

Sponsor Grant Assurances

New England Region Compliance Workshop

By: Elizabeth Newman, Attorney, Office of
Chief Counsel Airports Law Branch

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**Federal Aviation
Administration**



Grant Assurances

- Commitments by airport in exchange for grant funds
- Basic structure in effect for decades
 - Since Federal Airport Act of 1946
- 49 U.S.C. § 47107 prescribes statutory assurances
- Specific assurances included in grant agreements



Grant Assurances

General Requirements

- Apply to all property and facilities on the Airport Property Map
 - Not just the facilities improved with grants

- Apply for 20 years (or useful life of facilities if less than 20 years)
 - Some Exceptions
 - ✓ No Time Limit - Exclusive Rights, Airport Revenue, Civil Rights or Real Property Acquired with Federal Funds

 - ✓ 10 Years - Private airport owners



Grant Assurances

- No. 5 - Preserving Rights & Powers
- No. 22 - Economic Nondiscrimination
- No. 23 - Exclusive Rights



No. 5 Preserving Rights & Powers

- Airports cannot take action to deprive it of the right to satisfy its obligations
 - Affirmative responsibility to impose rules to further its obligations
 - Ensure that current/future plans will not deprive the airport of its rights and powers

- Review policies and procedures to ensure rights and responsibilities are not given away
 - Disposals – Airport must obtain written approval from FAA before disposing of interest in airport or noise property

Preserving Rights & Powers Cont.

- Contracting out airport management
 - ✓ Sponsor must retain sufficient rights and authority to assure that third party manager complies with federal obligations and sponsor's grant agreement
 - ✓ Sponsor *not* relieved of its responsibility under assurances by such arrangement
- Subordination of title
 - ✓ FAA generally considers subordination of sponsor's fee interest in airport property to be transaction that would deprive sponsor of its necessary rights and powers
 - ✓ Through-The-Fence



Preserving Rights & Powers Cont.

- Noise Compatibility Program Projects
 - ✓ Where grantee is not airport, grant assurances must be made applicable to grantee

- Noise Compatibility Projects on Privately Owned Land
 - ✓ Airport must enter into agreement with property owner that contains conditions specified by FAA

- Private Airport Sponsors
 - ✓ Must assure FAA that airport will continue to function as a public use airport



No. 5 Economic Nondiscrimination

➤ Economic Nondiscrimination

- Statutory (49 USC 47107(a))
- Most heavily litigated grant assurance
- 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

Economic Nondiscrimination Cont.

- Two Concepts
 - Reasonable Access
 - Unjust Discrimination Among Tenants
- Applies only to Aeronautical Activities and Aeronautical Users
 - Concessionaires not protected by assurance

Economic Nondiscrimination Cont.

Aeronautical Activity - Defined

- 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



Economic Nondiscrimination Cont.

- Agreements and leases between sponsor and person or firm
 - Must furnish services on reasonable and not unjustly discriminatory basis

- FBOs - subject to same rates, fees, rentals as are uniformly applicable to all other FBOs making same or similar uses of airport and utilizing same or similar facilities

Economic Nondiscrimination Cont.

- Air carriers – shall be subject to nondiscriminatory and substantially comparable rules, regs, conditions, fees, rentals, and other charges
 - Similar use, similar facilities
 - Subject to reasonable classifications (e.g., tenants or non-tenants, signatory or non-signatory)

- Self-service, self-fueling of aircraft with own employees

Economic Nondiscrimination Cont.

- Safe and efficient operation of airport
 - Reasonable and not unjustly discriminatory conditions to be met by all users OK

- Limiting aeronautical use of airport for safe operation of airport
 - If limitation regulates safety of flight or flight operations, seek FAA concurrence

Economic Nondiscrimination Cont.

Aeronautical Activity Includes But Not Limited To:

- Scheduled or nonscheduled Air Carrier Services
- Pilot Training
- Aircraft Rental and Sightseeing
- Aerial Photography
- Crop Dusting
- Aerial Advertising and Surveying
- Aircraft Sales and Service
- Air Taxi and Charter Operations
- Aircraft Storage
- Sale of Aviation Petroleum Products
- Repair and Maintenance of Aircraft
- Sale of Aircraft Parts
- Military Flight Operations



Economic Nondiscrimination Cont.



Source: FAA

Examples of Aeronautical Activities

General Aviation

Sport Aircraft (Ex. Paragliders)

Skydivers

Ultralights

Agricultural operators

Banner Towers

Economic Nondiscrimination Cont.

- Airport open to all “aeronautical” users
- Common Reasons for Restricting Access
 - Safety
 - Noise (jets v. propeller aircraft)
 - Pavement Strength
 - Tenant In Poor Standing
 - Tenant Not Willing to Comply w/Minimum Standards
- FAA makes final determination of safety and efficiency, including:
 - ◆ Safety & Efficiency Studies by Flight Standards and Air Traffic

Economic Nondiscrimination Cont.

- Adoption of REASONABLE Minimum Standards
 - May violate No. 22 if standards too difficult to meet or unjustly discriminate among similarly-situated aeronautical users
 - Standards may pursue other goals:
 - Legitimate airport business interests
 - Public aeronautical needs: level and scope of services

Economic Nondiscrimination Cont.

- Unjust Economic Discrimination
 - Does not always mean equal treatment unless users similarly situated
- Differences can be justified by:
 - Types of services user willing to provide
 - ✓ bundling of services
 - Differences in treatment as a result of time
 - ✓ change in Minimum Standards

No. 23 Exclusive Rights

- Sponsor cannot grant an “exclusive right”
- Statutory requirement in addition to grant assurance (49 USC 40103(e))
- Comparable to antitrust
 - Policy against monopolies
 - Antitrust obligations also apply
- Sometimes alleged separately or in combination with Assurance No. 22

Exclusive Rights Cont.

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Exclusive Rights Cont.

- Can be direct or indirect
- Applies to existing users
- Examples
 - Protecting incumbent by refusing to negotiate with prospective tenant
 - Unequal enforcement of minimum standards
 - Unjustified difference in rates and charges
 - Aircraft operating restrictions

Exclusive Rights Cont.

➤ Exceptions

- Too costly, burdensome or impractical to have more than one FBO
- Introducing additional FBO would require space from existing FBO
- Proprietary Exclusive



Exclusive Rights Cont.

Proprietary Exclusive

- Applies to all aeronautical services (e.g., fuel, ground handling)
- Longstanding FAA policy
- Either intentional or due to absence of an FBO
- Airport can exercise this right at any time
 - Subject to any existing agreements

Exclusive Rights Cont.

Proprietary Exclusive

➤ Conditions

- Must be done directly by the airport; not by agents or contractors
- May be for only one service, but must be complete
- Must allow self-servicing
 - ✓ Cannot use proprietary exclusive right to undermine self-servicing

Questions

