42nd Annual AAAE
Airport Law Workshop
Phoenix, AZ

Session #12

Grant Agreements and Grant Assurances: Fundamentals and Latest Updates

KAPLAN KIRSCH

American Association of Airport Executives
AAAE Delivers Service. Innovation. Results.

International Municipal Lawyers Association
Advancing Excellence in the practice of Local Government Law

Speakers

Slone P. Isselhard

Partner, Kaplan Kirsch LLP
sisselhard@kaplankirsch.com

Sarah E. Wilbanks

Partner, Kaplan Kirsch LLP
swilbanks@kaplankirsch.com

Presentation Agenda

Why Grant Assurances Matter

Which Grant Assurances Matter (all of them)

Understanding the Grant Agreement

Interpretation and Enforcement

What’s Changed?

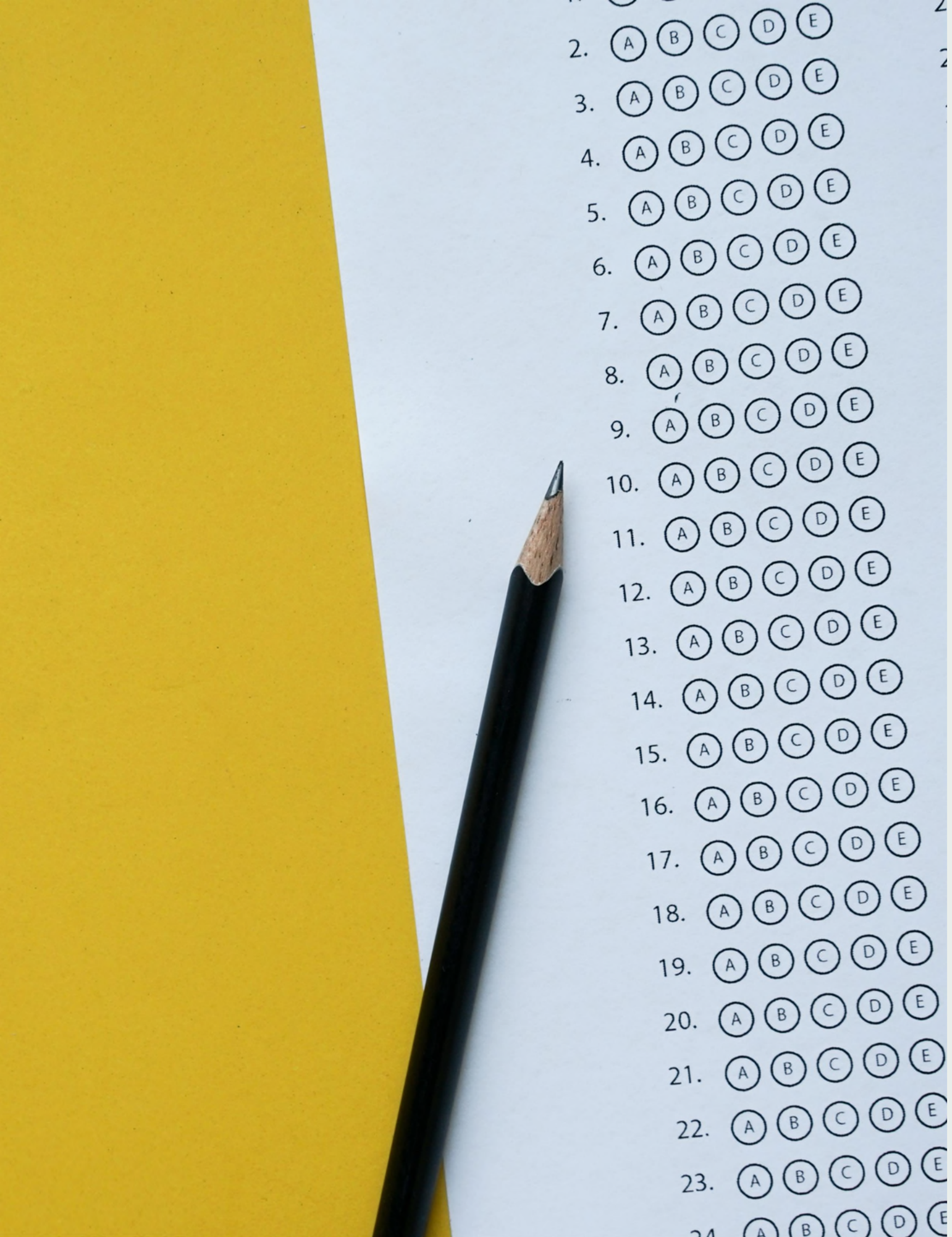
Practical Advice for Airport Lawyers

Q&A

Why Grant Assurances Matter

Reciprocity for federal investment

- Federal money/property comes with continuing obligations
- Grant agreement = contract with the United States
- Grant assurances are incorporated into that contractual relationship



Which Grant Assurances Matter

ALL OF THEM

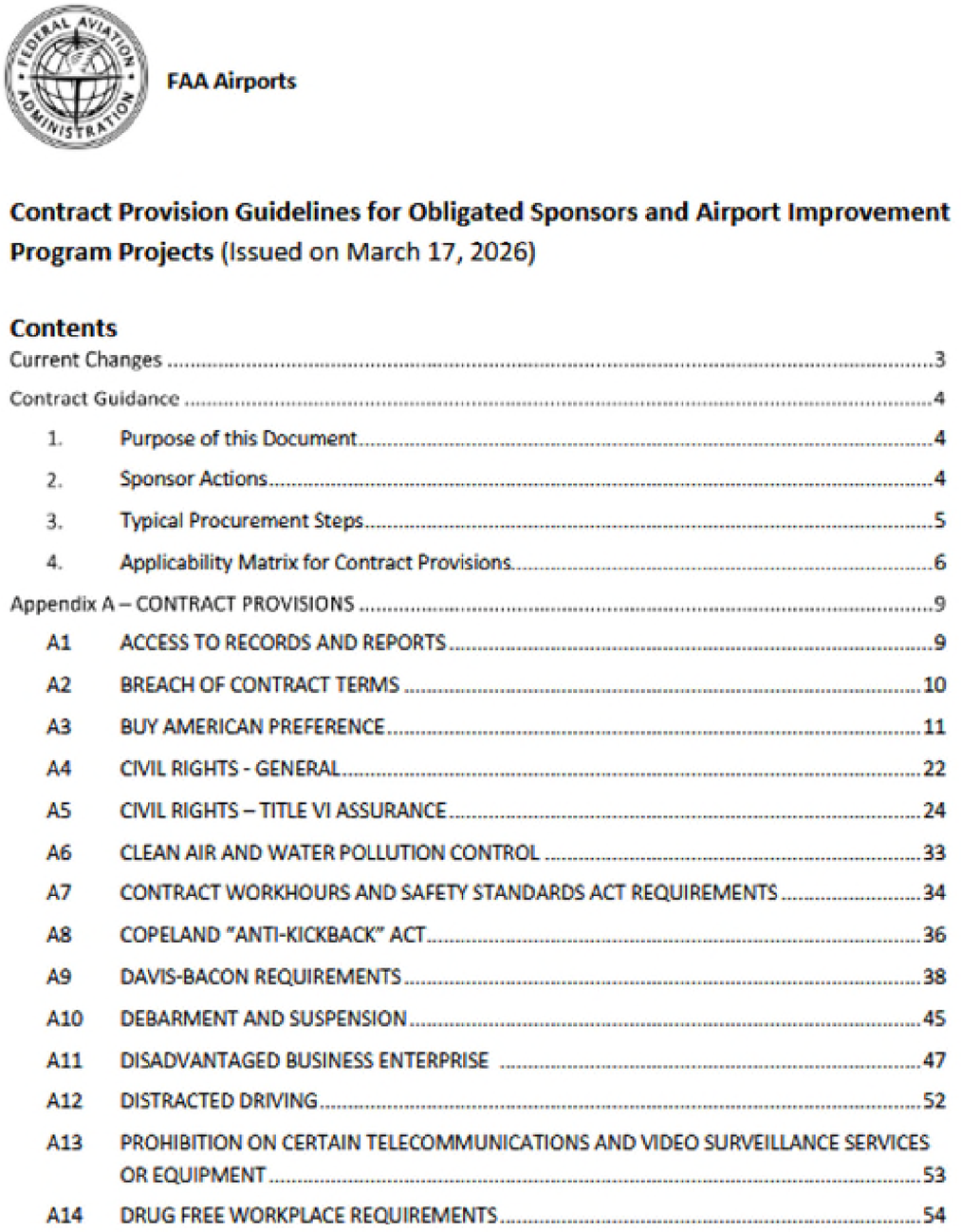
- Control & preservation of the airport
- Access & economic nondiscrimination
- Financial stewardship
- Land use & airport development
- Federal regulatory requirements

Grant Assurance #1

General Federal Requirements

- "Sponsor will comply with all applicable Federal laws…"
- Laundry list of federal laws, regulations, executive orders, policies, guidelines
- Mechanism to enforce federal law through Assurances

- Obligates sponsors to include "**required contract provisions**" in *every* contract



FAA Airports

Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects (Issued on March 17, 2026)

Contents

Current Changes 3

Contract Guidance 4

1. Purpose of this Document 4
2. Sponsor Actions 4
3. Typical Procurement Steps 5
4. Applicability Matrix for Contract Provisions 6

Appendix A – CONTRACT PROVISIONS 9

A1 ACCESS TO RECORDS AND REPORTS 9
A2 BREACH OF CONTRACT TERMS 10
A3 BUY AMERICAN PREFERENCE 11
A4 CIVIL RIGHTS - GENERAL 22
A5 CIVIL RIGHTS – TITLE VI ASSURANCE 24
A6 CLEAN AIR AND WATER POLLUTION CONTROL 33
A7 CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS 34
A8 COPELAND "ANTI-KICKBACK" ACT 36
A9 DAVIS-BACON REQUIREMENTS 38
A10 DEBARMENT AND SUSPENSION 45
A11 DISADVANTAGED BUSINESS ENTERPRISE 47
A12 DISTRACTED DRIVING 52
A13 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT 53
A14 DRUG FREE WORKPLACE REQUIREMENTS 54

*[The sponsor] will not **take or permit** any action which would... **deprive it of any of the rights and powers** necessary to perform ...this grant agreement....*

…

*[The sponsor] will **act promptly** to acquire, extinguish or modify any outstanding rights or claims ... which would interfere with such performance ....*

Grant Assurance #5

Preserving Rights and Powers

Practice tips when drafting leases and agreements:

- Retain “rights and powers”
- Reserve approval over subleases
- Limit lease duration
- Use reversionary & subordination clauses
- Review lender provisions

Grant Assurance #19

Operations and Maintenance

- Requires a functioning airport
- Keeping airport safe and open for aircraft
- FAA approval for nonaeronautical closure
- Contingency planning
- Relates to:
  - Assurance #11 (Pavement maintenance)
  - Assurance #29 (Airport Layout Plan)
  - Part 139

*The airport…shall be operated at all times in a **safe and serviceable condition** and in accordance with [requirements]... prescribed by applicable Federal, state, and local agencies for maintenance and operation.*

[The sponsor] will not cause or permit any activity or action thereon which would interfere with its use for airport purposes.…

*[The sponsor] will make the airport **available** for public use on **reasonable terms** and **without unjust discrimination** to all types, kinds, and classes of aeronautical activities . . .*

Grant Assurance #22

Economic Nondiscrimination

Key components:

- Available
- On reasonable terms
- Without unjust discrimination

Does **not** require acquiescence to all tenant demands

*[The sponsor] will make the airport **available** for public use on **reasonable terms** and **without unjust discrimination** to all types, kinds, and classes of aeronautical activities . . .*

Grant Assurance #22

Economic Nondiscrimination

Requires:

- ✓ Good-faith consideration of applications
- ✓ Access to airfield
- ✓ Reasonable and not unjustly discriminatory terms

Does not require:

- – Operator's preferred site
- – Operator's preferred terms
- – Through-the-fence access
- – Unsafe or unsightly operations
- – Sponsor's development of facilities

*[The sponsor] will make the airport **available** for public use on **reasonable terms** and **without unjust discrimination** to all types, kinds, and classes of aeronautical activities . . .*

Grant Assurance #22

Economic Nondiscrimination

- Terms must be:
  - Attainable
  - Rational
  - Uniformly applied

- Treat **similarly situated** aeronautical operators similarly
  - Facilities
  - Investment/risk
  - Signatory status
  - Time

✈ Publishing (and enforcing) **minimum standards** is a key method to comply with Assurance #22

Grant Assurance #23

Exclusive Rights

- Bars **express** and **implied** exclusive rights
- Having sole service provider not *inherently* unlawful
- Sponsor retains **proprietary exclusive** right – subject to conditions

> *[The sponsor] will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. …*

Grant Assurance #29

Airport Layout Plan

*[The sponsor] will **keep up to date** at all times an airport layout plan of the airport…*

- Depict airport's current and proposed:
  - Boundaries
  - Facilities and structures
  - "Non-aviation areas"
  - Access points
- Some portions of the ALP require FAA approval
  - See Section 743 / 47107(x)

Understanding the Grant Agreement

What Are You Actually Agreeing To?

- Grant Assurances ≠ Grant Agreement
- Project specific
- Funding source specific
- Template may change

Anatomy of a Grant Agreement

U.S. Department
of Transportation
Federal Aviation
Administration

FY 2025 AIRPORT INFRASTRUCTURE GRANT
TEMPLATE ONLY ** GRANT AGREEMENT ** TEMPLATE ONLY
Part I - Offer

Federal Award Offer Date	{{DateTime_es_:signer1:calc(now()):format(date," mmmm d, yyyy")}}
Airport/Planning Area	[Selection Criteria: Airport Name or Planning Area]
Airport Infrastructure Grant Number	[Selection Criteria: Grant Number Formatted]
Unique Entity Identifier	[Selection Criteria: DUNS Number]

TO: [Selection Criteria: Sponsor Name]
(herein called the "Sponsor") (For Co-Sponsors, list all Co-Sponsor names. The word "Sponsor" in this Grant Agreement also applies to a Co-Sponsor.)
[Please Enter Co-Sponsor Name(s)]

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

ONLY - DO NOT COPY

Anatomy of a Grant Agreement

The Deal:

- Grant offer
- Project description
- Federal share / maximum obligation
- Performance period

Special Conditions:

- Project-specific
- Airport-wide & continuing
- Grant-specific

Sponsor Certifications:

- Subject to change
- False Claims Act

Incorporated:

- Statutes
- Regulations
- Policies
- Grant Assurances

CERTIFICATE OF SPONSOR'S ATTORNEY

I, {{N_es_:signer5: fullname}}, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of __[Database: State Name]__. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative, who has been duly authorized to execute this Grant Agreement, which is in all respects due and proper and in accordance with the laws of the said State; the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58, Division J, Title VIII) of 2021; FAA Reauthorization Act of 2024 (P.L. 118-63); and the representations contained in the Project Application. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct.[5]

{{DateTime_es_:signer5:calc(now()):format(date," mmmm d, yyyy")}}

Dated at _____

ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

On _____, before me, a Notary Public, personally appeared _____, who proved to me through satisfactory evidence to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that _____ executed the foregoing instrument in their authorized capacity by their signature on the instrument.

_____
Signature of Notary

By: {{Sig_es_:signer5:signature:dimension(height=12mm, width=70mm)}}

(Signature of Sponsor's Attorney)

TEMPLATE ONLY - DO NOT COPY

[5] Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. § 1001 (False Statements) and could subject you to fines, imprisonment, or both.

How Long Do the Obligations Last?

It depends (typical lawyer response)

- Useful life of the project/equipment
  - Capped at 20 years
  - Rolling/concurrent grants
- Forever
  - As long as the property operates as an airport
  - Or is released

How FAA Interprets and Enforces Grant Assurances and Conditions

Layered obligations

Statute / Federal law

↓

Regulations

↓

Grant Agreement / Grant Assurances

↓

FAA Orders & Published Policies

↓

Part 16 Decisions / Director's Determinations

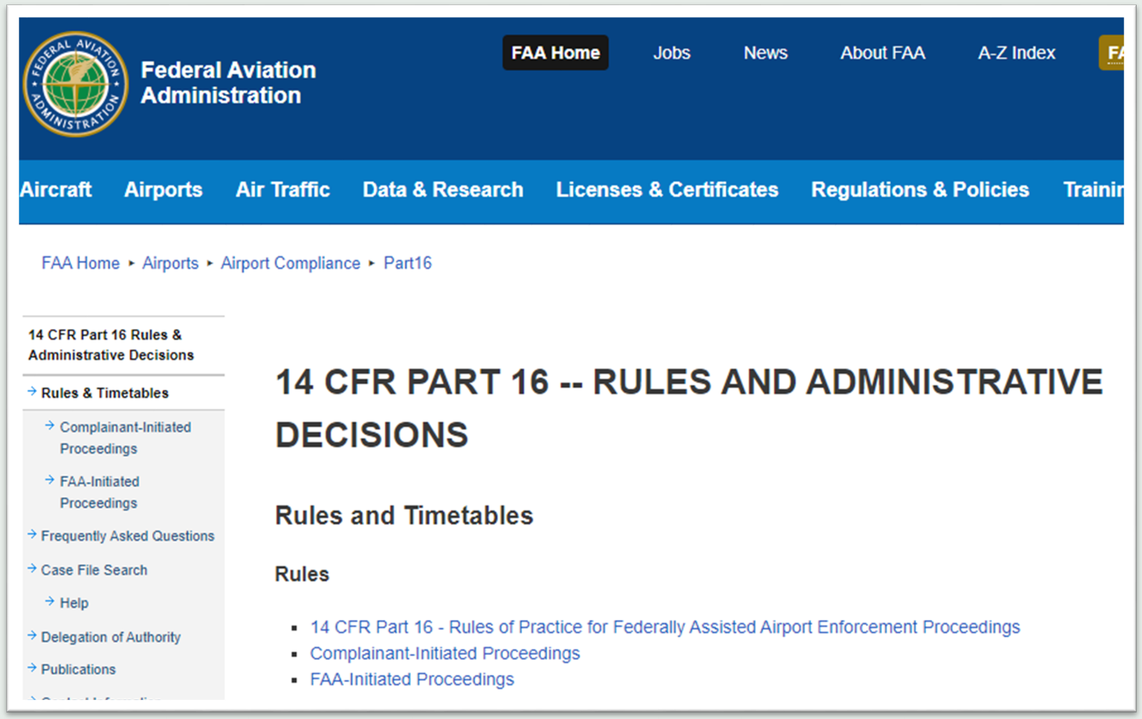
↓

Guidance / FAQs / Compliance Guidance Letters

Enforcement

Formal and informal enforcement actions

- Two types of grant enforcement
  - 14 C.F.R. **Part 13** (“informal”)
  - 14 C.F.R. **Part 16** (“formal”)
- Focus on current compliance
  - Strong preference: voluntary compliance
- Maximum penalty: Loss of grant eligibility



Possible Consequences of Non-Compliance

Corrective action plans and revenue diversion

- Withholding/conditioning future grants
  - Discretionary AIP funding
  - AIP entitlement funds
- Cease and desist and other orders
- Special penalties for Revenue Use violations:
  - PFC authorization
  - Non-AIP grants
  - Civil penalties
- False Claims Act and criminal penalties

2025 Grant Assurances

Grant Agreement Template

Order 5190.6C

Required Contract Clauses

Policy & Interpretation

What's Changed?

- Statute vs. policy
- Existing contractual obligation vs. new funding condition
- Eligibility for future federal money vs. compliance with an existing grant

Practical Advice for Airport Lawyers

Five questions to ask before you act:

1. Is the airport federally obligated?
2. What grant conditions and obligations apply?
3. Which grant assurances are implicated?
4. What does current FAA policy and guidance say?
5. What documentation will we wish we had if FAA asks about this five years from now?

42nd Annual AAAE
Airport Law Workshop
Phoenix, AZ

Questions?

KAPLAN KIRSCH

American Association of Airport Executives
AAAE Delivers Service. Innovation. Results.

International Municipal Lawyers Association
Advancing Excellence in the practice of Local Government Law

42nd Annual AAAE
Airport Law Workshop
Phoenix, AZ

Thank You!

KAPLAN KIRSCH

American Association of Airport Executives
AAAE Delivers Service. Innovation. Results.

International Municipal Lawyers Association
Advancing Excellence in the practice of Local Government Law