

FAA Airport Compliance Manual — Order 5190.6B

Airports

Chapter 15. Permitted and Prohibited Uses of Airport Revenue

15.9. Permitted Uses of Airport Revenue.

a. General. Sponsors may use their airport revenue for the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

Such costs may include reimbursements to a state or local agency for the costs of services actually received and documented, subject to the terms of the Revenue Use Policy. Operating costs for an airport may be both direct and indirect and may include all of the expenses and costs that are recognized under the generally accepted accounting principles and practices that apply to the airport enterprise funds of state and local government entities.

g. **Central Service Costs.** A sponsor may use airport revenue to pay for costs such as accounting, budgeting, data processing, procurement, legal services, disbursing, and payroll services that it bills to the airport through an acceptable cost allocation plan. The Revenue Use Policy and OMB Circular A-87 are our references for evaluating sponsor cost allocation plans. Such costs must meet the standard of being airport capital or operating costs. The allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these costs.

15.11. Allocation of Indirect Costs. An airport may use its revenue to pay capital or operating costs that the sponsor charges the airport through a cost allocation plan. In an acceptable cost allocation plan, the sponsor allocates costs in a manner consistent with Attachment A to Office of Management and Budget (OMB) Circular A-87,³⁹ except substitute the phrase “airport revenue” for the phrase “grant award” wherever the latter phrase occurs in Attachment A. In addition, the sponsor may not disproportionately allocate general government costs to the airport and may not indirectly bill costs through the cost allocation plan that are also billed directly to the airport. The sponsor must bill its other comparable units of government in a similar manner for the same costs it allocates to the airport; such allocations must be in proportion to the benefit that each receives from the allocated costs.

15.13. Prohibited Uses of Airport Revenue.

a. **Unlawful Revenue Diversion.** Unlawful revenue diversion is the use of airport revenue for purposes other than airport capital or operating costs or the costs of other facilities owned or operated by the sponsor and directly and substantially related to air transportation. Revenue diversion violates federal law and AIP grant assurances unless: (1) it is grandfathered within the scope of grandfathered financial authority established before 1982, or, (2) it is authorized under an exemption issued by the FAA as part of the airport privatization pilot program.

Revenue diversion is the use of airport revenue for purposes other than airport capital or operating costs.

b. General. Prohibited uses of airport revenue include direct or indirect payments that exceed the fair and reasonable value of those services and facilities provided to the airport. The FAA generally considers the cost of providing the services or facilities to the airport as a reliable indicator of value. For example, the DOT Office of Inspector General (OIG) and the FAA found a city sponsor to be diverting revenue where the sponsor charged the airport for investment management at the rate that would have been charged for commercial services when services to the airport were actually provided by city employees at a much lower cost.

k. Impact Fees. Impact fees assessed by any governmental body that exceed the value of services or facilities provided to the airport are prohibited uses of airport revenue. However, the airport may pay for environmental mitigation measures contained in an FAA record of decision approving funding for an airport development project or for constructing a ground access facility that would otherwise be eligible for the use of airport revenue. When such fees meet the other allowability and documentation requirements, the sponsor may use airport revenue to pay for impact fees. In determining appropriate corrective action for an impact fee payment that is not consistent with the revenue use requirements, the FAA will consider whether a nonsponsoring governmental entity imposed the fee and whether the sponsor has the ability under local law to avoid paying the fee.

Chapter 17: Self-sustainability

17.5. Self-sustaining Principle.

Airports must maintain a fee and rental structure that makes the airport as financially self-sustaining as possible under the particular circumstances at that airport. The requirement recognizes that individual airports will differ in their ability to be fully self-sustaining, given differences in conditions at each airport. The purpose of the self-sustaining rule is to maintain the utility of the federal investment in the airport.

17.6. Airport Circumstances. At some airports, market conditions may not permit a sponsor to establish fees that are sufficiently high to recover aeronautical costs and sufficiently low to attract and retain commercial aeronautical services.

In such circumstances, a sponsor's decision to charge rates that are below those needed to achieve self-sustainability in order to assure that services are provided to the public is not inherently inconsistent with the federal obligation to make the airport as self-sustaining as possible given its particular circumstances.

A sponsor may charge aviation museums and aeronautical secondary and post secondary education programs conducted by accredited education institutions operating aircraft reduced rental rates to the extent that civil aviation receives reasonable tangible or intangible benefits from such use. However,

attention must be paid to whether an aviation museum or post secondary school operates actual aircraft. This is important since a “flying” museum is an aeronautical activity, while one that does not operate aircraft may not be classified as one. (Photo: FAA)

17.7. Long-term Approach. If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the sponsor should establish long-term goals and targets to make the airport as financially self-sustaining as possible.

17.8. New Agreements. Sponsors are encouraged to undertake reasonable efforts to make their particular airports as self-sustaining as possible when entering into new or revised agreements or when otherwise establishing rates, charges, and fees.

17.9. Revenue Surpluses. Some airports may have sufficient market power to charge fees that exceed total airport costs. In establishing new fees and generating revenues from all sources, sponsors should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenue may be spent under 49 U.S.C. § 47107(b)(1).

Reasonable reserves and other funds to facilitate financing and to cover contingencies are not considered revenue surpluses. The sponsor must use any surplus funds accumulated in accordance with the Revenue Use Policy.

Additionally, the progressive accumulation of substantial amounts of surplus aeronautical revenue could warrant an FAA inquiry into whether the aeronautical fees are consistent with the sponsor’s obligation to make the airport available on fair and reasonable terms.

The FAA will not ordinarily investigate the reasonableness of a general aviation airport’s fees absent evidence of a progressive accumulation of surplus aeronautical revenues.

17.10. Rates Charged for Aeronautical Use. Charges for aeronautical uses of the airport must be reasonable. For aeronautical users, the FAA considers charges that reflect the cost of the services or facilities satisfies the self-sustaining requirement. Accordingly, the FAA does not consider the self-sustaining obligation to require the sponsor to charge fair market value rates to aeronautical users.

As explained in more detail in chapter 18 of this Order, Airport Rates and Charges, fees for the use of the airfield generally may not exceed the airport's capital and operating costs of providing the airfield. Aeronautical fees for landside or non-movement area airfield facilities (e.g., hangars and aviation offices) may be at a fair market rate, but are not required to be higher than a level that reflects the cost of services and facilities. In other words, those charges can be somewhere between cost and fair market value. In part, this is because hangars and aviation offices are exclusively used by the leaseholders while airfield facilities are used in common by all aeronautical users.

The FAA will not ordinarily investigate the reasonableness of a general aviation airport’s fees absent evidence of a progressive accumulation of surplus aeronautical revenues.

Chapter 18. Airport Rates and Charges

18.22. Self-sustaining Rate Structure.

a. Requirement. Sponsors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible. (The policy on the self-sustaining requirement is discussed in chapter 17 of this Order, Self-sustainability.)

b. Revenue Surpluses. In establishing new fees and generating revenues from all sources, sponsors should not seek to create revenue surpluses that exceed the amounts required for airport system purposes and for other purposes for which airport revenue may be spent under 49 U.S.C. §§ 47107(b)(1) and 47133. Reasonable reserves and other funds to facilitate financing and to cover contingencies are not surplus. While fees charged to nonaeronautical users may exceed the costs of service to those users, the sponsor must use the surplus in accordance with the revenue use requirements of 49 U.S.C. §§ 47107(b) and 47133. For example, a nonaeronautical surplus may be used to offset aeronautical costs and result in lower fees for aeronautical users or may be used for nonaeronautical airport development purposes.

c. Market Discipline. Over time, the DOT assumes that the limitations on airport revenue use, combined with effective market discipline for nonaeronautical services and facilities, will be effective in holding aeronautical costs to airport revenues while providing reasonable aeronautical fees for services and facilities.

d. Surplus. The progressive accumulation of substantial amounts of surplus airport revenue may warrant an FAA inquiry into whether aeronautical fees are consistent with the sponsor's federal obligations to make the airport available on fair and reasonable terms.