

## §331.5

would have been incurred had the terrorist attacks on the United States of September 11, 2001 not occurred.

*Fixed-base general aviation operator* means an entity based at a particular airport that provides services to and support for general aviation activities, including the provision of fuel and oil, aircraft storage and tie-down, airframe and engine maintenance, avionics repair, baggage handling, deicing, and the provision of air charter services. The term does not include an entity that exclusively provides products for general aviation activities (e.g. a parts supplier).

*Forecast or forecast data* means a projection of revenue and expenses during the eligible reimbursement period had the attacks of September 11, 2001 not occurred.

*Incurred* means to become liable or subject to (as in "to incur a debt").

*Loss* means something that is gone and cannot be recovered.

*Provider of general aviation ground support services* means an entity that does not qualify as a fixed-base general aviation operator but operates at a particular airport and supplies services, either exclusively or predominantly, to support general aviation activities, including flight schools or security services. The term does not include an entity that exclusively provides products for general aviation activities (e.g. a parts or equipment supplier).

*You* means fixed-base general aviation operators or providers of general aviation ground support services.

### §331.5 Who may apply for reimbursement under this part?

If you are or were an eligible fixed-base general aviation operator or provider of general aviation ground support services (collectively "operators or providers") at an eligible airport or airports in the Washington, DC area, and incurred direct or incremental losses during the applicable reimbursement periods stated at §331.13 that were solely due to the actions of the Federal government following the terrorist attacks on the United States on September 11, 2001, you may apply for reimbursement under this part. If you are applying for reimbursement based

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on losses at more than one airport, then you must submit separate applications for each airport. For example, if you are a provider of general aviation ground support services at Ronald Reagan Washington National Airport and Potomac Airfield in Fort Washington, Maryland, you must submit two separate applications.

### §331.7 What losses will be reimbursed?

(a) You may be reimbursed an amount up to the difference between the adjusted income you actually or reasonably forecasted for the eligible reimbursement period and the actual adjusted income you earned during the eligible reimbursement period. If you did not forecast for the eligible reimbursement period or any part of the eligible reimbursement period, you may be reimbursed for the difference between what you can show you would have reasonably expected to earn as adjusted income during that period had the airport at which you are or were an operator or provider not been closed as the result of Federal government actions, and the actual adjusted income you earned during the eligible reimbursement period. Adjusted income is calculated on a pretax basis. It is the total of Operating Profit or Loss (i.e., Total Operating Revenues minus Total Operating Expenses) and Nonoperating Income (Loss); however, it excludes certain expenses, including lobbying expenses that were incurred to promote reimbursement for losses after the terrorist attacks or enact what became Section 185 of Pub. L. 109-115. Extraordinary, non-recurring, or unusual adjustments, and capital losses are normally ineligible for reimbursement. If you wish to claim for such an adjustment or loss, you must demonstrate that such adjustments were solely attributable to the Federal government's closure of the five Washington-area airports, are in conformity with Generally Accepted Accounting Principles, were fully borne within the statutory reimbursement period, that the loss was not discretionary in nature, and that reimbursement would not be duplicative of other relief.

(b) A temporary loss that you recovered after the attacks of September 11, 2001, or that you expect to recover, is

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not eligible for reimbursement under this part. You will not be reimbursed for those losses incurred through your own fault, negligence, or violation of law, or because of the actions of a third party (e.g. an airport).

(c) If you engaged in any non-aviation income-producing activities after September 11, 2001, such income must be reported under question number 5 in the appendix to this part.

(d) So called "cost savings" claims (i.e. increasing the claimed amount of reimbursement by reducing actual expenses to "adjust" for savings in expense categories asserted not to have been affected by the terrorist attacks) are not eligible for reimbursement.

(e) You cannot claim reimbursement for the lost time value of money (i.e. interest on lost profits for the period of time the funds were not available for your use).

(f) Lobbying fees and attorneys' fees incurred to promote reimbursement for losses after the terrorist attacks or enact Section 185 of Pub. L. 109-115 are not eligible for reimbursement.

(g) Your calculation of revenues, expenses and income must be based on financial documents maintained in the ordinary course of business that were prepared for the eligible reimbursement period, such as income statements, statements of operations, profit-and-loss statements, operating forecasts, budget documents or other similar documents.

**§ 331.9 What funds will the Department distribute under this part?**

The Department will distribute the full amount of reimbursement it determines is payable to you under section 185 of the Act. Payment may be made in one or more installments.

**§ 331.11 What are the limits on reimbursement to operators or providers?**

(a) You are eligible to receive reimbursement subject to the set-aside (subpart C of this part) for eligible operators or providers at College Park Airport in College Park, Maryland; Potomac Airfield in Fort Washington, Maryland; and Washington Executive/Hyde Field in Clinton, Maryland. The amount available to you as reimburse-

ment may be reduced to cover the cost of independent verification and auditing, as set forth in § 331.17.

(b) If you receive more reimbursement than the amount to which you are entitled under section 185 of the Act or the subpart C set-aside, the Department will notify you of the basis for the determination and the amount that you must repay to the Department. The Department will follow collection procedures under the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 *et seq.*) to the extent required by law, in recovering such overpayments.

(c) Payment will not be made to you until you have agreed to release the United States Government for all claims for financial losses resulting from the closure of the five airports in the Washington, DC area. The Department will provide a release form to applicants that must be completed before any payment is made under Section 185 of the Act.

**§ 331.13 What is the eligible reimbursement period under this part?**

The eligible reimbursement period for direct and incremental losses differs by airport:

(a) For Ronald Reagan Washington National Airport the eligibility period for reimbursement is from September 11, 2001 until October 18, 2005.

(b) For College Park Airport in College Park, Maryland, the eligibility period for reimbursement is from September 11, 2001 until February 13, 2005.

(c) For Potomac Airfield in Fort Washington, Maryland, the eligibility period for reimbursement is from September 11, 2001 until February 13, 2005.

(d) For the Washington South Capitol Street Heliport in Washington, DC, the eligibility period for reimbursement is from September 11, 2001 to November 30, 2005.

(e) For Washington Executive/Hyde Field in Clinton, Maryland, there are two eligibility periods for reimbursement. The first period is from September 11, 2001 until May 16, 2002. The second period is from September 29, 2002 until February 13, 2005.