



U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF INSPECTOR GENERAL

**FAA Needs To More Accurately Account
for Airport Sponsors' Grandfathered
Payments**

FAA

Report No. AV2018041

April 17, 2018





FAA Needs To More Accurately Account for Airport Sponsors' Grandfathered Payments

Self-Initiated

Federal Aviation Administration | AV2018041 | April 17, 2018

What We Looked At

The Federal Aviation Administration (FAA) estimates that between 2017 and 2021, there will be a need for approximately \$32.5 billion in airport projects eligible for funding from the Federal Airport Improvement Program (AIP) for safety, security, and airfield projects. Federal law requires airports to use revenues for airport capital and operating costs, and allows no expenditures unrelated to the airports. However, the law allows airport sponsors—an airport's owner/operator, such as the city, county, or State that the airport serves—that have historically used revenues for non-airport purposes—referred to as grandfathered sponsors—to continue to use revenues for these purposes. FAA may limit awards of AIP discretionary grants to grandfathered sponsors that use revenues for non-airport purposes above statutory limits. Due to the limited Federal funds available for airport improvements and the large investments projected for future airport development, we conducted this audit. Our objective was to assess FAA's oversight of grandfathered sponsors' compliance with Federal law related to airport revenue payments. Specifically, we assessed FAA's (1) guidance to airport sponsors on reporting grandfathered payments and (2) process for verifying the accuracy and completeness of sponsor reporting.

What We Found

FAA incorrectly reported grandfathered payments due to insufficient guidance to airport sponsors. Four of the eight grandfathered airport sponsors we reviewed did not know how to correctly report their grandfathered payments because FAA has not provided sufficient guidance. Furthermore, FAA did not verify the accuracy of the data in its annual reports on grandfathered sponsors. Specifically, FAA's data in its annual summary reports on four of eight sponsors' grandfathered payments from 1995 through 2015 were inaccurate. For example, FAA understated one sponsor's payments by over \$200 million. FAA also understated another sponsor's payments by over \$2.1 billion and did not take into account the \$3.7 billion the State returned to this sponsor.

Our Recommendations

We provided three recommendations to help FAA improve its oversight of grandfathered sponsors. FAA concurred with all three recommendations.

All OIG audit reports are available on our website at www.oig.dot.gov.

For inquiries about this report, please contact our Office of Legal, Legislative, and External Affairs at (202) 366-8751.

Contents


Memorandum	1
Results in Brief	3
Background	4
FAA Incorrectly Reported Grandfathered Payments Due to Insufficient Guidance to Airport Sponsors	5
FAA Did Not Verify the Accuracy of the Data in Its Annual Reports on Grandfathered Sponsors	6
Conclusion	10
Recommendations	10
Agency Comments and OIG Response	10
Actions Required	11
Exhibit A. Scope and Methodology	12
Exhibit B. Organizations Visited or Contacted	14
Exhibit C. List of Acronyms	16
Exhibit D. Revenue Use Exemptions and Total Grandfathered Payments for Eight Sponsors ^a	17
Exhibit E. PANYNJ's Annual Grandfathered Payments From Fiscal Years 1995 Through 2015	18
Exhibit F. MAA's Grandfathered Payments For Fiscal Years 1995 through 2015	19
Exhibit G. Major Contributors to This Report	20
Appendix. Agency Comments	21



Memorandum

Date: April 17, 2018

Subject: ACTION: FAA Needs to More Accurately Account for Airport Sponsors' Grandfathered Payments | Report No. AV2018041

From: Matthew E. Hampton 
Assistant Inspector General for Aviation Audits

To: Federal Aviation Administrator

Between 2017 and 2021, the Federal Aviation Administration (FAA) estimates a need for approximately \$32.5 billion in airport projects eligible for funding from the Federal Airport Improvement Program¹ to fund safety, security, and airfield projects. Under Federal law, airports must use their revenues on airport capital or operating costs,² not for expenditures unrelated to the airports. However, the law also allows airport sponsors—the airport's owner/operator, such as the city, county, or State that the airport serves—that have historically used airport revenues for non-airport purposes—referred to as grandfathered airport sponsors³—to continue to use airport revenues for these purposes. According to FAA, these non-airport purposes are usually the grandfathered sponsor's general municipal or governmental expenses. FAA recognizes these revenue uses as lawful revenue diversions.⁴ Yet, FAA must consider sponsors' use of airport revenues for non-airport purposes over a statutory limit as a factor in award decisions on applications for Airport Improvement Program (AIP) discretionary⁵ funds. From 1995 to 2015, grandfathered sponsors have reported over \$10 billion

¹ FAA, *Report to Congress: National Plan of Integrated Airport Systems (NPIAS) 2017-2021*, September 2016.

² Under Federal law, airport revenues can only be expended for "the capital and operating costs of the airport, the local airport system, or other local facilities which are 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."

³ There are 9 grandfathered airport sponsors that own or operate over 30 airports (see Exhibits D and E).

⁴ For a discussion of lawful revenue diversion and grandfathered airports, see Federal Aviation Administration, *Policy and Procedures Concerning the Use of Airport Revenue*, Federal Register Vol. 64, No. 30, February 16, 1999.

⁵ AIP funding falls into two basic categories: discretionary and entitlement funds. Discretionary funds, subject to certain restrictions, are available for distribution at FAA's discretion. Entitlement funds are apportioned by formulas contained in statute each year to specific airport sponsors, types of airports, or states. FAA estimates about 30 percent of AIP funding is discretionary and about 70 percent is entitlement. Unless otherwise noted, the AIP funding discussed in this report is discretionary.

in grandfathered payments⁶ in 2015 inflation-adjusted dollars,⁷ including over \$1.2 billion in 2015.

Due to the limited Federal funds available for airport improvements and the large investments projected for future airport development and improvements, we conducted this audit. Our objective was to assess FAA's oversight of grandfathered airports' compliance with Federal law related to airport revenue payments. Specifically, we assessed FAA's (1) guidance to airport sponsors on reporting grandfathered payments and (2) process for verifying the accuracy and completeness of airport sponsor reporting.

We conducted this audit in accordance with generally accepted Government auditing standards. Exhibit A details our scope and methodology. Exhibit B lists the entities we visited or contacted.

We appreciate the courtesies and cooperation of Department of Transportation representatives during this audit. If you have any questions concerning this report, please call Matthew E. Hampton, Assistant Inspector General for Aviation Audits, at (202) 366-0500.

cc: The Secretary
DOT Audit Liaison, M-1
FAA Audit Liaison, AAE-100

⁶ In this report, we define grandfathered payments as payments made by grandfathered sponsors that can be used for non-airport purposes. Grandfathered payments are reported by fiscal year in this report.

⁷ The figure includes positive dollar payments made by the Port Authority of New York and New Jersey (PANYNJ). See exhibit E for these payments.

Results in Brief

FAA incorrectly reported grandfathered payments due to insufficient guidance⁸ to airport sponsors.

We found that four of the eight grandfathered airport sponsors we reviewed⁹ did not know how to correctly report their grandfathered payments because FAA has not provided sufficient guidance. Federal law and FAA policy require sponsors to annually report financial data, including grandfathered payments. FAA provides sponsors with a financial reporting form—Form 126—to report payments, and uses this information to determine the amount of the grandfathered payments. However, FAA’s guidance does not fully inform sponsors how to report grandfathered payments. For example, the guidance does not inform sponsors how to report on airports with fewer than 2,500 enplanements.¹⁰ We found that 1 sponsor of 15 grandfathered airports under reported its payments because it was not aware it had to provide FAA with an additional report on its payments for airports with fewer than 2,500 enplanements. As a result, FAA reported them incorrectly in its annual report on grandfathered airports¹¹ and without accurate data may not have the information it needs when making decisions on AIP discretionary funding for grandfathered airports.

FAA did not verify the accuracy of the data in its annual reports on grandfathered sponsors.

FAA’s data in its annual summary reports on four of eight sponsors’ grandfathered payments from 1995 through 2015 were inaccurate. For example, FAA understated one sponsor’s payments by over \$200 million. FAA also understated another sponsor’s payments by over \$2.1 billion and did not take into account the \$3.7 billion the State returned to this sponsor. FAA made these errors because FAA lacks an internal control process to verify these data such as spot checks or periodic assessments of some or all of sponsor reports to verify the data including comparisons of sponsors’ audited financial reports to grandfathered payment information. According to FAA officials, the Agency relies on sponsors to accurately report their grandfathered payments, and does not have the resources to validate financial information. However, because it did not verify data, FAA did not recognize that one sponsor had exceeded the statutory limit for its grandfathered payments by over \$500,000. An accurate calculation of grandfathered payments is important because FAA considers whether a sponsor

⁸ FAA, *Advisory Circular 150/5100-19D: Guide for Airport Financial Reports Filed by Airport Sponsors*, June 2011.

⁹ We did not review PANYNJ to avoid duplication of an FAA review of PANYNJ’s financial records.

¹⁰ “Enplanement” is FAA’s term for passenger boarding.

¹¹ FAA develops an annual internal report on grandfathered airports.

has exceeded its statutory limit for use of revenue for non-airport purposes as a factor in its decisions to award AIP discretionary grants.

We are making recommendations to help FAA improve its oversight of grandfathered sponsors.

Background

The FAA Authorization Act of 1994¹² requires airport sponsors to file financial information with FAA, including payments that their airports made to other Government entities,¹³ and the purposes for those payments. According to FAA, airports' use of FAA Form 5100-126 (Form 126) satisfies these requirements. Form 126 contains a line item entitled "grandfathered payments." The act also requires sponsors to report funds collected and spent at their airports. Airports use FAA Form 5100-127 (Form 127) to meet this requirement. FAA stores sponsors' financial information, including on grandfathered payments, in its Airports Financial Reporting Database.

Under Federal statute,¹⁴ FAA must consider sponsors' use of airport revenues for non-airport purposes as a factor in award decisions on applications for AIP discretionary grants if the amount of airport revenues used exceeds a statutory limit. Specifically, FAA may limit awards of AIP grants to grandfathered airports that use amounts of airport revenues for non-airport purposes above a statutory limit. The statutory limit is based on the amount of grandfathered revenue the sponsor spent for non-airport purposes as of the first fiscal year ending after August 23, 1994, adjusted for inflation each year using the Consumer Price Index. For example, San Francisco International Airport's statutory limit for fiscal year 2015¹⁵ was about \$25 million based on the approximately \$16 million its sponsor spent on non-airport purposes in fiscal year 1995¹⁶ adjusted for inflation.

¹² Pub. Law No. 103-305.

¹³ Other Government entities can include city, county, State, and branches of the Federal Government.

¹⁴ 49 U. S. C. § 47115(f).

¹⁵ Fiscal year ending June 30, 2015.

¹⁶ Fiscal year ending June 30, 1995.

FAA Incorrectly Reported Grandfathered Payments Due to Insufficient Guidance to Airport Sponsors

We found that four of the eight grandfathered airport sponsors we reviewed did not know how to correctly report their grandfathered payments because FAA has not provided sponsors sufficient guidance on how to report their grandfathered payments. As a result, FAA reported them incorrectly in its annual report on grandfathered airports and without accurate data may not have the information it needs when making decisions on AIP discretionary funding for grandfathered airports.

FAA's Circular on completion of Form 126 does not include sufficient guidance on how to report grandfathered payments on the Form. An FAA official informed us that sponsors should report payments of revenue for non-airport purposes on the grandfathered payment line item only. However, FAA's Circular does not include this information. As a result, four sponsors did not report their grandfathered payments in this manner. For example:

- One sponsor reported its grandfathered payments in two line items—the “grandfathered payment” line item and the “payment in lieu of taxes” line item. A portion of the sponsor’s grandfathered payments was a payment in lieu of taxes to cities and localities. The sponsor informed us that each year, the total grandfathered payments consisted of the amounts it reported in both the grandfathered payment line item and payment in lieu of taxes line item.
- Another sponsor informed us that it reported only part of its grandfathered payments on Form 126 because it believed that FAA did not require it to report grandfathered payments allocated to all 15 of its airports. FAA guidance only requires financial reporting on airports with over 2,500 enplanements. However, there is no guidance informing owners of grandfathered airports on how to report on airports with less than 2,500 enplanements. FAA officials also informed us that sponsors must report grandfathered payments on Form 126 for airports with at least 2,500 enplanements, and use another document for airports with under 2,500 enplanements. However, the guidance does not explain or even mention a requirement for another document for this purpose. As a result, this sponsor under-reported its grandfathered payments because it was not aware that it had to submit an additional document on grandfathered payments for its airports with less than 2,500 enplanements.

Federal law¹⁷ requires airport sponsors to submit annual financial reports to FAA—of which FAA Form 126 is part—to inform the public about how they collect and disburse funds. These reports also provide FAA with a means to evaluate sponsors' compliance with revenue-use requirements. Furthermore, the Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government*¹⁸ (Federal Control Standards) states that under effective internal controls¹⁹ at Federal agencies, management communicates with and obtains quality information from, external parties, such as airport sponsors.

FAA officials stated that the Circular applies to over 500 airports, and that it would not make sense to add guidance for only 9 grandfathered sponsors. The FAA officials also stated that adding examples for how to report grandfathered payments could cause confusion and would have to be heavily explained. However, the nine grandfathered sponsors include nine of the largest airports²⁰ in terms of enplanements in the United States, and incorrect reporting can affect FAA's assessment of these airport sponsors that have exceeded the statutory limit.

FAA Did Not Verify the Accuracy of the Data in Its Annual Reports on Grandfathered Sponsors

FAA did not verify the accuracy of the annual reports the Agency develops on grandfathered payments for the eight sponsors we reviewed because FAA lacks an internal control process to verify these data. Such a process could include spot checks or periodic assessments of some or all sponsor reports to verify the data including comparisons of sponsors' audited financial reports—often available online—to grandfathered payment information. According to FAA officials, the Agency relies on the airports' principal financial officers to certify to the accuracy of the data in the financial reports. As a result, FAA's ability to make accurate determinations about whether a sponsor's annual grandfathered payments have exceeded statutory limits is inhibited, and consequently may affect the Agency's decisions on AIP grant awards.

FAA's policy²¹ calls for development of an annual internal summary report on each sponsor's grandfathered payments from the sponsor's Form 126. FAA uses

¹⁷ Pub. Law No. 103-305.

¹⁸ GAO, *Standards for Internal Control in the Federal Government* (GAO-14-704G), September 2014.

¹⁹ According to GAO, internal control is a process used by management to help an entity achieve its objectives.

²⁰ According to FAA data, these airports are 9 of the 30 largest airports in calendar year 2016.

²¹ FAA, *Memorandum: Annual Process for Compliance with Sec. 47115 (f) Pertaining to Airports Grandfathered Under the Revenue Use Statutes* (2013).

these reports to determine whether sponsors' grandfathered payments for the year exceeded the statutory limits. Consequently, FAA may limit awards of AIP grants to grandfathered airports that use amounts of airport revenues for non-airport purposes above the statutory limit.

According to the Federal Control Standards, an effective internal control system must assess risk and include quality information that is accurate and complete. According to the Standards, agency management should evaluate data from external entities, such as airport sponsors, and take any necessary actions to ensure the data's quality. Management should also design control activities so that all transactions are completely and accurately recorded. These control activities help management fulfill its responsibilities to address identified risk in the internal control system.

We found that FAA's summary reports for fiscal years 1995 through 2015 for two²² of the eight sponsors were understated by a total of over \$206 million and overstated by a total of over \$43 million for a third sponsor. For a fourth sponsor, Maryland Aviation Administration (MAA), FAA understated the grandfathered payments made into a State fund by a total of over \$2.1 billion. See table 1 for details. In one case, the State of Hawaii, an accurate statement of the grandfathered payments for 1 year would have put payments above statutory limits by over \$500,000. Since FAA can reduce AIP discretionary funding when grandfathered airports go over the statutory limit, the amount spent over the statutory limit could have been used for other airport projects.

²² We did not find inaccuracies in the data from the other four grandfathered sponsors in the summary reports.

Table 1. Grandfathered Payments from Fiscal Years 1995 to 2015

Airport Sponsor	Payments in FAA Summary Reports	Payment Totals Confirmed by OIG	Differences
Maryland Aviation Administration (MAA)	\$909,905,994	\$3,100,614,872	\$(2,190,708,878)
Massachusetts Port Authority (Massport)	\$497,776,753	\$698,217,061	\$(200,440,308)
State of Hawaii	\$193,311,541	\$199,216,336	\$(5,904,795)
City and County of San Francisco, CA	\$564,269,596	\$ 520,955,401	\$43,314,195
TOTALS	\$2,165,263,884	\$4,519,003,670	\$(2,353,739,786)

Source: OIG analysis of airport sponsor and FAA data

We identified the inaccuracies in the data by reviewing sponsors’ audited financial statements available to the public online. Sponsors also informed us of inaccurate data during our review. Both FAA and airport sponsors made errors in reporting. For example,

- FAA’s summary reports on MAA included a total of \$909.9 million, but we found the total to be \$3.1 billion. From 1995 through 2003, rather than report its grandfather payments on Form 126, MAA reported on FAA Form 127, which is used to report operating revenue. According to MAA, in 2004, it stopped reporting its grandfathered payments because Form 127 changed and no longer contained a place to report the payments.

Between 1995 and 2015, MAA paid \$3.1 billion to the State of Maryland, and the State paid over \$3.7 billion back to MAA (see exhibit F). FAA considers the funds that MAA paid to the State of Maryland to be grandfathered payments, but did not start including the funds that MAA received back from the State in its summary reports until after we inquired about the issue.

- For Massport, FAA misreported the grandfathered payment in its summary reports for 1995 and for 2001 through 2015. FAA’s total in its summary reports on Massport was \$497.8 million but we found the correct total to be \$698.2 million. For fiscal years 2001 through 2015, Massport did not report correct data, but because FAA did not verify the data, FAA did not detect the inaccuracies in the data.

Furthermore, since 2001, Massport has reported its grandfathered payments in two line items on the Form 126—in the “grandfathered payment” line item, and the “payment in lieu of taxes” line item. For 3 years—2006 through 2008—FAA included only the amount in the “payment in lieu of taxes” line item as Massport’s grandfathered payments. For 12 years—2001 to 2005 and 2009 to 2015—FAA included only the payments Massport reported in the “grandfathered payment” line item.

According to FAA officials, the Agency relies on sponsors to fully and accurately report their grandfathered payments because, officials stated, the Agency does not have the resources to validate all financial information. While FAA requires sponsors’ chief financial officers to certify the accuracy of the financial reports for Forms 126 and 127, FAA makes no representation regarding the accuracy of sponsors’ reported data.

Furthermore, FAA’s policy states that in addition to sponsors’ Forms 126, to detect sponsors’ diversions of airport revenue, the Agency will use single audit reports;²³ results of investigations following third-party complaints; and OIG audits. However, FAA officials informed us that the Agency only reviews single audits reports for compliance issues and does not confirm whether audited grandfathered payments are the correct amounts because it relies on airport sponsors’ self-certifications. FAA officials also stated that the Agency receives complaints and inquiries regarding airport sponsors’ use of airport revenue in meetings with airline representatives, and airport user groups. Lastly, FAA officials informed us that the Agency conducts annual financial reviews of commercial service airports, and in recent years, two of those airports were grandfathered airports.

However, FAA’s lack of an internal control process to verify the accuracy of the information in its annual summary reports on grandfathered payments, such as comparisons with sponsors’ readily available financial statements, inhibits the Agency’s ability to accurately determine whether sponsors have exceeded statutory limits for grandfathered payments. As a result, FAA may base its decisions regarding AIP awards on incorrect information.

²³ Under 2 CFR § 200.501, non-Federal entities that expend \$750,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year.

Conclusion

Airports are a critical component of the Nation's transportation infrastructure. Millions of dollars in current and future infrastructure needs exist with limited financial resources to meet those needs. However, because the Agency has not accurately accounted for grandfathered payments, FAA cannot be sure the data on these payments that it uses in AIP funding decisions for grandfathered airports is accurate. As a result, the Agency cannot be sure that AIP discretionary funding is provided to the most deserving airport improvement needs.

Recommendations

To improve FAA oversight of grandfathered airports, we recommend that the Federal Aviation Administrator:

1. Provide written guidance to grandfathered sponsors on what constitutes a grandfathered payment and how to accurately report grandfathered payments.
2. Develop and implement an internal control process to verify the accuracy of reports on grandfathered payments.
3. In accordance with Federal law, consider the State of Hawaii exceeding its statutory limit on the use of revenues for non-airport purposes as a factor in reducing AIP discretionary funds awarded to the State. Implementation of this recommendation could put \$509,727 in funds to better use.

Agency Comments and OIG Response

We provided FAA with our draft report on January 16, 2018, and received its formal response on February 21, 2018, which is included as an appendix to this report. FAA concurred with all three of our recommendations. For recommendations 1 and 2, FAA proposed appropriate actions and completion dates and we consider these recommendations resolved but open pending completion of planned actions. Regarding recommendation 3, FAA stated that it will consider actions to address this recommendation should Hawaii DOT request discretionary funding in the future, and requested that we close the recommendation. Accordingly, we consider recommendation 3 resolved and closed.

In its response, FAA indicated that the draft report did not accurately state that an airport sponsor's use of airport revenues for non-airport purposes above the statutory limit can only be a factor for *discretionary* award decisions. The draft report did refer to discretionary AIP awards, but we have made further clarifications in the final report, including footnote 5, which distinguishes between discretionary and entitlement AIP funds, and expressly states that the AIP funding discussed in this report is discretionary unless otherwise noted.

FAA also expressed the following concerns that some of the statements in our report are inaccurate or inconsistent with the information FAA provided. We disagree with FAA's characterization of the statements in our report as explained below.

FAA states that table 1 does not provide an accurate report for MAA, and requests a revision to reflect the figures in exhibit F, which includes the Maryland Trust Fund's payment of over \$3.73 billion returned to MAA. To fully explain the inaccuracies we found with MAA's grandfathered payments, we note the returned payment at several points in the report, including exhibit F. Furthermore, as shown in table 1, FAA considered the funds that MAA paid to the Maryland State Transportation Trust Fund to be the grandfathered payments. In fact, FAA did not start accounting for the payments returned to MAA in its summary reports until after we brought the matter to the Agency's attention.

FAA also states in its response that the grandfathered payments reported for Massport, City of Chicago, and City/County of San Francisco in exhibit D are inconsistent with information that FAA's Office of Airport Compliance provided to us. We disagree because the payment information FAA provided for these airports conflicted with the payment amounts we obtained and confirmed with airport sponsors or FAA's report. In the case of Massport and the City and County of San Francisco, both confirmed the correct grandfathered payment amounts that we used in our calculation of their total grandfathered payments. For the City of Chicago, FAA provided two different figures after reviewing our draft report that we could not reconcile. Therefore, we made no changes to our report.

Actions Required

We consider recommendations 1 and 2 resolved but open pending completion of planned actions. We consider recommendation 3 resolved and closed.

Exhibit A. Scope and Methodology

We conducted this performance audit between June 2016 and January 2018 in accordance with generally accepted Government auditing standards as prescribed by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our objective was to assess FAA's oversight of grandfathered airports' compliance with Federal law related to airport revenue payments. Specifically, we assessed FAA's (1) guidance to airport sponsors on reporting grandfathered payments and (2) process for verifying the accuracy and completeness of airport sponsor reporting.

To address our objectives, we obtained and reviewed applicable laws, policies, and guidance related to grandfathered airports and payments. More specifically, we obtained and reviewed the following documentation: *FAA's Policy and Procedures Concerning the Use of Airport Revenue*; *FAA's Memorandum on Annual Process for Compliance with Sec. 47115(f)*; *FAA Order 5190.6B, Airport Compliance Manual*; and *FAA Advisory Circular, Guide for Airport Financial Reports Filed by Airport Sponsors*.

To better understand guidance provided to grandfathered airport sponsors and FAA's oversight responsibilities, we interviewed FAA officials, including officials responsible for overseeing grandfathered payments, and legal staff responsible for determining grandfathered status. We also corresponded with eight of the nine grandfathered airport sponsors to determine how FAA's guidance and policies are implemented and the methodology used for calculating grandfathered payments. In addition, we interviewed officials, such as Airlines for America and Airports Council International, to obtain their perspectives. Based on our discussion with Airlines for America,²⁴ we spoke with 3 of the top 6 United States airlines²⁵ to obtain their views on the program.

²⁴ According to Airlines for America, it is a trade organization of the leading United States passenger and cargo carriers.

²⁵ According to FAA, based on fiscal year 2016 data, the top 6 airlines (American, Delta, United, Southwest, Alaska/Virgin, and JetBlue) accounted for more than 85 percent of the United States airline industry capacity and traffic.

For eight of the nine current grandfathered sponsors,²⁶ we analyzed grandfathered payments from 1995 to 2015 to determine whether FAA and airport sponsors are properly and accurately reporting grandfathered payments. Specifically, we compared FAA's Annual Summary Report on Grandfathered Payments to sponsors' Forms 126 and online audited financial statements. We contacted airport sponsors to obtain and review documentation to support its grandfathered status and confirm the correct grandfathered payment. Furthermore, we obtained and reviewed documentation from FAA to support its AIP discretionary funding decisions for sponsors over the grandfathered payment statutory limit.

²⁶ As noted above, we did not include the PANYNJ in order to avoid interference with and duplication of FAA's review of airport financial records concerning PANYNJ's aviation activities, including an examination of its "grandfathered" expenditures.

Exhibit B. Organizations Visited or Contacted

FAA

Office of Airport Compliance and Management Analysis

Office of Airport Planning and Programming

Office of the Chief Counsel

Office of Information and Technology

Western Pacific Region

Great Lakes Region

Chicago Airport District Office

Washington Airport District Office

San Francisco Airport District Office

New York Airport District Office

Office of the Secretary

Office of General Counsel

Grandfathered Airport Sponsors

Maryland Aviation Administration

Massachusetts Port Authority

City of Chicago

City and County of San Francisco

State of Hawaii

City and County of Denver

City of Saint Louis

Niagara Frontier Transportation Authority

Airlines

American Airlines

United Airlines

JetBlue Airways

Organizations

Airlines for America

Airports Council International

Exhibit C. List of Acronyms

AIP	Airport Improvement Program
DOT	Department of Transportation
FAA	Federal Aviation Administration
GAO	Government Accountability Office
MAA	Maryland Aviation Administration
Massport	Massachusetts Port Authority
OIG	Office of Inspector General
PANYNJ	Port Authority of New York and New Jersey

Exhibit D. Revenue Use Exemptions and Total Grandfathered Payments for Eight Sponsors^a

Sponsor and Its Airports as of Fiscal Year 2015	Legislation for Grandfathered Sponsors	Grandfathered Payments Fiscal Years 1995 to 2015
MAA ^b (Baltimore-Washington International; Martin State)	A 1957 state statutory transportation program governs the financing and operations of a multimodal transportation authority, including airport, highway, port, rail and transit facilities, wherein state revenues, including airport revenues support the state's transportation related, and other, facilities.	\$3,100,614,872
MASSPORT (Boston Logan International; Hanscom Field)	The port authority's 1956 enabling act provisions specifically permits it to use port revenue, which includes airport revenue, to satisfy debt obligations and to use revenues from each project for the expenses of the authority.	\$698,217,061
City of Chicago (O'Hare and Midway International)	The Municipal Code of Chicago applies a 1 percent use tax on personal property (including jet fuel) purchased outside of the City of Chicago ("City") and used in the City. The Code also applies a 5 cents per gallon tax on all vehicle fuel (including jet fuel) used in the City.	\$529,330,420
City and County of San Francisco (San Francisco International Airport)	City legislation authorizes the transfer of a percentage of airport revenues, permitting an airport-air carrier settlement agreement providing for annual payments to the city of 15 percent of the airport concession revenues.	\$520,955,401
State of Hawaii (All public use airports)	A 1955 state statute assesses a five percent surcharge on all receipts and deposits in an airport revenue fund to defray central service expenses of the state.	\$199,216,336
City and County of Denver (Denver International Airport)	Denver initially adopted a \$0.04 per gallon fuel tax in 1981, and in 1986 amended the tax to \$0.02 per gallon.	\$138,325,514
City of St. Louis, MO (Lambert-Saint Louis International Airport)	Bond obligations and city ordinances requires a five percent "gross receipts" fee from airport revenues. The payments were instituted in 1954 and continued in 1968.	\$111,540,515
Niagara Frontier Transportation Authority (Buffalo Niagara International and Niagara Falls International Airports)	Per New York State legislation, the Authority is able to use its grandfathered revenue exemptions for its operations, including those airport and non-airport related, including other authority facilities.	\$43,032,208
TOTAL		\$5,341,232,327

^a Currently, nine grandfathered sponsors can use airport revenues for non-airport purposes. We did not review PANYNJ, the ninth sponsor, during this audit. See exhibit E for information on PANYNJ.

^b Although MAA paid \$3.1 billion to the State of Maryland, the State paid \$3.7 billion back to MAA from 1995 through 2015 (see exhibit F).

Source: OIG review of airport sponsors' and FAA documents

Exhibit E. PANYNJ's Annual Grandfathered Payments From Fiscal Years 1995 Through 2015

Fiscal Year	Grandfathered Payments
1995	\$176,544,000
1996	\$0
1997	\$0
1998	\$126,052,000
1999	\$48,897,000
2000	\$124,984,000
2001	\$21,427,000
2002	\$341,984,000
2003	\$68,033,000
2004	\$249,530,000
2005	\$198,409,000
2006	\$237,695,000
2007	\$40,973,000
2008	\$150,493,000
2009	\$265,062,000
2010	\$840,054,000
2011	\$92,598,000
2012	(\$165,853,000)
2013	(\$11,592,000)
2014	(\$416,280,000)
2015	\$836,197,000
TOTAL	\$3,225,207,000

Source: FAA, Revised Final Report on "Grandfathered" Revenue Payments for 2015, August 26, 2016

Exhibit F. MAA's Grandfathered Payments For Fiscal Years 1995 through 2015

Fiscal Year Period	Payments in FAA Summary Reports	Payment Totals Confirmed by OIG	Misreported Differences	Payments Returned to MAA ^a
1995-2003	\$909,905,994	\$912,849,344	\$(2,943,350)	\$1,135,718,487
2004-2015	\$0	\$2,187,765,528	\$(2,187,765,528)	\$2,597,600,567
TOTALS	\$909,905,994	\$3,100,614,872	\$(2,190,708,878)	\$3,733,319,054

^a FAA did not start accounting for the payments returned to MAA in its summary reports until after we inquired about the issue.

Source: OIG analysis of airport sponsor and FAA data

Exhibit G. Major Contributors to This Report

MARSHALL JACKSON	PROGRAM DIRECTOR
NELDA SMITH	PROGRAM DIRECTOR
STEPHEN JONES	PROJECT MANAGER
JUDY NADEL	SENIOR AUDITOR
AMITRA MAMDOUHI	SENIOR ANALYST
SETH KAUFMAN	SENIOR COUNSEL
PETRA SWARTZLANDER	SENIOR STATISTICIAN
SUSAN NEILL	WRITER-EDITOR

Appendix. Agency Comments

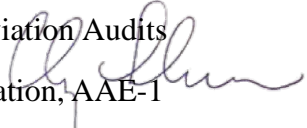


Federal Aviation Administration

Memorandum

Date: February 21, 2018

To: Matthew E. Hampton, Assistant Inspector General for Aviation Audits

From: H. Clayton Foushee, Director, Office of Audit and Evaluation, AAE-1 

Subject: Federal Aviation Administration's (FAA) Response to Office of Inspector General (OIG) Draft Report: FAA Airport Sponsors' Grandfathered Payments

The FAA's Office of Airports is firmly committed to implementing actions to improve grandfather payment reporting and internal control requirements. Under Federal Statutes,¹ the "grandfather provision" of the revenue use requirement, an airport operator may use airport revenues for non-airport purposes other than those proscribed under these sections. However, under another Federal Statute,² FAA must consider the use of this airport revenue for non-airport purposes as a factor militating against the distribution of discretionary Airport Improvement Program (AIP) funds. The FAA will continue to ensure the most accurate grandfather payment information is reported. The Office of Airport Compliance (ACO) has begun implementing additional guidance to assist airports in accurately reporting payments and to enhance internal control processes to verify the accuracy of payments.

The FAA has reviewed the draft report and offers the following comments in response to the OIG's findings and recommendations:

- The draft report states that FAA must consider an airport sponsor's use of airport revenues for non-airport purposes as a factor in award decisions for AIP grants. This is not correct—it only relates to discretionary award decisions, and only if the amount diverted exceeds the statutory limit in 49 U.S.C. § 47115(f)(2).

¹ 49 U.S.C. §§ 47107(b) and 47133(b)

² 49 U.S.C. § 47115(f)(2)

- Table 1 in the draft report indicating grandfathered payments from FY 1995-2015 does not provide an accurate report for the Maryland Aviation Administration (MAA). MAA's actual grandfather payment was \$3,100,614,872 to the State Transportation Trust Fund and \$3,733,319,054 was returned to MAA from the Trust Fund. The returned amount to MAA for airport purposes far exceeds the amount deposited by MAA to the Trust Fund. We request the OIG revise the statements in Table 1 to comport with how the information is accurately shown in Exhibit F.
- The payments reported for Massport, City of Chicago and City/County of San Francisco in Exhibit D are inconsistent with information ACO submitted to the OIG.
- The FAA discovered in fiscal year 2017 that the state of Hawaii's accounting practices adjustments resulted in an overage of \$509,727 above the sponsor's fiscal year 2012 cap. Based on the statutory requirement, FAA considers the fact that a sponsor exceeded its lawful cap as a factor militating against the distribution of discretionary funds in the fiscal year following the year in which the cap was exceeded, not the year FAA learned of the overage. A strict interpretation would suggest that the FAA should not look five years into the past and adjust future funding decisions; however, such an interpretation could incentivize airports to misreport in one year and then revise their records later. Accordingly, the FAA will consider this information the next time Hawaii DOT requests discretionary funding. The FAA will ensure that the management team in the FAA's Western-Pacific Regional Office, the Honolulu Airports District Office, and the Office of Airport Planning and Programming all have copies of this memorandum and take steps to ensure it is given full consideration prior to awarding AIP discretionary funds to Hawaii DOT.

Upon review of OIG's draft report, FAA concurs with all three recommendations, as written and plans to implement recommendations 1 and 2 by May 31, 2018. Regarding recommendation three, we will consider actions to address this recommendation should Hawaii DOT request discretionary funding in the future and we request closure of the recommendation. The FAA notes that consideration of actions to address recommendation three would ensure that Federal funds are put to best use.

We appreciate the opportunity to respond to the OIG draft report. Please contact H. Clayton Foushee at (202) 267-9000 if you have any questions or require additional information about these comments.

U.S. DOT IG Fraud & Safety Hotline

hotline@oig.dot.gov | (800) 424-9071

<https://www.oig.dot.gov/hotline>

Our Mission

OIG conducts audits and investigations on behalf of the American public to improve the performance and integrity of DOT's programs to ensure a safe, efficient, and effective national transportation system.

OFFICE OF INSPECTOR GENERAL
U.S. Department of Transportation
1200 New Jersey Ave SE
Washington, DC 20590



www.oig.dot.gov