

Part IV: Airports and Aeronautical Users

Chapter 6. Rights and Powers and Good Title

6.1 Introduction.

This chapter discusses the sponsor's federal obligation to preserve its rights and powers and to maintain good title to the airport property. The sponsor's federal obligations discussed in this chapter apply to both public and private airport sponsors who are obligated under agreements with the federal government. This chapter also discusses related issues such as transfers to other recipients, delegation of federal obligations, subordination of title, airport management agreements, and Airport Investment Partnership Program (AIPP).

6.2 Responsibilities.

It is the responsibility of the Regional Airports Divisions (RO) and Airport District Offices (ADOs) to ensure the sponsor can fulfill its federal responsibilities at all times. Accordingly, these offices will advise sponsors when asked, if the terms of any proposed agreements have the effect of limiting the sponsor's ability to fulfill its federal obligations.

The FAA is also responsible for approving the transfer of an obligated airport from one sponsor to another sponsor. For general aviation and non-reliever airport transfers, the Region or ADO leads the review of the submitted documents. For all other airports, the FAA headquarters Office of Airport Compliance and Management Analysis (ACO) will take the lead, in coordination with the RO or ADO, to review the submitted documents and decide whether to concur with the transfer.

When requested, the ACO will advise sponsors on the Airport Investment Partnership Program¹ and the Associate Administrator for Airports will sign the Record of Decision for applications that are approved. See [Airport Investment Partnership Program](#)

6.3 Controlling Grant Assurances.

a. Grant Assurance 4, *Good Title*.

This grant assurance requires a sponsor to hold good title to the landing areas of the airport or the site thereof or will give satisfactory assurance to the FAA that good title will be acquired. (See *also* 49 U.S.C. § 47106(b)). Additionally, for noise compatibility program projects to be carried out on the property of the sponsor, the sponsor must

¹ 49 U.S.C. § 47134.

hold good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or give assurance to the Secretary that good title will be obtained. (See [FAA Grant Assurances](#)).

In some cases, based on information available, the FAA may be unable to determine how the airport property was acquired or if a sponsor has title to all airport property. Adding to the confusion, sometimes the sponsor's Exhibit 'A' Airport Property Inventory Map (Exhibit 'A') may not be current or show all property interests. In such cases, FAA should request that the sponsor provide the FAA with a complete title search report of all airport property depicted on the current Airport Layout Plan (ALP) and Exhibit 'A'. This should identify the actual parcels and the means of acquisition for the entire airport property.

When determining initial eligibility, the FAA should require a title search report to ensure that the sponsor has good title to the parcels necessary to achieve the purpose of the grant and the role of the airport.

When a sponsor acquires land for a project funded under an AIP grant, the FAA and the sponsor must follow the FAA Advisory Circular (AC) for land acquisition to ensure the sponsor has acquired sufficient land rights. (See [AC 150/5100-17 - Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects](#)). The FAA may also request a title search report when the FAA has concerns about the documentation of land holdings on an Exhibit 'A'. When transferring sponsorship or reviewing an application to the Airport Investment Partnership Program, the FAA may request a title search report.

A lack of good title can prevent the processing of a grant – even without a finding of noncompliance – because such a sponsor would not be eligible as a threshold requirement. If a sponsor gives away good title, such action might also be a violation of [Grant Assurance 5, Preserving Rights and Powers](#). The determination of good title does not necessarily require fee simple ownership. Long-term leases may give sufficient rights to allow an AIP improvement grant. However, the lease term generally must exceed the useful life of the anticipated project. A lease may need to be extended to maintain good title.

b. Grant Assurance 5, Preserving Rights and Powers.

A sponsor cannot take any action that may deprive it of its rights and powers to direct and control airport development and comply with the grant assurances. [Grant Assurance 5, Preserving Rights and Powers](#), requires a sponsor, not to sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in

certain property shown on the Exhibit 'A' without the prior written approval of the FAA.² (See chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*).

Of particular concern to the FAA is granting a property interest to tenants on the airport. These property interests may restrict the sponsor's ability to preserve its rights and powers to operate the airport in compliance with its federal obligations. Providing developers with an option to acquire a fee interest in federally obligated airport property is not acceptable to the FAA under [Grant Assurance 5, Preserving Rights and Powers](#). An option to acquire a fee interest in airport property should be considered a sale of airport property and may require an FAA release.

The sponsor must maintain its ability to ensure that it can operate the airport in compliance with its grant obligations.

6.4 Airport Governance Structures.

The sponsor determines the management and organizational structure of an airport. The type of structure employed can vary depending on whether the sponsor delegates all or some of its management responsibilities to a third party.

a. Co-Sponsorship Agreement.

Where the airport is under the control of more than one sponsoring agency, such as when the airfield and the passenger terminal are owned and operated by different agencies, the sponsors may be required to enter into an agreement satisfactory to the FAA to ensure that the joint operation of the airport will provide sufficient rights and powers to meet Airport Improvement Program (AIP) grant obligations. (See [FAA Order 5100.38, Airport Improvement Program Handbook, Tables 2-9, 2-10, and 2-11](#)).

b. Delegation of Federal Obligations.

Sponsors may enter into arrangements that delegate certain federal obligations to other parties. For example, an airport authority may arrange with the public works department of a local municipality to meet certain maintenance commitments, or a sponsor may contract with a utility company to maintain airfield lighting equipment. More prevalent at small airports are arrangements in which the sponsor relies upon a commercial tenant or franchise operator to cover a broad range of airport operating, maintenance, and management responsibilities.

² See also, FAA Reauthorization Act of 2024 (Pub. L. 118-63).

None of these contractual delegations of responsibility absolves or relieves the sponsor of its primary obligations to the federal government. The sponsor should ensure that delegations to other parties do not result in a conflict of interest or a violation of the federal grant assurances. The sponsor shall not delegate or transfer its authority to negotiate and enter into aeronautical and nonaeronautical leases and agreements unless approved by the FAA.

6.5 Rights and Powers.

As discussed above, [Grant Assurance 5, *Preserving Rights and Powers*](#), requires the airport sponsor to preserve its rights and powers to control and operate the airport in accordance with its federal obligations. The following addresses this grant assurance:

a. Airport Sponsors.

- (1) Sponsor Actions.** The sponsor must obtain the Secretary’s written approval before taking any action that would deprive it of the rights and powers necessary to perform any terms, conditions, and assurances in the grant agreement. In addition, the sponsor must take the actions necessary to regain its rights and powers, including extinguishing rights of other parties that prevent the sponsor from complying with its federal obligations. (See [Grant Assurance 5\(a\)](#)). A method a sponsor may use in this regard is to place a “subordination clause” in all of its tenant leases and agreements that subordinates the terms of the lease or agreement to the federal grant assurances and surplus property obligations. A subordination clause may assist the sponsor in amending a tenant lease or agreement that otherwise deprives the sponsor of its rights and powers. A typical subordination clause will state that if there is a conflict between the terms of a lease and the federal grant assurances, the grant assurances will take precedence and govern.
- (2) Private Airport Sponsors.** If the sponsor is a private sponsor, it will assure the FAA that the airport will continue to function as a public-use airport. (See [Grant Assurance 5\(e\)](#)).
- (3) Changes in Property Interest.** The sponsor must obtain the FAA’s written approval before it sells, leases, encumbers, transfers, destroys, or disposes of any of its interest in certain airport or noise compatibility property.³ (See chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*). If the FAA finds the transferee eligible to assume the obligations of the grant agreement and to have the power, authority, and financial

³ See also, [FAA Reauthorization Act of 2024 \(Pub. L. 118-63\)](#).

resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest and make binding upon the transferee all of the terms, conditions, and assurances contained in the grant agreement. (See [Grant Assurance 5\(b\)](#)). For more information on noise and privately owned land, see also section 6.5.b, *Airport Sponsors*. For more information on airport transfers see also section 6.7, *Airport Sponsor Transfers*.

(4) Contracting Out Airport Management. If the sponsor arranges for another entity to manage the airport, it must retain sufficient rights and authority to assure that the third-party manager operates and maintains the airport in accordance with the federal obligations and the sponsor's grant agreement. The sponsor is not relieved of its responsibility under the grant assurances or agreement. (See [Grant Assurance 5\(f\)](#); see also, section 6.8, *Airport Management and Development Arrangements*).

(5) Residential Through the Fence. Residential through-the-fence (RTTF) agreements allow people who own residential property with aircraft storage facilities near an airport to access the airport from off-airport property. [Grant Assurance 5\(g\)](#) 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 Pub. L. 112-95, [FAA Modernization and Reform Act of 2012] and their sponsor assurances." (See chapter 12, *Review of Aeronautical Lease Agreements*, and FAA's [Residential Through-the-Fence Access Toolkit](#)).

b. Other Entities.

(1) Noise Compatibility Program Projects by Non-Sponsors. For noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, the grantee will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. The grantee will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement. (See [Grant Assurance 5\(d\)](#)).

(2) Noise Compatibility Program Projects on Privately Owned Land. For noise compatibility projects to be carried out on privately owned property, the grantee will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. The grantee will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement. (See [Grant Assurance 5\(e\)](#)).

6.6 Good Title.

a. Title and Property Interest.

(1) Title Requirement (Grant Assurance 4, Good Title). As set forth in 49 U.S.C. § 47106(b)(1), no project grant application for airport development may be approved by the Secretary unless the sponsor, a public agency, or the United States holds good title (satisfactory to the Secretary) to the airfield, or gives assurance to the Secretary that good title will be acquired. Good title is a precondition for award of an AIP grant and is usually reviewed in connection with grant applications rather than as a compliance issue for a grant already awarded. The Airports Financial Assistance Division, APP-500, in coordination with ACO, should be advised of any issue regarding good title.

(2) Airport Property Interest. Title with respect to the airport land can be either fee simple or title with certain rights excepted or reserved, such as a lease with a term that is at least as long as the useful life of the project. (See [FAA Order 5100.38, Airport Improvement Program Handbook](#), Table 2-9, *Legal and Financial Requirements for Public Agencies*).

Any encumbered title must not deprive the sponsor of possession or control necessary to carry out all federal obligations. A deed containing a reversionary clause, (e.g., “so long as the property is being used for airport purposes”) does not negate good title provided that the other federal conditions or requirements are satisfied.

Where any rights excepted or reserved would prevent the sponsor from carrying out its federal obligations under the grant, such rights must be extinguished prior to approval of the project subject to an AIP grant.

- (3) Determination of Adequate Title.** A certification by a sponsor that has acquired property interests required for a project may be accepted in lieu of any detailed title evidence. (See [FAA Order 5100.37B, Land Acquisition and Relocation Assistance](#) and [Advisory Circular 150/5100-17, Appendix D, Guidelines for Sponsor Certification of Title](#)). Without such certification, the sponsor's submission of title evidence must be reviewed to determine adequacy of title. The adequacy of such title is an administrative determination made by FAA Office of Airports personnel.
- (4) Title Requirement Prior to Notice to Proceed.** Authorization for the sponsor to issue a notice to proceed with grant funded work on property to be acquired by the sponsor should not be given until it has been determined that all property interests on which construction is to be performed have been, or will be, acquired in conformance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). (See [Advisory Circular 150/5100-17, Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects](#), for additional information on this topic).

b. Subordination of Title.

(1) Subordination.

The FAA will normally consider subordination of the sponsor's fee interest in airport property by mortgage, easement, or other encumbrance as a transaction that would deprive the sponsor of the rights and powers necessary to fulfill its federal obligations.

However, the sponsor, with FAA approval, may subordinate its interest in a tenant lease to facilitate tenant financing for development on airport property. In this case, the sponsor agrees only that the mortgage or financing is serviced ahead of the payment to the sponsor for the lease of airport property.

(2) Review.

If the FAA determines that an encumbrance may deprive a sponsor of its ability to fulfill its federal obligations, the Secretary may withhold approval of grant applications from the sponsor. (See chapter 2, *Compliance Program*, section 2.9c, *Withholding AIP Payments and Grant Application Approval*). The Region or ADO should review such encumbrance documents and make a determination on a case-by-case basis. Determinations should be in accordance with [Grant Assurance 4, Good Title, and Grant Assurance 5, Preserving Rights and Powers](#). It may be appropriate to consult with the FAA Office of Chief Counsel (AGC-610).

(3) FAA Determination.

The FAA should base its concurrence with any lien, mortgage, or other encumbrance to federally obligated property on a factual and thorough documented determination. The FAA office working on the issue should ask the sponsor to execute a declaration recognizing that the FAA's grant obligations survive a foreclosure or bankruptcy. The FAA's grant obligations should be recorded on the property. The possibility of foreclosure or other action adverse to the airport should be so remote that it reasonably precludes the possibility that such a lien, mortgage, or other encumbrance will prevent the sponsor from fulfilling its federal obligations.

6.7 Airport Sponsor Transfers.⁴**a. Eligibility Determination for a New Sponsor.****(1) General.**

Generally, the Region or ADO will determine whether a potential sponsor is capable of assuming federal responsibilities. This review requires that the sponsor be legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants, and other federal obligations required of the sponsor and contained in the Airport Improvement Program (AIP) project application and grant agreement forms.

(2) Authority to Act as a New Sponsor.

The proposed new sponsor must show it has the authority to act as a sponsor. FAA will require an opinion of the proposed sponsor's attorney as to its legal authority to act as a sponsor and to carry out its responsibilities under the applicable agreements when deemed necessary or desirable.⁵

As a condition of the release of the existing sponsor obligations, the FAA requires the new sponsor to assume all existing grant obligations and federal land conveyance obligations. The FAA will review transfer documents to ensure clarity regarding the assignment of responsibility for the federal obligations. In some instances, it may be appropriate to continue the existing sponsor's obligations in effect, in full or in part, especially where the existing sponsor is the only local government entity that could assure compliance. For example, a local municipality with zoning authority may transfer the airport to an airport authority

⁴ See [Guidance for Transfer of Federally Obligated Airports](#).

⁵ See also, [FAA Order 5100.38, Airport Improvement Program Handbook](#).

with no off-airport zoning power. In that case it would be appropriate not to release the municipality from its existing obligations to protect the airport environs from incompatible uses and obstructions.

(a) Grant Assurance 5.

[Grant Assurance 5, *Preserving Rights and Powers*](#), prohibits the airport sponsor from entering into an agreement that would deprive it of any of its rights and powers that are necessary to perform all of the conditions in the grant assurances or agreement or other federal obligations unless another sponsor/operator assumes the obligation to perform all such federal requirements.

When an airport sponsor transfers authority to another sponsor, whether public or private, the FAA will review the transfer document to ensure there is no ambiguity regarding responsibility for the federal obligations. The FAA has a statutory obligation to ensure that an airport sponsor (1) is capable of assuming all grant assurances and other federal obligations; and (2) is legally and financially able to assume and carry out its obligations as sponsor and operator to maintain and operate the airport as a public-use airport in a safe manner according to FAA regulations and standards.⁶ Before a transfer to another public entity can take place, the FAA must review and specifically determine that the new airport sponsor is eligible and willing to perform all the obligations of existing grant agreements and federal property conveyances. Otherwise, the FAA will not permit the transfer to occur.

(b) AIP Eligibility.

Eligibility to receive funds under the AIP is contingent upon the type of sponsor and the type of activity for which the funds are sought. For more information see [FAA Order 5100.38, chapter 2, *Who can get a grant?*](#); see also [Guidance for Transfer of Federally Obligated Airports](#).

⁶ See, e.g., the Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. §§ 40101, 40113, 40114, 46101, 46104, 46105, 46106, 46110; and the Airport and Airway Improvement Act of 1982, as amended and recodified, 49 U.S.C. §§ 47105(d), 47106(d), 47107(k), 47107(l), 47111(d), 47122.

b. FAA Review of the Proposed Sponsor's Application.

The FAA, as part of its review of the proposed sponsor's application will determine if the proposed sponsor can satisfy the requirements of the grant assurances. The FAA will also determine if existing sponsor's practices are consistent with its grant obligations. In cases where corrective action is required, the FAA will bring it to the attention of both parties. Grant assurances directly related to the federal funding of airport development projects will be addressed in the grant application process. The following provides a summary of the applicable grant assurances:

- **Assurance 3, Sponsor Fund Availability** – The review will confirm whether the sponsor has sufficient funds available to assure operation and maintenance of airport related costs not funded by the Federal Government.
- **Assurance 4, Good Title** – The review will confirm whether the sponsor has good title or assures good title will be acquired satisfactory to the FAA. The sponsor, a public agency, or the Federal Government must hold good title to the areas of the airport used or intended to be used for the landing, taking off, or surface maneuvering of aircraft, or assures good title will be acquired. A good title is a marketable title, free and clear of all liens and encumbrances (except those specified and usually agreed to by the government in advance). If the sponsor is acquiring land in the project, a property inventory map (Exhibit A) should be updated unless it is part of the approved airport layout plan.
- **Assurance 5, Preserving Rights and Powers** – The review will confirm whether or not the sponsor has surrendered by contract its capability to control the airport and to carry out its commitments to the Federal Government. The sponsor assures that it will not take an action that would operate to deprive it of any of the rights and powers necessary to perform its federal obligations without the written approval of the FAA. The FAA is looking to identify any terms and conditions of the arrangement which could prevent the realization of the full benefits for which the airport was constructed, or which could develop into a restriction on the new owner's ability to meet its obligations to the Federal Government.

Any lease or agreement granting the right to serve the public on the premises of an airport so obligated should be subordinate to the authority of the owner to establish sufficient control over the operation to guarantee that airport users will be treated fairly. (See also section 6.5, *Rights and Powers*).

- **Assurance 19, Operations and Maintenance** – The review will confirm whether the sponsor will operate the airport in a safe and serviceable condition in accordance with minimum standards or as may be required or prescribed by applicable federal, state, and local agencies for maintenance and operations. This includes operating and maintaining all facilities with due regard to climatic and flood conditions, maintain a program of regular airport inspections, and a promptly notifying pilots of any condition affecting the aeronautical use of the airport, and that the sponsor will request FAA’s approval to close the airport for nonaeronautical activity.
- **Assurance 20, Hazard Removal and Mitigation** – The review will confirm whether the sponsor will take appropriate action to mitigate existing airport hazards and prevent the establishment or creation of future airport hazards.
- **Assurance 21, Compatible Land Use** – The review will confirm that the sponsor will take appropriate action, to the extent reasonable, including the adoption of zoning laws to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft.
- **Assurance 22, Economic Non-Discrimination** – The review will confirm whether the sponsor will make the airport available as an airport for public-use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities including commercial aeronautical activities. (See 49 U.S.C. § 47107(a)).
- **Assurance 23, Exclusive Rights** – The review will confirm that no exclusive right exists or will exist for the use of the airport to provide aeronautical services to the public. (See 49 U.S.C. §§ 47107(a)(4) and 40103(e)).
- **Assurance 24, Fee and Rental Structure** – The review looks to ensure that the sponsor maintains a fee and rental structure for facilities and services that will make the airport as self-sustaining as possible, in accordance with 49 U.S.C. § 47107(a)(13) and [FAA’s Policy Regarding Airport Rates and Charges, 78 Fed. Reg. 55330](#) (September 10, 2013).
- **Assurance 25, Airport Revenue** – The review will confirm whether airport revenue is used for the capital and operating cost of the airport and that all airport revenue will be transferred to the new sponsor. (See [FAA’s Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696](#) (February 16, 1999) [Revenue Use Policy]).

- **Assurance 29, Airport Layout Plan** – The review will confirm whether the sponsor keeps an airport layout plan up to date at all times. (See 49 U.S.C. § 47107(a)(16)).⁷
- **Assurance 30, Civil Rights** – The review will confirm whether the sponsor takes measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin (including limited English proficiency), sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, federal financial assistance to the airport. (See 49 U.S.C. § 47123).

c. Documents Required for FAA Review and Approval.

- Public Agency's enabling legislation or act that gives it the authority to operate and own the airport(s).
- A copy of the executed or draft Operation and Management Agreement for the specific airport, if another party conducts operation and management of airport.
- Proof of Good Title, including copy of executed deed and tract information.
 - Attorney assurance by letter to the FAA that any title issue is being cured if there are parcels for which good title cannot be confirmed.
- An executed copy of the Assignment and Assumption Agreement, including list of transferred grants if new sponsor purchased airport from a previous FAA sponsor.
- Document wherein the new sponsor must agree to assume all existing federal obligations.
 - Prior sponsor will not be released from its obligations not assumed by the new sponsor - in some circumstances, the prior sponsor is not fully released from the obligations.
- Any other agreements between the parties relating to the terms of the transfer and the new sponsor's operation of the airport.
- Public Agency's attorney legal certification that the new airport sponsor meets the legal requirements to carry out the certifications, representations, warranties, assurances, covenants and other obligations required of sponsors which are contained in the AIP project application and grant agreement forms.

⁷ See also [FAA Reauthorization Act of 2024 \(Pub. L. 118-63\)](#).

- Applicant's audited financial statements for the most recent fiscal year end.
 - May include review of prior Payment in Lieu of Taxes (PILOT).
- Exhibit 'A' Property Inventory Map and Airport Layout Plan.
- Approval of other government agencies, if applicable.
 - As a rule, the name of the approving agency and date of approval will be sufficient.
 - When a state law requires channeling through a state aeronautics commission, the approval of that commission must be indicated by endorsement or by other means which the commission may want to use.
- Part 139 Application for Certificate, amendments to Airport Certification Manual (ACM)/Airport Certification Specifications (ACS), if applicable.
 - Certification of the new sponsor is generally a simple process if the airport already holds a Part 139 Certificate.
 - Part 139 Certificates are not transferable.
 - A new sponsor must apply for the Certificate, and FAA must issue the Certificate at the time of the transfer in order to maintain uninterrupted service.
 - FAA will not release a sponsor from obligations that occurred prior to the transfer such as revenue diversion.
- Transportation Security Administration approval and updated security manual, if applicable.
- Documentation required pursuant to the National Environmental Policy Act of 1970 (42 U.S.C. §§ 4321-4347) (NEPA) and applicable Department of Transportation and Federal Aviation Administration Orders implementing NEPA.

d. Transfer Document Review.

For general aviation and non-reliever airport transfers, the Region or ADO leads the review of the submitted documents. Once the Region/ADO completes its review, the Region or ADO provides the initial decision and completed package to ACO for final review and concurrence. For all other airports, ACO will take the lead, in coordination with the Region or ADO, to review the submitted documents, and decide whether to concur with the transfer.

The review is intended to ensure that the sponsor is legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants, and other federal obligations required of the sponsor, and will maintain the necessary control of the airport needed to carry out its commitments to the federal government.

During its review, the Region or ADO will identify any terms and conditions of a lease, contract, or agreement that could prevent the realization of the full benefits for which the airport was constructed or that could render the sponsor noncompliant with its federal obligations. The sponsor should place a standard clause in all its agreements that the terms and conditions of the agreement shall be subordinate to the federal grant assurances and any surplus property federal obligations. (See section 6.5, *Rights and Powers*).

FAA will require an opinion of the proposed sponsor's attorney as to its legal authority to act as a sponsor and to carry out its responsibilities under the applicable agreements when deemed necessary or desirable.⁸

e. Transfer of Federally Conveyed Property.

The federal government conveys property to public agencies for the operation of an airport. Although these property conveyance instruments may permit the conveyance to a third party, the sponsor must obtain FAA approval prior to its transfer, and the transferee must assume the federal obligations of the original grantee. FAA approval of the transfer will depend on the terms and conditions in the original instrument of transfer. (See chapter 3, *Federal Obligations from Property Conveyances*). FAA approval will also depend on whether the airport is subject to other existing federal agreements. In addition, a deed of release may be required. (See chapter 22, *Land Use Changes and Releases of Federally Acquired and Federally Conveyed Land*, for additional information).

f. Disputed Changes in Sponsorship.

The 2024 Reauthorization codified the FAA Administrator's authority to approve any change in the sponsorship of, or operational responsibility, for the airport sponsor of record to another public or private entity. Congress also outlined the conditions for the Administrator's approval of a disputed change of airport sponsorship. (See Pub. L. 118-63, Sec. 757(b)). These conditions generally mirror FAA's [*Notice of Policy on Evaluating Disputed Changes of Sponsorship at Federally Obligated Airports*](#), 81 Fed. Reg. 36144 (June 6, 2016).

⁸ See also [FAA Order 5100.38, Airport Improvement Program Handbook](#).

A disputed change of airport sponsorship means any action that seeks to change the ownership, sponsorship, or governance of, or operational responsibility for, a federal obligated, publicly owned airport, including any such change directed by judicial action or State or local legislative action, where the airport sponsor of record initially does not consent to such change. (See Pub. L. 118-63, Sec. 757(d)).

Under the 2024 Reauthorization, the Administrator shall not approve any disputed change of airport sponsorship unless the Administrator receives:

- (1) written documentation from the airport sponsor of record consenting to the change in sponsorship or operation;
- (2) notice of a final, non-reviewable judicial decision requiring such change; or
- (3) notice of a legally-binding agreement between the parties involved.

The Administrator may not evaluate or approve a disputed change of airport sponsorship where a legal dispute is pending before a court of competent jurisdiction. (See Pub. L. 118-63, Sec. 757(b)).

In addition, the Administrator “shall independently determine whether the proposed sponsor or operator is able to satisfy the conditions the Administrator determines necessary, that any change in the ownership, sponsorship, or governance of, or operational responsibility for, a federally obligated, publicly owned airport is consistent with existing Federal law, regulations, existing grant assurances, and Federal land conveyance obligations.” (See Pub. L. 118-63, Sec. 757(c)).

g. Sponsor Insolvency.

In the event that an airport sponsor, (*i.e.*, the municipality), becomes insolvent and seeks reorganization pursuant to Chapter 9 of the Federal Bankruptcy Code (11 U.S.C. § 901 et seq.), the sponsor will need to inform the FAA (Region and/or ADO). The FAA will then need to inform the bankruptcy court that the federal government has an interest in the properties of the airport sponsor. Any federal interest (such as instrument of transfer/deed/federal obligations) in the properties should have been recorded with the sponsor’s local register of deeds at the time of transfer or grant issuance.

h. Transfers of Privately Owned Public-Use Airports under 49 U.S.C. § 47133.

Privately owned public-use airports receiving federal assistance are bound by many of the same laws, regulations, and grant assurances that govern publicly owned airports. Consequently, privately owned airports receiving federal assistance generally are not transferred to another entity. The FAA’s [Revenue Use Policy](#) imposes restrictions on the proceeds from the sale of airport property. However, there is an exception under federal law that permits a private sponsor to be compensated for the sale of a privately owned public-use airport to a public agency.

Under 49 U.S.C. § 47133(b)(2), a private airport sponsor can sell the airport to a public agency, and if certain conditions are met, including grants fund reimbursement, the private owner can retain a portion of the sales proceeds without restriction.

Relatedly, the ACO will review the stock sale of the corporate entity managing a privately owned public-use airport to confirm there is no change to the airport sponsor. Such request should be submitted directly to ACO.

i. United States Government.

(1) Conveyance to a Federal Agency.

Unless otherwise prohibited by the obligating or transfer document, the FAA cannot prohibit a sponsor from conveying to a federal agency any airport property that was transferred under the Surplus Property Act of 1944, as amended. Such a conveyance, whether voluntary or otherwise, does not place the conveying sponsor in default of any obligation to the United States. Such a conveyance has the effect of a complete release of the conveying sponsor. These transfers are rare and historically were initiated by the Department of Defense to obtain airport property for military purposes. Regions/ADOs and airport sponsors should contact ACO when considering such a conveyance.

(2) FAA Objections.

When a sponsor proposes such a conveyance or has accomplished the conveyance without prior notice, the Region or ADO will determine if the transfer adversely impacts civil aviation. If so, it must make any objection immediately known to both the sponsor and the federal agency involved. If the Region or ADO cannot obtain a satisfactory solution, it should submit a full and complete report to ACO without delay. ACO will then continue to work with the sponsor and the federal agency to reach a satisfactory solution.

6.8 Airport Management and Development Arrangements.

This section describes the types of general arrangements a sponsor may enter into for the management and development of the airport.

Airport sponsors entering into an agreement with another entity to develop and/or operate the airport must ensure that the ultimate development or management plan is in compliance with all grant assurances, FAA's [Revenue Use Policy](#), and 49 U.S.C. § 47133. This includes, but is not limited to, separating the agreement into discrete stand-alone agreements for airport management, airport development, and/or FBO services. It is contrary to the Revenue Use Policy, 49 U.S.C. § 47133, and [Grant Assurance 25, Airport Revenues](#), to enter into any agreements for the operation and development of the airport that includes revenue sharing.

The Airport Investment Partnership Program (AIPP) is a unique program where a private operator may be exempt from the revenue use requirements to the extent necessary to permit the private operator to earn compensation from the airport operations. Additionally, under this program, the airport owner or leaseholder may be exempt from repayment of federal grants, return of property acquired with federal assistance, and the use of proceeds from the airport's sale or lease to be used exclusively for airport purposes. This program and the exemptions are explained further in section 6.9, *Airport Investment Partnership Program*.

The following is applicable to management or development arrangements that are not part of the AIPP program:

a. Types of Airport Arrangements.

Sponsors may enter into a variety of contractual arrangements to manage and/or develop the airport (e.g., contract, agreement, lease). Regardless of the title of the arrangement, the purpose is to allow a third party to manage or develop the airport on behalf of the airport sponsor.

(1) Airport Management.

These are arrangements with another entity to manage all or portions of the airport. The arrangements may include airport maintenance and supervision of operations. This may have the effect of placing a private entity in a position of substantial control over airport decisions that may affect the public sponsor's grant compliance. This kind of agreement should include provisions to adequately protect and preserve the sponsor's rights and powers to assure grant compliance. In addition, these should be stand-alone agreements that do not include the provision of aeronautical services at the airport.

(2) Airport Development.

These are arrangements with another entity to develop all or portions of the airport. Such arrangements should not encumber airport property for long periods of time without putting it to active use and thereby precluding other developers or aeronautical users access to the property. The agreement may give the right to conduct commercial aeronautical services on the airport directly and to control the granting of such commercial rights to third party tenants. To be effective, these arrangements should include clear performance goals and milestones. This situation creates a high potential for violating [Grant Assurance 23, Exclusive Rights](#), unless mitigated, and the sponsor should retain sufficient rights to prevent and reverse any exclusive rights on the airport.

b. Principles of Airport Agreements.**(1) Responsibility.**

Although the sponsor may delegate or contract with an agent of its choice for airport management or development, such arrangements do not relieve the sponsor of its federal obligations. Such arrangements have a high potential for a conflict of interest if the agent provides aeronautical services and at the same time can exercise some control over access and competition at the airport. Consequently, any agreement conferring such responsibilities must contain adequate safeguards to preserve the sponsor's control over the actions of its agent. In particular, the airport sponsor remains obligated to [Grant Assurance 5, Preserving Rights and Powers](#), which provides, in part:

f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in this Grant Agreement and shall ensure that such arrangement also requires compliance therewith.

To avoid conflicts with a sponsor's federal obligations, the FAA recommends any management or development agreement to be a separate agreement from any aeronautical services agreement. When these functions are defined in one agreement, the sponsor should make provisions for the survival and separation of management responsibilities in the case of default. This makes the respective responsibilities for each activity clear and enables the sponsor to deal with a possible default in one activity (*i.e.*, management agreement) without terminating a second, separate activity not subject to a default. An example of such an arrangement could consist of an airport management agreement with FBO services (providing these services in-house or outsourcing the services) and a development agreement for a terminal complex.

(2) Terms of the Agreement.

These agreements should include specific terms and conditions that clearly describe that the duties and responsibilities must be performed in accordance with applicable federal, state, and local laws, including applicable grant assurances. The agreement must also include a reservation of rights to the airport sponsor so that the sponsor maintains the ability to assure the airport is operated in accordance with Title 49, United States Code, the regulations and the terms, conditions and grant assurances.

(3) Protect the Sponsor's Rights and Powers.

Any agreement needs to have provisions to prevent a private operator from interfering with the airport sponsor's functions, rights, powers, and responsibilities, (e.g., airport development and planning, funding, access by other aeronautical and service providers), as required under Grant Assurance 5. Inclusion of contract provisions similar to the following can assure that the public sponsor retains the ability to prevent a violation of the grant assurances:

- (a)** The private operator agrees to operate the airport in accordance with the airport sponsor's obligations to the federal government under applicable grant agreements or deeds and for the use and benefit of the public; to make available all airport facilities and services to the public on reasonable terms and without unjust discrimination; to provide space on the airport, to the extent available; and to grant rights and privileges for use of aeronautical facilities of the airport to all qualified persons and companies desiring to conduct aeronautical operations on the airport.
- (b)** The parties understand and agree that nothing contained in the agreement shall be construed as granting or authorizing the granting of an exclusive right within the meaning of [49 U.S.C. §§ 40103\(c\)](#) and [47107\(a\)\(4\)](#).
- (c)** The agreement is subordinate to the sponsor's obligations to the federal government under existing and future agreements for federal aid for the development and maintenance of the airport.

6.9 Airport Investment Partnership Program.

a. General.

The Airport Investment Partnership Program (AIPP), 49 U.S.C. § 47134, replaced the privatization program that existed prior to 2018.⁹ Under the statute, a sponsor may sell or lease a general aviation airport or lease a commercial service airport to a private operator to operate and manage the airport. Alternatively, the AIPP permits public sponsors and private operators to manage an airport jointly. It also permits a public sponsor to privatize multiple airports owned by the same sponsor. Through this program, airport sponsor may receive an exemption from repayment of federal grants, return of property acquired with federal assistance, and an exemption for the use of proceeds from the airport's sale or lease to be used exclusively for airport purposes.

⁹ *FAA Reauthorization Act of 2024* (Pub. L. 118-63), Sec. 738, amended 49 U.S.C. § 47134(b).

The private operator (purchaser or lessee) may receive an exemption from the revenue use requirements to the extent necessary to permit the private operator to earn compensation from the operations of the airport. (See [Airport Investment Partnership Program](#)).

b. Change of Sponsorship from Public to Private.

Leases or sales under the AIPP transfer the federal obligation as well as the responsibility for operation, management, and development of an airport from a public sponsor to a private sponsor. These leases and sales also transfer the federal obligations to the private operator, although the FAA may require the public agency transferring the airport to retain concurrent responsibility for certain assurances if appropriate.

c. Exemption from Federal Obligations.

As an incentive for public airport operators of publicly owned airports to consider privatization under the AIPP, Congress authorized the FAA to exempt federal revenue use obligations to the extent necessary (1) to permit the sponsor to recover from the sale or lease of the airport such amount as may be approved, (2) waive any obligation of the sponsor to repay federal grants or return federally acquired property; and (3) to permit the purchaser or lessee to earn compensation from operations of the airport. (See 49 U.S.C. § 47134(b)). At commercial service primary airports, the amount approved under (1) above, is subject to the approval of at least 65 percent (65%) of the scheduled air carriers serving the airport and by scheduled and nonscheduled air carriers whose aircraft landing at the airport during the preceding calendar year, had a total landed weight during the preceding calendar year of at least 65% of the total landed weight of all aircraft landing at the airport during such year. At a nonprimary airport the FAA may approve the amount after the airport has consulted with at least 65% of the owners of aircraft based at the airport. (See 49 U.S.C. § 47134(b)(1)(A)).

If the FAA grants an exemption to a sponsor from the provisions of sections 47107(b) and 47133 (and any other law, regulation, or grant assurance) to the extent necessary to permit the sponsor to recover from the sale or lease of the airport, then the FAA shall grant an exemption to the sponsor from the obligation to repay grants or return of property, and the FAA shall grant an exemption to the purchaser or lessee to permit such entity to earn compensation from the operations of the airport.

An agency record of decision (ROD) identifies all the applicable exemptions. The agency ROD also details the findings that must be made for approval of an application. Exemptions under the AIPP are issued by the FAA Administrator. Public inquiries on the AIPP should be referred to the Airport Compliance Division, ACO-100.

d. Grants for Predevelopment Costs of AIPP.

Under 49 U.S.C. § 47102(3)(R), the FAA may now consider a grant to an airport sponsor that is considering submitting an application for airport privatization under 49 U.S.C. § 47134. Specifically, 49 U.S.C. § 47134(l) explains that a grant for predevelopment planning costs relating to the preparation of an application or a proposed application cannot exceed the statutory threshold. The current version of FAA's [Program Guidance Letter \(PGL\) 19-03, Grants for Predevelopment Costs for Airport Investment Partnership Program](#) provides information on these grants including eligible scopes of work. (See PGL 19-03).

6.10 Partnership Outside of the Airport Investment Partnership Program.**a. General.**

Sale or lease of a public-use airport to a private entity is not prohibited by law, and the FAA may be requested to approve a transfer of ownership or operating responsibility of a public-use airport to a private entity without an application for participation in the AIPP. FAA review of a request for the transfer of the public sponsor's obligations and approval of a private entity as the new sponsor is conducted in accordance with the general review procedures in section 6.7, *Airport Sponsor Transfers*. This review is similar to the review of a transfer between public airport owners and does not involve the specific requirements and findings of 49 U.S.C. § 47134.

b. Private Operator as Airport Sponsor.

An investment partnership of a public-use airport by sale or long-term lease is distinguished from a management contract by the fact that the private operator becomes the airport sponsor. The private operator is the applicant for grants and is directly responsible to the FAA for compliance with the conditions and assurances in those grants, including revenue use. As with transfers under the AIPP, the FAA may require the public agency transferring the airport to retain concurrent responsibility for certain assurances if appropriate. For example, the FAA may require a transferring public agency to maintain its ability to use its local zoning power to protect approaches to the airport.

c. Special Considerations.

While reviewing a transfer of responsibility for airport operations to a private operator is in many respects similar to reviewing any transfer of ownership and operation (public or private), reviewing for privatization outside the AIPP should consider the following:

- (1) The transfer will not be approved unless the private operator agrees to assume all of the existing obligations of the public sponsor under grant agreements and surplus and nonsurplus property deeds. For future grants, the private operator

will agree to the assurances applicable to a private operator. In accordance with the assignment and assumption agreement, the private operator will also be obligated to comply with the public operator's assurances as long as they would have remained in effect for the public operator.

- (2) The FAA may not exempt the public or private sponsor from the requirements of [Grant Assurance 25, Airport Revenues](#). Accordingly, the public sponsor may use the proceeds from the sale or lease of the airport only for purposes stated in [49 U.S.C. §§ 47107\(b\) and 47133](#).
- (3) In most instances, it is not necessary for the public sponsor to return to the FAA the unamortized value of grant-funded projects or surplus or nonsurplus property received from the federal government, as long as the grant-funded facilities and donated property continue to be used for the original airport purposes. To assure this continued use, the private operator will be required to agree specifically to continue the airport uses of grant-funded facilities and federally donated property for the purposes described in FAA grant agreements and property deeds.
- (4) The private operator will be subject to the general AIP criteria for grants to private operators and will not be subject to or benefit from the special provisions of the AIPP. (See [FAA Order 5100.38, Airport Improvement Program Handbook](#), for information on grant eligibility).
- (5) As with any change of airport owner/operator, FAA certificates do not transfer. Also, if the airport has a security plan in effect in accordance with Transportation Security Administration (TSA) regulations, TSA should be advised of the request for approval of the transfer of airport management responsibility. TSA will advise the airport sponsor if additional amendments are necessary.

6.11 through 6.15 Reserved.