Federal Aviation Administration

Memorandum

Date: July 16, 2013

To: ACO-100, Regional and Airports District Office Managers and Compliance Specialists

From: Randall S. Fiertz, Director, Airport Compliance and Management Analysis

Subject: Compliance Guidance Letter 2013-01 – FAA Review of Existing and Proposed Residential Through-the-Fence Access Agreements

I. SUMMARY AND DEFINITIONS: This Compliance Guidance Letter (CGL) replaces and supersedes the guidance issued on March 21, 2011 (Compliance Guidance Letter 2011-1 - FAA Implementation of Interim Policy Regarding Access to Airports From Residential Property and Review of Access Arrangements[1]). The purpose of this CGL is to provide guidance to FAA's Airports personnel responsible for reviewing existing and proposed residential through-the-fence access agreements.

On February 14, 2012, the FAA Modernization and Reform Act of 2012 was signed into law (P.L. 112-95). Section 136 of this law states:

> ...a sponsor of a general aviation airport shall not be considered to be in violation of this subtitle, or to be in violation of a grant assurance made under this section or under any other provisions of law as a condition for the receipt of Federal financial assistance for airport development, solely because the sponsor enters into an agreement that grants to a person that owns residential real property adjacent to or near the airport access to the airfield of the airport for the following:
> (A) Aircraft of the person.
> (B) Aircraft authorized by the person.

In addition, this law outlines specific conditions and limitations that must be in the access agreement. Beginning on October 1, 2014, an airport sponsor with an existing residential through-the-fence access arrangement will be required to demonstrate evidence of compliance with this law. Specifically, these airport sponsors are required to update their airport layout plans to depict points of residential through-the-fence access and provide a copy or copies of their access agreements to demonstrate the sponsor's compliance with the law.

[1] Compliance Guidance Letter 2011-1 is no longer in use and is not currently available on the FAA's Web site. To obtain a copy of this guidance, contact ACO-100 at (202) 267-3085.

For the purposes of this CGL, the following definitions apply:

- Airport Property – All real property identified on the airport sponsor's most recent Exhibit A, on file with FAA for the airport.

- Access – An access point for taxiing aircraft across the airport boundary; or the right of the owner of a particular off-airport residential property to use an airport access point to taxi an aircraft between the airport and that property.

- Access Agreement – A written agreement between an airport sponsor and a residential property owner or an association representing residential property owners that prescribes the rights, responsibilities, charges, duration, and other terms the airport sponsor determines are necessary to establish and manage the airport sponsor's relationship with the residential property owner.

- Commercial Service Airport – A public airport in a State that the Secretary determines has at least 2,500 passenger boardings in each year and is receiving scheduled passenger aircraft service.

- Existing Access – Any residential through-the-fence access arrangement certified to the FAA in response to CGL 2011-1.

- Extend an Access – An airport sponsor's consent to renew or extend an existing right to access the airport from residential property or property zoned for residential use.

- General Aviation Airport – A general aviation airport as defined at 49 U.S.C., § 47102(8) as a public airport in a State that does not have commercial service or has scheduled service with less than 2,500 passenger boardings each year. This definition excludes privately-owned reliever airports.

- New Access – Any residential through-the-fence access arrangement executed on or after February 14, 2012.

- Privately-Owned Reliever Airport – A privately-owned airport the Secretary designates to relieve congestion at a commercial service airport and to provide more general aviation access to the overall community.

- Residential Property – A piece of real property used for single- or multi-family dwellings; duplexes; apartments; primary or secondary residences even when co-located with a hangar; hangars that incorporate living quarters for permanent or long-term use; and time-share hangars with living quarters for variable occupancy of any term.

- Transfer of Access – Sale or transfer of a residential property or property zoned for residential use with existing through-the-fence access; or subdivision, development or sale as individual lots of a residential property or property zoned for residential use with existing through-the-fence access.

- Triggering Event – An action that requires the airport sponsor to update its residential through-the-fence access plan or resubmit an access agreement review sheet prior to the expiration of the accepted access plan/agreement. (See section IV.A.3)

The following actions are triggering events at commercial service airports:
1. Development of an airport master plan or an update to an existing master plan.
2. Significant revisions to an airport layout plan, such as changes to a runway's length, width or pavement strength; revised taxiway(s); change in design aircraft; change in runway approach procedures; land acquisition; new or modified aircraft hangar/parking areas; etc.
3. Requests for Federal participation in land acquisition.
4. Identification of a safety concern.
5. Substantial changes to the access agreement.

The following action is a triggering event at general aviation airports:
1. Substantial changes to the access agreement.

II. BACKGROUND: On March 14, 2011, FAA amended Grant Assurance 5, *Preserving Rights and Powers*, to prohibit new residential through-the-fence access arrangements and published an interim policy to address existing residential through-the-fence access.[2] The interim policy required all AIP grant-eligible airport sponsors to certify their status. Those sponsors with existing access agreements were directed to depict their residential through-the-fence access points on their airport layout plan (ALP) and develop access plans to address:

- General Authority for Control of Airport Land and Access;
- Safety of Airport Operations;
- Recovery of Costs of Operating the Airport;
- Protection of Airport Airspace; and
- Compatible Land Uses Around the Airport.

The self-certification process identified 121 existing residential-through-fence agreements. This chart identifies the number of existing residential through-the-fence agreements by type of airport in each region.

FAA Region	Number of Existing Residential Through-the-Fence Access Agreements		
	GA Airports	Commercial Service Airports	Total
Alaska	4	1	5
Central	7	0	7
Eastern	13	0	13
Great Lakes	23	1	24
New England	6	0	6
Northwest Mountain	31	2	33
Southern	12	0	12
Southwest	12	0	12
Western Pacific	9	0	9
Total	117	4	121

[2] See 76 Fed. Reg. 15028 (March 18, 2011).

On February 14, 2012, the FAA Modernization and Reform Act of 2012 was signed into law (P.L. 112-95). Section 136 of this law permits general aviation airport sponsors, as defined in the statute, to enter into residential through-the-fence agreements with property owners or associations representing property owners. This must be a written agreement that requires the property owner to:

- Pay access charges that the sponsor determines to be comparable to those fees charged to tenants and operators on-airport making similar use of the airport;
- Bear the cost of building and maintaining the infrastructure the airport sponsor determines is necessary to provide access to the airfield from property located adjacent to or near the airport;
- Maintain the property for residential, noncommercial use for the duration of the agreement;
- Prohibit access to the airport from other properties through the property of the property owner; and
- Prohibit any aircraft refueling from occurring on the property.

In order to implement this law, FAA issued an amendment to the sponsor assurances on April 10, 2012.[3] Grant Assurance 5(g) now states:

> Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

Grant Assurance 29, *Airport Layout Plan*, has been amended to require all proposed and existing access points used to taxi aircraft across the airport property boundary be depicted on the ALP.

On July 30, 2012, FAA published a notice in the Federal Register proposing to rescind the interim policy on residential through-the-fence access to federally-obligated airports for general aviation airports and proposing to finalize the interim policy for the four commercial service airports with existing access.[4] This notice also explained how FAA proposes to implement section 136. The FAA accepted comments on its interpretation of the law and the proposed policy. On July 16, 2013, FAA published a notice in the Federal Register responding to the comments, explaining its interpretation of the law, and finalizing its policy with regard to commercial service airports.[5]

III. PROPOSED INTERPRETATION OF THE LAW:

A. Enforcement: The FAA interprets the inclusion of specific terms and conditions as Congress' intent for the FAA to enforce section 136 of P.L. 112-95 accordingly. In

[3] See 77 Fed. Reg. 22376 (April 13, 2012).
[4] See 77 Fed. Reg. 44515 (July 30, 2012).
[5] See 78 Fed. Reg. 42419 (July 16, 2013).

its implementation, FAA will ask airport sponsors to demonstrate their compliance with the law. Airport sponsors with existing access must provide evidence of compliance no later than October 1, 2014. Airport sponsors of general aviation airports proposing to establish new access agreements must provide evidence of compliance prior to establishing an access point. The FAA acknowledges that its approach to sponsors with existing access will be different than the posture taken with sponsors of general aviation airports proposing to establish new agreements. This is because airport sponsors with existing agreements may have ceded important rights and powers through the execution of these existing agreements, and their ability to comply with the terms and conditions of the law may be severely hampered. The FAA intends to address such situations on a case-by-case basis. General aviation airports proposing to establish new agreements must comply with the terms and conditions contained in section 136 of P.L. 112-95; the FAA will not waive these terms and conditions for new agreements.

B. Applicability: The definition of "general aviation airport" included in the statute excludes privately-owned reliever airports. The FAA has identified seven privately-owned reliever airports with existing residential through-the-fence access agreements. In implementing section 136 of P.L. 112-95, FAA will grandfather these airports and treat them in a manner similar to publically-owned general aviation airports. However, going forward, FAA will apply the statutory prohibition on privately-owned general aviation airports and disallow these airports from entering into new residential through-the-fence agreements.

C. Commercial Activities: Section 136 of P.L. 112-95 states that residential property owners must maintain their property for residential, noncommercial use for the duration of the agreement. The FAA interprets this as a prohibition on commercial aeronautical services offered by residential through-the-fence users or any third parties that might compete with on-airport aeronautical service providers. In implementing this provision, FAA will limit the scope of this condition to commercial aeronautical activities only. The FAA will not concern itself with unrelated commercial activities that may be permitted by local regulation.

D. Existing Mixed-Use Properties: The FAA is aware of some existing residential through-the-fence agreements that permit the co-location of homes and aeronautical businesses (mixed-use properties). In these cases, FAA will require airport sponsors to execute two separate agreements with the homeowner. One agreement must address the duration, rights, and limitations of the homeowner's residential through-the-fence access, and the second agreement must be consistent with FAA's current policies on commercial through-the-fence activities and ensure the off-airport business does not result in unjust economic discrimination for on-airport aeronautical service providers. The FAA encourages sponsors with mixed-use properties to adopt long-term plans to relocate the off-airport commercial aeronautical activity onto the airport when feasible and practicable to do so. Going forward, airport sponsors proposing to establish a residential through-the-fence arrangement must meet the statutory terms and conditions, including the prohibition on using the residential property for commercial aeronautical use. New agreements proposing to co-locate or

mix residential and commercial aeronautical activities would not be consistent with the law.

E. Authorized Access: Section 136 of P.L. 112-95 states that residential property owners must prohibit access to the airport from other properties through the property of the property owner. The FAA interprets this as a prohibition on unauthorized access to the airport; this condition does not necessarily prescribe a scenario in which all residential through-the-fence users must have their own dedicated access point to enter the airport. Compliance with this condition will require access agreements stipulate that residential through-the-fence access agreement holders are prohibited from permitting unauthorized users (any individual not a party to an access agreement with the airport sponsor) to pass through or "piggy back" on their access in order to enter the airport. The FAA expects airport sponsors to establish their own policies, restrictions, and/or requirements to be imposed on fly-in guests who taxi from the airport to visit off-airport residents. Going forward, FAA will encourage sponsors of general aviation airports proposing to establish new residential through-the-fence agreements to limit the number of access points in a manner that is consistent with airport planning practices.

F. Fueling: Section 136 of P.L. 112-95 states that residential property owners must prohibit any aircraft refueling from occurring on the property. The FAA interprets this as a prohibition on the sale of fuel from residential property. The FAA will not concern itself with self-fueling activities which may be permitted by local regulation.

G. Duration of Agreements: Section 136 of P.L. 112-95 does not specify or limit the duration of agreements for residential through-the-fence access. Therefore, FAA will not require these agreements contain any specific limitation on the duration.

IV. PROPOSED IMPLEMENTATION: For the purposes of this CGL, state block grant program participants must implement the same actions as an FAA Airport District Office (ADO). The tools referenced below are listed in Appendix A; the internal toolkit is located at Q:\National\ACO-100\RTTF Toolkit and the external toolkit is located at http://www.faa.gov/airports/airport_compliance/residential_through_the_fence/.

A. Existing Access:

1. Notification: ADOs are required to notify airport sponsors with existing access about the statutory requirements contained in P.L. 112-95, the revised guidance for the review of access agreements, and the timeline for compliance with the law. Notification must occur by August 30, 2013. A sample notification letter is in the internal electronic toolkit. (See Appendix A)

2. Airport Layout Plan: The sponsor assurances require all proposed and existing access points used to taxi aircraft across the airport property boundary to be depicted on the ALP. Sponsors with existing access are required to update their airport layout plan (ALP) to identify the locations on the airport boundary that

serve as points of access for off-airport residents. A temporary designation through a pen and ink change[6] is acceptable until an ALP is updated.

3. FAA Review of Access Agreements and Acceptance of Access Plans:

   a. General Aviation Airports and Privately-Owned Reliever Airports: Access agreements submitted by sponsors of general aviation airports and privately-owned reliever airports with existing access will be reviewed by ADOs and Regional Offices. Regional Offices will determine if access agreements submitted by sponsors of general aviation airports and privately-owned reliever airports effectively address the terms and conditions contained in P.L. 112-95. This is discussed further in section V below.

   b. Commercial Service Airports: Access plans submitted by sponsors of commercial service airports with existing access will be reviewed by ADOs, Regional Offices, and ACO-100. ACO-100 will accept access plans submitted by sponsors of commercial service airports with existing access which effectively address the terms and conditions contained in P.L. 112-95 and are consistent with the sponsor assurances. This is discussed further in section V below.

   The FAA's review of an access agreement and its acceptance of an access plan is valid for a period not to exceed 20 years or until a triggering event occurs.[7]

4. Evidence of Compliance: Airport sponsors with existing residential through-the-fence agreements must provide evidence of compliance no later than October 1, 2014. Although the terms and conditions outlined in Sec. 136 of P.L. 112-95 became effective on February 14, 2012, FAA recognizes that airport sponsors may need time to amend existing residential through-the-fence agreements to reflect these requirements.

   In most cases, FAA will define evidence of compliance as the airport sponsor's submission of documentation as outlined in Appendix C and E. ADOs have the flexibility to apply their knowledge of the airport sponsor's particular situation when recommending to the Regional Office or ACO-100 a finding that the sponsor has demonstrated evidence of compliance. To ensure efficient review and approval, ADOs should encourage airport sponsors with existing residential through-the-fence access agreements to complete and submit their documentation 180 days before it is due.

   Failure to establish evidence of compliance may result in further compliance action.

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[6] When the FAA receives an ALP depicting existing residential through-the-fence access points, the FAA will accept those access points as "pen and ink changes" to the ALP. No environmental analysis is required.

[7] This does not prevent sponsors of general aviation airports from contemplating or executing residential through-the-fence agreements for a term which exceeds 20 years. This simply states FAA's desire to review these arrangements every 20 years or when a triggering event occurs.

5. Monitoring: ADOs are responsible for tracking the submission of access agreements and access plans by airport sponsors covered in their jurisdiction. ADOs are strongly encouraged to utilize the sample letters contained in the internal electronic toolkit to remind sponsors of their due date. Regional Offices and ACO-100 will track the FAA's acceptance of access plans. ACO-100 has created a spreadsheet to monitor this activity. The spreadsheet is in the internal electronic toolkit. ADOs or Regional Offices must update the spreadsheet on a periodic basis as information is sent to and received from airport sponsors. Regional offices are required to update the spreadsheet and notify ACO-100 each time a residential through-the-fence agreement is accepted. Regional offices are also required to scan and save a copy of all correspondence related to the review in their regional folder in the internal toolkit.[8]

6. Triggering Events: If the ADO becomes aware of a triggering event, the ADO must notify the airport sponsor of the need to resubmit its access agreement or update its access plan. AIP grants issued to sponsors of commercial service airports with existing access for development of an airport master plan or master plan update should include a special condition requiring the airport sponsor to update its access plan as part of its planning process. AIP grants for projects that will result in a significant change to the airport such as changes to the runway's length, width or pavement strength; revised taxiway(s); change in design aircraft; change in runway approach procedures; new or modified aircraft parking area(s) etc. or land acquisition must not be issued prior to FAA review of an updated access plan.

B. New Access: Prior to establishing a new access point, sponsors of general aviation airports must submit an updated ALP for FAA review, and a copy of the (draft) access agreement and access agreement review sheet. The FAA will review the (draft) access agreement as part of the ALP review. However, ADOs may not sign an updated ALP depicting a new residential through-the-fence access point before the FAA has confirmed that the (draft) access agreement will comply with the law.

Before unconditionally approving an ALP depicting a new residential through-the-fence access point, the ADO must comply with the National Environmental Policy Act (NEPA) and any applicable Federal environmental laws, regulations and/or orders. ADOs should discuss the proposed ALP changes with the sponsor and determine the environmental review required.

In accordance with Grant Assurance 5(g) sponsors of commercial service airports may not enter into new residential through-the-fence agreements. Privately-owned reliever airports are also prohibited from establishing new residential through-the-fence access agreements.

[8] This includes the access agreement(s), access agreement review sheet(s), access plans if required, the ADO's memo to the Regional Office, and associated memos/correspondence sent by the Regional Office. Regional offices are not required to save ALPs as part of an airport sponsor's residential through-the-fence access package. Each package should be saved and named with the airport's location identifier and the date it was accepted by the Region (e.g., ABC 10-1-13).

ADOs are responsible for tracking the submission of requests to establish new residential through-the-fence access agreements by airport sponsors covered in their jurisdiction. ADOs are strongly encouraged to utilize the sample letters contained in the internal electronic toolkit. Regional Offices and ACO-100 will track the FAA's acceptance of ALPs proposing new residential through-the-fence access arrangements. ACO-100 has created a spreadsheet to monitor this activity. The spreadsheet is in the internal electronic toolkit. ADOs or Regional Offices must update the spreadsheet on a periodic basis as information is sent to and received from airport sponsors. Regional offices are required to update the spreadsheet and notify ACO-100 each time an ALP depicting a new residential through-the-fence access arrangement is accepted. Regional offices are also required to scan and save a copy of all correspondence related to the review in their regional folder in the internal toolkit.[9]

C. Oversight: ACO-100 will conduct periodic program audits to ensure FAA staff complies with the review process outlined in this CGL.

V. CONTENT AND FAA REVIEW OF ACCESS AGREEMENTS AND ACCESS PLANS: The law places specific terms and conditions on residential through-the-fence access agreements. All access agreements and access plans must effectively address these terms and conditions; the FAA cannot waive or modify these terms. The FAA's planned process for implementing the law and reviewing access plans in the future is graphically depicted in Appendix B.

A. General Aviation Airports and Privately-Owned Reliever Airports with Existing Access: General aviation airports and privately-owned reliever airports with existing residential through-the-fence access agreements must submit a copy or copies of their access agreements and complete the access agreement review sheet contained in Appendix C. If the airport sponsor has entered into identical agreements with numerous residential through-the-fence users, only one copy of that agreement and one access review sheet must be submitted. If the airport sponsor has entered into different agreements with residential through-the-fence users, the airport sponsor must submit a copy of each different agreement with a separate access agreement review sheet.

Although general aviation airports and privately-owned reliever airports are not required to develop mitigation measures to ensure consistency with their sponsor assurances, FAA strongly encourages airport sponsors to thoroughly evaluate how these agreements may impact the sponsor's ability to meet its Federal obligations. The FAA is not precluded from investigating a potential grant assurance violation associated with or resulting from an airport sponsor's residential through-the-fence arrangement.

[9] This includes the access agreement(s), access agreement review sheet(s), the ADO's memo to the Regional Office, and associated memos/correspondence sent by the Regional Office. Regional offices are not required to save ALPs as part of an airport sponsor's residential through-the-fence access package. Each package should be saved and named with the airport's location identifier and the date it was accepted by the Region (e.g., ABC 10-1-13).

ADOs will review access agreements submitted by general aviation airports and privately-owned reliever airports with existing access. The ADO will conduct its review of the plan using the checklist contained in Appendix D of this CGL. Complete and acceptable submissions should be reviewed within 60 days of receipt. The ADO may request an airport sponsor provide more detailed information or amend its agreement if the access agreement does not meet the requirements of the law. Once the ADO has completed its review, the ADO will forward the access plan to the Region under a cover memo.

A second review will be conducted by the Regional Office. The Regional Office will conduct its review of the plan using the checklist contained in Appendix D of this CGL. Complete and acceptable submissions should be reviewed within 60 days of receipt. The Regional Office may request an airport sponsor provide more detailed information or amend its agreement if the access agreement does not meet the requirements of the law. If the Regional Office finds the access agreement does not effectively address the statutory requirements contained in the law, the Regional Office will forward the access agreement to ACO-100 under a cover memo.

ACO-100 will only review access agreements for general aviation airports with existing access when a Regional Office cannot verify that the agreement complies with the statutory requirements contained in the law. Should this occur, ACO-100 will work with the airport sponsor to identify alternative methods of compliance, on a case-by-case basis, and report these issues to interested Congressional Committees. If ACO-100 and the airport sponsor cannot identify any actions to effectively address the statutory requirements contained in the law, ACO-100 may review the matter for further compliance action. ACO-100 will notify the airport sponsor, the Regional Office, and the ADO of its action.

Access agreements which effectively address the statutory requirements contained in the law will be accepted by the Regional Office. The Regional Office will notify the airport sponsor, the ADO, and ACO-100 of its action. The internal electronic toolkit contains a sample cover memo and sample letters. (See Appendix A)

B. Commercial Service Airports with Existing Access: Access plans developed by sponsors of commercial service airports with existing residential through-the-fence access agreements must address the statutory requirements contained in the law and ensure consistency with their grant assurances as described in Appendix E. Sponsors of commercial service airports with existing access must demonstrate that the access arrangement does not impede the airport sponsor's current or future compliance with its sponsor assurances. In some cases, the airport sponsor may propose mitigation measures intended to address the potential for noncompliance in the future. The FAA can work with airport sponsors to identify appropriate mitigation measures to address concerns related to current and future consistency with the sponsor assurances. However, FAA is not precluded from investigating a potential grant assurance violation associated with or resulting from an airport sponsor's residential through-the-fence arrangement.

ADOs will review access plans submitted by commercial service airports with existing access. The ADO will conduct its review of the plan using the checklist contained in Appendix F of this CGL. Complete and acceptable access plans should be reviewed within 60 days of receipt. The ADO may request an airport sponsor provide more detailed information or propose more effective mitigation measures if the access plan does not meet the requirements of the law or is inconsistent with the sponsor's grant assurances. Once the ADO has completed its review, the ADO will forward the access plan to the Region under a cover memo.

A second review will be conducted by the Regional Office. The Regional Office will conduct its review of the plan using the checklist contained Appendix F of this CGL. Complete and acceptable access plans should be reviewed within 60 days of receipt. The Regional Office may request an airport sponsor provide more detailed information or propose more effective mitigation measures if the access plan does not meet the requirements of the law or is inconsistent with the sponsor's grant assurances. Once the Regional Office has completed its review, the Regional Office will forward the plan to ACO-100 under a cover memo.

ACO-100 will review access plans forwarded by Regional Offices using the checklist contained in Appendix F of this CGL. ACO-100 may request an airport sponsor provide more detailed information or propose more effective mitigation measures if the access plan does not meet the requirements of the law or is inconsistent with the sponsor's grant assurances. Only ACO-100 can accept an access plan submitted by a commercial service airport with existing access. If ACO-100 finds the access plan does not effectively address the statutory requirements contained in the law or is inconsistent with the airport sponsor's assurances, ACO-100 may review the matter for further compliance action. ACO-100 will notify the airport sponsor, the Regional Office, and the ADO of its action.

C. General Aviation Airports Proposing New Access: General aviation airports proposing to establish new residential through-the-fence access agreements must submit the following:

1. An updated ALP depicting the proposed access point(s);
2. A copy of the (draft) access agreement(s); and
3. Access agreement review sheet(s) contained in Appendix C.

Although these sponsors are not required to develop mitigation measures to ensure consistency with their sponsor assurances, FAA strongly encourages airport sponsors to thoroughly evaluate how these agreements may impact the sponsor's ability to meet its Federal obligations. The FAA is not precluded from investigating a potential grant assurance violation associated with or resulting from an airport sponsor's residential through-the-fence arrangement. Airport sponsors proposing to establish new residential through-the-fence access agreements must have an ALP signed by FAA prior to establishing the access point(s).

ADOs must review the ALP changes and (draft) access agreements submitted by general aviation airports proposing new access. The ADO must review the ALP in accordance with the FAA's guidance for ALP review.[10] The ADO must review the (draft) access agreement using the checklist contained in Appendix D of this CGL. FAA approval of ALP updates and (draft) access agreements for new residential through-the-fence access must be based on the scope, detail, and quality of each submission. The ADO may request an airport sponsor provide more detailed information or amend its agreement if the (draft) access agreement does not meet the requirements of the law. ADOs should work with airport sponsors to ensure the proposed residential through-the-fence arrangement is consistent with the sponsor's future airport development as proposed on the ALP. Once the ADO has completed its review, the ADO will forward the proposal to the Region under a cover memo. The cover memo must also discuss the sponsor's future plans for the airport, based on the ADO's review of the proposed ALP.

A second review will be conducted by the Regional Office. Complete and acceptable ALP changes and (draft) access agreements should be reviewed within 90 days of receipt. The Regional Office will conduct its review of the draft access agreement using the checklist contained in Appendix D of this CGL. The Regional Office will verify that the proposed residential through-the-fence arrangement is consistent with the sponsor's future airport development as proposed on the ALP. The Regional Office may request an airport sponsor provide more detailed information or amend its agreement if the (draft) access agreement does not meet the requirements of the law. The Regional Office may reject the proposal to establish new residential through-the-fence access if:

1. The (draft) access agreement does not effectively address the statutory requirements contained in the law; or
2. The proposed arrangement is not consistent with the sponsor's future plans for the airport.

Airport sponsors may request headquarters review of a proposal rejected by a Regional Office. This request shall be made, in writing, to ACO-100. ACO-100 will coordinate the headquarters review. APP-400, AAS-100, AAS-300, and ACO-100 will participate in this review. ACO-100 will notify the airport sponsor, the Regional Office, and the ADO of headquarters' action.

The Regional Office will accept (draft) access agreements which effectively address the statutory requirements contained in the law and are verified as consistent with the sponsor's future plans for the airport. The Regional Office will notify the ADO and ACO-100 of its action, and the ADO will approve the ALP pursuant to Chapter Two of FAA Order 5050.4B, *National Environmental Policy Act (NEPA) Implementing Instructions for Airports Actions*. The approved ALP must contain a special

[10] ALPs submitted in accordance with the FAA's Standard Operating Procedure for FAA Review and Approval of Airport Layout Plans (ALPs), should be reviewed as described in that SOP. If the ALP submitted does not meet current standards or was developed using other guidance, ADOs may use Appendix H to review the residential through-the-fence component of the ALP.

condition stipulating FAA will not pay to relocate, soundproof, or mitigate noise at any homes with residential through-the-fence access. The ADO will notify the airport sponsor of these actions. The internal electronic toolkit contains a sample cover memo and sample letters. (See Appendix A)

D. Commercial Service Airports Proposing to Extend/Renew Existing Access: Sponsors of commercial service airports proposing to extend or renew existing residential through-the-fence access agreements must also address supplemental standards for compliance as described in Appendix I. The supplemental standards require the airport sponsor to fully comply with the law and ensure that continuation of the residential through-the-fence arrangement will be consistent with their grant obligations. However, FAA is not precluded from investigating a potential grant assurance violation associated with or resulting from an airport sponsor's residential through-the-fence arrangement.

ADOs will review the revised access plans submitted by commercial service airports proposing to extend or renew existing access. The ADO will conduct its review of the plan using the checklist contained in Appendix J of this CGL. Complete and acceptable access plans should be reviewed within 60 days of receipt. The ADO may request an airport sponsor provide more detailed information or propose more effective mitigation measures if the revised access plan does not meet the requirements of the law, is inconsistent with the sponsor's grant assurances, or does not meet the supplemental standards. Once the ADO has completed its review, the ADO will forward the access plan to the Region under a cover memo.

A second review will be conducted by the Regional Office. The Regional Office will conduct its review of the plan using the checklist contained in Appendix J of this CGL. Complete and acceptable access plans should be reviewed within 60 days of receipt. The Regional Office may request an airport sponsor provide more detailed information or propose more effective mitigation measures if the access plan does not meet the requirements of the law, is inconsistent with the sponsor's grant assurances, or does not meet the supplemental standards. Once the Regional Office has completed its review, the Regional Office will forward the plan to ACO-100 under a cover memo.

ACO-100 will review the revised access plans forwarded by Regional Offices using the checklist contained in Appendix J of this CGL. ACO-100 may request an airport sponsor provide more detailed information or propose more effective mitigation measures if the access plan does not meet the requirements of the law, is inconsistent with the sponsor's grant assurances, or does not meet the supplemental standards. Only ACO-100 can accept a revised access plan submitted by a commercial service airport proposing to extend or renew existing access. If ACO-100 finds the access plan does not effectively address the statutory requirements contained in the law, is inconsistent with the airport sponsor's assurances, or does not meet the supplemental standards, ACO-100 may review the matter for further compliance action. ACO-100 will notify the airport sponsor, the Regional Office, and the ADO of its action.

VI. PROPOSED EXTENSIONS/RENEWALS/TRANSFERS OF ACCESS AGREEMENTS: Airport sponsors secure their rights and powers by negotiating agreements which preserve their flexibility to plan for the airport's future. Therefore, FAA encourages airport sponsors negotiating residential through-the-fence agreements to consider short terms which can be renewed or extended at the sponsor's option.

The extension or renewal of a residential through-the-fence access agreement at a general aviation airport or a privately-owned reliever airport is not considered a triggering event that requires submission of a revised access agreement to FAA if the length of extension or renewal does not exceed the term of the FAA's acceptance of the original (or any subsequently updated) access agreements. However, should the airport sponsor make other changes to the terms of the agreement, FAA will need to review an updated access agreement. For example, if FAA accepted a sponsor's access agreement on October 1, 2014 and the sponsor uses two-year access agreement terms with its residential users, FAA would not need to review that sponsor's access agreement again in 2016 simply because the sponsor renewed agreements (previously reviewed by FAA) with its residential users for another two years.

In situations when the transfer of residential through-the-fence access from one residential property owner to another requires the airport sponsor's concurrence, FAA may treat the access as an extension or renewal. This occurs when a homeowner who is a party to a residential through-the-fence access agreement sells their property to another individual who must then execute a residential through-the-fence access agreement with the airport sponsor in order to utilize an existing access point. If the airport sponsor limits the term of the access agreement with the new property owner to a timeframe covered by its FAA-accepted access agreement or plan and the agreement is substantially similar to those agreements already reviewed by FAA, the airport sponsor does not need to submit a revised access agreement or plan. However, if the airport sponsor incorporates terms which are substantially different than those previously reviewed by FAA or permits a term of access which exceeds its accepted access agreement or plan, the sponsor is strongly encouraged to submit a draft access agreement and review sheet prior to executing the agreement with the new residential user.

In situations when residential through-the-fence access can be legally transferred from one residential property owner to another without the airport sponsor's review and/or consent, the FAA will treat the access as existing. For example, this may occur when a homeowner sells a property with deeded, perpetual access. Airport sponsors are not required to notify the FAA of these transactions unless the residential through-the-fence access agreement is substantially modified.

Commercial service airports that seek to extend or renew their existing agreements are required to meet supplemental standards outlined in the FAA's *Policy on Existing Through-the-Fence Access to Commercial Service Airports from A Residential Property*. The supplemental standards are also outlined in Appendix I.

VII. PROPOSED AIRPORT SPONSOR ELIGIBILITY FOR AIP GRANTS IN FY13 and FY14:

A. Airport Sponsors Currently in Compliance:

1. AIP Grants Issued in Accordance with 49 U.S.C., § 47114

All airport sponsors that are currently in compliance with their grant assurances remain eligible for AIP grants issued in accordance with 49 U.S.C., § 47114 in fiscal years 2013 and 2014. Beginning on October 1, 2014, airport sponsors with existing residential through-the-fence access agreements must demonstrate evidence of compliance.

Note that AIP investments must be related to general public demand at the airport. Costs associated with on-airport infrastructure and facilities used exclusively or primarily for accommodation of residential through-the-fence users are considered private-use and are ineligible for AIP funding.

2. AIP Grants Issued in Accordance with 49 U.S.C., § 47115
ADOs and Regional Offices may decline to invest AIP grants issued in accordance with 49 U.S.C., §47115 at airports with existing residential through-the-fence access prior to verifying the sponsor's compliance with the law.

B. Airport Sponsors Currently in Noncompliance: Noncompliant airport sponsors are ineligible to receive AIP grants. Airport sponsors that are currently in noncompliance due to grant assurance violations associated with residential through-the-fence agreements must submit a corrective action plan that includes a residential through-the-fence access agreement and/or access plan.

VIII. PROPOSED AIP ELIGIBILITY OF COSTS ASSOCIATED WITH ACCESS PLANS

A. Immediate ALP Update Depicting Existing Access: Grant Assurance 29 requires airport sponsors with or proposing residential through-the-fence agreements to depict access points on the ALP. A temporary designation through a pen and ink change[11] is acceptable until an ALP is updated as part of a master plan. Costs associated with this ALP revision are not AIP eligible; FAA Order 5100.38C, *Airport Improvement Program Handbook*, at paragraph 300.c. states that AIP grants may be used to fund ALPs when they are part of master planning or indirect costs associated with other airport development funded with an AIP grant.

B. Existing Residential Through-the-Fence Access Agreements and Plans: Costs associated with existing residential through-the-fence access agreements and plans are not AIP-eligible.

C. ALP Updates and Access Agreements Proposing New Access: ALP updates proposing new access are allowable costs for AIP funding only if included as an incidental cost associated with an AIP-funded master plan and ALP update. However, costs associated with the development of a draft access agreement are not AIP-eligible.

[11] When the FAA receives an ALP depicting existing residential through-the-fence access points, the FAA will accept those access points as "pen and ink changes" to the ALP. No environmental analysis is required.

Issues related to AIP-eligibility must be coordinated with APP-520.

IX. PROPOSED SPECIAL CONDITION IN FUTURE GRANTS AT COMMERCIAL SERVICE AIRPORTS WITH EXISTING ACCESS: Once FAA accepts a commercial service airport sponsor's residential through-the-fence access plan, all future AIP grants will be conditioned upon the inclusion of the following special grant condition:

> Update Accepted Residential Through-the-Fence Access Plan: The Sponsor agrees that it will enforce/implement the Residential Through-the-Fence Access Plan, accepted by the FAA on [INSERT DATE]. It is further agreed that any changes required to the Residential Through-the-Fence Access Plan that result from this grant project will be incorporated into the Residential Through-the-Fence Access Plan, which the Sponsor will update and submit to FAA prior to grant closeout.

X. PROPOSED DETERMINATION OF COMPLIANCE STATUS: FAA Order 5190.6B, *FAA Airport Compliance Manual*, at paragraph 2.9 states that the ADO must make a determination regarding the airport sponsor's compliance with its Federal obligations prior to issuing an AIP grant.

A. Compliance Determinations at Airports with Existing Access: The law precludes FAA from making a finding of noncompliance at a general aviation airport solely because an airport sponsor enters into an agreement granting residential through-the-fence access. However, the law does not exempt these sponsors from complying with their grant assurance obligations, and the law establishes specific terms and conditions that must be reflected in the residential through-the-fence arrangement. In Fiscal Years 2013 and 2014, the FAA will refrain from initiating investigations at airports with existing access. This will provide airport sponsors with existing access ample time to develop an access agreement or plan that effectively addresses the terms and conditions included in the law. However, this does not preclude the FAA from initiating a compliance action if there is reason to believe a compliance issue exists that is beyond merely granting a residential through-the-fence arrangement.

   Beginning on October 1, 2014, an airport sponsor's failure to submit evidence of compliance with the law may be reviewed for further compliance action.

B. Compliance Determinations at General Aviation Airports with Access Agreements: The FAA's acceptance of an airport's (draft) access agreement represents an agency finding that the airport sponsor has met the requirements of the law. However, the FAA is not precluded from altering or revoking its acceptance of an airport sponsor's access agreement if either of the following occurs:

   1. The airport sponsor fails to enforce its access agreement; or

   2. A Director's Determination or Final Agency Decision, resulting from an investigation under 14 CFR, part 16, requires the airport sponsor to take corrective action(s).

The FAA's acceptance of an airport sponsor's access agreement does not preclude FAA from initiating a compliance action if there is reason to believe a compliance issue exists which is beyond merely granting a residential through-the-fence arrangement.

C. Compliance Determinations at Privately-Owned Reliever Airports and Commercial Service Airports: While the law is explicit in its permission for publically-owned general aviation airports to enter into residential through-the-fence agreements, it is silent with regard to commercial service airports and privately-owned reliever airports. The FAA has interpreted this silence to continue the prohibition on the establishment of new residential through-the-fence agreements at these airports. Grant Assurance 5(g) reflects this prohibition. Violations of Grant Assurance 5(g) may result in enforcement action under 14 CFR, part 16.

D. Compliance Determinations at General Aviation Airports which Establish New Access Points without FAA Approval of an Updated ALP: Prior to establishing an access point for residential through-the-fence access, general aviation airports are required to depict the proposed access point(s) on the ALP and requested to submit a (draft) access agreement(s) which complies with the law for FAA review. Establishing a new access point not depicted on an FAA-approved ALP may result in a violation of Grant Assurance 29, *Airport Layout Plan*. General aviation airports that establish new access points prior to FAA's approval of a revised ALP may be reviewed for further compliance action. General aviation airports that execute new access agreements prior to demonstrating evidence of compliance do so at their own risk. FAA employees may not approve an ALP establishing a new access point if the (draft) access agreement does not comply with the terms and conditions of the law.

XI. PROPOSED ACTION IF AIRPORT IS UNABLE TO COMPLY: The FAA recognizes that some airports with existing residential through-the-fence access agreements may not be able to comply with the terms and conditions contained in the law and/or their sponsor assurances due to the type of arrangement previously negotiated. In these cases, FAA will determine if the airport still substantially serves its intended function in the National Plan of Integrated Airport Systems. These determinations will be made by Airport's Planning and Environmental Division (APP-400) in accordance with FAA Order 5090.3C, *Field Formulation of the National Plan of Integrated Airport Systems (NPIAS)*, or subsequent pertinent guidance that may be developed by the FAA.

A. Airports Continuing to Serve a Function in the NPIAS: In cases where the airport still substantially serves its intended function in the NPIAS, FAA will consider a reduced level of future AIP investments at the airport. ACO-100, APP-400, and APP-520 will analyze these airports on a case-by-case basis and provide more specific guidance to the ADO.

B. Airports No Longer Serving a Function in the NPIAS: Airports which no longer serve their intended function in the NPIAS will be removed from the NPIAS. ACO-100, APP-400, and APP-520 will analyze these airports on a case-by-case basis and provide more specific guidance to the ADO.

References and Resources

P.L. 112-95, Sec. 136
Airport Improvement Program (AIP): Policy Regarding Access to Airports From Residential Property (76 Fed. Reg. 44515; July 30, 2012)
FAA Grant Assurances
FAA Order 5190.6B, *FAA Airport Compliance Manual*
FAA Order 5100.38C, *Airport Improvement Program Handbook*
FAA Order 5300.1F, *Modifications to Agency Airport Design, Construction, and Equipment Standards*
FAA Order 5090.3C, *Field Formulation of the National Plan of Integrated Airport Systems (NPIAS)*
M. Daniel Carey and Cliff Davenport v. Afton-Lincoln County Municipal Airport Joint Powers Board, FAA Docket No. 16-06-06, (January 19, 2007) (Director's Determination)
FAA's Residential Through-the-Fence Electronic Toolkit (internal) at Q:\National\ACO-100\RTTF Toolkit
FAA's Residential Through-the-Fence Electronic Toolkit (external) at: http://www.faa.gov/airports/airport_compliance/residential_through_the_fence/

APPENDIX A

The internal electronic toolkit is available at Q:\National\ACO-100\RTTF Toolkit. The following documents are available:

Internal Toolkit

Tool	Target Date for Use of Tool	Available for use by
Monitoring Spreadsheet (to track status of interim policy implementation)	On-going	ADO Region ACO-100
Sample Notification Letter Advising Sponsors with Existing RTTF of Change in Law	By August 30, 2013	ADO Region
Sample Letter to Sponsor Acknowledging Receipt of RTTF documentation	Upon receipt of RTTF documentation	ADO Region ACO-100
Sample Request for More Information from Sponsors	During review of RTTF documentation	ADO Region ACO-100
Sample Letter to Sponsors Identifying Noncompliance with the Law and/or Need for More Mitigation Measures	During review of RTTF documentation	ADO Region ACO-100
Sample Letter to Sponsor Stating RTTF Documentation Has Been Forwarded to Region/ACO-100	Upon completion of ADO/Regional review	ADO Region
Cover Memo to Transmit RTTF Documentation to Regional Office/ACO-100	Upon completion of ADO/Regional review	ADO Region
Sample Letter to Sponsors with Existing Access that Have Not Submitted an Access Agreement(s) and/or Access Plan	No later than June 2, 2014	ADO Region
Sample Letter Accepting a GA Sponsor's (Draft) Access Agreement	Ongoing	Region
Sample Letter to Sponsors Who Express Interest in Establishing New RTTF	On-going	ADO Region ACO-100

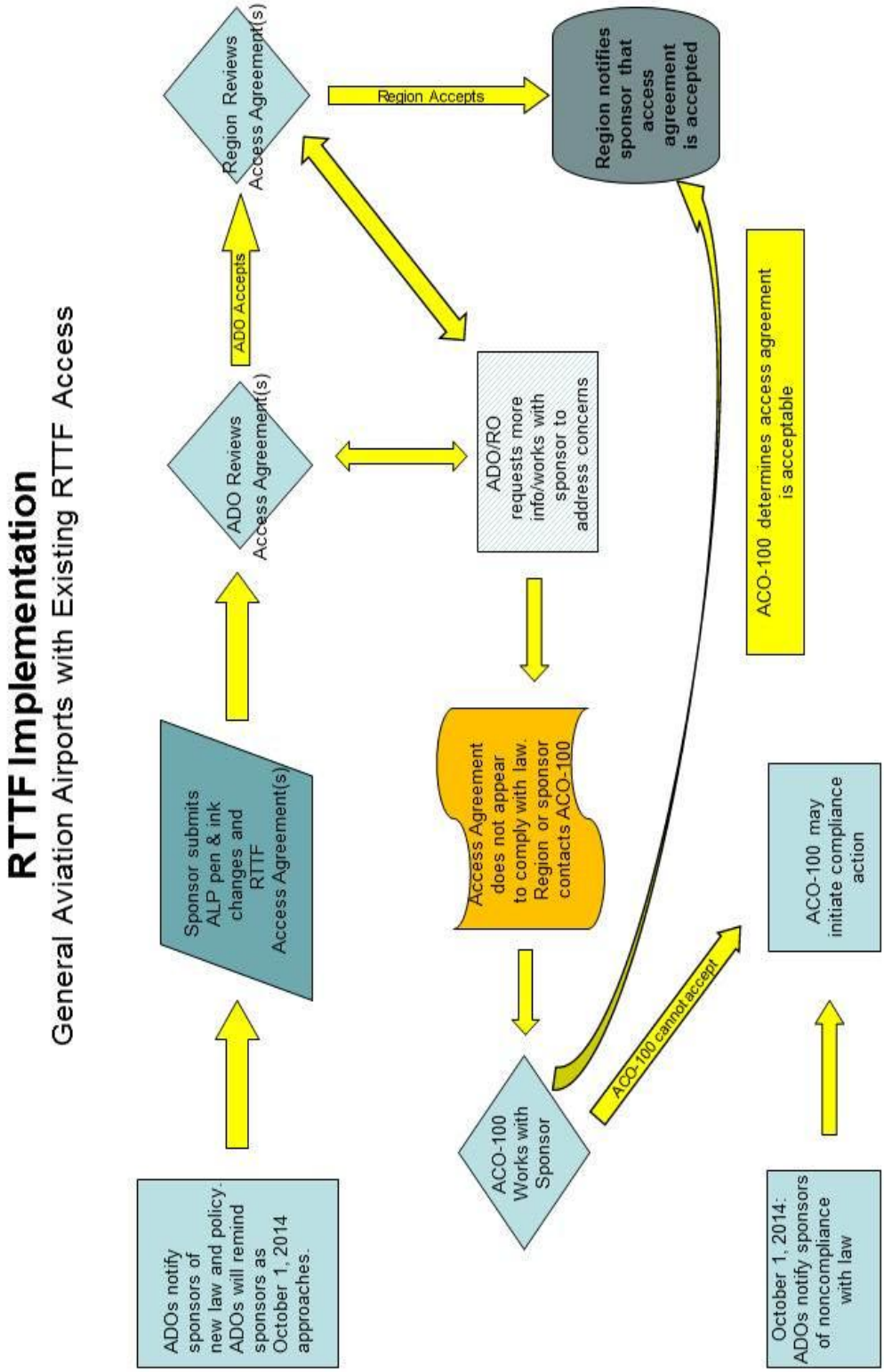
Special Condition for AIP Grants	Grants issued to sponsors with accepted RTTF access plans in FY15 and beyond	ADO Region ACO-100
Special Condition for ALP Approval	Upon approval of an ALP depicting new RTTF at a general aviation airport	ADO/Region
Sample Easements	On-going	ADO Region ACO-100

The external electronic toolkit is available at:
http://www.faa.gov/airports/airport_compliance/residential_through_the_fence/.
The following documents are available:

External Toolkit

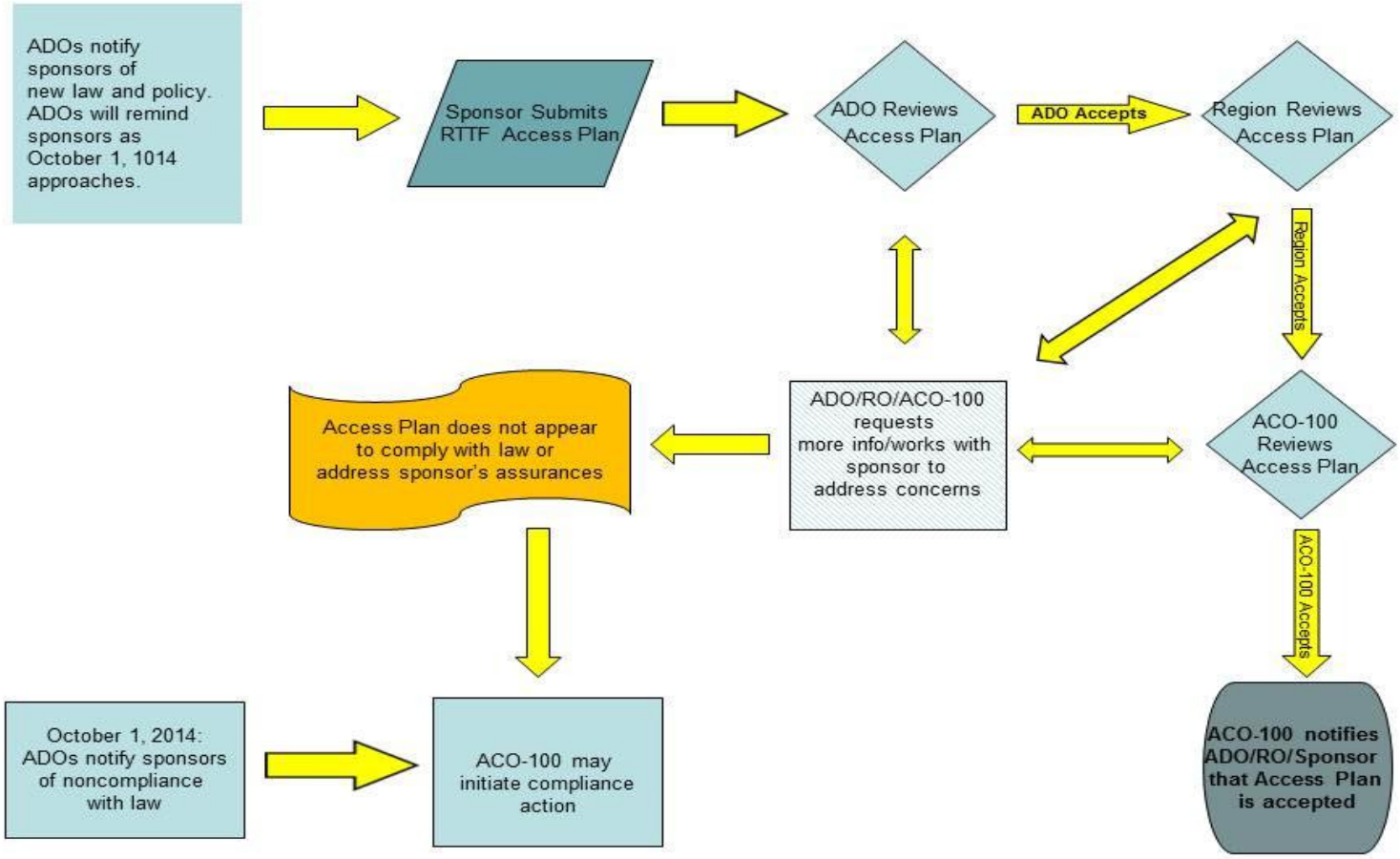
Tool	Target Date for Use of Tool
FAA's Interpretation of the FMRA's Section 136	Ongoing
FAA Recommendations for Airport Sponsors Considering Residential Through-the-Fence Access Agreements	Ongoing
Access Agreement Review Sheet for Airport Sponsors with Existing Access (Appendix C)	Prior to October 1, 2014
Access Agreement Review Sheet for Airport Sponsors Proposing New Access (Appendix G)	Ongoing
Sample Access Agreement and Review Sheet	Ongoing
Final Policy on Existing Through-the-Fence Access to Commercial Service Airports from a Residential Property	Ongoing
Sample Access Plan	Ongoing
Sample Sponsor Certification	Ongoing
Supplemental Standards for Commercial Service Airports Proposing to Extend/Renew Existing Access (Appendix I)	Ongoing
Special Condition for AIP Grants	Grants issued to sponsors with accepted RTTF access plans in FY15 and beyond
Special Condition for ALP Approval	Ongoing
Sample RTTF Summary Table	Ongoing
Examples of Rate-Setting Methodologies	Ongoing

APPENDIX B


RTTF Implementation
General Aviation Airports with Existing RTTF Access
ADOs notify sponsors of new law and policy. ADOs will remind sponsors as October 1, 2014 approaches.
Sponsor submits ALP pen & ink changes and RTTF Access Agreement(s)
ADO Reviews Access Agreement(s)
ADO Accepts
Region Reviews Access Agreement(s)
Region Accepts
Region notifies sponsor that access agreement is accepted
ADO/RO requests more info/works with sponsor to address concerns
Access Agreement does not appear to comply with law. Region or sponsor contacts ACO-100
ACO-100 Works with Sponsor
ACO-100 cannot accept
ACO-100 determines access agreement is acceptable
October 1, 2014: ADOs notify sponsors of noncompliance with law
ACO-100 may initiate compliance action

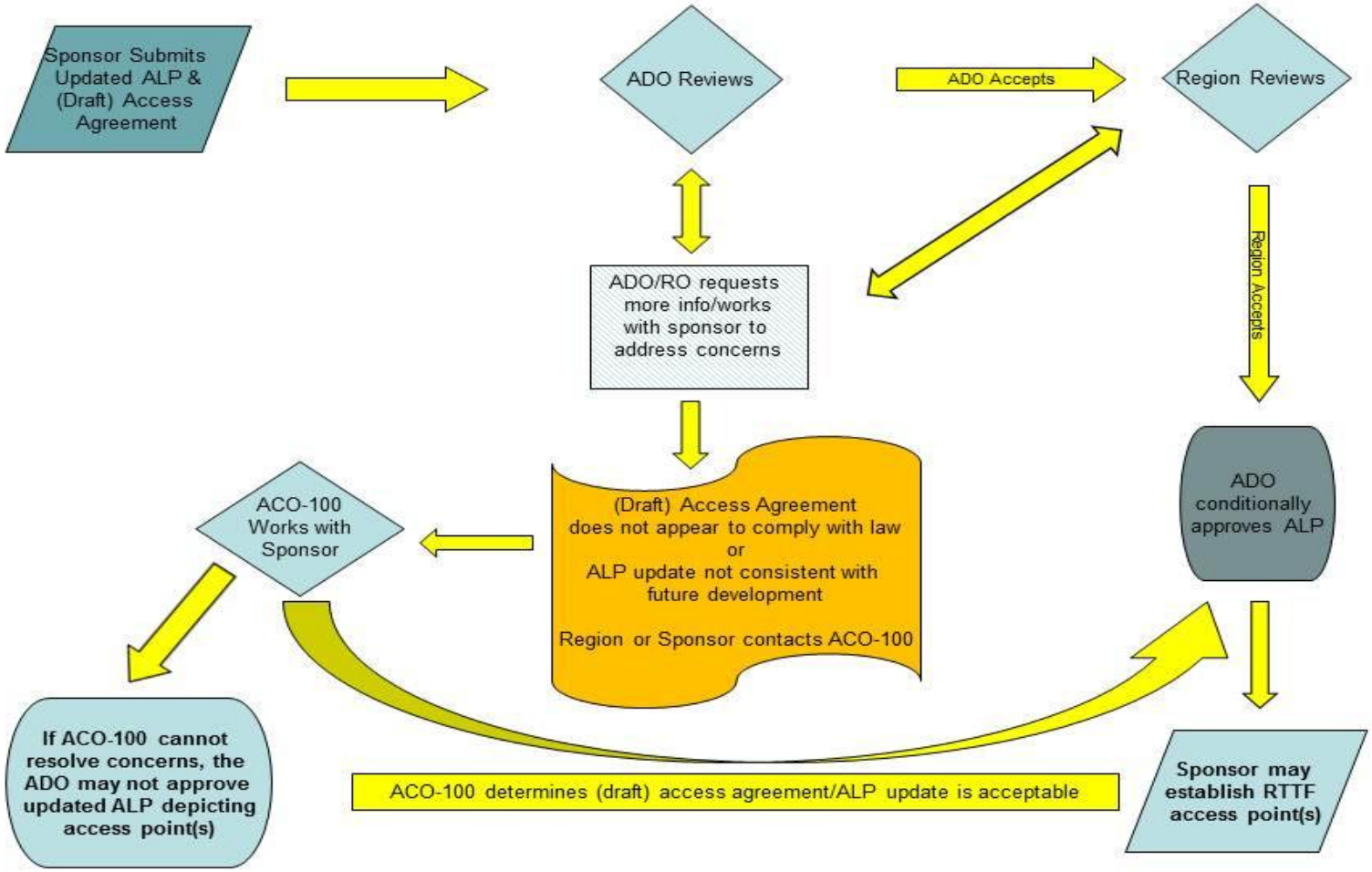
RTTF Implementation

Commercial Service Airports with Existing RTTF Access



RTTF Implementation

General Aviation Airports Proposing New RTTF Access



APPENDIX C

Access Agreement Review Sheet

Documentation:
Provide copies of the written access agreement(s) between the sponsor and residential through-the-fence user(s) or association(s) representing residential through-the-fence users. Sponsors who have entered into a residential through-the-fence agreement with an association may need to provide additional documentation such as covenants, conditions, and restrictions (CC&Rs). If the same agreement is used with multiple residents, the sponsor is only required to submit one copy of the agreement with an explanation noting the number of residences to which it pertains. Identify the document (if more than one type of document is submitted), page number, or paragraph which verifies the following:

1. The residential through-the-fence user pays airport access charges that are comparable to tenants and operators on-airport making similar use of the airport.
   Document: _____
   Page number or paragraph: _____

   If this page or paragraph does not define tenants and operators on-airport making similar use of the airport, explain how the airport sponsor defines this term and the fee/rate structure charged to these tenants.

   _____
   _____
   _____

   If this page or paragraph does not include an escalation clause, explain if the fees/rates charged to the residential through-the-fence user increase on the same schedule as the fees/rates for tenants and operators on-airport making similar use of the airport.

   _____
   _____
   _____

   If the two fee schedules do not transparently appear to be equivalent, explain the rationale used by the airport sponsor to make such determination.

   _____
   _____
   _____

2. Residential through-the-fence users bear the cost of building and maintaining the infrastructure the airport sponsor determines is necessary to provide aircraft located on the adjacent property to or near the airport access to the airfield of the airport.
   Document: _____
   Page number or paragraph: _____

3. The residential through-the-fence user is prohibited from using their property, or permitting any third party from using their property, for any commercial aeronautical purpose for the duration of the access agreement.
   Document: _____
   Page number or paragraph: _____

4. Access to the airport from unauthorized users, through the property of the residential through-the-fence access agreement holder, is prohibited.
   Document: _____
   Page number or paragraph: _____

5. The residential through-the-fence user is prohibited from selling aviation fuel on their property.
   Document: _____
   Page number or paragraph: _____

This agreement has been executed with (insert number) residential through-the-fence (user(s) or homeowners association(s)).

APPENDIX D

FAA Review and Action on Access Agreements submitted by General Aviation Airports and Privately-Owned Reliever Airports with Existing Access

Terms and Conditions Required by Statute:

- ☐ Is the sponsor comparing residential through-the-fence users to similarly-situated on airport tenants and users? Comparing residential through-the-fence users to itinerant users is not consistent with the law.

- ☐ Is the access fee paid by residential through-the-fence users higher than or equivalent to the fees paid by similarly situated on-airport users and tenants?

- ☐ Does the airport sponsor require residential through-the-fence users to bear the cost of building and maintaining the infrastructure the airport sponsor determines necessary to provide access to the airfield?

- ☐ Does the airport sponsor prohibit commercial aeronautical uses, whether provided by the property owner or a third party, on the property of the residential through-the-fence users? Commercial aeronautical activities on property owned by individuals with residential through-the-fence access are prohibited by law. Therefore, homeowners may not co-locate any type of commercial aeronautical activity on their residential property or permit a third party to offer any commercial aeronautical services.

- ☐ Does the airport sponsor prohibit access to the airport from unauthorized users through the property of the residential through-the-fence users?

- ☐ Does the airport sponsor prohibit the sale of aviation fuels on the property of the residential through-the-fence users?

- ☐ Review the access agreement(s). Are the terms consistent with answers provided to the questions above? If the terms of the agreement expressly permit any activities prohibited by the law, the airport sponsor lacks an effective mechanism to address its legal requirements. Does the access agreement clearly outline the terms and duration of access?

Action:

ADOs should summarize their answers to the questions above in the forwarding memorandum. If the airport sponsor fails to address any statutorily required terms and conditions the ADO should not forward the plan to the Region.

Regional Offices should compare the ADO's assessment of the access agreement(s) to the information provided on the review sheet. If the ADO's assessment lacks sufficient detail or does not accurately describe the access agreement(s), the Regional Office should not accept the access agreement(s). If the access agreement(s) effectively addresses the legal requirements associated with residential through-the-fence access, the Regional Office may accept the access

agreement(s). If the access agreement(s) presents inherent conflicts with the law, the Regional Office must contact ACO-100.

APPENDIX E

Access Plans: Required Documentation and Narrative from Commercial Service Airport Sponsors with Existing Access

A. Access Agreement Review Sheet

Provide copies of the written access agreement(s) between the sponsor and residential through-the-fence user(s) or association(s) representing residential through-the-fence users. Sponsors who have entered into a residential through-the-fence agreement with an association may need to provide additional documentation such as covenants, conditions, and restrictions (CC&Rs). If the same agreement is used with multiple residents, the sponsor is only required to submit one copy of the agreement with an explanation noting the number of residences to which it pertains. Identify the page number or paragraph which documents the following:

1. The residential through-the-fence user pays airport access charges that are comparable to tenants and operators on-airport making similar use of the airport.
Document: _____
Page number or paragraph: _____

If this page or paragraph does not define tenants and operators on-airport making similar use of the airport, explain how the airport sponsor defines this term and the fee/rate structure charged to these tenants.

_____
_____
_____

If this page or paragraph does not include an escalation clause, explain if the fees/rates charged to the residential through-the-fence user increase on the same schedule as the fees/rates for tenants and operators on-airport making similar use of the airport.

_____
_____
_____

If the two fee schedules do not transparently appear to be equivalent, explain the rationale used by the airport sponsor to make such determination.

_____
_____
_____

2. Residential through-the-fence users bear the cost of building and maintaining the infrastructure the airport sponsor determines is necessary to provide aircraft located on the adjacent property to or near the airport access to the airfield of the airport.
Document: _____
Page number or paragraph: _____

3. The residential through-the-fence user is prohibited from using their property, or permitting any third party from using their property, for any commercial aeronautical purpose for the duration of the access agreement.
Document: _____
Page number or paragraph: _____

4. Access to the airport from unauthorized users, through the property of the residential through-the-fence access agreement holder, is prohibited.
Document: _____
Page number or paragraph: _____

5. The residential through-the-fence user is prohibited from selling aviation fuel on their property.
Document: _____
Page number or paragraph: _____

This agreement has been executed with (insert number) residential through-the-fence (user(s) or homeowners association(s)).

B. Airport and Access Drawing, Summary Table, & Narrative
Required Documentation:

1. Provide an airport and access drawing (scale 1”=200’ to 1”=600’) which clearly depicts all existing and proposed:
    - Airport and residential through-the-fence parcels;
    - Runways (length, width, orientation, thresholds, hold lines);
    - Runway Safety Areas, Object Free Areas, Precision Obstacle Free Areas (if applicable), and Runway Protection Zones;
    - Taxiways;
    - Navigational aids;
    - On-airport structures (hangars, buildings, fuel facilities, ramps, roads, etc.)
    - Off-airport structures adjacent to the airport’s property boundary, include all residential through-the-fence lots (identify lots by number or letter);
    - Fences and gates;
    - All existing and proposed residential through-the-fence access points; and
    - Municipal boundaries.

2. Provide a summary table which describes the following as associated with each residential through-the-fence parcel:
    - Access point utilized as referenced on the airport and access drawing sheet;
    - Development name (if the residence is part of a community, platted subdivision, etc.)

- Lot;
- Owner;
- Number of residential improvements proposed;
- Number of residential improvements constructed;
- Type of residential improvement (single family home, apartment, undeveloped parcel, etc.);
- Enabling instrument (access agreement, lease, deed, easement, etc.);
- Date of execution or recording;
- Term of agreement;
- Number of access points granted;
- Number of access points currently utilized;
- Zoning designation and the entity controlling zoning for that parcel;
- The access fee collected annually;
- Number of aircraft associated with each residence; and
- If there are any restrictions in the enabling instrument restricting the sale, assignment, or subleasing of the property.

3. Provide a description of the airport that identifies the number of aircraft based on the airport and the estimated or actual number of annual local and itinerant operations.

4. Provide a description of the hangar/tie-down space available on the airport property as identified on the airport and access drawing. This description must include the total number of hangars/tie-downs on airport property, the number of hangars/tie-downs currently rented, and the number available for rent. If all on-airport hangars/tie-downs are currently rented, the description must include what steps the sponsor is taking or plans to take to develop additional hangar/tie-down space.

C. General Authority for Control of Airport Land and Access: Grant Assurance 5, Preserving Rights and Powers, prohibits airport sponsors from taking 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 in the grant agreement without the written approval of the Secretary. This includes maintaining sufficient control of access points and operations across airport boundaries to maintain safe operations, and to make changes in airport land use to meet future needs.

Required Documentation:

1. Provide a detailed description of the nature, structure, duration, and terms associated with each residential through-the-fence access arrangement.
2. Provide copies of access agreements and/or governing documents (i.e., agreements, easements, deeds, Covenants, Conditions, and Restrictions or CC&Rs, etc).
3. Provide copies of any avigation easements the sponsor might hold.
4. Describe how the access agreements/governing documents are subordinate to the airport sponsor's grant assurances. If they are not, explain how the sponsor can invoke changes to the agreement to ensure ongoing compliance with its grant obligations.
5. Describe the airport sponsor's legal ability to impact zoning changes around the airport. Describe the current zoning for and around the airport. Describe any steps the airport sponsor has taken to limit new residential zoning around the airport.

6. Describe any access controls that residential through-the-fence users must utilize when taxiing onto airport property. If there is no fence, describe the signage or markings used to delineate airport property from private property.
7. Describe the process utilized to educate your local community and residential through-the-fence users about your Federal obligations as an airport sponsor.
8. If the airport sponsor has established any short-term or long-term plans for eliminating residential through-the-fence access, describe those plans.

D. Safety of Airport Operations: Grant Assurance 19, Operation and Maintenance, requires the airport sponsor to ensure the airport and all facilities which are necessary to serve the aeronautical users of the airport are operated at all times in a safe and serviceable condition.

Required Documentation:

1. Provide a copy of any specific rules/requirements that apply only to residential through-the-fence users (if established). Explain how residential through-the-fence users are subject to the same rules and regulations as on-airport users.
2. Describe any process the sponsor has developed to sanction residential through-the-fence users who violate the airport's rules and regulations.
3. Describe any restrictions or special requirements imposed on fly-in guests who taxi from the airport's property to visit off-airport residents. Describe how those restrictions or special requirements are communicated to the residential through-the-fence users and their guests. Describe how the sponsor monitors this practice.
4. Describe the mechanism used to separate aircraft and vehicular traffic.
5. Describe the mechanism used to prevent residential/domestic activities (i.e., dog walking, sports, etc.) from occurring on airport property, and particularly within the air operations area associated with runway safety areas, runway protection zones, runway object free zones, taxiway safety areas, obstacle free areas, object free areas and primary surface properties. Describe how this is monitored and enforced.
6. Describe the mechanism used to prevent through-the-fence residents from establishing potential wildlife attractants (i.e., water detention ponds, gardens, composting lots, etc.) near the airport. If wildlife attractants have been established, describe how the airport requires through-the-fence residents to mitigate.
7. Describe how aircraft access each runway threshold from the RTTF access points. Identify any residential through-the-fence taxi routes that preclude the sponsor from meeting any FAA design standards. Describe any plans the airport sponsor may have to meet the FAA design standards in the future. If proposing a modification to standards, a Safety Assessment Screening must be completed and the requirements contained in FAA Order 5300.1F, *Modifications to Agency Airport Design, Construction, and Equipment Standards* must be addressed.

E. Rates and Charges: Grant Assurance 24, Fee and Rental Structure, requires an airport sponsor to 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. Residential through-the-fence users are not protected by Grant Assurance 22, Economic Nondiscrimination, and the FAA will not entertain allegations of unreasonableness for residential through-the-fence access.

Required Documentation:

1. A description of how the airport sponsor collects access fees from residential through-the-fence users and their guests who taxi from the airport to an off-airport residence.

F. Protection of Airport Airspace: Grant Assurance 20, Hazard Removal and Mitigation, requires airport sponsors to take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

Two of FAA's prime objectives are to promote air safety and the efficient use of the navigable airspace. Title 14 CFR, part 77, "Objects affecting the navigable airspace," establishes standards and notification requirements for objects affecting navigable airspace. Notification of an off-airport project under FAA Form 7460-1, Notice of Proposed Construction or Alteration, prompts FAA to conduct an aeronautical study based on information provided by its proponent to identify potential aeronautical hazards in advance to prevent or minimize the adverse impacts to the safe and efficient use of navigable airspace. The FAA's authority to promote the safe and efficient use of the navigable airspace, whether concerning existing or proposed structures, is predominantly derived from title 49 U.S.C., § 44718; § 44718 does not provide specific authority for FAA to regulate or control how land (i.e., real property) may be used in regard to structures that may penetrate navigable airspace. In addition, the Federal Government lacks the authority to regulate local land use. Therefore, it is critical that airport sponsors identify tools they can use to protect the airport's airspace both on and off the airport.

Required Documentation:

1. A description of the mechanism used by the airport sponsor to ensure that homes, hangars, other structures, and off-airport taxiways do not penetrate the airport's protected surfaces. If available, provide verification that airspace studies were conducted for residential through-the-fence homes, hangars, other structures, and off-airport taxiways.
2. A description of the mechanism used to require residential through-the-fence users to complete FAA Form 7460-1, Notice of Proposed Construction or Alteration, when they propose to erect and/or alter structures on their property.
3. A description of the mechanism used to require residents to trim/remove trees and/or any other potential obstructions.
4. A description of any legal powers and/or authorities the airport sponsor might have to prohibit new construction determined to be a hazard to air navigation.

G. Compatible Land Uses Around the Airport: Grant Assurance 21, Compatible Land Use, requires airport sponsors to take appropriate action, to the extent reasonable, 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.

Required Documentation:

1. A description of the mechanism used by the airport sponsor to monitor proposed and actual zoning changes/designations in land use surrounding the airport. Describe how the sponsor plans to avoid residential encroachment or other noncompatible land uses.

2. A description of any actions the airport sponsor may be taking to educate the local zoning/land use authority about the sponsor's obligations as a federally-obligated airport.
3. A description of any plans the airport sponsor may have with regard to the acquisition of avigation easements.
4. Does the residential use conflict with any current or planned aviation uses at the airport? If it does, describe the airport sponsor's plans to address this conflict.
5. A description of any local or state requirements or limitations with regard to the proximity of homes and aeronautical activities. Do any off-airport structures conflict with the current or future establishment of fueling activities, aircraft maintenance, flight training, aircraft charter, banner towing, crop dusting, parachuting, aircraft storage, etc.?
6. A description of the airport sponsor's mechanism for receiving and tracking noise complaints. Please also note how this program is promoted to the local community.

H. Sponsor Certification: Airport sponsors may certify their access plan with the sample certification form, by passing a local resolution, or submitting a signed affidavit. A sample certification form is in the external electronic toolkit at:

http://www.faa.gov/airports/airport_compliance/residential_through_the_fence/

APPENDIX F

FAA Review and Action on Access Plans submitted by Commercial Service Airports with Existing Access

A. Terms and Conditions Required by Statute

Review:

- ☐ Is the sponsor comparing residential through-the-fence users to similarly-situated on airport tenants and users? Comparing residential through-the-fence users to itinerant users is not consistent with the law.
- ☐ Is the access fee paid by residential through-the-fence users higher than or equivalent to the fees paid by similarly situated on-airport users and tenants?
- ☐ Does the sponsor require residential through-the-fence users to bear the cost of building and maintaining the infrastructure the airport sponsor determines necessary to provide access to the airfield?
- ☐ Does the sponsor prohibit commercial aeronautical uses on the property, whether provided by the property owner or a third party, of the residential through-the-fence users? Commercial aeronautical activities on property owned by individuals with residential through-the-fence access are prohibited by law. Therefore, homeowners may not co-locate any type of commercial aeronautical activity on their residential property, or permit a third party to offer any commercial aeronautical services.
- ☐ Does the sponsor prohibit access to the airport from unauthorized users through the property of the residential through-the-fence users?
- ☐ Does the sponsor prohibit the sale of aviation fuels on the property of the residential through-the-fence users?
- ☐ Review the access agreement(s). Are the terms consistent with the answers provided to the questions above? If the terms of the agreement expressly permit any activities prohibited by the law, the sponsor lacks an effective mechanism to address its legal requirements. Does the access agreement clearly outline the terms and duration of access?

Action:

ADOs should summarize their answers to the questions above in section II of the forwarding memorandum. If the sponsor fails to address any statutorily required terms and conditions the ADO should not forward the plan to the Region.

Regional Offices should compare the ADO's assessment of the access plan to the access agreement(s) itself. If the ADO's assessment lacks sufficient detail or does not accurately describe the access agreement(s), the Regional Office should not accept the access plan. If the access agreement(s) presents inherent conflicts with the law, the Regional Office must note this in its forwarding memo to ACO-100.

ACO-100 should summarize their answers to the questions above in the letter of findings to the sponsor.

B. Airport and Access Drawing, Summary Table, & Narrative

Review:

- ☐ Has the ADO/RO compared the airport and access drawing submitted with the access plan to the ALP and Exhibit A on file with the FAA?
- ☐ Do any access points conflict with planned future development at the airport?
- ☐ Is land available for future aeronautical development on the airport?
- ☐ Has the sponsor identified any nearby land for future acquisition?

Action:
ADOs should summarize their answers to the questions above in section III of the forwarding memorandum.

Regional Offices should compare the ADO's assessment of the access plan to the plan itself. If the ADO's assessment lacks sufficient detail or does not accurately describe the access plan, the Regional Office should supplement the answers provided.

ACO-100 should summarize their answers to the questions above in the letter of findings to the sponsor.

C. General Authority for Control of Airport Land and Access: An airport sponsor is required to demonstrate it has sufficient control of access points and operations across airport boundaries to maintain safe operations, and to make changes in airport land use to meet future needs.

Review:

- ☐ Verify all required documentation is included.
- ☐ Are the access agreements(s)/governing documents subordinate to the sponsor's grant assurances? If not, how does the sponsor ensure compliance with Grant Assurance 5?
- ☐ Do the access agreement(s)/governing documents contain any noise restrictions not approved by the FAA in a part 150 or part 161 study? Does the airport's 5010 data sheet or the Airport Facilities Directory note any mandatory noise restrictions?
- ☐ Does the sponsor have good title to all of the property depicted on its property map?
- ☐ Should the sponsor conduct a title search to verify ownership of any particular parcels?
- ☐ Is the sponsor taking steps to ensure that undeveloped land around the airport is zoned for airport-compatible purposes?
- ☐ Is the sponsor taking steps to identify and protect its real property?
- ☐ Is the sponsor taking steps to educate its local community and residential through-the-fence users about the grant assurances?
- ☐ Does the sponsor propose any short-term or long-term plans for eliminating the residential through-the-fence access?

Action:
ADOs should review all materials submitted by the sponsor and complete the review checklist. Any areas of concern should be noted to ACO-100 in section IV of the forwarding memorandum.

Regional Offices should compare the ADO's assessment of the access plan to the plan itself. If the ADO's assessment lacks sufficient detail or does not accurately describe the access plan, the Regional Office should supplement the answers provided.

ACO-100 should review all materials submitted by the sponsor to determine if the sponsor has sufficient authority for control of airport land and access. ACO-100 should note any practices or stipulations that could impact the sponsor's ability to meet its grant assurance obligations.

D. Safety of Airport Operations: An airport sponsor is required to demonstrate that its residential through-the-fence arrangement does not impede its safe operation of the airport.

Review:

- ☐ Is the sponsor taking steps to ensure that residential through-the-fence users and their guests are subject to requirements at least as stringent as those that on-airport tenants must follow?
- ☐ Are private-use taxiways noted on the airport's 5010 data sheet or the Airport Facilities Directory?
- ☐ Is the sponsor taking sufficient steps to ensure aircraft and vehicular traffic are separated?
- ☐ Is the sponsor taking sufficient steps to prevent residential/domestic activities from occurring on the airport's property?
- ☐ Is the sponsor taking sufficient steps to prevent and/or mitigate wildlife attractants on residential through-the-fence properties?
- ☐ Do any residential through-the-fence access points require airport users to utilize higher-risk procedures or maneuvers such as back-taxiing, direct access to the runway, entering the runway from a nonperpendicular taxiway, or crossing public roads to enter the airport? Verify that any modifications to standards have been processed in accordance with the requirements contained in FAA Order 5300.1F, *Modifications to Agency Airport Design, Construction, and Equipment Standards*.
- ☐ Is the sponsor proposing to consolidate or relocate any access points? Will this impact any projects proposed in the sponsor's capital improvement plan?

Action:

ADOs should review all materials submitted by the sponsor and complete the review checklist. Any areas of concern should be noted to ACO-100 in section V of the forwarding memorandum.

Regional Offices should compare the ADO's assessment of the access plan to the plan itself. If the ADO's assessment lacks sufficient detail or does not accurately describe the access plan, the Regional Office should supplement the answers provided.

ACO-100 should review all materials submitted by the sponsor, and in consultation with AAS, determine if the sponsor has sufficiently addressed the safety of airport operations. ACO-100 should note any practices that impact safety at the airport and make any necessary recommendations.

E. Rates and Charges: An airport sponsor is required to demonstrate it can and does collect fees from residential through-the-fence users comparable to those charged to airport tenants. The rates and charges paid by residential through-the-fence users cannot result in unjust

discrimination against on-airport tenants. The schedule of rates and charges should promote the goal of financial self-sustainability for the airport.

Review:

- ☐ Does the sponsor have an effective program in place to collect the access fees and verify that all residential through-the-fence users are paying their access fee?
- ☐ Does the schedule of rates and charges impede the sponsor's ability to pursue the goal of self-sustainability for the airport?

Action:

ADOs should review all materials submitted by the sponsor and complete the review checklist. Any areas of concern should be noted to ACO-100 under section VI of the forwarding memorandum.

Regional Offices should compare the ADO's assessment of the access plan to the plan itself. If the ADO's assessment lacks sufficient detail or does not accurately describe the access plan, the Regional Office should supplement the answers provided.

ACO-100 should review all materials submitted by the sponsor to determine if the schedule of rates and charges is consistent with Grant Assurances 22 and 24. ACO-100 should summarize their answers to the questions above in the letter of findings to the airport sponsor.

F. Protection of Airport Airspace: Grant Assurance 20, Hazard Removal and Mitigation, requires airport sponsors to take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

Two of FAA's prime objectives are to promote air safety and the efficient use of the navigable airspace. Title 14 CFR part 77, "Objects affecting the navigable airspace," establishes standards and notification requirements for objects affecting navigable airspace. Notification of an off-airport project under FAA Form 7460-1, Notice of Proposed Construction or Alteration, prompts FAA to conduct an aeronautical study based on information provided by its proponent to identify potential aeronautical hazards in advance to prevent or minimize the adverse impacts to the safe and efficient use of navigable airspace. The FAA's authority to promote the safe and efficient use of the navigable airspace, whether concerning existing or proposed structures, is predominantly derived from title 49 U.S.C., § 44718; § 44718 does not provide specific authority for FAA to regulate or control how land (i.e., real property) may be used in regard to structures that may penetrate navigable airspace. In addition, the Federal Government lacks the authority to regulate local land use. Therefore, it is critical that airport sponsors identify tools they can use to protect the airport's airspace both on and off the airport.

Review:

- ☐ Does the sponsor currently have an effective mechanism to protect the airport's airspace?
- ☐ Was construction of the existing homes, hangars, other structures, and off-airport taxiways properly studied by the FAA?

Action:
ADOs should summarize their answers to the questions above in section VII of the forwarding memorandum. Any areas of concern should be noted to ACO-100.

Regional Offices should compare the ADO's assessment of the access plan to the plan itself. If the ADO's assessment lacks sufficient detail or does not accurately describe the access plan, the Regional Office should supplement the answers provided.

ACO-100 should summarize their answers to the questions above in the letter of findings to the sponsor.

G. Compatible Land Uses Around the Airport: An airport sponsor is required to demonstrate the potential for noncompatible land use adjacent to the airport boundary is minimized consistent with Grant Assurance 21, Compatible Land Use.

Review:
- ☐ Does the sponsor currently have an effective mechanism to monitor zoning/land use changes around the airport?
- ☐ Does the sponsor appear to understand its obligations with regard to Grant Assurance 21, Compatible Land Use?
- ☐ Does the sponsor propose any short-term or long-term plans for acquiring avigation easements that should be incorporated into the sponsor's capital improvement plan?
- ☐ If the residential use conflicts with current or proposed aeronautical development, does the sponsor have a satisfactory plan to address this conflict?
- ☐ Do any state or local requirements or limitations associated with the proximity of homes and aeronautical activities impede current or proposed future aeronautical development?
- ☐ Does the sponsor currently have an effective mechanism for receiving, tracking, and responding to noise complaints? Is this program promoted to the community?

Action:
ADOs should summarize their answers to the questions above in section VIII of the forwarding memorandum. Any areas of concern should be noted to ACO-100.

Regional Offices should compare the ADO's assessment of the access plan to the plan itself. If the ADO's assessment lacks sufficient detail or does not accurately describe the access plan, the Regional Office should supplement the answers provided.

ACO-100 should summarize their answers to the questions above in the letter of findings to the sponsor.

H. Sponsor Certification: Airport sponsors may certify their access plan with the sample certification form, by passing a local resolution, or submitting a signed affidavit. A sample certification form is in the external electronic toolkit at:
http://www.faa.gov/airports/airport_compliance/residential_through_the_fence/.

Review:

- ☐ Verify the sponsor has certified its access plan by including the sample certification form, by passing a local resolution, or by submitting a signed affidavit.

APPENDIX G

Required Documentation from General Aviation Airport Sponsors Proposing New Access

Required Documentation:
1. Updated ALP
2. (Draft) Access Agreement(s)
3. Access Agreement Review Sheet(s)

Revised ALP
Prior to submitting an ALP proposing a new access point(s), the sponsor must review their ALP to ensure:

- The proposed access point(s) do not conflict with current or planned development.
- The location of the proposed home(s) does not conflict with current or planned development.
- Adequate areas to accommodate forecasted growth are identified.

Access Agreement Review Sheet

Documentation:
Provide copies of the (draft) written access agreement(s) between the sponsor and residential through-the-fence user(s) or association(s) representing residential through-the-fence users. If the same agreement will be used with multiple residents, the sponsor is only required to submit one copy of the (draft) agreement with an explanation noting the number of residences to which it will apply. Identify the page number or paragraph which documents the following:

1. The residential through-the-fence user pays airport access charges that are comparable to tenants and operators on-airport making similar use of the airport.
Page number or paragraph: _____

If this page or paragraph does not define tenants and operators on-airport making similar use of the airport, explain how the airport sponsor defines this term and the fee/rate structure charged to these tenants.

_____
_____
_____

If this page or paragraph does not include an escalation clause, explain if the fees/rates charged to the residential through-the-fence user increase on the same schedule as the fees/rates for tenants and operators on-airport making similar use of the airport.

_____
_____
_____

If the two fee schedules do not transparently appear to be equivalent, explain the rationale used by the airport sponsor to make such determination.

_____
_____
_____

2. Residential through-the-fence users bear the cost of building and maintaining the infrastructure the airport sponsor determines is necessary to provide aircraft located on the adjacent property to or near the airport access to the airfield of the airport.
Page number or paragraph: _____

3. The residential through-the-fence user is prohibited from using their property, or permitting any third party, for any commercial aeronautical purpose for the duration of the access agreement.
Page number or paragraph: _____

4. Access to the airport from other properties through the property of the residential through-the-fence access agreement holder is prohibited.
Page number or paragraph: _____

5. The agreement prohibits the sale of aviation fuels from the property of the residential through-the-fence user.
Page number or paragraph: _____

This (draft agreement or agreement) (will be or has been) executed with (insert number) residential through-the-fence (user(s) or homeowners association(s)).

FAA Recommendations for Draft Residential Through-the-Fence Agreements:

- A subordination clause which acknowledges the residential through-the-fence agreement is subordinate to the airport sponsor's current and future Federal obligations.
- A legal indemnification clause requiring residential through-the-fence user(s) to acknowledge that their property will be affected by aircraft noise and emissions and waiving any right to bring an action against the airport sponsor for operations at the airport.
- A hazard removal clause to ensure the sponsor maintains a mechanism for mitigating (removal, tree trimming, marking, lighting, etc.) potential airport hazards and for stopping construction or establishment of airport hazards. Residential through-the-fence user(s) must be directed to complete and file FAA Form 7460-1, Notice of Proposed Construction or Alteration, and obtain a "no hazard" determination prior to erecting and/or altering any structures on their property.
- A defined term which does not exceed a reasonable airport planning horizon.
- A mechanism which allows the airport sponsor to impose and enforce the safety requirements and airport operating rules on residential through-the-fence user(s).
- Access fees/charges that are comparable to the rates charged to tenants and operators on the airport making similar use of the airport and a mechanism to increase the access fee/charges on the same schedule used for tenants and operators on the airport making similar use of the airport.

- A provision which prohibits any commercial aeronautical uses, whether offered by the property owner or a third party.
- Avigation easements that permit unobstructed flight through the airspace necessary for takeoff and landing at the airport.

APPENDIX H

FAA Review and Action on Access Agreements and ALPs Proposing New Access at General Aviation Airports

Updated ALP

***This checklist should only be used if the ALP submitted was not prepared in accordance with the FAA's Standard Operating Procedure for FAA Review and Approval of Airport Layout and includes a residential through-the-fence access point(s).

- ☐ Are the taxiway/taxilane dimensions for the residential access taxiway(s) depicted from the airport boundary to existing infrastructure?
- ☐ Are all safety dimensions depicted?
- ☐ Are all obstruction surfaces (14 CFR part 77, threshold siting, all design surfaces contained in Advisory Circular 150-5300-13, *Airport Design*, etc.) clear?
- ☐ Do all the proposed structures associated with the residential use (houses, hangars, garages, etc.) include elevations? Do any of these structures penetrate any clear zone?
- ☐ Do any proposed structures associated with the residential component (houses, hangars, garages, etc.) impact existing or planned navigational aids or other equipment?
- ☐ Does the sponsor maintain control of all Runway Protection Areas and Runway Protection Zones? If not, how does the sponsor ensure no residential activities are permitted in these areas?
- ☐ If the sponsor has an air traffic control tower, does the tower have a clear line of sight to view the access point?
- ☐ If the sponsor does not utilize physical access controls, such as fencing and gates, can the sponsor adequately separate residential activities from the airport property?

Access Agreement Review Sheet

Use Appendix D to review the (draft) access agreement(s).

Special Conditions

The approved ALP must contain a special condition stipulating the FAA will not pay to relocate, soundproof, or mitigate noise at any homes with residential through-the-fence access.

APPENDIX I

Revised Access Plans: Required Documentation and Supplemental Standards for Commercial Service Airport Sponsors Proposing to Extend/Renew Existing Access

Required Documentation:

1. Copies of draft access agreement(s) and/or governing documents (i.e. agreements; easements; deeds; Covenants, Conditions, and Restrictions, etc.) developed to meet the standard of compliance for existing residential through-the-fence agreements and reflecting the supplemental standards listed below.
2. A current (developed or revised within the last five years) airport master plan.
3. An updated ALP. All access points should be depicted and proposed for FAA's unconditional approval.
4. A revised residential through-the-fence access plan developed to meet the standard of compliance for existing residential through-the-fence access at commercial airports (see Appendix E) and reflecting the supplemental standards listed below.

The following supplemental standards must be addressed in the revised access plan:

- The new access agreement fully complies with the terms and conditions contained in section 136 of P.L. 112-95.
- The term of access does not exceed 20 years.
- Explains how one of the following applies:
    a) The airport's current master plan (developed or revised within the last five years) identifies adequate areas for growth that are unaffected by the current residential through-the-fence access; or
    b) The airport sponsor has the legal right to terminate the through-the-fence access agreement to accommodate airport development; or
    c) The airport sponsor can require its residential through-the-fence user(s) to relocate their access points, at the expense of the user(s), to improve safety on or off the airport to accommodate growth on the airport.
- The revised access agreement allows the airport sponsor to impose and enforce safety requirements and airport operating rules on residential through-the-fence user(s) identical to those imposed on airport tenants and transient users.
- The airport sponsor obtains avigation easements from residential through-the-fence user(s) for overflight, including unobstructed flight through the airspace necessary for takeoff and landing at the airport.
- The access plan explains how residential through-the-fence user(s) acknowledge that their property will be affected by aircraft noise and emissions and that aircraft noise and emissions may change over time.
- The revised access agreement contains a provision in which residential through-the-fence user(s) acknowledge that their property will be affected by aircraft noise and emissions and waives any right to bring an action against the airport sponsor for operations at the airport.
- The revised access agreement requires residential through-the-fence user(s) to complete and file FAA Form 7460-1, Notice of Proposed Construction or Alteration, and obtain a "no hazard" determination prior to erecting and/or altering any structures on their property.

- The revised access agreement contains a provision addressing the sponsor's mechanism for mitigating (removal, tree trimming, marking, lighting, etc.) existing airport hazards, and for stopping construction or establishment of future airport hazards, including wildlife attractants.
- The airport sponsor or local zoning authority has adopted measures to limit future use and ownership of the residential through-the-fence properties to aviation-related uses (in this case, hangar homes) or development the FAA generally considers as compatible with airport operations (if available under state law).
- Any restrictions or provisions adopted by a homeowners association(s) or other entity representing the residential through-the-fence users are enforceable by the airport sponsor and may not be cancelled without cause.
- The access agreement is subordinate to the airport sponsor's current and all future federal obligations.
- The access plan describes the airport sponsor's ongoing program to counsel residential through-the-fence users about their rights and responsibilities under the access agreement as well as the airport sponsor's federal obligations.

APPENDIX J

FAA Review and Action on Revised Access Plans submitted by Commercial Service Airport Sponsors Proposing to Extend/Renew Existing Access

Review:

- ☐ Verify all required documentation is included.
- ☐ Verify completion of the environmental review needed to unconditionally approve any access points on the updated ALP.
- ☐ Review the revised residential through-the-fence access plan as required under Appendix F applying the following supplement standards:
    - ☐ Does the plan fully comply with the terms and conditions required by statute?
    - ☐ Is the access agreement subordinate to the sponsor's obligations?
    - ☐ Does the revised access plan address the sponsor's ability to accommodate future growth?
    - ☐ Has the sponsor or local zoning authority adopted measures to limit future use and ownership of the residential through-the-fence property to aviation-related uses such as hangar homes or development the FAA generally considers as compatible with airport operations (if available under state law)?
    - ☐ Does the sponsor have an ongoing program to counsel residential through-the-fence users about their rights and responsibilities under the access agreement as well as the sponsor's Federal obligations?
    - ☐ Are any restrictions or provisions adopted by a homeowners association(s) or other entity representing the residential through-the-fence users enforceable by the sponsor? Can they be cancelled without cause?
- ☐ Review the revised residential through-the fence access agreement.
    - ☐ Is the term of access limited to 20 years or less?
    - ☐ Does the revised access agreement require residential through-the-fence user(s) to acknowledge that their property will be affected by aircraft noise and emissions and that aircraft noise and emissions may change over time?
    - ☐ Does the revised access agreement contain a provision in which residential through-the-fence user(s) acknowledge that their property will be affected by aircraft noise and emissions and waive any right to bring an action against the sponsor for operations at the airport?
    - ☐ Does the revised access agreement allow the sponsor to impose and enforce safety requirements and operating rules on residential through-the-fence user(s) identical to those imposed on airport tenants and transient users?
    - ☐ Does the revised access agreement contain a provision addressing the sponsor's mechanism for mitigating (removal, tree trimming, marking, lighting, etc.) existing airport hazards, and for stopping construction or establishment of future airport hazards, including wildlife attractants?
    - ☐ Does the revised access agreement require residential through-the-fence user(s) to complete and file FAA Form 7460-1, Notice of Proposed Construction or Alteration, and obtain a "no hazard" determination prior to erecting and/or altering any structures on their property?

☐ Has the sponsor obtained avigation easements from residential through-the-fence user(s) for overflight, including unobstructed flight through the airspace necessary for takeoff and landing at the airport?

Action:
ADOs/Regional Offices should review all materials submitted by the sponsor and complete the review checklists. Any areas of concern should be noted to ACO-100 in the corresponding section of the forwarding memorandum. Specific concerns related to previous FAA recommendations or the sponsor's ability to address the supplemental standards should be noted.

ACO-100 should review all materials submitted by the sponsor to determine if the airport sponsor meets all standards of compliance for existing residential through-the-fence access agreements, as well as the supplemental standards. ACO-100 may recommend changes to the revised access agreement and/or plan needed to address these standards. Final FAA acceptance authorizes the sponsor to extend or renew the existing access agreement.

Special Conditions
The approved ALP must contain a special condition stipulating the FAA will not pay to relocate, soundproof, or mitigate noise at any homes with residential through-the-fence access.