Balancing Federal Regulation of Airports With Federal Contribution to Airports

The federal government has taken a heavy-handed approach to airport regulation. Federal Airport Improvement Program (AIP) grants, on average, amount to less than 25% of airports’ capital spending and less than 9% of their total annual revenue. This contribution level, while important, does not justify the extensive and pervasive federal regulatory over-reach into areas not related to the AIP-funded project or land purchased with such funds.

Although FAA states that the purpose of its Airports Compliance Program is to “protect the public interest in civil aviation,” more often than not it is used by airport tenants or would-be tenants to promote their own parochial business interests rather than the public interest, whether seeking to keep out competition, gain an advantage over a competitor, or gain leverage in lease negotiations with the airport.

FAA should be directed to take effective measures to re-orient its airport compliance program to carry out its stated purpose and focus only on protecting important federal interests that concern the public welfare, rather than scrutinizing the details of airport operators’ business decisions. We recommend the Administration take the following steps to reduce regulatory burdens on airports now and in the future.

Use of Airport Land
The Administration should eliminate federal restrictions on, and the need for federal approvals for, non-aeronautical development of airport land acquired by the airport operator without federal assistance, except to preclude interfering with safe and efficient aircraft operations, and to ensure that fair market value is received by the airport for use of the land.

Doing so will prevent airport initiatives from being ensnared in extensive and expensive federal reviews and analyses, which unduly delay projects and often cause developers to look elsewhere to build. It will enable airports to undertake or facilitate development of revenue-producing, non-aeronautical facilities to make productive use out of land that is not needed for aeronautical purposes, and to provide a new stream of revenue for airport purposes.

Air Service Incentives
A key component of airports’ public responsibility is to encourage and facilitate convenient air service to the community’s desired destinations, and foster price and service competition. With the four largest airlines now controlling 85 percent of the air service market, FAA should revise its restrictions on how airports may induce airlines to increase air service.
FAA should allow airports more flexibility in designing, implementing, and participating in incentive programs to foster more air service to their communities. Specifically, FAA should allow greater flexibility in the extent to which airports may be involved in developing incentives by third parties without imposing AIP-based limitations on such incentive programs, e.g., they cannot be limited to one carrier, even if selected by a fair process (e.g., an RFP process)

Airports should also be allowed to (1) specify the air service schedule or equipment that would qualify flights for incentives in order to meet the community's needs, (2) provide a robust menu of start-up services and facilities to new entrant or expanding income air carriers, and (3) provide vouchers for airport-related services as incentives for passengers to use the new service.

**Passenger Facility Charge (PFC) Reforms**

Eliminate the statutory cap on the level of PFC that may be imposed by an airport (Legislative Change)

Eliminate the additional “significant contribution” standard for review of PFCs above $3.00. This is outdated and will serve no useful purpose. (Legislative change)

Extend the streamlined PFC process for imposing and using PFCs from non-hub airports to all hub sizes. PFC streamlining for non-hubs has been a successful initiative that should be replicated for other hub sizes. It reduces time and paperwork and frees up FAA and airport resources. (Legislative Change)

Interpret the PFC statute more generously to allow greater PFC funding of projects such as airport terminals. Currently, excessive FAA and airport staff and consultants’ time must be devoted to extremely detailed analysis of PFC eligibility, for instance whether various portions of terminals are eligible or ineligible for PFC funding. This serves no compelling federal interest. FAA should expand and simplify PFC eligibility standards to the maximum extent possible.

**Construction Reforms**

The Administration should allow airports to promote early completion and savings for critical federally-funded airport projects by employing contractual provisions, such as incentive payments and more efficient project delivery methods that have worked in the private sector and in other federal transportation grant programs.

Reducing the time it takes to complete airport infrastructure projects can help minimize disruptions that negatively impact airlines, passengers, and other airport customers. In addition, completing projects early would be particularly helpful to airports in northern tier states with short construction cycles.

**Requiring Rigorous Analysis of Potential Regulations**

The federal government’s regulatory reach over airports should be smaller, and the government should not impose additional regulatory burdens that are a drag on local, state, and regional economies.

In implementing the Executive Order on reducing regulatory burdens, the Administration should limit FAA regulation only to those areas in which there is truly a national interest and require the FAA to use a full notice/comment rulemaking process before imposing new burdens or restrictions on airports. This includes public notice and opportunity for comment, realistic analysis of costs/benefits and federalism
implications (since airports are operated by local, state, and regional governmental entities), and avoiding unfunded mandates.

The FAA also should be directed to end its current practice of imposing burdens through a variety of extra-regulatory practices, e.g., imposing requirements on airports via FAA policy or advisory circulars; treating draft policies as final, enforceable requirements; and imposing regulations on airports through FAA “internal guidance.” This reform will ensure that airports have the opportunity to participate in the development of any new requirements that will be imposed on them, and that new requirements cannot be imposed without serious analysis of their potential burdens.

In addition, FAA should be prohibited from directly or indirectly enforcing existing guidance, advisory circulars, and policies that impose burdens or restrictions on airports unless they went through a full regulatory process.