



# RESPONDING TO COVID-19: LEGAL AND FINANCIAL CHALLENGES FOR AIRPORTS

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# Today's webinar

**Questions/issues to consider,  
not airport-specific legal advice**

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1. CARES Act funds
  - What will airports receive
  - Allocation of funds
2. Demands for financial concessions
  - Role of requesting entity
  - Existing financial obligations / contracts
3. Closure of some (or all) airport facilities



# Themes

- No templates or precedents for this stuff!
  - Any “template” may work for the airport that created it, when it was written...  
... but your airport is different and the situation *may* be different now
- Need to document decisions precisely – language matters
- Consider your own financial needs first
- Plan for unforeseen financial contingencies
- Legal and financial obligations entwined



# 1. CARES Act funds

- Multiple buckets of funds:
  - \$3.7B based upon enplanements
  - \$3.7B based upon debt & coverage – calculation unclear
  - \$2B based upon AIP entitlement (no local match)
  - \$500M local match for FY 20 AIP grants
  - \$100M for GA airports (no local match)
- All funds are exempt from statutory requirements applicable to AIP grants (except requirement for prevailing wages)
- Airport sponsor must retain 90% of persons employed as of 3/27/20



# Use of CARES Act funds

- Check your Form 127 report for 2018
- Develop strategic plan for use of funds
  - Grant Assurance obligations (22, 24)
  - Forecast needs in cost centers
  - Debt service and debt coverage obligations
- O&M vs capital needs
- Expediting vs slowing projects
- Expect pressure from all sorts of tenants (some of whom may be getting federal funds themselves)
- Application to the rate base - how funds are applied will impact rates differently



## 2. Demands for financial concessions

- FAA guidance – “waivers” vs. “deferrals”
  - Underpinnings are Grant Assurance 24
  - Do not lose sight of core goal – your airport’s continued financial viability
- Consider unknown duration of current crisis and your own financial needs
- Effect on cash flow and bond requirements for fiscal years
- What other relief is available to the tenant(s)
- Consider that bankruptcy of tenants is real possibility
- Is waiver lending public credit? A gift of public funds?



# Financial concessions

- Written document essential; need to be formal but flexible
- Force majeure clauses
  - Typically do not forgive payment, only performance
  - 2-way street
  - No “standard” clause – significant details in there – read them!
  - Interpretation varies by state
- Different needs of different tenants
  - MAG vs. space rent
  - Activity based (e.g., % rent, epax, landed weight) vs. flat-charge rents
  - Cost centers



### 3. Closure of airport facilities

- Distinguish between aeronautical and non-aeronautical facilities
  - Terminal vs airfield
- Maintain viability of aeronautical functions (GA 19, 22)
- Practical realities
  - Needs of existing users / tenants
  - Emergency/ medical needs
- Health screening is not a sponsor function; can/should accommodate local health requirements





# Questions/discussion

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