

LAND ACQUISITION COSTS

Pub. L. 107-71, title I, §143, Nov. 19, 2001, 115 Stat. 644, provided that: "In the case of a grant for land acquisition issued to an airport under chapter 471 of title 49, United States Code, prior to January 1, 1995, the Secretary of Transportation may waive the provisions of section 47108 of such title and provide an upward adjustment in the maximum obligation of the United States under that chapter to assist the airport in funding land acquisition costs (and associated eligible costs) that increased as a result of a judicial order."

[For definitions of "airport" and "United States" used in section 143 of Pub. L. 107-71, set out above, see section 133 of Pub. L. 107-71, set out as a note under section 40102 of this title.]

§ 47109. United States Government's share of project costs

(a) GENERAL.—Except as otherwise provided in this section, the United States Government's share of allowable project costs is—

(1) 75 percent for a project at a medium or large hub airport;

(2) not more than 90 percent for a project funded by a grant issued to and administered by a State under section 47128, relating to the State block grant program;

(3) 90 percent for a project at any other airport;

(4) 70 percent for a project funded by the Administrator from the discretionary fund under section 47115 at an airport receiving an exemption under section 47134; and

(5) 95 percent for a project that—

(A) the Administrator determines is a successive phase of a multiphase construction project for which the sponsor received a grant in fiscal year 2011; and

(B) for which the United States Government's share of allowable project costs would otherwise be capped at 90 percent under paragraph (2) or (3).

(b) INCREASED GOVERNMENT SHARE.—If, under subsection (a) of this section, the Government's share of allowable costs of a project in a State containing unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) of more than 5 percent of the total area of all lands in the State, is less than the share applied on June 30, 1975, under section 17(b) of the Airport and Airway Development Act of 1970, the Government's share under subsection (a) of this section shall be increased by the lesser of—

(1) 25 percent;

(2) one-half of the percentage that the area of unappropriated and unreserved public lands and nontaxable Indian lands in the State is of the total area of the State; or

(3) the percentage necessary to increase the Government's share to the percentage that applied on June 30, 1975, under section 17(b) of the Act.

(c) GRANDFATHER RULE.—

(1) IN GENERAL.—In the case of any project approved after September 30, 2003, at a small hub airport or nonhub airport that is located in a State containing unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) of more than 5 percent of the total area of all lands in the

State, the Government's share of allowable costs of the project shall be increased by the same ratio as the basic share of allowable costs of a project divided into the increased (Public Lands States) share of allowable costs of a project as shown on documents of the Federal Aviation Administration dated August 3, 1979, at airports for which the general share was 80 percent on August 3, 1979. This subsection shall apply only if—

(A) the State contained unappropriated and unreserved public lands and nontaxable Indian lands of more than 5 percent of the total area of all lands in the State on August 3, 1979; and

(B) the application under subsection (b), does not increase the Government's share of allowable costs of the project.

(2) The Government's share of allowable project costs determined under this subsection shall not exceed the lesser of 93.75 percent or the highest percentage Government share applicable to any project in any State under subsection (b), except that at a primary non-hub and non-primary commercial service airport located in a State as set forth in paragraph (1) of this subsection that is within 15 miles of another State as set forth in paragraph (1) of this subsection, the Government's share shall be an average of the Government share applicable to any project in each of the States.

(d) SPECIAL RULE FOR PRIVATELY OWNED RELIEVER AIRPORTS.—If a privately owned reliever airport contributes any lands, easements, or rights-of-way to carry out a project under this subchapter, the current fair market value of such lands, easements, or rights-of-way shall be credited toward the non-Federal share of allowable project costs.

(e) SPECIAL RULE FOR TRANSITION FROM SMALL HUB TO MEDIUM HUB STATUS.—If the status of a small hub airport changes to a medium hub airport, the Government's share of allowable project costs for the airport may not exceed 90 percent for the first 2 fiscal years after such change in hub status.

(f) SPECIAL RULE FOR ECONOMICALLY DISTRESSED COMMUNITIES.—The Government's share of allowable project costs shall be 95 percent for a project at an airport that—

(1) is receiving essential air service for which compensation was provided to an air carrier under subchapter II of chapter 417; and

(2) is located in an area that meets one or more of the criteria established in section 301(a) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161(a)), as determined by the Secretary of Commerce.

(g) SPECIAL RULE FOR COVERED EQUIPMENT.—

(1) IN GENERAL.—The Government's share of allowable project costs for covered equipment and its installation shall be 100 percent.

(2) DEFINITION OF COVERED EQUIPMENT.—For purposes of this subsection, the term "covered equipment" means aqueous film forming foam input-based testing equipment that is eligible for Airport Improvement Program funding based on Federal Aviation Administration PGL 21-01, titled "Extension of Eligibility for stand-alone acquisition of input-based testing

equipment and truck modification”, dated October 5, 2021 (or any other successor program guidance letter).

(3) SUNSET.—The higher cost share authority established in this subsection shall terminate on the earlier of—

(A) 180 days after the date on which the eligibility of covered equipment for Airport Improvement Program funding under the authority described in paragraph (2) terminates or is discontinued by the Administrator; or

(B) 5 years after the date of enactment of this subsection.

(h) SPECIAL RULE FOR FISCAL YEARS 2025 AND 2026.—Notwithstanding subsection (a), the Government’s share of allowable project costs for a grant made to a nonhub or nonprimary airport in each of fiscal years 2025 and 2026 shall be 95 percent.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1264; Pub. L. 103–305, title I, §114, Aug. 23, 1994, 108 Stat. 1579; Pub. L. 104–264, title I, §149(c), title XII, §1211, Oct. 9, 1996, 110 Stat. 3227, 3282; Pub. L. 106–181, title I, §126, Apr. 5, 2000, 114 Stat. 76; Pub. L. 107–71, title I, §119(a)(4), Nov. 19, 2001, 115 Stat. 629; Pub. L. 108–176, title I, §§162, 163, Dec. 12, 2003, 117 Stat. 2513; Pub. L. 112–95, title I, §137, Feb. 14, 2012, 126 Stat. 24; Pub. L. 113–235, div. K, title I, §119F, Dec. 16, 2014, 128 Stat. 2704; Pub. L. 115–31, div. K, title I, §119E, May 5, 2017, 131 Stat. 734; Pub. L. 115–254, div. B, title I, §134, Oct. 5, 2018, 132 Stat. 3209; Pub. L. 117–254, §2(a), Dec. 20, 2022, 136 Stat. 2361; Pub. L. 118–63, title VII, §708, May 16, 2024, 138 Stat. 1251.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|---|
| 47109(a) | 49 App.:2209(a), (b). | Sept. 3, 1982, Pub. L. 97–248, §510, 96 Stat. 685. |
| 47109(b) | 49 App.:2209(c). | |
| 47109(c) | 49 App.:2212(b)(5). | Sept. 3, 1982, Pub. L. 97–248, §513(b)(5), 96 Stat. 691; Dec. 30, 1997, Pub. L. 100–223, §111(a)(2), 101 Stat. 1503; Oct. 31, 1992, Pub. L. 102–581, §110(b), 106 Stat. 4880. |

In subsection (a), before clause (1), the words “Except as provided in subsections (b) and (c) of this section” are substituted for “Except as otherwise provided in this chapter” because subsections (b) and (c) restate the only parts of the chapter that provide exceptions to the general rule stated in subsection (a). In clauses (1) and (2), the words “for a project” are substituted for “payable on account of any project contained in an approved project grant application submitted in accordance with this chapter” in 49 App.:2209(a) and “payable on account of any project contained in an approved project grant application” in 49 App.:2209(b) for consistency in this chapter and to eliminate unnecessary words. A project cost is allowable only if it is incurred under a grant agreement made under the chapter, and a grant agreement may be made only if the project grant application is approved. In clause (1), the words “number of passenger boardings” are substituted for “enplaning . . . of the . . . passengers enplaned” because of the definition of “passenger boardings” in section 47102 of the revised title.

In subsection (b), the words “If, under subsection (a) of this section, the Government’s share of allowable costs . . . is less than the share applied on June 30, 1975, under section 17(b) of the Airport and Airway Development Act of 1970” and “(3) the percentage necessary to

increase the Government’s share to the percentage that applied on June 30, 1975, under section 17(b) of the Act” are substituted for 49 App.:2209(c) (last sentence) for clarity. The words “of the total of all lands therein” are omitted as surplus.

In subsection (c), the words “Notwithstanding subsections (a) and (b) of this section” are substituted for “Notwithstanding any other provision of this chapter” because subsections (a) and (b) are the only other parts of the chapter that specify the United States Government’s share of allowable project costs.

Editorial Notes

REFERENCES IN TEXT

Section 17(b) of the Airport and Airway Development Act of 1970, referred to in subsec. (b), is section 17(b) of Pub. L. 91–258, which was classified to section 1717(b) of former Title 49, Transportation, prior to repeal by Pub. L. 97–248, title V, §523(a), Sept. 3, 1982, 96 Stat. 695.

The date of enactment of this subsection, referred to in subsec. (g)(3)(B), is the date of enactment of Pub. L. 117–254, which was approved Dec. 20, 2022.

AMENDMENTS

2024—Subsec. (h). Pub. L. 118–63 added subsec. (h).

2022—Subsec. (g). Pub. L. 117–254 added subsec. (g).

2018—Subsec. (a)(1). Pub. L. 115–254, §134(1), substituted “medium or large hub airport;” for “primary airport having at least .25 percent of the total number of passenger boardings each year at all commercial service airports;”.

Subsec. (a)(5). Pub. L. 115–254, §134(2), added par. (5) and struck out former par. (5) which read as follows: “for fiscal year 2002, 100 percent for a project described in section 47102(3)(J), 47102(3)(K), or 47102(3)(L).”

2017—Subsec. (c)(2). Pub. L. 115–31 amended par. (2) generally. Prior to amendment, text read as follows: “The Government’s share of allowable project costs determined under this subsection shall not exceed the lesser of 93.75 percent or the highest percentage Government share applicable to any project in any State under subsection (b), except that at a primary non-hub airport located in a State as set forth in paragraph (1) of this subsection that is within 15 miles of another State as set forth in paragraph (1) of this subsection, the Government’s share shall be an average of the Government share applicable to any project in each of the States.”

2014—Subsec. (c)(2). Pub. L. 113–235 inserted before period at end “, except that at a primary non-hub airport located in a State as set forth in paragraph (1) of this subsection that is within 15 miles of another State as set forth in paragraph (1) of this subsection, the Government’s share shall be an average of the Government share applicable to any project in each of the States”.

2012—Subsec. (a). Pub. L. 112–95, §137(1), substituted “otherwise provided in this section” for “provided in subsection (b) or subsection (c) of this section” in introductory provisions.

Subsecs. (e), (f). Pub. L. 112–95, §137(2), added subsecs. (e) and (f).

2003—Subsec. (a). Pub. L. 108–176, §162(b), substituted “Except as provided in subsection (b) or subsection (c)” for “Except as provided in subsection (b)” in introductory provisions.

Subsec. (a)(4). Pub. L. 108–176, §163, substituted “70 percent” for “40 percent”.

Subsecs. (c), (d). Pub. L. 108–176, §162(a), added subsec. (c) and redesignated former subsec. (c) as (d).

2001—Subsec. (a)(5). Pub. L. 107–71 added par. (5).

2000—Subsec. (a)(2) to (4). Pub. L. 106–181 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1996—Subsec. (a)(3). Pub. L. 104–264, §149(c), added par. (3).

Subsec. (c). Pub. L. 104–264, §1211, added subsec. (c).

1994—Subsec. (a). Pub. L. 103–305, §114(1), substituted “subsection (b)” for “subsections (b) and (c)”.

Subsec. (c). Pub. L. 103-305, § 114(2), struck out subsec. (c) which read as follows: “(c) LIMITATION.—Notwithstanding subsections (a) and (b) of this section, the Government’s share of project costs allowable under section 47110(d) of this title may not be more than 75 percent, except that the Government’s share shall be 85 percent for a project at a commercial service airport that does not have more than .05 percent of the total annual passenger boardings in the United States.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108-176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104-264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of this title.

OUTREACH EFFORTS

Pub. L. 117-254, § 2(b), Dec. 20, 2022, 136 Stat. 2361, provided that: “Not later than 90 days after the date of enactment of this Act [Dec. 20, 2022], the Administrator of the Federal Aviation Administration shall conduct an outreach effort to make airports aware of the higher cost share authority established in section 47109(g) of title 49, United States Code, as added by subsection (a).”

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 117-254, § 2(d), Dec. 20, 2022, 136 Stat. 2362, provided that: “The amendments made by this Act [amending this section] shall apply to amounts that first become available in fiscal year 2023 or thereafter.”

TEMPORARY INCREASE IN GOVERNMENT SHARE OF CERTAIN AIP PROJECT COSTS

Pub. L. 108-176, title I, § 161, Dec. 12, 2003, 117 Stat. 2513, as amended by Pub. L. 110-190, § 4(c), Feb. 28, 2008, 122 Stat. 644; Pub. L. 110-253, § 3(c)(3), June 30, 2008, 122 Stat. 2418; Pub. L. 110-330, § 5(i), Sept. 30, 2008, 122 Stat. 3718; Pub. L. 111-12, § 5(h), Mar. 30, 2009, 123 Stat. 1458; Pub. L. 111-69, § 5(i), Oct. 1, 2009, 123 Stat. 2055; Pub. L. 111-116, § 5(h), Dec. 16, 2009, 123 Stat. 3032; Pub. L. 111-153, § 5(h), Mar. 31, 2010, 124 Stat. 1085; Pub. L. 111-161, § 5(h), Apr. 30, 2010, 124 Stat. 1127; Pub. L. 111-197, § 5(h), July 2, 2010, 124 Stat. 1354; Pub. L. 111-216, title I, § 104(h), Aug. 1, 2010, 124 Stat. 2350; Pub. L. 111-249, § 5(i), Sept. 30, 2010, 124 Stat. 2628; Pub. L. 111-329, § 5(h), Dec. 22, 2010, 124 Stat. 3567; Pub. L. 112-7, § 5(h), Mar. 31, 2011, 125 Stat. 32; Pub. L. 112-16, § 5(h), May 31, 2011, 125 Stat. 219; Pub. L. 112-21, § 5(h), June 29, 2011, 125 Stat. 234; Pub. L. 112-27, § 5(h), Aug. 5, 2011, 125 Stat. 271; Pub. L. 112-30, title II, § 205(i), Sept. 16, 2011, 125 Stat. 358; Pub. L. 112-91, § 5(i), Jan. 31, 2012, 126 Stat. 4, provided that: “Notwithstanding section 47109(a) of title 49, United States Code, the Government’s share of allowable project costs for a grant made in any of fiscal years 2009 through 2011, or in the portion of fiscal year 2012 ending before February 18, 2012, under chapter 471 of that title for a project described in paragraph (2) or (3) of that section shall be 95 percent.”

[Pub. L. 110-253, § 3(c)(3), which directed amendment of section 161 of Pub. L. 108-176, set out above, by substituting “fiscal year 2008.” for “fiscal year 2008 before

July 1, 2008.”, was executed by substituting “fiscal year 2008,” for “fiscal year 2008 before July 1, 2008,” to reflect the probable intent of Congress.]

§ 47110. Allowable project costs

(a) GENERAL AUTHORITY.—Except as provided in section 47111 of this title, the United States Government may pay or be obligated to pay, from amounts appropriated to carry out this subchapter, a cost incurred in carrying out a project under this subchapter only if the Secretary of Transportation decides the cost is allowable.

(b) ALLOWABLE COST STANDARDS.—A project cost is allowable—

(1)(A) if the cost necessarily is incurred in carrying out the project in compliance with the grant agreement made for the project under this subchapter, including any cost a sponsor incurs related to an audit the Secretary requires under section 47121(b) or (d) of this title and any cost of moving a Federal facility impeding the project if the rebuilt facility is of an equivalent size and type; or

(B) if the cost is an incentive payment incurred in carrying out the project described in subparagraph (A) that is to be provided to a contractor upon early completion of a project, if—

(i) such payment does not exceed the lesser of 5 percent of the initial construction contract amount or \$1,000,000;

(ii) the level of contractor’s control of, or access to, the worksite necessary to shorten the duration of the project does not negatively impact the operation of the airport;

(iii) the contract specifies application of the incentive structure in the event of unforeseeable, non-weather delays beyond the control of the contractor;

(iv) nothing in any agreement with the contractor prevents the airport operator from retaining responsibility for the safety, efficiency, and capacity of the airport during the execution of the grant agreement; and

(v) the Secretary determines that the use of an incentive payment is likely to increase airport capacity or efficiency or result in cost savings as a result of shortening the project’s duration;

(2)(A) if the cost is incurred after the grant agreement is executed and is for airport development or airport planning carried out after the grant agreement is executed;

(B) if the cost is incurred after June 1, 1989, by the airport operator (regardless of when the grant agreement is executed) as part of a Government-approved noise compatibility program (including project formulation costs) and is consistent with all applicable statutory and administrative requirements;

(C) if the Government’s share is paid only with amounts apportioned under paragraphs (1) and (2) of section 47114(c) or section 47114(d)(3)(A)¹ and if the cost is incurred—

(i) after September 30, 1996;

(ii) before a grant agreement is executed for the project; and

¹ See References in Text note below.