



34<sup>th</sup> Annual Basics of Airport Law Workshop and 2018 Legal Update

## Session #3

# SPONSOR OBLIGATIONS PART 1: AVOIDING COMPLIANCE ISSUES IN EVERYDAY OPERATIONS

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# WHAT DO WE MEAN BY COMPLIANCE?

- Satisfying obligations under sponsor assurances and related federal laws
  - Grant Assurances
  - Federal property conveyances
  - Other federal laws and policies
- Developing procedures to assure compliance
- Preserving authority to meet federal obligations

# SOURCES OF FEDERAL OBLIGATIONS

- 39 sponsor obligations for all grant-obligated airports
  - Cover EVERY aspect of airport operations
- Property conveyance obligations
  - Surplus and non-surplus
- Statutory obligations for federally-assisted airports
  - Exclusive rights
  - Civil rights
  - Revenue use
- Part 139 – Commercial Service

# 39 SPONSOR ASSURANCES

1. General Federal Requirements
2. Responsibility and Authority of the Sponsor
3. Sponsor Fund Availability
4. Good Title
5. Preserving Rights and Powers
6. Consistency with Local Plans
7. Consideration of Local Interest
8. Consultation with Users
9. Public Hearings
10. Metropolitan Planning Organization
11. Pavement Preventive Maintenance
12. Terminal Development Prerequisites
13. Accounting System, Audit, and Record Keeping Requirements
14. Minimum Wage Rates
15. Veteran's Preference
16. Conformity to Plans and Specifications
17. Construction Inspection and Approval
18. Planning Projects
19. Operation and Maintenance
20. Hazard Removal and Mitigation
21. Compatible Land Use
22. Economic Nondiscrimination
23. Exclusive Rights
24. Fee and Rental Structure
25. Airport Revenues
26. Reports and Inspections
27. Use by Government Aircraft
28. Land for Federal Facilities
29. Airport Layout Plan
30. Civil Rights
31. Disposal of Land
32. Engineering and Design Services
33. Foreign Market Restrictions
34. Policies, Standards, and Specifications
35. Relocation and Real Property Acquisition
36. Access By Intercity Buses
37. Disadvantaged Business Enterprises
38. Hangar Construction
39. Competitive Access

# NATURE OF GRANT OBLIGATIONS

- Contract – Statute Hybrid
  - Funds given in exchange for assurances regarding the airport and its operation and maintenance
- Many sponsor assurances must be applied to third-parties
  - Federal requirements
  - Reasonable access, price, and service
  - Pavement and facility maintenance

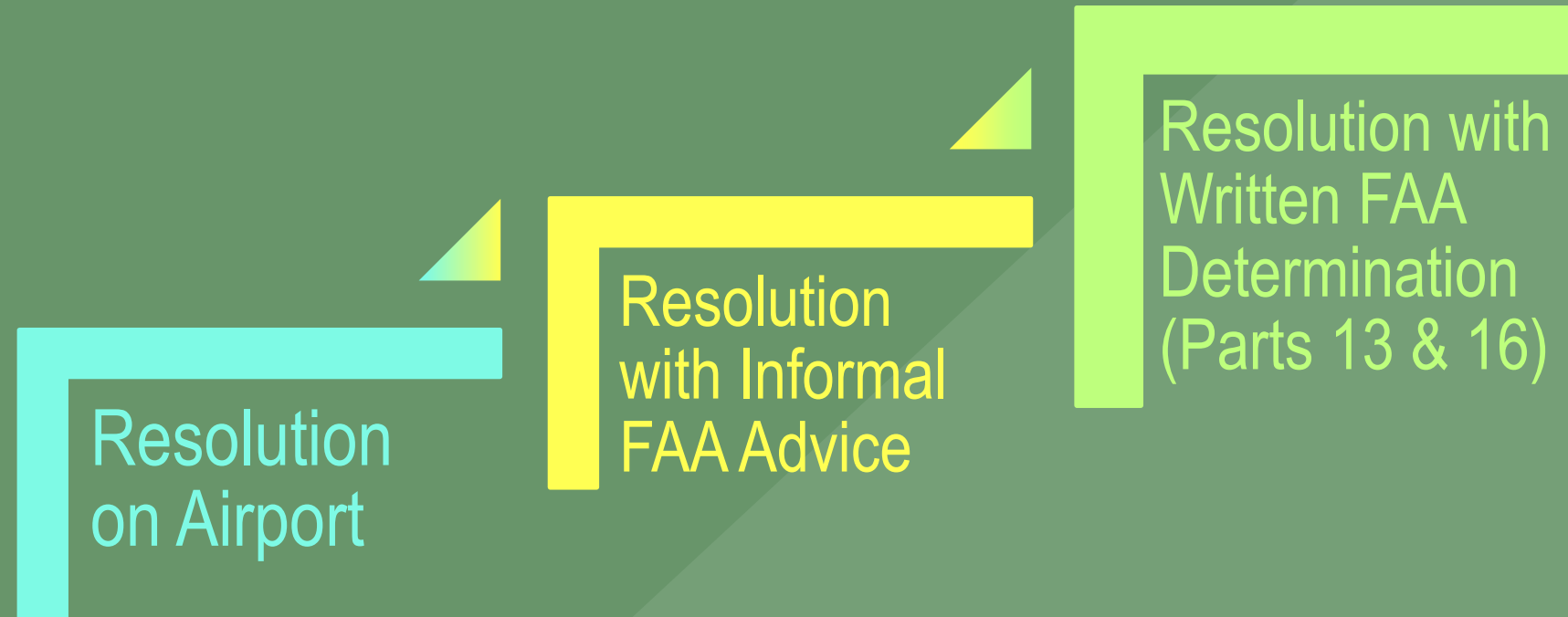
# DURATION OF GRANT OBLIGATIONS

- Most Assurances apply for the shorter of 20 years or the useful life of the facilities developed or equipment purchased
- No time limit for –
  - Exclusive rights
  - Airport revenue
  - Civil rights
  - Real property acquired with federal funds

# ACHIEVING COMPLIANCE

- FAA wants airports to be in compliance
- Compliance program is not punitive
- Goal: develop path to compliance through corrective action
- Cooperative process based on acceptance of obligations

# RESOLVING COMPLIANCE ISSUES





# ON-AIRPORT RESOLUTION

- Most compliance questions resolved at airport level with no FAA involvement
  - FAA does not actively review all airport activities or documents
- Airport sponsor is responsible for complying with federal obligations
  - Know your obligations!
  - Retain power to control users
- FAA is available for difficult compliance issues

# PROACTIVE COMPLIANCE

- Minimum standards
- Airport rules and regulations
- Airport leasing policy
  - Standard lease and contract forms
  - Rental rates
  - Subordination clause
- Operational/management procedures
  - Pavement condition
  - ALP updates
  - Airport self-inspection program
- Compliance audit

# INFORMAL FAA ADVICE

- Usually initiated by question from an airport or a user
  - Think about how to ask the question you want answered
- Start local: ADO or Regional Compliance Office
  - Let ADO or region elevate issue to HQ
- HQ becomes involved when national policy issues implicated
- Can be helpful to engage FAA early to identify solutions

# INFORMAL COMPLIANCE DETERMINATION

- 14 C.F.R. Part 13
  - Initiated by complaint from airport user
  - Informal, non-binding process
  - ADO or region issues opinion
  - Relatively fast
  - No penalty assessed, even if violation indicated
- FAA land use inspections and other visits can identify compliance issues and request Corrective Action Plan
  - Failure to comply can lead to formal adjudication

# FORMAL COMPLIANCE ADJUDICATION

- 14 C.F.R. Part 16
  - Formal, binding process
  - Can be initiated by an airport user or FAA
  - Must be preceded by good faith efforts to resolve dispute
  - Requires factual and legal response from airport sponsor
  - Process typically takes 1-2 years
- Adverse decision results in Corrective Action Plan
- Failure to comply can result in loss of grant eligibility

# ROADMAP FOR COMPLIANCE TOPICS

## This Session

- Assurance 5: Right and Powers
- Assurance 19: Operations and Maintenance
- Assurance 22: Economic Nondiscrimination
- Assurance 23: Exclusive Rights

## Session 5

- Assurance 1: General Federal Requirements

## Session 4

- Assurance 6: Compatibility with Local Plans
- Assurance 24: Self-Sustainability
- Assurance 25: Airport Revenue
- Assurance 29: Airport Layout Plan
- Assurance 31: Disposal of Land

# KEY GRANT ASSURANCES

- Assurance 5 - Right and Powers
- Assurance 19 - Operations and Maintenance
- Assurance 22 - Economic Nondiscrimination
- Assurance 23 - Exclusive Rights

# ASSURANCE 5: RIGHTS AND POWERS

- “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” Sponsor Assurances.
- “Will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor.”



# ASSURANCE 5: RIGHTS AND POWERS

- Common problem areas
  - Leases and contracts
  - Internal procedures that give “veto” to others
  - Limited authority in organic laws or local laws limiting authority
- Key to compliance
  - Do not surrender authority
  - Include subordination clause in ALL airport contracts
  - “This lease shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.” (ORDER 5190.6B, App. O)

# ASSURANCE 19: OPERATIONS AND MAINTENANCE

“The airport and all facilities which are necessary to serve the aeronautical users of the airport ... shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes.”

# ASSURANCE 19: OPERATIONS AND MAINTENANCE

- Maintain, inspect, repair pavement and all facilities shown on ALP
- Keep airport open for public use and operating safely and efficiently
- Ties to other Assurances/Obligations:
  - Assurance 29 (ALP)
  - Assurance 11 (Pavement Preventative Maintenance)
  - Part 139
  - Advisory Circulars
- Non-interference clause implies broad authority

# 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.”

# ASSURANCE 22: ECONOMIC NONDISCRIMINATION

- Require FBOs to provide services on a reasonable basis and price to all aeronautical users
- Charge all FBOs the same rates, rents, and charges for similar uses
- Guarantee rights to self-fuel and self-service
- Sponsor activities subject to same rules as others
- Impose rules and restrictions for safety reasons, subject to FAA review and approval

# 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.
- Sport aircraft (e.g., paragliders) and ultralights
- Skydiving and banner towing
- Agricultural operators
- Aircraft storage, repair, maintenance, and parts sales
- Sale of aviation petroleum products

# ECONOMIC NONDISCRIMINATION

- Common issues
  - New minimum standards
  - New rental rates and fees
  - New rules and regulations
  - Limitations and conditions on leasing or other access to airport

# ASSURANCE 23: EXCLUSIVE RIGHTS

- “Will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public.”
- Obligation continues as long as the airport is an airport
- Usually included in federal land transfers and other grants



# EXCLUSIVE RIGHTS: COMMON ISSUES

- Single FBO
  - 1 FBO is OK **IF** sponsor itself does not limit the ability of 2d FBO to open on same terms
  - Assurance 23 provides narrow conditions for when a sponsor can limit airport to only 1 FBO
- Exclusionary rules and practices
  - Implied exclusive right through unreasonable minimum standards and/or other leasing practices that have the effect of unreasonably limiting access by new commercial operators

# CURRENT COMPLIANCE ISSUES

- Non-aeronautical use of airport hangars
- FBO fuel pricing and services – AOPA
- Disputed changes of sponsorship at federally-obligated airports
- Regulatory reform and Grant Assurances
- Permanent closure of federally-obligated airports
- Lease reversionary interests on public property

# COMPLIANCE RESOURCES

- FAA Compliance Handbook, ORDER 5190.6B
- FAA Advisory Circulars, Orders, Policies
  - Exclusive Rights, AC 5190-6
  - Policies and Procedures Concerning the Use of Airport Revenue
  - Policy Regarding Airport Rates and Charges
  - Minimum Standards for Commercial Aeronautical Activity
- Part 16 decisions and DOT/FAA letters
- ACRP publications add recent ones

# QUESTIONS?

Text a “friend’s” question to

240.893.3499

# MORE QUESTIONS?

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