

Federal Grant Obligations Regarding Airports Revenue Use

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Auditors**

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**Federal Aviation
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Overview

- **Federal Obligations and Grant Assurances**
- **Revenue Use Policy**
- **Revenue Diversion**
- **Financial Review Location Selection**
- **Questions**



Federal Obligations

Grant Assurances and Obligations

- **Requirements that an Airport Sponsor agrees to when accepting Federal assistance or land**
- **Binding commitments designed to ensure the public interest is served**
 - Deeds; Conveyance Agreements; and Grant Assurances (mandated by Federal statute)
- **Enforced through the Airport Compliance Program**
 - Useful life of the facility (generally 20 years)
 - Perpetual Obligations - Federally acquired and conveyed land, airport revenue, civil rights and exclusive rights



Federal Obligations

Standards of Compliance

A sponsor meets its commitment when:

- The federal obligations are understood;
- A program (e.g., preventive maintenance, leasing policies, operating regulations, etc.) is in place that the FAA deems adequate to carry out the sponsor's commitments;
- The sponsor satisfactorily demonstrates that such a program is being carried out; and,
- Past compliance issues have been addressed.

FAA Order 5190.6B, 2.8.b.



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Federal Obligations

Federal Grant Assurances:

- A grant agreement represents any agreement made between the FAA (on behalf of the United States) and an airport sponsor in which the airport sponsor agrees to certain assurances.
- In general, the airport sponsor assures it will operate the airport for the use and benefit of the public as an airport for aeronautical purposes.
- The grant agreement and assurances will apply whether the airport sponsor receives the grant of federal funding or a conveyance of land.

There are 39 standard grant assurances for airport sponsors



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Federal Obligations

Grant Assurance 25, *Airport Revenue*

All revenues generated by the airport, including any local taxes on aviation fuel established after December 30, 1987, must be used for the capital or operating costs of the airport, the local airport system, or other local facilities owned and operated by the owner or operator of the airport and directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport.



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Federal Obligations

Grant Assurance 25, *Airport Revenue*

Exceptions (lawful diversion of airport revenue):

- Grandfathered obligations – financing and debt obligations issued before September 3, 1982
- Certain sale proceeds from the sale of a privately owned airport to a public sponsor
- Certain revenue derived from or generated by mineral extraction, production, lease, etc.
- Airport Investment Partnership Program (AIPP). [(49 U.S.C. § 47134)]



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Airport Revenue

What is Airport Revenue?

- **FAA policy published in 1999 Federal Register.**
- **Applies to revenue generated by the airport.**
- **Includes:**
 - Fees, rents, charges, and payments from aeronautical users, tenants, and businesses on the airport
 - Revenue from sponsor-owned property off airport
 - All revenue from nonaeronautical activities
 - Revenue from the sale of minerals/mineral rights and agricultural leases
 - Proceeds from the disposal of airport property
 - State or local taxes on aviation fuel.



Airport Revenue

Revenue Diversion

- Use of airport revenue for purposes other than the capital and operating costs of the airport
- Principal reason for audit requirement
- Use of airport revenue for prohibited costs may be considered revenue diversion



Airport Revenue

Permitted Uses

An airport may use its revenues for the capital and operating costs of the airport, the local airport system, or other local facilities owned and operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

Airport employee salaries

Utilities

Marketing the airport

Local AIP match

Insurance

Lobbying and attorneys fees

Repayment of the sponsor***

Costs incurred by government officials***

General government costs***



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Airport Revenue

Use of Airport Revenue

•Prohibited Uses

- Direct or indirect payments that exceed the value of services and facilities provided to the airport
- General economic development
- Promotions and marketing activities unrelated to airports
- Loans at less than prevailing interest rates
- Direct subsidies to air carriers



Airport Revenue

Use of Airport Revenue

•Prohibited Uses (cont'd)

- Land rental for nonaeronautical purposes at less than fair market value
- Rent-free land use
- Unrelated community activities
- Payments based on an inconsistent cost allocation formula
- Impact fees that exceed the value of services provided



Airport Revenue

Most Common Violations

- Cost allocation plans which overcharge the airport and subsidize other municipal operations
- Not charging FMV for nonaeronautical activities
- Using airport property for other municipal activities (animal shelters, firing ranges, jails, vehicle or equipment storage, etc.) without compensating the airport at FMV
- Poorly structured air carrier incentive programs which inadvertently subsidize air carriers
- Selling airport land and not compensating the airport



Airport Revenue

Revenue Diversion Remedies

- **Only assurance to specify penalties for violations:**

- Repayment with interest
- Withholding approval of an application for future grants
- Withholding modification of existing grants
- Withholding payment under existing grants
- Withholding approval of a PFC request
- Withholding any amount from funds otherwise available to the sponsor from DOT (i.e., transit or highway grants)



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Airport Revenue

Revenue Diversion Remedies

- File suit for enforcement in the U.S. District Court
- Exercise reversionary interests and take title to all or any part of property conveyed by the federal government
- Seek civil penalties of up to *three* times the amount diverted – treble damages



Airport Revenue

How Can an Airport Sponsor Avoid this Problem?

- **Use airport revenue for permitted purposes**

- Capital or operating costs of the airport
- Reimbursement to local governments for services actually received
- Promotions directly related to the airport
- Repayment to the sponsor for contributed funds
- General government or central service costs
- Must be identified in an approved cost allocation plan
- Usually subject to additional scrutiny



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Airport Revenue

How Airport Audits are Selected:

- Certified Activity Tracking System (CATS) Annual Reports (49 USC § 47107 (a)(19))
- Single Audit Reports (49 USC § 47107(m))
- Investigation following 14 CFR Part 16 complaint
- DOT OIG audits
- Other



Questions and Discussion

