

## Part V: Financial Responsibilities

### Chapter 16. Resolution of Unlawful Revenue Diversion

#### 16.1 Background.

This chapter describes the FAA's responsibility for detecting and resolving unlawful revenue diversion. Unlawful revenue diversion is subject to the standard investigation and determination procedures discussed in chapter 5, *Initiating, Accepting, and Investigating Informal and Formal Complaints*.

#### 16.2 FAA Authorization.

##### a. 1982 Authorization Act.

The Airport and Airway Improvement Act of 1982, Pub. L. 97-248, (AAIA) established the general requirement for public airport owners and operators to use all revenues generated by the airport for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property. (Codified at 49 U.S.C. § 47107(b)).

##### b. 1994 Authorization Act.

In the 1994 Authorization Act, Pub. L. 103-305, Section 111, Congress strengthened the revenue use requirement by adding a new assurance requiring airport owners or operators to submit an annual report listing all amounts paid by the airport to other units of government, and required the FAA to issue a policy on the use of airport revenue. The FAA published its Policy and Procedures Concerning the Use of Airport Revenue ([Revenue Use Policy](#)), 64 Fed. Reg. 7696 (February 16, 1999), to implement the requirements of the AAIA and subsequent laws described below. Congress also established the following actions that the FAA is authorized to take when a sponsor fails to correct unlawful revenue diversion:

- (1) Withholding Airport Improvement Program (AIP) grants and approval of applications to impose and use passenger facility charges (PFCs). (See 49 U.S.C. §§ 47111(d)-(e), 47106(d), and 47107(m)).
- (2) Assessing a civil penalty for unlawful revenue diversion of up to \$50,000. (See 49 U.S.C. § 46301(d)).
- (3) Seeking judicial enforcement for violation of any grant assurance. (See 49 U.S.C. §§ 46106 and 47111(f)).

**c. 1996 Reauthorization Act.**

Section 804 of the 1996 Reauthorization Act (codified at 49 U.S.C. § 47133) broadened the applicability of the revenue use prohibition to cover any airport that is the subject of federal assistance, including both public and privately owned public use airports, and airport sponsors that have accepted real property conveyances from the federal government. There is a limited exception to the revenue use prohibition, which is discussed in detail in chapter 15, *Grandfathering from Prohibitions on Use of Airport Revenue*, section 15.10, *Allocation of Indirect Costs*.

Additionally, as noted in the [Revenue Use Policy](#), airport sponsors that have accepted only surplus property from the federal government, and did not have an AIP grant in place on October 1, 1996, would not be subject to the revenue use requirement by operation of § 47133. However, if that airport accepted additional federal property or accepted an AIP grant on or after October 1, 1996, the airport would be subject to the revenue use requirement. Moreover, in accordance with 49 U.S.C. § 47153(b), the FAA does include the revenue use requirement as a required term in Surplus Property Instruments of Conveyance in order to protect and advance the interests of the United States in civil aviation. Congress also established the following actions that the FAA is authorized to take when a sponsor fails to correct unlawful revenue diversion:

- (1) Withholding any amount available to the sponsor under Title 49 of the United States Code, including transit or multimodal transportation grants. (See 49 U.S.C. § 47107(m) (3)).
- (2) Assessing a civil penalty up to three times the amount of diverted revenue. The Administrator may impose a civil penalty up to \$50,000 against an airport sponsor. The FAA must apply to a U.S. district court for enforcement of a proposed civil penalty that exceeds \$50,000. (See 49 U.S.C. § 46301).
- (3) Requiring assessment of interest on the amount of diverted revenue. (See 49 U.S.C. § 47107(n)).

**d. FAA Reauthorization Act of 2024 (2024 Reauthorization Act).**

In the [FAA Reauthorization Act of 2024 \(Pub. L. 118-63, Sec. 703\)](#), codified at 49 U.S.C. § 47107(m)(4) and (n)(1), Congress revised the civil penalty for airport revenue diversion to be an amount equal to double the illegal diversion in question plus interest. This revision does not apply to illegal diversion of airport revenues that occurred prior to the date of enactment of the act.

### **16.3 Section 47133 and Grant Assurance 25, Airport Revenues.**

As stated above, since enactment of the AAIA in 1982, sponsors – as a condition of receiving AIP grants – have been required to comply with [Grant Assurance 25, Airport Revenues](#). In the 1996 Reauthorization Act, Congress broadened the applicability of the revenue use prohibition to cover any airport that is the subject of federal assistance, including both public and privately owned public use airports, and airport sponsors that have accepted real property conveyances from the federal government. These revenue use requirements are codified at 49 U.S.C. § 47133.

Accordingly, revenue use violations may be enforced as a violation of contract obligations under the grant assurances, as a violation of federal law under 49 U.S.C. § 47107(k) and § 47133, or as a violation of a Surplus Property Deed or other federal land conveyances when applicable.

### **16.4 Agency Policy.**

The FAA's Revenue Use Policy implements the requirements of the AAIA and the above laws. (See chapter 15, *Permitted and Prohibited Uses of Airport Revenue*). Additionally, FAA's [Policy and Procedures Concerning the Use of Airport Revenue: Proceeds from Taxes on Aviation Fuel](#), 79 Fed. Reg. 66282 (November 7, 2014) formally adopts, through an amendment to the Revenue Use Policy, FAA's interpretation of the Federal requirements for use of revenue derived from taxes on aviation fuel.

### **16.5 Responsibilities.**

It is the responsibility of the FAA Regional Airports Division (Region) and Airports District Office (ADO) to identify unlawful revenue diversion, to seek sponsor compliance informally before initiating formal investigation, and to monitor corrective action plans from informal complaints. The FAA Director of the Office of Airport Compliance and Management Analysis (ACO-1) is responsible for issuing Notices of Investigation, assessing interest and penalties, issuing formal compliance determinations, and arranging for hearings to be conducted when appropriate.

As discussed in chapter 19, *Airport Financial Reports*, ACO, Regions and ADOs are responsible for resolving single audit findings. ACO is the liaison between the Office of the Secretary (OST) and Regions and ADOs on single audits. Regions and ADOs are responsible for resolving airport specific single audit findings. The FAA must ensure the sponsors took appropriate and timely corrective action on all single audit findings.

The Office of Inspector General (OIG) may also conduct audits and issue reports on revenue diversion. National reports with revenue diversion findings will be sent to ACO; audits on individual airports may be sent to the Regions. ACO will monitor the follow-up to those reports. The DOT/OIG provides a semi-annual report to Congress on the status of the FAA's responsiveness and resolution of those revenue diversion findings.

## **16.6 Detection of Airport Revenue Diversion.**

### **a. Sources of Information.**

To determine if a sponsor has unlawfully diverted revenue, the FAA depends primarily on various sources of information, including:

- (1) Annual financial reports submitted by sponsor. (See chapter 19, *Airport Financial Reports*).
- (2) Single audit reports conducted in accordance with 2 CFR part 200. (See chapter 19, *Airport Financial Reports*).
- (3) Part 16 formal complaints (under 14 CFR part 16). (See chapter 5, *Initiating, Accepting and Investigating Informal and Formal Complaints*).
- (4) Audits conducted by the DOT/OIG.
- (5) Formal or informal financial reviews.
- (6) Part 13 informal complaints (under 14 CFR part 13). (See chapter 5, *Initiating, Accepting and Investigating Informal and Formal Complaints*).
- (7) Land-use inspections. (See chapter 21, *Land Use Compliance Inspection*).
- (8) Airport staff.
- (9) Inquiries from relevant non-profit associations.
- (10) News reports.

### **b. Reports.**

FAA may identify revenue diversion through audit reports issued by the DOT/OIG or by an independent auditor performing a single audit under 2 CFR part 200. See chapter 19, *Airport Financial Reports*, for additional information on single audits.

The OIG may also conduct audits and issue reports on revenue diversion. National reports with revenue diversion findings will be sent to ACO; audits on individual airports may be sent to the regional airports division. ACO will monitor the follow-up to those reports. DOT/OIG reports to Congress on the status of the FAA's responsiveness and resolution of those revenue diversion findings.

**c. Release of Audit Reports.**

Regions, ADOs, and ACO must coordinate the release of any audit report prepared by the OIG to the public with the Assistant Chief Counsel for Airports and Environmental Law to ensure that the release is in accordance with the Trade Secrets Act ([18 U.S.C. § 1905](#)) and the Freedom of Information Act (FOIA) ([5 U.S.C. § 552](#)).

**d. Compliance Reviews.**

ACO conducts financial compliance review(s) of selected airports each fiscal year.

**e. Published Airport Financial Data.**

In cases where the FAA must ascertain compliance with the Federal revenue requirements, reviewing published airport financial data may be useful. In each case, differences among the audit report or complaint, published financial data, and information presented by the sponsor should be discussed and resolved to the extent possible.

**16.7 Investigation of a Complaint of Unlawful Revenue Diversion.****a. General.**

The FAA enforces the requirements imposed on sponsors as a condition of their acceptance of federal grant funds or property through the administrative procedures set forth in 14 CFR part 16. As such, the FAA has the authority to receive complaints, conduct informal and formal investigations, compel sponsors to produce evidence, and adjudicate matters of compliance within the jurisdiction of the Associate Administrator for Airports. (See chapter 5, *Initiating, Accepting and Investigating Informal and Formal Complaints*).

**b. Formal Complaint.**

When the FAA receives a formal complaint against a sponsor for unlawful revenue diversion, the Airport Compliance Division follows the procedures in Part 16 for adjudicating the complaint. If, at any point prior to completion of the investigation, the airport sponsor resolves the unlawful revenue diversion, the Director may dismiss the complaint. This is consistent with the objectives outlined in chapter 2, *Compliance Program*, section 2.4, *Objectives of the Compliance Program*. After conducting an investigation, the Director of Airport Compliance and Management Analysis will either dismiss the complaint or issue a Director's Determination, which can impose immediate sanctions or propose future action, or both.

## **16.8 Investigation without a Complaint.**

### **a. General.**

When a formal complaint has not been filed, but the FAA has an indication from one or more sources that unlawful revenue diversion has occurred, the Region or ADO will notify the sponsor and request that it respond to the allegations. If, after evaluating the sponsor's arguments and submissions, the Region or ADO determines that unlawful diversion of revenue did not occur, then it will notify the sponsor and take no further action.

### **b. Finding.**

If the Region or ADO makes a preliminary finding that there has been unlawful revenue diversion, and the sponsor has not taken corrective action (or has not agreed to take corrective action), the Region or ADO may forward the matter to ACO for investigation under 14 CFR part 16. If, after further investigation, ACO finds there is reason to believe there is, or has been, unlawful revenue diversion, and the sponsor refuses to terminate or correct the diversion, the Director will issue a Director's Determination. In cases where the airport sponsor agrees to implement the corrective actions to prevent further revenue diversion and return the diverted revenue amount plus interest the Director may dismiss the investigation.

### **c. Office of the Inspector General (OIG).**

When the OIG issues a report of an investigation with a revenue diversion finding, ACO will proceed with an investigation and attempt to resolve the finding.

## **16.9 Administrative Sanctions.**

When the ACO-1 makes a finding of unlawful revenue diversion through a Director's Determination, ACO will first seek recovery of illegally diverted funds through corrective action by the sponsor. Should that fail, the Director may pursue any or all of the following enforcement remedies at his/her discretion subject to any appeal and affirmation by the Associate Administrator for Airports following appeal:

- a.** Withholding approval of an application for future grants.<sup>1</sup> (See 49 U.S.C. § 47106(d)).

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<sup>1</sup> As stated in the policy document, [\*Factors Affecting Award of Airport Improvement Program \(AIP\) Discretionary Funding, 64 Fed. Reg. 31031 \(June 9, 1999\)\*](#), it is the intent of the FAA generally to withhold AIP discretionary funding to those airports requesting such funding that are being investigated by the FAA for misuse of airport generated revenue.

- b. Withholding approval of a new grant application or proposed modification to an existing grant that would increase the amount of funds available. (See 49 U.S.C. § 47111(e)).
- c. Withholding payments under existing grants. (See 49 U.S.C. § 47111(d)).
- d. Withholding approval of any new application to impose a passenger facility charge. (See 49 U.S.C. § 47111(e)).
- e. Withholding any amount from funds otherwise available to the sponsor, including funds for other transportation projects, such as transit or multimodal projects as part of grants made available under Title 49. (See 49 U.S.C. § 47107(m)(3)).
- f. For violations of the grant assurance or 49 U.S.C. § 47133, the Associate Administrator for Airports may file suit for enforcement in the U.S. District Court. (See 49 U.S.C. § 47111(f)).
- g. Exercising its right of reverter and, on behalf of the United States, taking title to all or any part of the property interests conveyed. (See 49 U.S.C. §§ 47133 and 47151, et seq.). Reverter is discussed in detail in chapter 23, *Reversions of Airport Property*.

#### **16.10 Civil Penalties and Interest.**

##### **a. Civil Penalties.**

The Associate Administrator for Airports may seek a civil penalty for a violation of the AIP sponsor assurance on revenue diversion of up to three times the amount of unlawful revenue diversion. For a proposed civil penalty in excess of \$50,000, the FAA must file a civil action in the U.S. District Court to enforce the penalty. (See 49 U.S.C. §§ 46301 and 47107).

##### **b. Office of the Chief Counsel.**

The FAA Office of the Chief Counsel files civil penalty actions. AGC-600 must be consulted when considering whether to impose a civil penalty action for airport revenue diversion.

##### **c. Use of Authority.**

In general, a civil penalty sanction may be appropriate when two conditions apply:

###### **(1) Sponsor Noncompliance.**

ACO-1 has identified a violation to the airport sponsor and has given the sponsor a reasonable period of time to take corrective action to restore the funds or otherwise come into compliance before a penalty is assessed, but the sponsor has not complied.

**(2) Other Remedies Fail.**

Other enforcement actions against the sponsor, such as withholding grants and payments, would be unlikely to achieve compliance.

**d. Interest.**

The amount necessary for a sponsor to come into compliance includes interest calculated in accordance with 49 U.S.C. § 47107(n). The maximum civil penalty allowed under § 46301(a)(3) is three times the amount unlawfully diverted and may also include interest calculated in accordance with 49 U.S.C. § 47107(n). The maximum civil penalty allowed under 49 U.S.C. 47107(m) is double the illegal diversion plus interest calculated in accordance with 49 U.S.C. §47107(n).<sup>2</sup>

**16.11 Compliance with Reporting and Audit Requirements.**

The Regions and ADOs will monitor airport sponsor compliance with the Airport Financial Reporting Requirements and Single Audit Requirements, as described in the [Revenue Use Policy](#). Failure to comply with these requirements can result in withholding future grant awards and further payments under existing grants.

**16.12 Statute of Limitations on Recovery of Funds.**

The 1996 Reauthorization Act included a statute of limitations that prevents the recovery of funds illegally diverted more than six years after the illegal diversion occurs. (See 49 U.S.C. § 47107(m)(7)). Accordingly, the FAA may bring an action for recovery of unlawfully diverted funds within six (6) years of the date on which the diversion occurred.

**16.13 through 16.17 Reserved.**

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<sup>2</sup> This is not applicable to illegal diversion of airport revenues that occurred prior to the enactment of FAA Reauthorization Act of 2024.