

STATEMENT OF NICHOLAS G. GARAUFIS, CHIEF COUNSEL OF THE FEDERAL AVIATION ADMINISTRATION, BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, SUBCOMMITTEE ON AVIATION, CONCERNING AIRPORT REVENUE DIVERSION. MARCH 7, 1996.

Mr. Chairman and Members of the Subcommittee:

I am Nicholas Garaufis, the FAA's Chief Counsel. I welcome the opportunity to appear before you today to discuss the FAA's approach to the issue of airport revenue diversion. Accompanying me are James Washington, FAA's Acting Associate Administrator for Airports, and David Bennett, Director of the Office of Airport Safety and Standards.

At the outset, let me assure the Subcommittee that we are committed to ensuring that airport revenues are used for airport purposes, as required by law. We take very seriously any allegation of unlawful airport revenue diversion.

Before highlighting some of the key elements of the draft policy on airport revenue diversion we published for comment on February 26, I would like to give you a shorthand description of what we mean by revenue diversion. The current FAA airport grants program was established by the Airport and Airway Improvement Act of 1982. The 1982 Act, as amended, requires an airport that receives airport grants from the FAA to use all airport-generated revenues (such as rent, landing fees, and the like) for the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport sponsor that are directly and substantially related to air transportation.

This statutory requirement is included in the assurances the airport sponsor submits in its application for a Federal grant, and incorporated into the grant agreement between the FAA and the sponsor. The law provides a limited exception to this rule for certain airport arrangements in place prior to passage of the 1982 Act that were "grandfathered."

Another provision of the 1982 Act requires that airports maintain a fee and rental structure that makes them as self-sustaining as possible, and this is also included in grant agreements.

I would like to take a few moments now to describe our proposed policy on airport revenue diversion, on which we are currently receiving comments. Since the policy is out for public comment, and subject to modification based on comments, our discussion of this draft policy today will, by necessity, be constrained.

In order to provide guidance to airport sponsors, we have proposed definitions of the key terms, and included examples of permitted and prohibited uses of airport revenue. In many cases, the policy continues the FAA's current practice. For example, the proposed policy restates our view that a local government can be reimbursed by a sponsor for past contributions of cash or land to the airport, but cannot recoup any implied interest on the original amount. Another issue we addressed was the treatment of a sale of airport real property, and the sale of an entire airport as an operating entity. We also described our proposed monitoring and compliance program in the draft policy, including the sanctions for noncompliance.

One of our intentions in drafting the proposed policy was to address, as much as feasible, issues identified in airport audits that were conducted by the DOT Inspector General (IG) over the last several years. For instance, we clarified the circumstances under which an airport sponsor's use of funds would be grandfathered under the law, and provided some specific examples that have been approved by the DOT General Counsel. In such cases we are required, pursuant to a 1994 change to the airport grant statute, to take into account the fact that airport revenue is used for off-airport purposes as a factor militating against distribution of future discretionary grants to an airport under the Airport

Improvement Program (AIP). That is our current practice, and that requirement is specified in the proposed policy. Our only substantial disagreement with the Inspector General, concerning fair market value for aeronautical facilities, has been resolved and is covered in the proposed revenue diversion policy.

A great deal of interest has been expressed in the subject of airport privatization, which I know is also of interest to this Subcommittee, and which is briefly touched on in the proposed policy. Our approach to this topic, among others, no doubt will come up at the hearing on March 20 when Administrator Hinson will testify on the full range of issues affecting AIP reauthorization. (I would note that the comment period on the proposed policy will be still be open at that time, so the constraints that limit my discussion today will still apply.) We certainly welcome comments on this aspect of the proposed policy, which could enable us to reasonably provide more definitive guidance.

Another significant issue addressed in our policy is the FAA's monitoring of possible airport revenue diversion. Although we agree with the Inspector General that it is essential that airports be monitored for possible noncompliance with the revenue use grant assurances, experience has shown, in the vast majority of cases, that airports voluntarily comply with the law. We anticipate that the guidance contained in our policy will make it easier for them to do so.

Our approach to the monitoring and enforcement of revenue use provisions is that we will take appropriate action when a potential violation is brought to the FAA's attention, or when we have reason to focus on a particular transaction. We have proposed in our draft policy a variety of means to uncover potential revenue diversion. In the first place, we will continue to evaluate IG audits and follow up with corrective action, as appropriate. The IG is better equipped than the FAA to conduct these audits, both in terms of

available staff and auditing expertise, and the FAA lacks the resources to regularly audit the 2500 or so airports covered by grant agreements.

Another source of information on possible unlawful revenue diversion will be provided by airport financial reports. We will soon publish a standard format for airports to use in preparing these annual reports, as required by the 1994 FAA Authorization Act. One of the major benefits of this report is that the airport operator will be required to make it available to users of the airport and the general public. The FAA anticipates that users, especially air carriers, will carefully review the form and notify the FAA of any possible unlawful revenue diversion. We will fully investigate any report that is the subject of a third-party complaint, in addition to conducting our own random spot checks of the reports.

We are also working to refine the Compliance Supplement for Single Audits, referenced in the proposed policy, to help auditors flag potential problems. This will improve and fine-tune for our purposes an audit that is already being conducted on behalf of an airport, thus making the most effective use of limited state and local government resources. Finally, we will continue to investigate all third-party reports from any source bringing possible problems to our attention.

In cases of possible violation of the revenue use provisions, the law requires us to give the airport notice and an opportunity to refute the charges. This often involves the submission and review of considerable documentation. Unfortunately, it has sometimes taken us longer than we like to evaluate and respond to IG audit reports, in part because of the need to obtain and analyze information from state and local governments.

Although these delays are a regrettable part of the investigation process, we will work to close the remaining cases resulting from the IG's audits as expeditiously as possible.

Once a violation is identified, we are also required by law to provide the airport an opportunity to take corrective action voluntarily before we begin enforcement action. Although we have been successful, thus far, in resolving cases of unlawful revenue diversion through negotiation and discussion, we will not hesitate to use the tools available to us to ensure that airport revenue is used in accordance with the law. We have a variety of sanctions at our disposal, including withholding payments to an airport sponsor under existing AIP grants, withholding approval of future AIP grants or approval of a passenger facility charge, filing suit for injunctive relief in District Court, and assessing civil penalties.

In closing, Mr. Chairman, I would like to acknowledge the Subcommittee's long-standing interest in this area, and emphasize our commitment to ensuring that airport revenues are used in accordance with the law. We will continue to work in cooperation with the aviation community to see that airport revenues are used for airport purposes, as the law requires.

That completes my prepared statement. We would be pleased to respond to any questions you may have at this time.