



# **GASB 87 TRAINING WORKSHOP: REGULATED LEASES**

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## Offside position

It is not an offence to be in an offside position.

A player is in an offside position if:

- any part of the head, body or feet is in the opponents' half (excluding the halfway line) and
- any part of the head, body or feet is nearer to the opponents' goal line than both the ball and the second-last opponent
- The hands and arms of all players, including the goalkeepers, are not considered.

A player is not in an offside position if level with the:

- second-last opponent or
- last two opponents

## Offside offence

A player in an offside position at the moment the ball is played or touched\* by a team-mate is only penalised on becoming involved in active play by:

- interfering with play by playing or touching a ball passed or touched by a team-mate or
- interfering with an opponent by:
  - preventing an opponent from playing or being able to play the ball by clearly obstructing the opponent's line of vision or
  - challenging an opponent for the ball or
  - clearly attempting to play a ball which is close when this action impacts on an opponent or
  - making an obvious action which clearly impacts on the ability of an opponent to play the ball

*\*The first point of contact of the 'play' or 'touch' of the ball should be used*

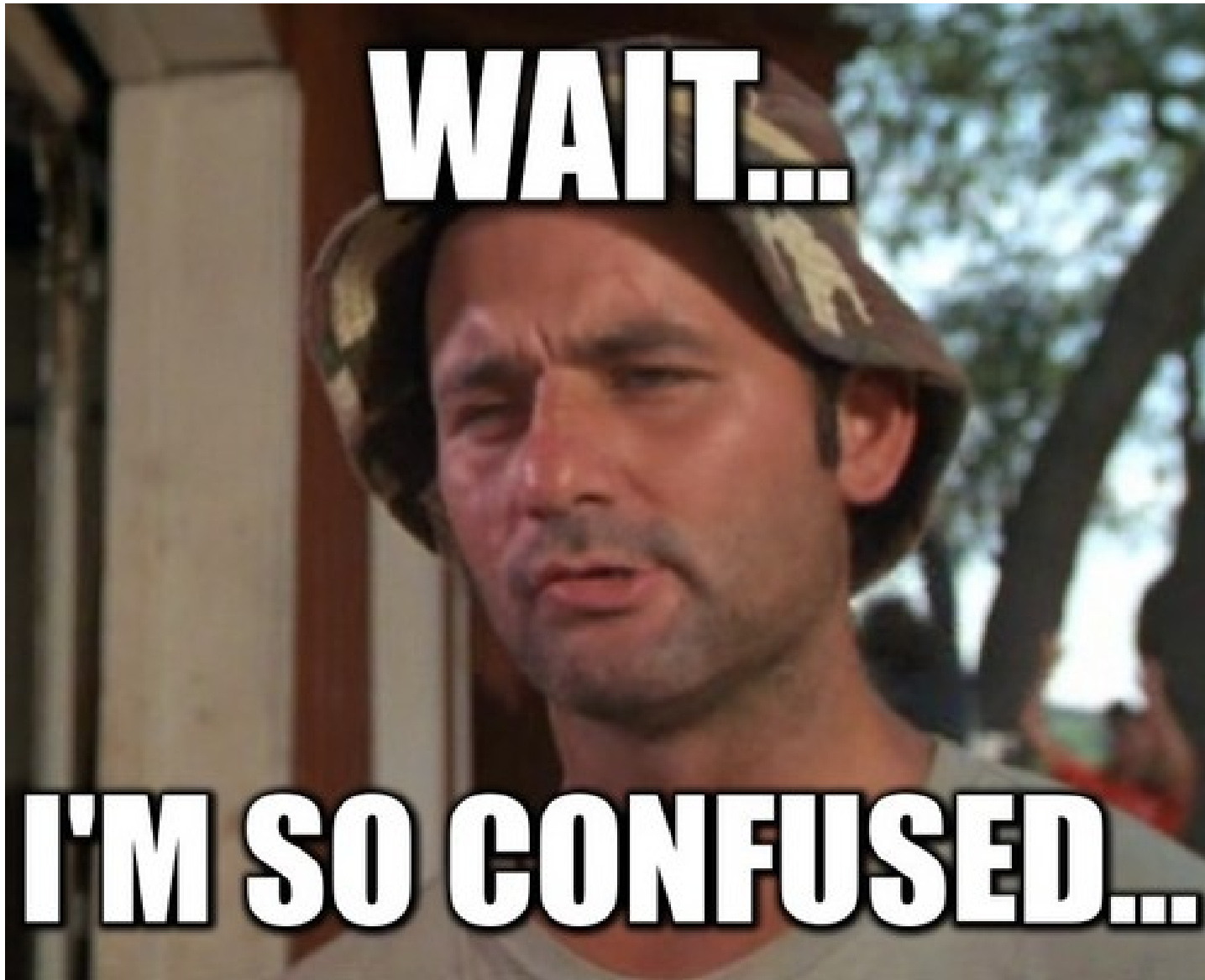
or

- gaining an advantage by playing the ball or interfering with an opponent when it has:
  - rebounded or been deflected off the goalpost, crossbar or an opponent
  - been deliberately saved by any opponent
- A player in an offside position receiving the ball from an opponent who deliberately plays the ball (except from a deliberate save by any opponent) is not considered to have gained an advantage.

## No offence

There is no offside offence if a player receives the ball directly from:

- a goal kick
- a throw-in
- a corner kick











# INTRODUCTION

- Paragraph 42 of GASB 87 recognizes that DOT and FAA regulate leases between:
  - **airports** and
  - **air carriers** and **other aeronautical users.**



# DOT/FAA REGULATION OF AERONAUTICAL LEASES



- **Meets the standards of Paragraph 43:**
  - a. Lease rates **cannot exceed a reasonable amount** -- reasonableness is subject to determination by an external regulator;
  - b. Lease rates should be **similar** for lessees that are **similarly situated**; and
  - c. The lessor **cannot deny potential lessees** the right to enter into leases **if facilities are available**
    - a. As long as the lessee's use of the facilities complies with generally applicable use restrictions.

## FEDERAL STATUTORY BACKGROUND

- The AIP Statute and related Grant Assurances require Airports to assure that:
  - the **airport** will be **available** for **public use** on **reasonable conditions** and **without unjust discrimination**;
  - **air carriers** making **similar use** of the airport **will be subject to substantially comparable charges-**
    - for facilities **directly and substantially related to providing air transportation**;

# GRANT ASSURANCE EXCLUSIVE RIGHT



- Airports must assure FAA that *a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport*
  - a right given to only one **fixed-base operator** to provide services at an airport deemed not to be an exclusive right if certain conditions are met.
- **fixed-base operators similarly using the airport will be subject to the same charges;**

# AIP STATUTORY PROVISIONS

- These provisions in the AIP Statute (§47107(a)(1)):
  - **The airport will be *available* for public use *on reasonable conditions* and *without unjust discrimination.***
- Meet the 3 requirements of GASB 87 Paragraph 43

# DOT/FAA REGULATION OF AERONAUTICAL LEASES MEETS THE STANDARDS OF ¶ 43



- The DOT/FAA Rates and Charges Policy states that:
  - Under the terms of grant agreements administered by FAA for airport improvement, ***all aeronautical users are entitled to airport access on fair and reasonable terms without unjust discrimination.***

# DOT/FAA REGULATION OF AERONAUTICAL LEASES MEETS THE STANDARDS OF ¶ 43



- This meets *all three GASB standards*:
  - reasonable terms
  - no unjust discrimination (lease rates are similar for similarly situated lessees), and
  - the airport cannot deny potential lessees the right to enter into leases (aeronautical users are *entitled* to airport access).

## AERONAUTICAL USE (RELATES TO GASB “AVIATION LEASES”)



- DOT/FAA say **aeronautical use** of an airport is **any activity** that **involves, makes possible, is required for the safety of, or is otherwise directly related to, the operation of aircraft.**
- This **includes** *services provided by air carriers related directly and substantially to the movement of passengers, baggage, mail and cargo on the airport.*

## NON-AERONAUTICAL USE

- Facilities such as *reservations centers, headquarters offices, or flight kitchens on an airport* **do not constitute an aeronautical use.**
- ***Such facilities need not be located on an airport.***
- They are **NOT** subject to the DOT/FAA Rates & Charges Policy (federal regulation), and
- Are **NOT** covered by the Exception under GASB 87 ¶¶ 42 and 43



## KEY TAKEAWAYS AERONAUTICAL USE

- Thus, **aeronautical use** for rates and charges purposes is ***not limited to facilities related to the movement or servicing of aircraft.***
- ***It also includes facilities that are directly and substantially related to the movement of passengers and baggage, such as:***
  - *ticket counters,*
  - *baggage handling facilities, and*
  - *people movers.*

# KEY TAKEAWAYS AERONAUTICAL USE



- Also included are facilities **directly** and **substantially** related to the **movement** of **mail** and **cargo**.

# FEDERAL REASONABLENESS REQUIREMENT



- Rates, fees, **rentals**, landing fees, and other service charges (“fees”) imposed on **aeronautical users** for the **aeronautical use** of the airport (“aeronautical fees”) must be **fair** and **reasonable**.

# FEDERAL PROHIBITION AGAINST UNJUST DISCRIMINATION



- Aeronautical fees **may not unjustly discriminate** against **aeronautical users or user groups**.
- The airport proprietor **must apply a consistent methodology** in establishing fees **for comparable aeronautical users** of the airport.

# FEDERAL PROHIBITION AGAINST UNJUST DISCRIMINATION



- *Note*, the prohibition on unjust discrimination **does not prevent** an airport from **making reasonable distinctions** among aeronautical users, such as
  - signatory and nonsignatory carriers; and
  - assessing **higher fees** on categories of aeronautical users based on those distinctions, such as
    - a nonsignatory premium.

# FEDERAL PROHIBITION AGAINST UNJUST DISCRIMINATION



## KEY REGULATORY POINT

- While airports are allowed to make other reasonable distinctions between users and facilities, e.g., based on:
  - size,
  - age, or
  - condition of the facilities,
- FAA **retains** the right to **review** these determinations.
  - on its own initiative or
  - when an aeronautical **user** files a **Part 13** or **Part 16 complaint**.

## FAA AUTHORITY

- FAA's Regulatory and Enforcement Authority is key in determining that the DOT/FAA regulatory framework meets the GASB 87 Exception.
- FAA's authority is broader than DOT's authority under Part 302 (fast track) proceedings to review airline rates and charges and is **not** precluded **if** there is a lease.
  - For example, many Part 16 complaints are based on claims that a **competitor** got a **better deal** on their **lease** that is **unjustified**.

# THE LESSOR CANNOT DENY LEASES TO POTENTIAL LESSEES



- [A]n exclusive rights violation occurs when an airport sponsor:
  - **unreasonably excludes** a **qualified applicant** from engaging in an **on-airport aeronautical activity** without just cause, or
  - **fails to provide** an **opportunity** for qualified applicants to be an aeronautical service provider.



## THE LESSOR CANNOT DENY LEASES TO POTENTIAL LESSEES

- An exclusive rights violation can occur through the use of **leases** where, for example;
  - all the available airport land and/or facilities suitable for aeronautical activities are leased to a single aeronautical service provider who cannot put it into productive use within a reasonable period of time
  - thereby **denying other qualified parties the opportunity to compete** to be an aeronautical service provider at the airport.

# THE LESSOR CANNOT DENY LEASES TO POTENTIAL LESSEES



- An exclusive rights ***violation*** occurs when the *airport sponsor*:
  - ***excludes others***, either intentionally or unintentionally, *from participating in an on-airport aeronautical activity* or
  - ***unreasonably excludes a qualified applicant***:
    - *from engaging in an on-airport aeronautical activity* without just cause or
    - *fails to provide an opportunity for qualified applicants to be an aeronautical service provider.*

# THE LESSOR CANNOT DENY LEASES TO POTENTIAL LESSEES



- Although there is an exception if granting the right to provide an aeronautical service would **compromise safety** at the airport, the agency states that:
- “The FAA **is the final authority** in determining what, in fact, **constitutes** a compromise of safety.”

# THE LESSOR CANNOT DENY LEASES TO POTENTIAL LESSEES



- Thus, the **FAA ultimately determines** whether or not an airport can **deny** a potential lessee **a lease** to enable it to provide aeronautical services.
- This satisfies Subparagraph (c) of GASB 87 Paragraph 43.

# ADDITIONAL FACILITIES COVERED BY THE GASB 87 EXCEPTION



- Grant Assurance 22, Economic Nondiscrimination, **requires an airport to make available *suitable areas or space on reasonable terms*** to those willing and qualified to offer *aeronautical services to the public such as:*
  - *air taxi,*
  - *charter,*
  - ***aircraft storage (hangar), and***
  - ***aircraft maintenance services.***

# ADDITIONAL FACILITIES COVERED BY THE GASB 87 EXCEPTION



- Even if an airport does not have a hangar available for a prospective service provider, if there is land available at the airport, it ***must, at a minimum, make that land available*** to the prospective service provider (i.e. ***through a ground lease***) so that it can develop its aeronautical facility.

## ADDITIONAL FACILITIES COVERED BY THE GASB 87 EXCEPTION



- Airports are federally obligated *to make available suitable areas or space on reasonable terms to those willing and qualified to offer:*
  - *aeronautical services to the public (e.g. **air carrier, air taxi, charter, flight training, or crop dusting services**)*
  - or support services (e.g. fuel, **storage, tie-down, or flight line maintenance services**) to aircraft operators.

## ADDITIONAL FACILITIES COVERED BY THE GASB 87 EXCEPTION



- Airports are also obligated to make space available to support aeronautical activity of noncommercial aeronautical users
  - **hangars and tie-down space** for individual aircraft owners.
- Unless the airport provides these services itself, the sponsor has a **duty to negotiate in good faith** for the **lease of premises** available to **conduct aeronautical activities**.



# CONCLUSION



- The range of airport leases that meet the standards of GASB 87 Paragraphs 42 and 43 are **quite broad**, and are ***not limited*** to only **passenger airline** or **FBO leases**. They also include
  - Hangars
  - cargo facility leases.
  - leases with
    - air taxi,
    - charter,
    - flight training, or
    - crop dusting services.

## CONCLUSION

- Airline leases that meet the GASB exception standards are **not** limited to airside leases.
- They also include facilities used “by air carriers **related directly** and **substantially** to the **movement of passengers, baggage, mail** and **cargo** on the airport,” including leases for:
  - **ticket counters,**
  - **baggage facilities,**
  - **people movers,** and
  - **various cargo sorting/storage facilities.**

## CONCLUSION

- Airports should consult with their financial and legal professionals
- To determine which of their leases meet the exception standards of GASB 87 Paragraphs 42 and 43.





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