
WHITE PAPER

Recommended Practices for Airport Sponsors and Commercial Aviation Businesses in Addressing Leasehold Issues in Response to COVID-19

Purpose

In the wake of the COVID-19 public health emergency, the aviation industry's airports and commercial aeronautical businesses, have been confronted with operational challenges, employee retention concerns and financial uncertainty unlike anything experienced before. Worldwide, COVID-19 has resulted in operational travel restrictions that has caused significant financial harm to airports, the industry's 3,661 FBOs, air carriers, including charter operators, MROs, and other essential aeronautical service providers.

NATA recognizes that most airport sponsors are public agencies that have both the unique challenge of being financially self-sustaining, while striving to support and preserve the valuable services and jobs that the business aviation industry provides to their communities. NATA encourages efforts to establish or continue fostering collaborative approaches and solutions between airport sponsors and their commercial aeronautical tenants in addressing these challenges, including initiating constructive discussions regarding options for the deferral and/or abatement of leasehold obligations during the coronavirus pandemic.

During times like these, commercial aeronautical businesses and airports are urged to continue to promote dialogue, develop insights into each other's perspectives, and find common ground on uniform rapid relief programs that help airport tenants that are undergoing financial hardships during this unforeseen crisis. NATA, under the established federal guidelines, is working with industry to establish and support the following best practices when considering financial accommodations for airport commercial tenants.

Coronavirus Aid, Relief, and Economic Security (CARES) Act

On March 27, 2020, the House of Representatives passed the CARES Act and President Trump signed the Act into law. The Act provides approximately \$10 billion in [grants for airports](#) with commercial airline service (with \$100 million to general aviation airports) and assistance for small businesses in the form of loans and payroll relief. The Paycheck Protection Program and the Payroll Support to Air Carriers and Contractors under Division A, Title IV, Subtitle B of the CARES Act are two programs that aim to retain employees and continue payment of employee wages, salaries, and benefits.

FAA Guidance on Rent Abatement and Deferral of Rental Payments

On April 4, 2020, the FAA released an informational [document](#) titled *Information for Airport Sponsors Considering COVID-19 Restrictions or Accommodations*. The document specifically addresses issues including "Rent abatement/minimum annual guarantee" and "Deferral of rental payments or other fees." According to FAA guidance, a decision to abate rent (including "minimum annual guarantees" and also encompassing fees) is a local decision and must abide by [AIP Grant Assurances](#) 22 (Economic Nondiscrimination) and 24 (Fee and Rental Structure).

NATA Recommendations & Best Practices

As has been identified, rent and other fee relief efforts must follow the current federal regulatory and legislative guidelines. As noted, local communities, airport sponsors and tenant businesses should work together to determine what may be right for the specific airport community.

Commercial service airports typically have residual or hybrid fee structures versus general aviation compensatory fee structures. The current FAA guidance does permit airports to either waive or defer aeronautical rents, however airports are cautioned in any consideration of non-aeronautical rents and fees, which could shift costs to aeronautical users, including the airlines. This consideration must be differentiated in any review that should not suggest in compensatory fee structures, that non-airline related aeronautical users, (i.e. FBOs, MROs, etc.) would be expected to make up any loss of airport revenue and cash flow.

Uniform and equitable financial assistance for similarly situated tenants is critical to the continued operation of any airport's commercial aeronautical service providers and master leaseholder aeronautical businesses – for whose sub-tenants' businesses that may be seeking relief from their master leaseholders. It is important to note that any assistance should only be considered based on the urgency of the current public health crisis and in balancing the financial needs of both the airport and commercial tenants.

The following checklist provides guidance for airports and airport commercial businesses in considering financial accommodations for airport rent and fee relief programs:

Background Assessment

- Review each lease/contract for key terms
 - Review text of *force majeure* clause (is it a hammer or a shield?)
 - Circumstances in which tenant already is entitled to rent/fee reductions (e.g., revised fees/rents for drop in enplaned passengers)
 - Evaluate consequences of a default in payments
 - Length of remaining term
 - Ability for (and likelihood of) tenant to take unilateral action
 - Identify possible costs that could be reduced (e.g., minimum staffing levels or operating hours)
 - Is the tenant providing essential commercial aeronautical activities? (e.g., aviation fuels, aircraft ground handling services, aircraft maintenance, aircraft charter)
 - What minimum standards are required to be met and can a temporary variance or exemption be granted?
- Conduct financial assessment of sponsor's financial flexibility
 - Look at both short-term and long-term financial consequences of not receiving revenue (either deferral or abatement of revenue)
 - Consider if tenant's payments will decline even without accommodations (e.g., percentage rent only?)
 - Evaluate likely CARES Act relief to sponsor and what cost centers will be allocated that relief
 - Is there a state or local legal prohibition or restriction on sponsor making loans or gifts?
 - Local or state relief funds or programs for sponsor
- Evaluate financial needs
 - Eligibility for, or actual receipt of, CARES Act or other relief (financial or other)
 - Effect of other non-financial accommodation or relief to be offered by the sponsor (e.g., shorter hours; reduced staffing, etc.)
 - Effect of local or state relief (e.g., non-eviction orders or rent deferral orders)
 - Has the tenant already taken steps to protect the solvency of the company?
 - Were there any financial reserves before the public health emergency?
 - Tenant has been able to demonstrate financial need
- Consider the financial consequences of any relief offered to all similarly situated tenants (aeronautical, non-aeronautical, quasi-aeronautical, commercial, and non-commercial)
- Review sponsor's ACDBE program (if applicable) to determine flexibility to offer accommodations that could adversely – or positively - affect the minority partners

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- Airport sponsors should review their bond documents and review with airport tenants
 - Will sponsor comply with covenants, including debt service coverage and cash flow before and after accommodation?
 - Determine when reporting is due and whether accommodation will extend beyond a reporting period and whether accommodation needs to be reported
 - Determine which tenants (by category) are going to receive what accommodation and prepare explanation (that could become a public document if necessary) for the distinction in treatment of different categories of tenants

Essential Terms for any Accommodation Agreement

- Determine whether letter agreement or lease amendment is preferable
- Is two party agreement required or simply unilateral action acceptable?
- Abatement or deferral (or hybrid)
 - Consider which payments to defer/abate in light of financial consequences both for the tenant and the sponsor
- Consider if interest on deferred payments will/must be charged and, if so, at what rate
- Draft to protect against bankruptcy preference (e.g., payments outside normal course of business)
- Provide flexibility to sponsor to extend period of accommodation unilaterally without need to renegotiate, re-execute agreement
- Include procedure for sponsor payment of deferred/abated fees into applicable cost centers (especially important for sponsor with residual or hybrid airline agreements) from unencumbered cash or other cost center
- Determine whether to include employment protection (e.g., recipient will not have a reduction-in-force or furloughs) or other policy objectives in program
- Consider whether to extend lease/contract term as an accommodation in addition to, or in lieu of, deferral or abatement

Drafting Accommodation Agreement

- Include appropriate ‘whereas’ clauses as warranted under terms of existing contractual relationship; clearly document legal position; distinguish from other tenants not provided with accommodation
- Importance of citing emergency and temporary nature of accommodation (check to reconcile with text of *force majeure* clause in applicable contract)
- Give sponsor unilateral authority to extend; define a specific period of accommodation
- Allow sponsor to terminate under specified circumstances (e.g., tenant’s receipt of financial aid, resumption of “normal” operations, etc.)
- Include specific repayment (in case of deferral) schedule
- Subordination to FAA requirements, including Airport Sponsor Assurances

Other considerations:

- If essential commercial aeronautical activities¹ ceased, is the sponsor (or another tenant) in a position to provide these essential commercial aeronautical activities?
 - How long and how much money would it take to replace the tenant and restart these essential commercial aeronautical activities?

¹ In this context, commercial aeronautical activities include aviation fueling, aircraft ground handling, aircraft maintenance, avionics maintenance, aircraft rental, and aircraft charter (including air ambulance).

- ☑ Each sponsor needs to align with any local ordinances that may limit or restrict commercial evictions and unlawful detainers, and how those apply to a sponsor's airport commercial tenants
- ☑ Establish rent and fee relief programs that provide opportunity for airport businesses to demonstrate economic need
- ☑ Establish rent and fee relief programs that integrate airport businesses to demonstrate as part of their request, their participation in CARES Act, or other federal, state or local economic relief programs
- ☑ Defer the enforcement of airport minimum standards provisions relative to staffing and service levels that would otherwise restrict tenant business from reasonably addressing their own economic mitigation measures
 - Consider future revisions to minimum standards that provide sponsors the ability to grant variances and/or exemptions during "emergency" situations
- ☑ Defer the payment of rents, fees, and charges for a period commensurate with the businesses ability to recover from the ongoing public health crisis. (i.e., month to month or 90 days and with options to adjust)
- ☑ Consider a uniform temporary or one-time suspension on any adjustment in the 2020 rental rates, including any retroactive application
- ☑ Compensatory leaseholders could pay a percentage of their rent to the sponsor as a potential relief option
- ☑ Sponsors and tenants should work collaboratively on repayment programs for any abated or deferred rents, rates and/or fees, based on, and consistent with reasonable national economic recovery indicators
- ☑ Airports should consult with all commercial aeronautical operators before making any rate abatement or deferral decisions, while also considering the following:
 - The business situation of the tenant;
 - The changes circumstances due to the public health emergency;
 - The desirability of having solvent tenants that can resume normal operations when the emergency ends;
 - The availability of other governmental or insurance relief that such entities have or may receive;
 - The appropriate term for such relief;
 - Consider possible subsequent conditions that would end the abatement; and
 - Compliance with lease obligations and current with financial obligations to the sponsor and creditors

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