

ACO's Role and Compliance Overview



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**Federal Aviation
Administration**

About the Presenter



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Mission Statements

- **FAA Mission:**
Provide the safest, most efficient aerospace system in the world.
- **ARP Mission:**
Be world leaders in creating a safe and efficient system of airports.
- **ACO Mission:**
Preserve aviation access to the national system of airports as a vital and limited national resource.



FAA Office of Airports (ARP)

- **Headquarters Offices**
 - Office of Airport Planning & Programming (APP)
 - Office of Airports Safety & Standards (AAS)
 - **Office of Airport Compliance and Management Analysis (ACO)**



FAA Office of Airports (ARP) (Cont.)

- **Office of Airport Compliance**
 - Office of Airport Compliance (ACO-100)
 - Office of Airport Financial Compliance (ACO-200)



Stakeholders

- Airport Sponsors
- Airport Users
- Industry Groups (AOPA, AAAE, USPA, etc.)
- FAA Regional and District Offices
- FAA Lines of Business (AVS, ATO, AST, etc.)



What is the Airport Compliance Program?

The FAA Airport Compliance Program is *contractually* based; it does not attempt to control or direct the operation of airports...

...rather, the program is designed to monitor and enforce obligations agreed to by airport sponsors in exchange for valuable benefits and rights granted by the United States...

[FAA Order 5190.6B, 1.5]



Standard of Compliance

An Airport Sponsor meets its commitments when:

- Federal obligations are understood
- A program is in place that the FAA deems adequate to carry out the sponsor's commitments (e.g., preventative maintenance, leasing policies, rules/regs, minimum standards)
- The sponsor satisfactorily demonstrates that such a program is being carried out
- Past compliance issues have been addressed

[FAA Order 5190.6B, 2.8b]



Airport Compliance Program Objectives

- Protect taxpayer investments & public interest in civil aviation
- Ensure aeronautical access
- Foster a competitive & fair environment at airports
- Educate sponsors, users, & local community
- Avoid informal & formal complaints



ACO-100 Core Responsibilities

- Adjudicate Formal Complaints (14 CFR Part 16); Enforce Corrective Actions
- Review/assist with Informal complaints (14 CFR Part 13)
- Author/Implement national compliance policy
- Respond to questions from general public, tenants, users, sponsors, etc.
- Enforce sponsor compliance with airport revenue use and financial reporting
- Outreach and Education



Source of Federal Obligations

Federal Obligations come from *two* primary sources:

- Federal **land** transfers
 - Surplus Property Act of 1944 conveyed 1000's of airports to municipalities
 - Federal Non-Surplus Property Conveyances
- Federal Airport Improvement Program (AIP) Grants
 - Legacy Grant Programs



AIP Grant Assurances

- Commitments by airport in exchange for airport development grant funds
- There are **39** grant assurances (37 based in statute) (49 U.S. Code § 47107)
- Included in Airport Improvement Program (AIP) grant application
- Committed when AIP grant is signed
 - Typically in effect for **20 years**
 - Exception **land** grant (forever)

ASSURANCES	
1. General Federal Requirements.	21. Compatible Land Use.
2. Responsibility and Authority of the Sponsor.	22. Economic Nondiscrimination.
3. Sponsor Fund Availability.	23. Exclusive Rights.
4. Good Title.	24. Fee and Rental Structure.
5. Preserving Rights and Powers.	25. Airport Revenues.
6. Consistency with Local Plans.	26. Reports and Inspections.
7. Consideration of Local Interest.	27. Use by Government Aircraft.
8. Consultation with Users.	28. Land for Federal Facilities.
9. Public Hearings.	29. Airport Layout Plan.
10. Metropolitan Planning Organization.	30. Civil Rights.
11. Pavement Preventive Maintenance.	31. Disposal of Land.
12. Terminal Development Prerequisites.	32. Engineering and Design Services.
13. Accounting System, Audit, and Record Keeping Requirements.	33. Foreign Market Restrictions.
14. Minimum Wage Rates.	34. Policies, Standards, and Specifications.
15. Veteran's Preference.	35. Relocation and Real Property Acquisition.
16. Conformity to Plans and Specifications.	36. Access By Intercity Buses.
17. Construction Inspection and Approval.	37. Disadvantaged Business Enterprises.
18. Planning Projects.	38. Hangar Construction.
19. Operation and Maintenance.	39. Competitive Access.
20. Hazard Removal and Mitigation.	



Key Federal Obligations

Key obligations include, but are not limited to:

- Maintain rights and powers to comply with its obligations (GA 5)
- Operating the airport in a safe and serviceable manner (GA 19)
- Making the airport available without unjust discrimination (GA 22)
- Prohibiting an exclusive right (GA 23)
- Maintaining reasonable and self-sustaining fee structure (GA 24)



Airport Rights and Powers

Grant Assurance 5, *Preserving Rights and Powers*

- Focus on “*preserving*” – ensure that actions, policies, or plans will not deprive the airport of its rights and powers to control the airport
- Can the airport sponsor control its own destiny?
- All contractual actions taken by the sponsor are subordinate to the grant assurances

A sponsor cannot take any action that may deprive it of its rights and powers to direct and control airport development and comply with grant assurances.



Property Leases or Use Agreements In Context

Sponsor should place a “Subordination Clause” in all its tenant leases and agreements that subordinates the terms of the lease or agreement to the federal grant assurances and surplus property obligations.



Airport Operations

Grant Assurance 19, *Operation and Maintenance*

- Operate the airport and all facilities necessary to serve the aeronautical users in a safe and serviceable condition at all times.
- Airport sponsor cannot cause or permit any activities or actions that would interfere with the use of the airport for airport purposes.
- All aeronautical activities must be safely integrated into the airport operation.



Economic Nondiscrimination

Grant Assurance 22, *Economic Nondiscrimination*

- The sponsor “will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities...”
- Commercial aeronautical service providers must furnish services in a reasonable and not unjustly discriminatory basis.
- Sponsor may establish reasonable and not unjustly discriminatory conditions to be met by all airport users to ensure safety/efficiency.



Economic Nondiscrimination (Cont.)

Grant Assurance 22, *Economic Nondiscrimination*

- Sponsor may prohibit or limit any type, kind, or class of aeronautical use if the action is necessary for the safe operation of the airport.
- Sponsor cannot prevent operators from self-fueling or self-maintaining A/C – subject to reasonable airport rules, regulations, minimum standards.



Economic Nondiscrimination In Context

- Aeronautical Activity must be provided reasonable and not unjustly discriminatory access.
- Users are subject to non-discriminatory and substantially similar airport rules, regulations, conditions, rates, fees, etc. as other similar operators. (Similarly-situated)
- Leases to provide commercial service to the public must require the operator to provide not unjustly discriminatory access to users.
- Each air carrier has the right to service itself, self-maintain its aircraft, and/or use any airport-authorized FBO.



Exclusive Rights

Grant Assurance 23, *Exclusive Rights*

- The *oldest* Federal Obligation (1938)

An exclusive right is a power, privilege, or other right excluding or debarring another from exercising a like power, privilege or right.



Exclusive Rights (Cont.)

Grant Assurance 23, *Exclusive Rights*

The airport sponsor may *not* grant a special privilege or monopoly to anyone providing aeronautical services on the airport or engaging in an aeronautical use. Neither by express agreement, imposition of unreasonable standards or requirements, or by any other means.

- Intent is promote aeronautical activity and protect fair competition
- Obligation continues as long as the airport is operated as an airport
- Exception: Sponsor-provided aeronautical services (FBO)



Exclusive Rights In Context

- **Sponsor cannot grant an exclusive right to any user seeking to use a federally obligated airport.**
 - Ex. Lease terms cannot confer an exclusive right.
- Sponsor cannot deny reasonable access to a user seeking to use the airport in order to protect a competitor.
 - FAA views a request to access/lease space as evidence of aeronautical demand
- Exclusive-use leased property is not an exclusive-right.



Airport Fees and Revenue

Grant Assurance 24, Fee and Rental Structure

- Airport must maintain a fee and rental structure that will ensure it is as self-sustaining as possible under the circumstances.
 - Airport sponsors must retain the ability to respond to local conditions
 - Federal law does not require a single approach to airport rate-setting, as long as the methodology used is transparent and applied consistently to similarly-situated aeronautical users.
 - Airport sponsors may set fees for aeronautical use of airport facilities by ordinance, statute, resolution, regulation, or agreement.



Compliance Enforcement – Surveillance Methods

- Complaints (Formal and Informal)
- Ad hoc Inspections
- Land Use Inspections
- Airport Financial Reporting Program
- Revenue Use Audits
- FAA Hotline Complaints
- Office of Inspector General Reports



Compliance Enforcement (Cont.)

When sponsors don't comply:

- The FAA may take punitive compliance actions, such as withholding funds under 49 U.S.C. 47114, when reasonable efforts have failed to achieve voluntary compliance
- This is because “aviation users receive direct benefits from the Federal investments made at public use airports via grants from the FAA to airport sponsors...”

[See FAA Order 5190.6B, 2.4.a.]



Airport Financial Compliance Program

ACO-200 Core Responsibilities:

- Oversight of the FAA Revenue Use Policy.
 - Single Audit Program.
 - Manage the Compliance Activity Tracking System Portal, (the Airport Financial Reporting Program).
 - Onsite Financial Reviews at Commercial Service Airports.



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.



Federal Obligations (Cont.)

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)]



What is Airport Revenue?

- FAA policy was published in the 1999 Federal Register and applies to revenue generated by the airport, which 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 (caveats)
- Costs incurred by government officials (caveats)
- General government costs (caveats)



Airport Revenue – Permitted Uses (Cont.)

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



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
- Loaning money to other entities at less than prevailing interest rates
- Direct subsidies to air carriers



Airport Revenue – Prohibited Uses (Cont.)

- Prohibited Uses of Airport Revenue - Continued
- Land rental for nonaeronautical purposes at less than fair market value
- Rent-free land use
- Unrelated community activities
- Payments based on an improper 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 that inadvertently subsidize air carriers
- Selling airport land and not compensating the airport



Airport Revenue Diversion Remedies

- Repayment with interest
- Withholding approval of an application for future grants
- Withholding modification of existing grants
- Withholding payment under existing grants
- File suit for enforcement in the U.S. District Court



Airport Revenue Diversion Remedies (Cont.)

- 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
- Withholding approval of a PFC request
- Withholding any amount from funds otherwise available to the sponsor from DOT (i.e., transit or highway grants)



Single Audits

Purpose: Ensure compliance with federal regulations and proper use of federal funds

- Key Components:
 - Eligibility: Applies to entities receiving \$1,000,000 or more in federal funds
 - Scope: Review of financial statements and compliance with federal requirements
 - Types of Audits: Financial audits and compliance audits
 - Outcome: Audit report with findings and recommendations
- Relevant Regulation: 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards)



Airport Financial Reporting Program (Forms 126/127)

- What is the Airport Financial Reporting Program?
- The Airport Financial Reporting Program stems from the Federal Aviation Administration Authorization Act of 1994 which mandates that commercial service airports, those with at least 2,500 enplanements in a calendar year, must submit timely and accurate financial reports to the FAA annually.



Which Airports Must File?

- Any airport that meets the following criteria must file:
 - Obligated: The airport has obligations to report.
 - Meets Commercial Service Threshold: Airports that provide commercial service or greater.
 - Provided Commercial Service in Prior Year: The airport provided commercial service in the preceding calendar year (Example: If an airport had at least 2,500 enplanements in the calendar year 2002, it must file reports for its 2003 fiscal year.)



FAA Financial Compliance Reviews

Purpose: Ensure proper use of federal funds by airports

- Key Program: Airport Improvement Program (AIP)
- Focus Areas:
 - Revenue generation
 - Expenditure tracking
 - Adherence to grant assurances



FAA Financial Compliance Review

Review Process

- On-site evaluations
- Examination of financial records
- Interviews with airport personnel



FAA Financial Compliance Reviews (Cont.)

How Airports are Selected for Onsite Review

- 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



Grant Assurances Discussed in this Workshop

Presentation	Applicable Grant Assurances	Applicable Statute/Policy
Land Use Change	GA 22: Economic Nondiscrimination GA 23: Exclusive Rights GA 29: Airport Layout Plan GA 31: Disposal of Land	Grant Acquired Property: 47107 h.(2) Land Conveyances: 47125, 47151-47153 88 Fed. Reg. 85474, Dec. 8, 2023
Air Carrier Incentives	GA 22: Economic Nondiscrimination GA 24: Fee and Rental Structure GA 25: Airport Revenues	88 Fed. Reg. 85344, Dec. 7. 2023



Grant Assurances Discussed in this Workshop - 2

Presentation	Applicable Grant Assurances	Applicable Statute/Policy
Financial Reviews and Single Audit	GA 1: General Federal Requirements GA 13: Accounting System, Audit, and record Keeping Requirements GA 25: Airport Revenue	Airport Revenue Policy: 47107, 47133
Part 16 Access	GA 5: Rights and Powers GA 22: Economic Nondiscrimination GA 23: Exclusive Rights GA 24: Rates and Charges	ANCA

