not specified in § 61.113(c) must be paid by the pilot. Examples of these include, but are not limited to, aircraft maintenance, aircraft insurance, aircraft depreciation, and navigation charts.

Example: Although oxygen may be consumed during a flight and is a direct operating expense, the cost of oxygen cannot be shared with passengers because it is not specifically listed in § 61.113(c).

## 8 COMPENSATION.

**8.1 Explanation of Compensation.** Compensation is the receipt of anything of value that is contingent on the pilot operating the aircraft; i.e., but for the receipt of the compensation, the pilot would not have taken that flight. Compensation does not require a profit, profit motive, or the actual payment of funds. Reimbursement of expenses, accumulation of flight time, and good will in the form of expected future economic benefits<sup>9</sup> can be considered compensation. Furthermore, the pilot does not have to be the party receiving the compensation; compensation occurs even if a third party receives a benefit as a result of the flight.

**8.2 Expense Sharing is Compensation.** The U.S. Court of Appeals for the District of Columbia Circuit found that the FAA correctly interpreted its regulation (§ 61.113) when the FAA concluded the expense-sharing exception narrowly authorizes some compensation.<sup>10</sup>

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<sup>7</sup> The FAA has consistently stated that “the only allowable share-the-costs operations are those which are bona fide, i.e., joint ventures for a common purpose with expenses being defrayed by all passengers and the pilot.” See Legal Interpretation to Rebecca MacPherson (Aug. 13, 2014), also citing Legal Interpretation to Paul Ware (Feb. 13, 1976); Legal Interpretation to Thomas Chero (Dec. 26, 1985); Legal Interpretation to Peter Bunce (Nov. 19, 2008); Legal Interpretation to Guy Mangiamele (Mar. 4, 2009); Legal Interpretation to Don Bobertz (May 18, 2009); Legal Interpretation to Mark Haberkorn (Oct. 3, 2011).

<sup>8</sup> *FlyteNow, Inc. v. Federal Aviation Administration*, 808 F.3d 882, 885-86 (D.C. Cir. 2015), rehearing en banc denied.

<sup>9</sup> *Blakey v. Murray*, NTSB Order No. EA-5061 (Oct. 28, 2003).

<sup>10</sup> See *FlyteNow*, 808 F.3d 890. The court went on to state that “the text and structure of the regulation make clear that allowable expense sharing is still compensation, albeit an authorized subcategory.”

**8.3 Additional Discussion.** For additional discussion, the FAA has issued legal interpretations with respect to what constitutes compensation. These legal interpretations are available by searching the legal interpretations database at [https://www.faa.gov/about/office\\_org/headquarters\\_offices/agc/practice\\_areas/regulations/Interpretations/](https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/regulations/Interpretations/).

## **9 COMMON PURPOSE.**

**9.1 General.** As previously stated, the FAA has consistently interpreted § 61.113(c) to mean that a private pilot have a common purpose with his or her passengers and have his or her own reason, other than the receipt of compensation for the flight, for traveling to the destination. The existence of a bona fide common purpose is determined on a case-by-case basis depending on the facts and circumstances of each individual case.

**9.2 Destination.** In assessing whether a pilot is operating consistently with the expense-sharing provision, the FAA considers whether the pilot has his or her own reason for traveling to the destination. When the pilot, not the passenger, chooses the destination, it suggests that the pilot is not simply transporting passengers for compensation. The common destination satisfies the common purpose test even if the pilot and the passengers have different business to conduct at the destination. For some time, the FAA has indicated that, in order for a common purpose to exist, the pilot must have his or her own personal need to fly to that destination, i.e., his or her own particular business to conduct at the destination. Therefore, when the pilot has no particular business to conduct at the destination or the flight is only for the purpose of transporting passengers, no common purpose exists. The common purpose test can be stated as “but for the receipt of compensation, the pilot would not have taken that flight.”

### **9.3 Examples of Flights With and Without a Common Purpose.**

**9.3.1** The following are examples of situations with and without common purposes.

Example 1:<sup>11</sup> A friend asks a pilot to fly him to another city to pick up a new car he ordered and offers to share the expenses of the flight. The private pilot agrees, as he is not doing anything else and would enjoy the flight. As the passenger chose the destination and the private pilot does not have a purpose of his own to be in the other city at that time, this is an example of a situation where no common purpose exists. Therefore, expense sharing would not be allowed under § 61.113(c).

Example 2:<sup>12</sup> A pilot plans to fly his plane to a wedding on Long Island. He is transporting passengers whose destination is also Long Island, but they are heading to a basketball game. As the pilot dictated the destination and both the passengers and the pilot have personal business on Long Island, a common purpose exists in these circumstances.

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<sup>11</sup> See Legal Interpretation to Ware (Feb. 13, 1976); Legal Interpretation to Chero (Dec. 26, 1985).

<sup>12</sup> See Legal Interpretation to Haberkorn (Oct. 3, 2011).

Example 3: John, a private pilot, plans to fly from Charlotte, NC to Boston, MA to accumulate flight time. Pete, his friend, asks if he can hitch a ride to Boston and share the expenses of the flight with him so that he can visit his great-grandmother for the weekend. A common purpose exists for this flight because John was already flying to Boston and would be making the trip regardless of whether Pete shared the flight.

- 9.3.2** In a multiple-flight situation, the pilot may meet the common purpose criteria for expense sharing with some, but not all, of the passengers.

Example:<sup>13</sup> Seven members of a running club, one of whom is a pilot, are participating in a race and they rent a four-seat aircraft to travel to the event. The pilot has to make two flights each way to transport all seven members. The pilot shares a common purpose with the passengers only in the first flight. This is because following the first flight the pilot would be at his destination and able to participate in the race. The second trip fails the common purpose test because the pilot has already achieved his purpose for the flight, i.e., getting to the race location to participate. Any additional trips would be solely for the reason of transportation of the additional members of the running club, and no common purpose would exist. Therefore, the pilot would only be able to share expenses with the first group of passengers.

## 10 HOLDING OUT.

- 10.1 General Discussion.** It is important that private pilots who want to share expenses do not “hold out” to the public, or a segment of the public, as willing to furnish transportation to any person who wants it. When an operator meets all the elements of common carriage, he or she cannot operate under the expense-sharing exception of § 61.113(c) and, unless an exception applies, needs to hold a part 119 certificate and operate these flights under part 121 or 135. Common carriage is defined as (1) a holding out of a willingness (2) to transport persons or property (3) from place to place (4) for compensation or hire.<sup>14</sup> When a private pilot wants to share expenses under § 61.113(c), three of the four elements of common carriage are already met; i.e., the pilot is transporting persons or property from place to place for compensation or hire. The remaining element is whether the pilot is “holding out a willingness” to do so.
- 10.2 What Constitutes Holding Out?** “Holding out” is accomplished by any means that communicates to the public that a transportation service is indiscriminately available to the members of that segment of the public that it is designed to attract. There is no specific rule or criteria as to how holding out is achieved. Instead, holding out is determined by assessing the available facts of a specific situation. Advertising in any form raises the question of holding out.<sup>15</sup> Historically, pilots have been found to be

<sup>13</sup> See similar situation in Legal Interpretation to Bobertz (May 18, 2009).

<sup>14</sup> See *FlyteNow*, 808 F.3d 890 (finding “no difficulty upholding the FAA’s interpretation of its regulations in this case”).

<sup>15</sup> See Legal Interpretation to John Yodice (Apr. 7, 1978); AC 120-12A.

holding out when advertising services via rolodex,<sup>16</sup> brochures,<sup>17</sup> newspapers, magazines, telephone directories, posters,<sup>18</sup> and website/internet postings.<sup>19</sup>

- 10.2.1** When money or anything of value is exchanged for transportation, the public expects, and the FAA demands, a higher level of safety for the flying public. A pilot may invite passengers for expense-sharing flights; however, a pilot should be guided by whether he or she is reaching out to a defined and limited group comprised of people with whom he or she has an ongoing, pre-existing relationship (e.g., family, friends, or close acquaintances).<sup>20</sup> Generally, the FAA would not consider a mere loose acquaintance to be part of a defined and limited group, which is a principle that may have added relevance in the age of social media (see the discussion in paragraph [10.2.3.3.2](#)).
- 10.2.2** The FAA distinguishes between offering expense-sharing services to a wide audience and to a limited group because holding out to the public may suggest to unsuspecting passengers that the pilot has met the higher regulatory requirements to carry passengers.<sup>21</sup> Absent this limitation on holding out, an unsuspecting passenger may unknowingly assume the safety risks of flying in aircraft flown by pilots who lack the training, experience, and operational oversight that the FAA requires of operators that conduct common carriage.
- 10.2.3** The following are examples of scenarios that illustrate what the FAA would consider in determining whether an operator is holding out. These examples are fact-specific and not all-inclusive.
- 10.2.3.1 Use of Agents, Agencies, or Salespeople.** Holding out may be accomplished through actions of agents, agencies, or salesmen who may, themselves, procure passenger traffic from the general public and collect them into groups to be carried by the operator. It is particularly important to determine if such agents or salespeople are in the business of selling transportation to the traveling public not only through the “group” approach but also by individual ticketing on known common carriers.
- 10.2.3.2 Print Publications.** Advertising in newspapers, magazines, telephone directories, brochures, posters, or any other type of publication is the most direct means of holding out. In most, but not all, instances, this type of

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<sup>16</sup> See Legal Interpretation to David Brown (Apr. 16, 1976).

<sup>17</sup> See Legal Interpretation to Hal Klee (Dec. 12, 1985); Legal Interpretation to Chero (Dec. 26, 1985).

<sup>18</sup> See Legal Interpretation to William Dempsey (June 5, 1990).

<sup>19</sup> See Legal Interpretation to MacPherson (Aug. 13, 2014); Legal Interpretation to Gregory Winton (Aug. 14, 2014).

<sup>20</sup> See Legal Interpretation to Chero (Dec. 26, 1985); Legal Interpretation to Klee (Dec. 12, 1985). The company solicited passengers via brochures offering to match prospective passengers wanting to fly to a certain destination with a pilot willing to provide the flight in return for expenses. The FAA determined that this system was “not a casual one of an individual pilot wishing to take some friends or acquaintances on a trip.” See also Legal Interpretation to Haberkorn (Oct. 3, 2011) (implying that under § 61.113(c) a pilot should have a close personal relationship with the passengers with whom the pilot intends to share expenses).

<sup>21</sup> *FlyteNow*, 808 F.3d 895 (holding that the FAA’s distinction between offering expense-sharing services online to a wide audience and those being offered to a limited group is justified).



advertising reaches a sufficiently broad segment of the general public that it would be considered holding out.

Example 1:<sup>22</sup> A private pilot wants to post a note with the specific time and date she is traveling to Long Island on a fixed-base operator (FBO) bulletin board in order to carry two additional passengers in exchange for pro rata reimbursement of expenses under § 61.113(c). Such advertisement on a bulletin board may be acceptable, as long as it targets a limited and defined audience as discussed in paragraph [10.2.1](#) above.

Example 2:<sup>23</sup> ABC Pilots Association decides to offer services matching prospective passengers wanting to fly to a certain destination with a pilot willing to provide the flight in return for expenses. ABC Pilots Association advertises these services widely through brochures seeking passengers from the public. This action would be considered holding out.

Example 3: Mr. Smith, a private pilot, plans to fly to Boston, MA to get fresh lobster for a lobster boil he is having in Cleveland, OH. He publishes an ad in the local Cleveland area newspaper seeking one to two passengers to share expenses on the trip to Boston. He receives several responses and selects his passengers based on the order he received responses to his ad. Mr. Smith's advertisement in the local Cleveland area newspaper would be considered holding out to a broad segment of the general population. Further, his acceptance of the first two passengers that responded to the ad indicate a willingness to transport anyone who wanted to travel to his destination.

**10.2.3.3 Internet.** The internet has a virtually unlimited audience. Therefore, when advertising on the internet, one typically would expect to reach, at a minimum, a broad segment of the general public searching for the type of information posted. Therefore, generally, an advertisement published on the internet would not meet the criteria of a limited and defined group as discussed in paragraph 10.2.1 and, in most instances, would be considered to be holding out.

**10.2.3.3.1 Websites.** Given the expansive reach of the internet, the FAA would consider a posting of a flight on a website accessible to the general public, or a segment of the general public, to be holding out. In this example, the website is designed to attract a broad segment of the public interested in transportation by air. Any prospective passenger searching for flights could access the website, sign up, search for flights, and readily arrange for travel via the

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<sup>22</sup> See Legal Interpretation to Haberkorn (Oct. 3, 2011).

<sup>23</sup> See Legal Interpretation to Klee (Dec. 12, 1985).

website.<sup>24</sup> Therefore, pilots advertising flights on the website would be deemed to be holding out.

Example:<sup>25</sup> A company developed a web-based service through which pilots can offer their planned itineraries to passengers willing to share the pilots' expenses. The company facilitates connections between pilots and potential passengers. The potential passengers must be members of the web-based service. To become a member, one only needs to fill out an online registration form. The pilot dictates the origin, destination, and travel dates. A pilot may accept or reject a request to be a passenger for any or no reason. The company would facilitate the sharing of expenses between the pilot and the passengers on a pro rata basis.

**10.2.3.3.2 Social Media.** Posts on social media pages are subject to the same limitations as any other form of solicitation for expense sharing. Therefore, to avoid being considered to be holding out, a pilot would need to be reaching out to a defined and limited group comprised of people with whom he or she has an ongoing, pre-existing relationship apart from expense sharing.

Example 1: A small neighborhood book club has set up a private Facebook group and only members of the club who are approved by the board are allowed to join and see posts. A member of the club posts that he or she is piloting a plane to the beach for the day and is asking if any other members would like to join and share expenses. Here the group is limited and defined, and the FAA would likely not consider this pilot to be holding out.

Example 2: On an open Facebook page that is viewed mainly by the student body of the local community college, a pilot posts a communication soliciting people to share expenses for a flight for spring break. This would not be considered a defined and limited group because it would not be limited to people with whom the pilot has an ongoing, pre-existing relationship. Further, even if the Facebook group were limited only to the student body, the size of the student body likely would cause that group to be considered a broad segment of the general public that the pilot would be willing to provide transportation services to; and, therefore, the pilot would be considered to be holding out.

**10.2.3.3.3 Apps.** Technology has advanced to a point where many services are provided via applications on mobile or electronic devices. It may be that use of these applications to advertise flights for cost sharing under § 61.113(c) is holding out. Similar to the website in paragraph [10.2.3.3.1](#), the app is designed to

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<sup>24</sup> Note: The occasional refusal of service does not provide conclusive proof that a pilot is not a common carrier. See AC 120-12A.

<sup>25</sup> See *FlyteNow*, 808 F.3d 882.

attract a broad segment of the public interested in transportation by air. Any prospective passenger searching for flights could access the app, sign up, search for flights, and readily arrange for travel. Therefore, the FAA would consider pilots advertising flights on the app to be holding out.

Example: A company develops an application in which pilots and potential passengers can be paired up to share costs of planned itineraries. A pilot could enter his or her destination, time, date, and origin for potential passengers to search for potential flights to common destinations. In order to use the app, a user would simply need to purchase and download the app and fill out a registration form.

**10.2.3.3.4 Email.** Advertisement through email for passengers to share expenses may be acceptable in some situations; however, in other situations it may be considered holding out. The FAA would not consider an email among close friends to be holding out. On the other hand, sending an “email blast” to a listserv or every friend, acquaintance, colleague, or contact of the pilot may be considered to be holding out.

**10.2.3.4 Personal Solicitation and Reputation/Course of Conduct.** Physically holding out, without advertising, where the pilot gains a reputation of serving all, is sufficient to constitute an offer to carry all customers. There are many means by which physically holding out can take place, e.g., personal solicitation and course of conduct. A pilot’s course of conduct can be sufficient to find that there has been a holding out of service to the public because the course of conduct can indicate a willingness to serve all who apply for service. The actions or conduct used to develop the reputation would be considered to be holding out.

Example 1: Francisco and Rob are friends enjoying the weekend relaxing in the city. Francisco, a private pilot, decides to fly to his lake house for the remainder of the weekend and invites Rob along. Francisco’s invitation to Rob in this instance would not be considered holding out.

Example 2: Sarah is a private pilot and regularly attends aviation conferences and events. While in attendance, Sarah tells everyone she talks to that she is a private pilot who is willing to fly others to various destinations. Regardless of Sarah’s success, Sarah’s expression of willingness to serve all with whom contact is made that she can and will perform the requested service is sufficient to be holding out.

Example 3: Fred is a private pilot. Every Friday, he flies to Orlando, FL from Chicago, IL to visit his family. Everyone in his community knows that if they want to fly to Orlando on any given weekend that they just need to talk to Fred and he will fly them to Orlando for their pro rata share of the flight expenses when he goes. Fred does not

advertise that he is going to Orlando or that he is looking for passengers. However, his conduct of regularly flying to Orlando and accepting whichever community members want to fly to Orlando on a given weekend as passengers has established a course of conduct such that Fred might be considered to be holding out his services of flying to Orlando.

## 11 SUMMARY.

**11.1 Sharing Expenses.** Pilots may share operating expenses with passengers on a pro rata basis when those expenses involve only fuel, oil, airport expenditures, or rental fees. These exceptions are themselves further limited. In assessing whether an expense-sharing flight is properly conducted under the exception in § 61.113(c), the FAA considers whether the pilot and passengers have a common purpose and whether the pilot has held out as offering services to the public. The “common-purpose test” anticipates that the pilot and expense-sharing passengers share a “bona fide common purpose” for their travel and the pilot has chosen the destination. Communications with passengers for a common-purpose flight are restricted to a defined and limited audience to avoid the “holding out” element of common carriage.

**11.2 Violation of Regulations.** Receipt of compensation outside of the exceptions contained in § 61.113 is a violation of part 61 subject to civil penalties under 49 U.S.C. § [46301](#). If the flight does not fall under the exceptions, the pilot may be found to be operating an aircraft as a commercial operator and must comply with the appropriate regulatory requirements for air carrier and commercial operations.

**12 QUESTIONS AND INQUIRIES.** Persons who have questions concerning the intended operation of their aircraft and whether they would be considered to be holding out for purposes of expense sharing under part 61 are encouraged to discuss their operation with the General Aviation and Commercial Division of the FAA’s Flight Standards Service (9-AFS-800-Correspondence@faa.gov).



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