

37TH ANNUAL

AIRPORT LAW WORKSHOP




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Session 4

Fundamentals IV: Key Grant Assurances



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GRANT ASSURANCES: AN OVERVIEW

- Set of 39 contractual conditions attached to receipt of federal AIP grant funds
- Binding for 20 years (or perpetual)
- Indirect but substantial means of federal regulation
- Note on other recent aid



FAA
Airports

ASSURANCES AIRPORT SPONSORS

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.



GRANT ASSURANCE 1: FEDERAL REQUIREMENTS

- Requires compliance with long list of federal laws, including:
 - Statutes
 - Executive Orders
 - Regulations
 - Certain OMB guidance
- Extremely broad
- Allows FAA to take action if sponsor is not complying with some other law
- Review to understand full scope



GRANT ASSURANCES 4 & 5: CONTROL OF PROPERTY AND POWERS

- GA 4: Sponsor must have and maintain “good title” to the airport
 - Usually, deed or other fee simple
 - Long-term lease can also be acceptable in some circumstances
- GA 5: Sponsor will not “take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances”
 - Selling property, easements, or allowing access (e.g., through-the-fence)
 - Problematic lease terms (mortgages, term lengths, reversion)
 - Non-sponsor land use regulations (compatible uses and GA 21)



GRANT ASSURANCES 6–10: LOCAL PLANS AND CONSULTATION

- Projects must be reasonably consistent with local plans.
- Sponsors must give “fair consideration” to community interest.
- Sponsors must undertake “reasonable consultation” with affected airport users on a project.
- Major projects require public hearings and MPO coordination:
 - Airport siting
 - Runway construction or extension





GRANT ASSURANCES 16 & 17: PROJECT IMPLEMENTATION

- Submit plans upon FAA request
- Follow plans that have been approved by the FAA
- Provide on-site technical supervision of projects





GRANT ASSURANCE 19: OPERATION AND MAINTENANCE





GRANT ASSURANCE 20: HAZARDS AND OBSTRUCTIONS



- Sponsor must “take appropriate action” to protect airspace by clearing, removing, or mitigating hazards and obstructions and preventing new hazards and obstructions
- Includes trees, buildings, wildlife attractants
- FAA does not mandate particular methodologies
 - Removing versus lighting
 - Some other unorthodox methods...





GRANT ASSURANCE 21: COMPATIBLE LAND USE

- Sponsor will take “appropriate action, **to the extent reasonable**, including the adoption of **zoning laws**, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes **compatible with normal airport operations**.”
- “Compatibility” flows both ways
 - Protect the airport and operations (see *also* GA 19 and 20)
 - Protect the surrounding area, usually from noise issues (GA 21)
- Importance of Master Planning and community involvement

GRANT ASSURANCE 22: ECONOMIC NONDISCRIMINATION



“Make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.”



WHAT IS AN AERONAUTICAL ACTIVITY?

“Any activity that involves, makes possible, or is required for the operation of aircraft or that contributes to or is required for the safety of such operations.”



Does the activity need to occur on the airport?



REASONABLE AND NOT UNJUSTLY DISCRIMINATORY

- Attainable
- Rational
- Uniformly applied
- Treats *similarly* situated users similarly
 - Age, condition, and use of facilities
 - Degree of operational or financial risk
 - Signatory and non-signatory status
 - Change in airport policies



**Minimum
Standards**





IT'S ABOUT ACCESS!

Required:

- Timely consideration
- Reasonable and not unjustly discriminatory terms
- Opportunity
- Grant Assurance 38: Private Hangar Construction

Not Required:

- Preferred operating location
- Preferred terms
- Through-the-fence (TTF) access
- Unsafe or unsightly operations
- Development of facilities



OTHER IMPORTANT GRANT ASSURANCE 22 REQUIREMENTS

- “Insert and enforce” provisions requiring operators to provide services on a reasonable and not unjustly discriminatory basis
- Guarantee rights to self-fuel and self-service
- Sponsor activities subject to same rules
- Impose rules and restrictions for safety reasons, subject to FAA review and approval



GRANT ASSURANCE 23: EXCLUSIVE RIGHTS

“[P]ermit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.”

- Perpetual statutory obligation
- *Express* and *de facto* exclusive rights
- Single FBO airports
- Proprietary exclusive rights
- Exclusion of qualified operators



GRANT ASSURANCE 24: SELF-SUSTAINING RATE STRUCTURE

- Sponsor must “maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport.”
 - Generally, try to recover costs of aeronautical function by assessing appropriate aeronautical fees
 - Different for commercial (airline rates and charges) versus GA airports (land rent, landing fees, fuel flowage)
 - Non-aero revenue can have a big impact





GRANT ASSURANCE 25: AIRPORT REVENUE USE AND DIVERSION

- Airports are a closed financial system
- “Airport revenue” can only be spent for the “capital or operating costs” of:
 - The airport;
 - The local airport system; or
 - Facilities owned and operated by the sponsor and “directly and substantially” related to air transportation
- Other uses of airport revenue are considered impermissible diversions and subject to penalties
- NOTE: Airport revenue diversion is *also* prohibited by statute (49 U.S.C. § 47113)



SO, WHAT DOES THAT MEAN?

“AIRPORT REVENUE”	PERMISSIBLE USES	IMPERMISSIBLE USES
Landing, per turn, or other use fees	Airport capital projects, including certain access projects	Mass transit unconnected to airport
Aero service fees	Airport operating costs (maintenance, utilities, salaries)	Impact fees that exceed value to the airport or PILOTS
Terminal concession fees, parking	Use of property for aero services	Sponsor use of airport property for non-aero purpose w/o payment
Rent paid to sponsor for airport property (aero or non-aero)	Reimbursement to sponsor for services rendered*	Unbalanced charges for general costs of government
Aviation fuel tax revenue	Marketing of airport and air service	General economic development



THE RED FLAGS

- Most often problematic when sponsor is larger government entity
- Political dynamics – “airport cash cow”
- Expenditures that do not look like airport-related
- Economic development
- Significant penalties – three times the diverted revenue, plus a six-year lookback





GRANT ASSURANCE 29: AIRPORT LAYOUT PLANS

- Maintain ALP showing all existing and proposed aeronautical and non-aeronautical structures, facilities, and uses
- Remove improvements that are not in conformity with the ALP, if they adversely affect the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport
- Subject to “Section 163” of FAA 2018 Act: distinguish obligation to maintain ALP and need for FAA approval
- Changes requiring approval may take time!

GRANT ASSURANCE 30: CIVIL RIGHTS

- FAA's contractual mechanism to enforce Title VI of the Civil Rights Act of 1964 and 49 CFR Part 21
- Broadly prohibits discrimination in all activities and projects of the sponsor
- Requires inclusion of specific contract provisions in every contract signed by the sponsor, and flowdown to subcontractors

Unlawful Discrimination

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or disability in public services and employment opportunities. Allegations of discrimination should be promptly reported to the Airport Manager or:

Federal Aviation Administration
Office of Civil Rights, ACR-1
800 Independence Avenue, S.W.
Washington, D.C. 20591

Federal regulations on unlawful discrimination are available for review in the Airport Manager's Office.

Coordinator: Russ Peaden
Phone: 804-226-8520
Address: 1 Richard E. Byrd Terminal Drive
Richmond International Airport, VA 23250


Discriminación Ilegal

Se prohíbe a los operadores de aeropuertos y a sus arrendatarios, inquilinos, concesionarios y contratistas discriminar contra cualquier persona por motivo de raza, color, nacionalidad de origen, sexo, creencias religiosas, impedimento físico o discapacidad en lo que respecta a servicios públicos y oportunidades de empleo. Las alegaciones de discriminación deberán ser dirigidas inmediatamente al Administrador del Aeropuerto o a:

Federal Aviation Administration
Office of Civil Rights, ACR-1
800 Independence Avenue, S.W.
Washington, D.C. 20591

Los reglamentos sobre discriminación ilegal están a la disposición de los interesados para su examen en la oficina del Administrador del Aeropuerto.

Coordinador: Russ Peaden
Teléfono: 804-226-8520
Dirección: 1 Richard E. Byrd Terminal Drive
Richmond International Airport, VA 23250

 U.S. Department of Transportation
Federal Aviation Administration

14C 17198



GRANT ASSURANCE 34: ADVISORY CIRCULARS

- As we say, Advisory Circulars are *neither* advisory nor circular
- Sponsors are required to comply with ACs because of Grant Assurance 34
- Many, many Advisory Circulars on a wide variety of topics
- Airport Series 150
 - https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.list/parentTopicID/11



GRANT ASSURANCE 35: RELOCATION AND REAL PROPERTY ACQUISITION

- Sponsor must adhere to 49 CFR Part 24 Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs
- Process for acquisition of property and relocation of individuals
- Sponsors likely required to comply regardless of GA 35, but just another layer of enforcement





COMPLIANCE RESOURCES

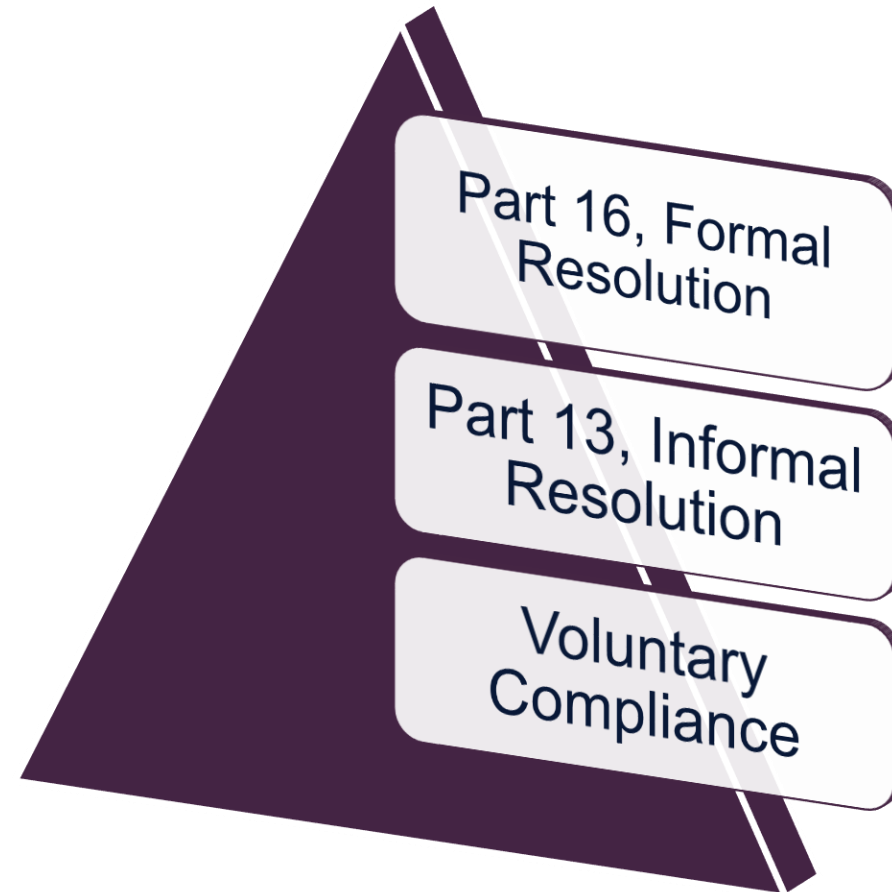
- FAA Order 5190.6B, *Airport Compliance Manual*
- FAA Advisory Circulars, Orders, and Policies
 - Exclusive Rights, AC 5190-6
 - Policies and Procedures Concerning the Use of Airport Revenue
 - Policy Regarding Airport Rates and Charges
 - Air Carrier Incentive Programs
- Compliance Guidance Letters
 - Appraisal Standards
 - Permanent Airport Closures
- ACRP publications – Chapter 32 in Desk Reference
- Part 16 decisions and DOT/FAA letters



SPEAKING OF ENFORCEMENT

Compliance elements:

1. Understand obligations
2. Have an appropriate program in place
3. Carry out program
4. Address past compliance issues



QUESTIONS?



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