



FAA Grant Assurances: Helpful or Hindrance?

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Presented By



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FAA Grants – What is the Airport Improvement Program

- The purpose of the program is to provide funds for the planning and development of public-use airports
- Eligible airports are those included in the National Plan of Integrated Airport Systems (NPIAS)
- The current NPIAS for 2025-2029 includes 3,300 airports:
 - Include 5,175 runways
 - House 131,097 aircraft
 - Accommodate 848 million enplanements
 - Support 101 million aircraft operations

FAA Grants – What is the Airport Improvement Program

- NPIAS currently estimates approximately \$67.5 billion in eligible and justified airport development between 2025 and 2029, up by \$5.1 billion

Table 2: Activity and Development at NPIAS Airports

Airport Category	Number of Airports	Percentage of Airports	Percentage of Paved Runways	Percentage of 2023 Total Enplanements	Percentage of NPIAS Cost	Percentage of all Based Aircraft*
Large Hub	31	1	3	71	36	1
Medium Hub	33	1	2	17	14	2
Small Hub	74	2	4	8	10	4
Nonhub	252	8	11	3	12	9
Primary Subtotal	390	12	19	99	72	16
National	122	4	5		5	14
Regional	586	18	18		9	25
Local	1,221	37	34		9	18
Basic	778	24	19		5	3
Unclassified	190	6	5		0	1
Nonprimary Subtotal	2,897	88	81	1	28	61
Total NPIAS Airports	3,287	100	100	100	100	77

FAA Grants – Who is eligible

- Airport Sponsors:
 - Public agency owning or leasing a public-use airport
 - Private entity owning a public-use airport
 - State acting as a sponsor for one or more specific airports in the state
 - Indian tribe or pueblo owning or leasing a public-use airport
- Airport Sponsors can generally get funds for:
 - Airport master planning
 - Airport development
 - Noise compatibility planning
 - Noise compatibility projects

FAA Grants – Who is eligible

- In addition to Airport sponsors, non-sponsors can get funds to:
 - Establish a public use airport
 - Acquire an existing airports
 - Acquire land in anticipation of constructing a new airport
 - Initial airport development

FAA Grants – Grant Assurances

- Federal money comes with Federal strings – Grant Assurances:
 - 49 USC § 47105 - Gives the requirements for FAA to approve a grant application
 - 49 USC § 47106 - Permits the FAA to give a grant if the FAA is satisfied that a number of specific project requirements will be met
 - 49 USC § 47107 - Requires the FAA to obtain written assurances from sponsors concerning current and future airport operations
- Most Grant Assurances are not limited to the project the money is obtained for
- Grant Assurances can affect future projects and how the airport conducts its business!

Grant Assurances That Must be Met Before a Grant is Offered

- #2 Responsibility and Authority of the Sponsor
 - Must be legally eligible to receive and use the grant, gone through the internal process to approve the project
- #3 Sponsor Fund Availability
 - Must have sufficient funds to pay for its part of the project
- #4 Good Title
 - Must have legal right to the land
- #6 Consistency with Local Plans
 - The project must be “reasonably consistent” with plans state agencies for development

Grant Assurances That Must be Met Before a Grant is Offered

- #7 Consideration of Local Interest
 - “Fair consideration” given to the interest of communities in or near where the project may be located
- #8 Consultation with Users
 - “Reasonable consultations” with affected parties using the airport at which project is proposed
- #9 Public Hearings
 - For major projects involving the location of an airport, an airport runway, or a major runway extension, a hearing is required with an opportunity for public input. The Secretary may require a transcript of such hearings
- #12 Terminal Development Prerequisites
 - Compliance with passenger safety and TSA security needs

Grant Assurances That Apply Until Grant is Closed

- #1 General Federal Requirements (except for 49 CFR part 23)
 - **List of 35 Statutes**, such as 49 U.S.C. subtitle VII, Davis-Bacon Act, Federal Fair Labor Standards Act, Hatch Act, National Historic Preservation Act of 1966, Age Discrimination Act of 1975, American Indian Religious Freedom Act, Architectural Barriers Act of 1968, Powerplant and Industrial Fuel Use Act of 1978, etc.
 - **List of 10 Executive Orders**, including new ones such as Ensuring the Future is Made in all of America by All of America's Workers; Restoring Freedom of Speech and Ending Federal Censorship; Ending Radical and Wasteful Government DEI Programs and Preferencing; Unleashing American Energy; Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government
 - **List of 24 Regulatory Provisions**
- #14 Minimum Wage Rates
 - All work under a contract valued at more than \$2,000
- #15 Veteran's Preference
 - Applies to hiring decisions

Grant Assurances That Apply Until Grant is Closed

- #32 Engineering and Design Services
 - Must comply with Army Corps of Engineer regulations
- #33 Foreign Market Restrictions
 - Can't use products or services of a foreign country that is listed as denying fair and equitable market opportunities to US companies
- #35 Relocation and Real Property Acquisition
 - Additional requirements for eminent domain and land acquisition under state law

Grant Assurances That Apply For Three Years

- #13 Accounting System, Audit, and Record Keeping Requirements
 - All project accounts and records which fully disclose the amount and disposition of the Grant Money and how money from other sources was spent. Must be made available for audit
- #26 Reports and Inspections
 - Very broad, includes any report the Secretary may request

Grant Assurances That Apply For The Life of the Project – Up to 20 years

- #5 Preserving Rights and Powers
 - Can't take any action that would make it impossible to comply with the terms of the grant
 - Can't sell or transfer any property associated with the project
 - Airport must continue its status as public use airport
- #11 Pavement Preventive Maintenance
 - (This applies to all of the airfield pavement on the airport, not just the specific pavement in the grant)
- #19 Operations and Maintenance
 - Minimum standards for safe operation

Grant Assurances That Apply For The Life of the Project – Up to 20 years

- #20 Hazard Removal and Mitigation
 - Lighting, trees, obstructions
- #21 Compatible Land Use
 - Use best efforts to limit zoning of nearby land (obstructions/noise)
- #22 Economic Nondiscrimination
 - Cannot discriminate in favor of some aeronautical users/business to the detriment of other users
 - Airport cannot let vendors or service providers discriminate in services of price
 - Users can self service or use FBO of their choice for services
 - Airport must contract on an equal basis with users/vendors/tenants

Grant Assurances That Apply Forever

- #23 Exclusive Rights
 - No aviation entity can be granted exclusive rights to operate at an airport unless it can be shown that it is economically unfeasible for another business to operate at the airport (such as an FBO)
- #30 Civil Rights
 - All civil rights laws apply to the airport's operations

Grant Assurances - Remedies

- Complaint can be filed with the FAA under 14 CFR Part 16
- Has to be served on the airport sponsor
- Concise summary of the matter
- Must establish standing
 - Sponsor violated a grant assurance
 - Complainant was substantially injured by the violation
- Statement of facts supported by evidence (documents and declarations)

Grant Assurances - Remedies

- Argument
 - Link the specific conduct to a specific grant assurance
 - Go deeper than the assurance to the specific FAA requirements (FAA Orders/regulations)
 - Cite to prior Agency decisions or appeals to federal courts of agency decisions
- Piggyback off of state/local ordinances such as procurement laws. Compliance with local nondiscriminatory and competitive bidding requirements are implied into the agreements
- Seek order of the Administrator finding a violation

Grant Assurances - Remedies

- Require the airport's decision/contract to be altered or reversed or a new contracting procedure be conducted
- Request that the airport be placed on the Airport on the Airport Noncompliance List (ANL)
 - The ANL is an internal notification from ACO-100 to other FAA Airport offices regarding which airports are not to receive any further discretionary grants authorized under 49 U.S.C. § 47115 and the General Aviation \$150,000 apportionment under 49 USC § 47114(d)(3)(B) until corrective action is achieved. The ANL can also include formal findings of noncompliance under 14 C.F.R. part 16 that support the withholding of grants under 49 U.S.C. § 47114(c).
- Possible review of an unfavorable decision by the Secretary in federal court

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