

Aviation Group Client Update

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FAA ISSUES NEW POLICY ON ACCESS TO AIRPORTS FROM RESIDENTIAL PROPERTY

On July 16, 2013, the Federal Aviation Administration (FAA) issued a [Final Policy Statement](#) concerning residential through-the-fence access to federally-obligated airports. The amended Policy implements the provisions of the FAA Modernization and Reform Act of 2012, and took effect immediately. Section 136 of the Act permitted general aviation airports to enter into residential through-the-fence agreements when there is a written agreement that requires the property owner to:

- Pay access charges that are comparable to those fees charged to tenants and operators on-airport making similar use of the airport;
- Bear the cost of building and maintaining the infrastructure that is necessary to provide access to the airfield from property located adjacent to or near the airport;
- Maintain the property for residential, noncommercial use for the duration of the agreement;
- Prohibit access to the airport from other properties through the property of the property owner; and
- Prohibit any aircraft refueling from occurring on the property.

A general aviation airport is defined as a public airport that does not have commercial service or has scheduled service with less than 2,500 passenger boardings each year. This definition excludes privately-owned reliever airports. The prohibition on refueling is interpreted by the FAA as a prohibition on the sale of fuel from residential property. The FAA will not concern itself with self-fueling activities which may be permitted by local regulation.

Grant Assurance 29, *Airport Layout Plan* (“ALP”), has been amended to require all proposed and existing access points used to taxi aircraft across the airport property boundary be depicted on the ALP. Costs associated with updating the ALP are not eligible for Airport Improvement Program (“AIP”) funding.

Airport sponsors with existing access must provide evidence of compliance no later than October 1, 2014. The FAA has issued a [Compliance Guidance Letter](#) for reviewing existing and proposed residential access agreements.

Airport sponsors of general aviation airports proposing to establish new access agreements must provide evidence of compliance prior to establishing an access point. Access agreements involving general aviation airports and privately-owned reliever airports with existing access will be reviewed

by ADOs and Regional Offices. Access plans submitted by sponsors of commercial service airports with existing access will be reviewed by ADOs, Regional Offices, and ACO-100.

General aviation airports interested in establishing a new access point must submit an updated ALP for FAA review, and a copy of the (draft) access agreement and access agreement review sheet. The FAA will review the (draft) access agreement as part of the ALP review. However, ADOs may not sign an updated ALP depicting a new residential through-the-fence access point before the FAA has confirmed that the (draft) access agreement will comply with the law.

Commercial service airports and privately-owned reliever airports are prohibited from establishing new residential access agreements.

Airport sponsors that are not compliant with the new access requirements are ineligible to receive AIP grants and must submit a corrective action plan that includes a residential through-the-fence access agreement and/or access plan.

If you have any questions or would like further information regarding this Final Policy Statement, please contact our office.

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McBreen & Kopko's Aviation Group represents air carriers, fixed base operators (FBOs), airport managers, aviation service providers, and business aircraft owners and operators on a wide range of aviation issues including regulatory matters, commercial transactions, aircraft finance matters, and bankruptcy and creditors' rights.