

33<sup>rd</sup> Annual Basics of Airport Law Workshop and 2017 Legal Update

## Session #6

# AIRPORT FINANCE

## SOURCES, USES, AND REGULATORY FRAMEWORK

Eric T. Smith, Partner  
*Kaplan Kirsch & Rockwell*  
Scott Mitchell  
*Federal Aviation Administration*

# OVERVIEW

- Where do airports get funds for operations, capital projects and other airport purposes?
- What are the statutory and regulatory data-points about which one needs to be concerned?
- What federal funding sources exist?
- What private sources of funds exist?
- What are permissible and non - permissible uses of airport revenue?



# THE GAME PLAN

- Private Sources
- Federal Sources
- Revenue Use



# AIRPORT FUNDING SOURCES

- Airport Revenue
- Bonds
- State & local government contributions
- Airport Improvement Program (AIP) Grants
- Passenger Facility Charges



# AIRPORT REVENUE — WHERE DOES IT GO?

- Operational Costs + Debt Service
- Capital Projects
  - Airfield Improvement & Maintenance
  - Terminal Projects
  - Parking
  - CONRACs
  - Transportation Systems (automated people movers)



# AIRPORT REVENUE - SOURCES

- Airline Rates & Charges
  - Landing fees, terminal rent
- On-airport, Non-aeronautical Revenue
  - Concessions, rental car fees
- “Nontraditional” non-aeronautical revenue generation
  - Office buildings, hotels, and . . .



# AIRPORT REVENUE - SOURCES

- Large & Medium Hub Airports
  - Higher cash flow
  - Significant PFC revenue
  - More self-sufficient
- Small & GA Airports
  - Cash flow challenged
  - Funding for major capital improvements difficult without grants

# BONDS

- Airport Bonds
  - General Airport Revenue Bonds
  - Special Facility Bonds
- Local Government Bonds
- Local Agency Bonds
- Tax Issues
- Rating Agencies





# BONDS

- The role of the airport attorney
- The importance in partnering with finance personnel
- Limitation of liability
- Bond Counsel
- Special Bond Counsel



# FEDERAL SOURCES OF MONEY & RESTRICTIONS ON USE OF “AIRPORT REVENUE”

- Airport Improvement Program & Passenger Facility Charges
- Revenue Use



# Airport Finance

- AIP
- PFC
- Revenue Diversion

Presented by: Scott E. Mitchell  
Manager, Airport Law Branch



Federal Aviation  
Administration



# AIP Statute Defines:

- 1. Who can get a grant –**  
Eligible Sponsorship
- 2. What types of projects get funded –**  
General rules for AIP grants
- 3. What is required for a grant project -**  
Pre-Grant Requirements Checklist  
Procurement Rules  
Grant Administration  
Post-Grant Assurances
- 4. How to allocate AIP funds**



# Sponsors

- State/local government or Indian tribes owning airports
- Private owners of designated relievers or airports with more than 2,500 enplanements
- State/local government not owning airports—for planning and noise mitigation
- (Federal government may never be sponsor)

# Generally Eligible

1. **Safety and Standards**
2. **Airfield/Airport Security**
3. **Airport Planning**



# Generally Eligible, cont.

4. **Airport Development**
5. **Environmental Mitigation**
6. **Public Use Facilities**
7. **Things that communicate with pilots**



# Generally Not Eligible

8. Things that make money at larger airports (Revenue Producing Facilities)
9. Things that Add to Aesthetics
10. Things that Communicate with Air Traffic



# Generally Not Eligible, cont.

**11. Other Federal Agency Facilities**

**12. Day-to-Day Operational and Maintenance Costs**



# Pre-Grant Requirements Checklist

- Airport in National Plan of Integrated Airport Systems
- Appropriate airport sponsorship
- Local share - with state, private contributions
- Airport has Airport layout plan, local and area planning
- Capacity Projects > \$10 million discretionary must have Benefit-cost
- Environmental finding and good land title
- Project meets aviation standards – justified based on established aeronautical demand



# Grant Procurement Rules

- **Full and Open Competition**
- **Most costs must be incurred after a grant has been issued**
- **Must follow required federal provisions**
  - Brooks Act for professional services
  - DBE
  - Veterans Preference

# Grant Administration

- **Design must use FAA-approved plans and specifications**
- **Davis-Bacon Act for construction wages**
- **Must follow published FAA requirements**
  - Project Inspection
  - Record Keeping
  - Financial Grants management

# Post-Grant Requirements – Grant Assurances

➤ Grant Assurances

➤ Part 16



# AIP Allocation Rules

- **Entitlement** **2/3 of AIP**
- **Discretionary** **1/3 of AIP**
  - **40% is for specific set-asides**

# Impact of Program Size

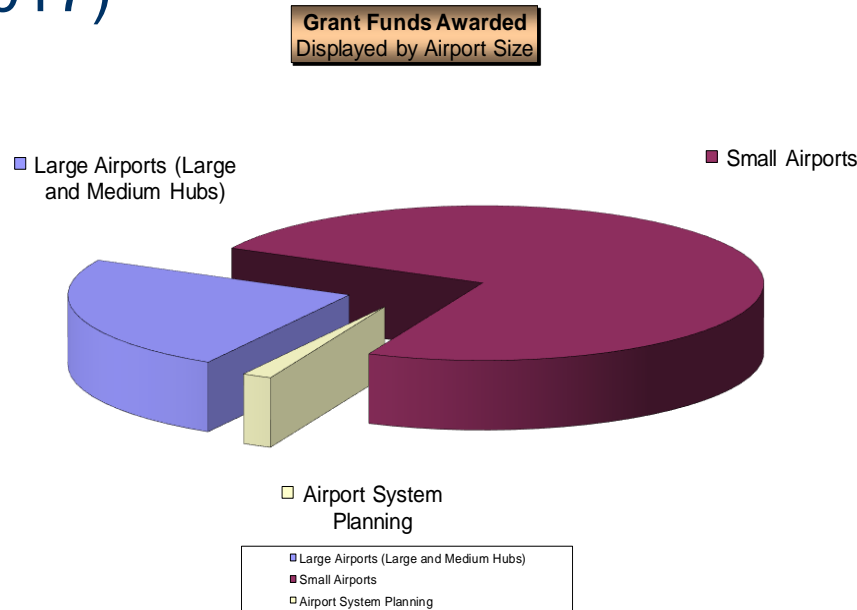
- **Funding rules change when AIP is greater than \$3.2 Billion**
  - Rule changes went into effect in FY2000
  - Includes doubled entitlements, nonprimary entitlements
  - Other increases in entitlement and discretionary funds

# AIP Historical Funding

## ➤ Majority of Funding goes to smaller airports

- Large/Medium = approx. 24%
- Small/Other = approx. 76%

(FY2017)



**1,661 Airports Receiving Grants in FY2017...**

**544 Primary:**

**49 Large Hub  
60 Medium Hub  
124 Small Hub  
311 Non Hub**

**1,117 Non Primary:**

**64 Commercial Svc  
1,053 General Aviation & Reliever**



# AIP Today

- **\$3.35 billion authorized and appropriated for FY 2017. In FY17 we issued and obligated 1,751 grants.**
- **Of the grants obligated, projects funded included:**
  - Runway \$1.2 billion
  - Safety \$36 million
  - Noise \$91 million
  - Security \$42 million
  - Other capacity projects \$1.3 billion

# AIP Today

- **AIP presently operating under the Disaster Tax Relief and Airport and Airway Extension Act of 2017 (the Extension) through March 31, 2018.**



# Overview of the PFC Program

- The PFC program is a Federally-regulated, locally-managed program that was authorized by law in 1990.
- The revenue source for the PFC program is a charge collected by air carriers from air carrier passengers. The charge can be \$1, \$2, \$3, \$4, to a maximum of \$4.50. Most airports charge \$3 or \$4.50.
- A passenger can be charged a maximum of two PFCs on a one-way itinerary and four PFCs on a roundtrip itinerary.
- Participation in the PFC program is limited to public agencies that own and control a commercial service airport and is not mandatory.

# Overview of the PFC Program

- Airlines must be consulted but have no right to approve or veto collection or use of PFCs.
- FAA approves individual projects for PFC funding and total amount of PFCs the airport may collect.
- Streamlined process for non-hub airports, individual project approval not required.
- Despite Federal approval, PFCs are considered local funds. Therefore, AIP requirements and assurances do not apply.



# Overview of the PFC Program

- **PFC eligibility generally follows AIP eligibility except:**
  - PFCs may be used as local share for AIP projects
  - Slight difference for noise projects— Part 150 approval not needed
  - Additional eligibility for terminal projects—gates and related areas—can be revenue generating
  - Can pay for debt service costs
  - Can pay for PFC administrative costs



# PFCs for Noise Mitigation Projects

- **Public agencies can use PFC funds for noise mitigation projects even if they are not in a Part 150 plan.**
- **The projects must meet the criteria for approval under Part 150—but they don't have to have been in a Part 150.**
- **Public agencies must supply a local planning document and noise exposure map similar to a Part 150.**



# PFCs for Terminal Projects

- **Broader eligibility than AIP Discretionary grants.**
- **Eligible components**
- **Ineligible components**
- **For Large- and Medium-hub airports:**
  - Airside needs must be met first before seeking to put PFCs above \$3.00 into the terminal and landside.

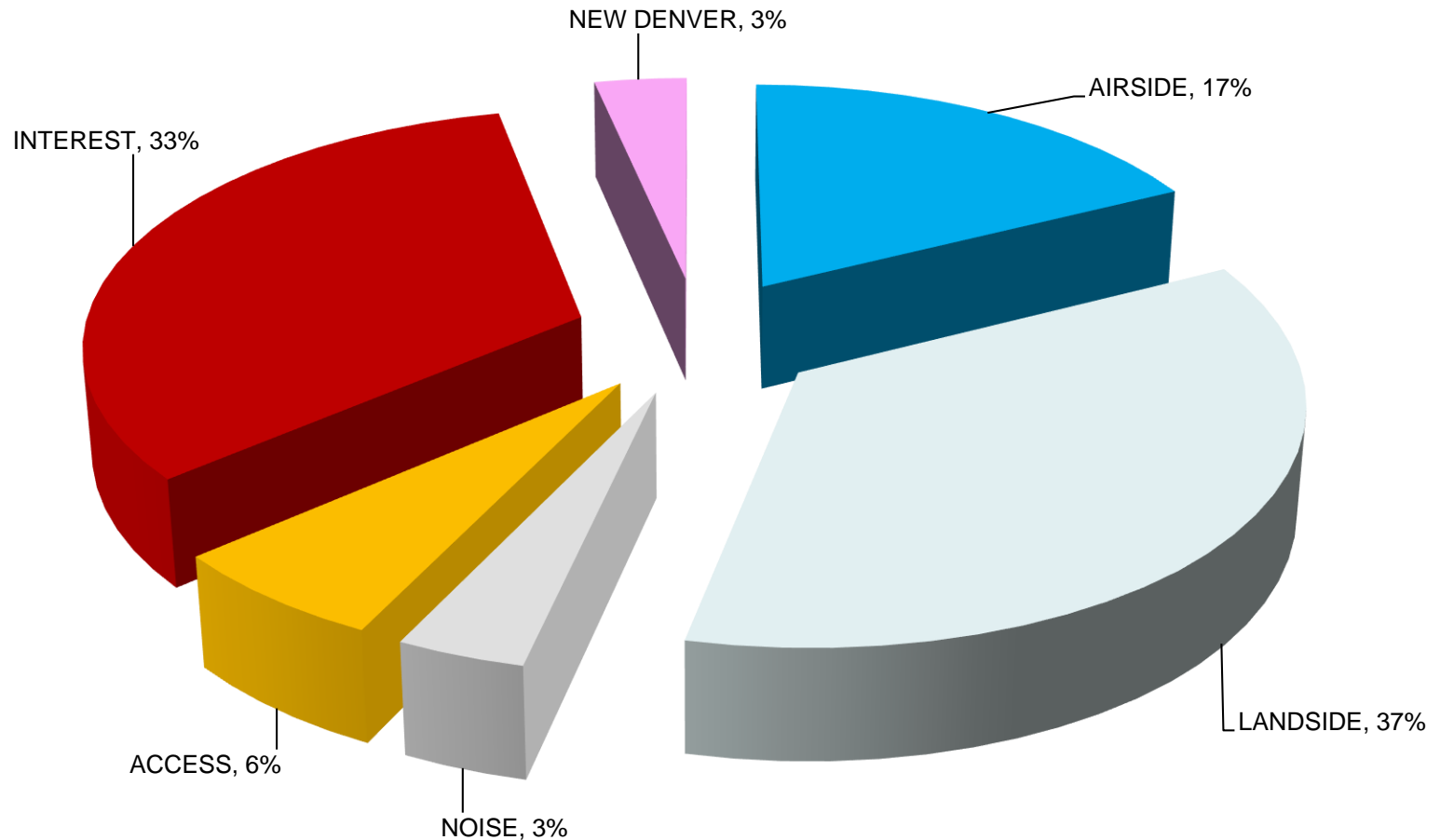
# Relationship of PFC and Airport Funding

- **PFCs complement AIP.**
- **Smaller airports often use PFCs to finance local matching requirements.**
- **Larger airports use PFCs to finance terminal and airport access projects that receive little AIP funding.**





# What have PFCs been approved to fund?



# PFC Stats

## Locations:

- Number of approved locations since inception: 398
- Number currently collecting: 356

Airport Category	Locations Currently Collecting	Collecting at Maximum \$4.50 level
Large	30	29
Medium	29	28
Small	69	66
Non Hub	182	175
Commercial Service	46	43
Total	356	339

# PFC Stats

## Collections:

- Total amount of approved collections: \$100.8 billion
- Actual collections from 1992 through 2015: \$50.1 billion
- Estimated monthly collections in 2016: \$260 million
- Estimated collections (based on current collection rates)
  - 2017 - \$3.26 billion
  - 2018 - \$3.37 billion

# Fundamental Principles

- **Going Out**
  - Revenue Diversion
- **Coming In**
  - Rates and Charges
  - Sustainability
- **FBO's?**

# Revenue Diversion

- Airport revenue and aviation fuel taxes
- December 30, 1987
  - Airport
  - Local airport system
  - Other facilities



# Policy Statement on Revenue Use

- Airport Revenue
- Permitted Uses
- Unlawful Diversion



# Examples

- **Other Units of Government**
- **Paying more than fair and reasonable value**
- **Cash subsidies to carriers in exchange for service commitments**

# Consequences

- **Grants**
- **PFCs**
- **Penalties?**
- **Hearing?**





# Money Coming In

- **Too much?**
- **Not enough?**
- **FBO's?**



# WRAP - UP / QUESTIONS

