

# 2023 Air Carrier Incentive Policy (ACIP) Update



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**Federal Aviation  
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# Why Update the Policy?

- The FAA updated its policy air carrier incentives policy offered by airport sponsors to air carriers to incentivize air carrier service.
- It is longstanding practice for airports to offer air carriers certain types of financial incentives (known as air carrier incentive programs, or ACIPs) to encourage the start of new airline service and/or new destination service at their airport.
- Since 2010, the industry's incentive programs have evolved a great deal, and numerous policy issues have been raised.
- A core issue was for FAA to move away from excessive prescriptive guidance and focus instead on outlining the applicable boundaries to be considered.



# Why Is This Important? (Part 1)

- Federally-obligated airports must ensure that an **ACIP** is consistent with sponsor's FAA federal obligations and related policies, including:
- Grant Assurance 22 **Economic Discrimination** requiring that “each air carrier using such airport . . . shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees...with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications...”



# Why Is This Important? (Part 2)

- Grant Assurance 24 **Fee and Rental Structure** generally requiring that an airport sponsor maintain an airport rate structure that makes the airport as self-sustaining as possible. Therefore, the airport sponsor must assure that promoting increases in air service does not adversely affect the airport's self-sustainability and the existing resources needed for the operation and maintenance of the airport.



# Why Is This Important? (Part 3)

- Grant Assurance 25 **Airport Revenues** requiring that airport revenues be used for the capital and operating costs of the airport. Also, while FAA's Revenue Use Policy provides that promotion of the airport and new air service, and marketing of airport services are legitimate costs of an airport's operation, air carrier operations are not. Accordingly, the airport sponsor may not make payments in any form from airport revenue to a carrier for operating at the airport, including for providing air service at the airport.



# Guiding Principles to Stay Compliant



# Stay Compliant Principle: Discrimination

**Any  
Discrimination  
Must be Justified  
and Time-Limited**

- **Differences in airport charges** for carriers under an ACIP from those charged to other carriers at an airport must not be unjustly discriminatory.
- **Differences in charges must be justified** by differences in the carriers' costs of starting and marketing new service at the airport and must be temporary.



# Stay Compliant Principle: Airport Revenue

## Airport Revenue Cannot be Used for Subsidies

- **Using airport revenue for cash payments and other forms of subsidy for a carrier providing new service is considered revenue diversion and thus prohibited by grant agreements and Federal law.**
- **Fee reductions, fee waivers, and marketing assistance as incentives to new service are permitted to the extent described in the Revenue Use Policy.**





# Stay Compliant Principle: Cross-Charging

## No Cross-Charging of Other Users

- **Carriers not participating in an ACIP may not be charged directly or indirectly** for the costs of the ACIP or for airport costs left uncovered as a result of the reduction or waiver of charges for an ACIP carrier, unless all non-participating carriers agree.



# Stay Compliant Principle: ACIP Terms

## Terms of ACIPs Should be Publicly Disclosed

- **Publishing** the intent to implement an ACIP, as well as information on how the ACIP is being used, ensures all eligible carriers are aware of the program.
- **Transparency** also allows nonparticipating operators to review the potential effect of the ACIP on standard airport rates and charges and minimizes the grounds for complaints of unjust discrimination.



# Stay Compliant Principle:

## ACIPs Cannot Affect Other Airport Operations

- A sponsor adopting an ACIP must maintain a **self-sustaining rate structure** that continues to provide funds for necessary operations and maintenance responsibilities, without increasing rates charged to non-participating operators.



# Changes and Clarifications from 2010 Guidance



# Changes: “New Service”

2010 Guidance	Final Policy (December 2023)	Rationale
<p>Allowed incentives for:</p> <ul style="list-style-type: none"><li>• Nonstop or one-stop service to previously unserved destination</li><li>• New entrants</li><li>• New frequencies on existing service</li></ul>	<p>New service is better defined as nonstop service to an airport destination not currently served, any service by a new entrant carrier; or a significant increase in capacity on preexisting service.</p>	<ul style="list-style-type: none"><li>• Value of nonstop significantly higher</li><li>• One-stop difficult to monitor in hub/spoke system</li><li>• Logical to treat any increase in seat capacity consistently.</li></ul>



# Changes: ACIP Transparency

2010 Guidance	Final Policy (December 2023)	Rationale
No specific transparency policy.	Sets expectation that sponsors provide 30-day advance disclosure of ACIP terms and conditions plus post-contract disclosure of incentives granted.	Helps to ensure compliance with grant assurances and related policies and reduces likelihood of “secret deals.”



# Changes: Limited Incentive Budgets

2010 Guidance	Final Policy (December 2023)	Rationale
Small airports were encouraged to use an RFP process if budget can only support one carrier.	Any sponsor can restrict incentives to the first qualifying carrier if limits and criteria are clearly stated in advance.	Airports of any size may face constraints; transparency helps to address concerns.



# Changes: Marketing Funds

2010 Guidance	Final Policy (December 2023)	Rationale
Recommended that the airport sponsor pay marketing costs directly to the entity providing the service.	Sponsors can pay marketing funds to a carrier only after the carrier has paid the provider and submitted an invoice	Reflects typical reality of marketing arrangements but prohibits “blank checks.”





# Changes: Assistance to Non-Airport ACIPs

2010 Guidance	Final Policy (December 2023)	Rationale
Prohibited airport staff from assisting or advising a non-airport entity on an ACIP that used non-airport funds.	Airport staff can provide certain technical assistance to non-airport entities on ACIPs that use non-airport funds.	Airport staff may have relevant industry knowledge; still may not handle non-airport funds or make decisions.



# Changes: Targeted Destinations

2010 Guidance	Final Policy (December 2023)	Rationale
Sponsor may offer incentives for specific destinations; no obligation to provide incentives for other destinations.	Eliminates reference to sponsor-identified specific destination targets.	Mitigates potential concerns over targets that favor certain carriers.



# Changes: “New Service” Eligible for Incentives

2010 Guidance	Final Policy (December 2023)	Rationale
Definition did not allow incentives for new frequencies on existing service.	Allows incentives for frequencies on existing service with certain conditions, if they result in significant capacity increase.	Consistent treatment of capacity increases, and consistency across carriers.



# Changes: Upgauging

2010 Guidance	Final Policy (December 2023)	Rationale
Requested comment on whether to continue to allow upgauging incentives.	Allows upgauging incentives on a similar basis as increased frequency incentives.	Consistent treatment of capacity increases.



# Changes: ACIP Transparency – Incentives Awarded

2010 Guidance	Final Policy (December 2023)	Rationale
Was unclear about whether sponsors had to provide notice of incentives awarded prior to signing an agreement.	Clarifies that there must be advance notice of the ACIP itself, but specific agreements can be posted after signing.	Minimizes potential unjust discrimination and mitigates competitiveness issues related to providing advance notice of agreements for specific routes.



# 2023 Policy Changes from February Draft to Final



# Final Changes: Marketing Funds

<b>Draft Policy (February 2023)</b>	<b>Final Policy (December 2023)</b>	<b>Rationale</b>
<p>Prohibited sponsors from transferring marketing funds to a carrier; funds must go directly to marketing provider.</p>	<p>Sponsors can pay marketing funds to a carrier, but only after the carrier has paid the provider and submitted an invoice.</p>	<p>Uniform comments from industry noted that the draft policy proposal was not practical.</p>



# Final Changes: Incentives for Restart of Service

<b>Draft Policy (February 2023)</b>	<b>Final Policy (December 2023)</b>	<b>Rationale</b>
Sponsor discretion to offer incentives for restart of service cancelled due to external events or poor performance.	Discretion limited to “extraordinary” external events (e.g., pandemic); poor route performance not a justification.	Tighter language to prevent potential abuse of flexibility.





# Final Changes: Transition to New Policy

<b>Draft Policy (February 2023)</b>	<b>Final Policy (December 2023)</b>	<b>Rationale</b>
<p>Incentives in effect before new policy is issued may continue; agreements signed after new policy issuance must be under ACIPs that comply.</p>	<p>Allows new incentive agreements for 60 days under ACIPs that were in effect on the date the new policy is issued and complied with 2010 Guidance.</p>	<p>Provides time for sponsors to revise ACIP to comply with new policy, including 30-day posting expectation.</p>



# New Policy Effects



# Areas of Flexibility (Sponsors) (Part 1)

- Eligibility of frequency increases and up-gauging
- Allowance for incentives based on number of passengers or seat-miles flown on new service
- Option to apply incentives for seasonal service for up to three seasons
- Allowance for ACIPs to distinguish between passenger and cargo service



# Areas of Flexibility (Sponsors) (Part 2)

- Ability to restrict incentives to the first qualifying carrier if there is a limited budget
- Sponsor may define several key parameters of ACIPs
- Ability to provide technical assistance to entities considering ACIPs with non-airport funds
- Discretion to offer incentives for service restart



# New Policy Effects: Less Flexibility (Sponsors)

- Exclusion of one-stop service from being eligible for incentives
- Frequency increase incentives may not discriminate between incumbent carriers who are already serving a particular route vs those who are adding service for the first time
- New transparency provisions require advance disclosure of incentive programs
- Prohibition of waiver of costs that would normally be charged by a third party, such as ground handling or fuel (classified as a subsidy)
- Limits on type of assistance airport staff can provide to non-airport entities
- No language explicitly stating that airport sponsors may provide incentives only to specifically targeted airport destinations



# Implementation and Next Steps

- Updated ACIP policy was published on December 7, 2023.
- Starting February 6, 2024, incentive agreements must be made under ACIPs new policy, including the 30-day advance posting requirement.
- FAA intends to post and maintain a frequently asked questions (FAQs) document to address questions of policy interpretation.
- Airport sponsors should direct questions to their Airports District Office (ADO), which will consult with ACO headquarters on responses.
- FAA does not approve ACIPs. However, at the request of an airport sponsor or an air carrier, FAA will review an ACIP for compliance with a sponsor's Federal obligations and related policies.

