

## Grant Assurance and Compliance and Part 16

Kaplan Kirsch & Rockwell attorneys regularly advise clients on the full suite of federal grant compliance issues, including exclusive rights, revenue diversion, unjust discrimination, access restrictions, self-sustaining rate structures, airport layout plans, and other grant obligations. We work with clients to assure compliance proactively by developing minimum standards for commercial operators; revising leasing practices; and adopting other airport rules, regulations, and policies. We regularly meet with FAA officials at the ADO, Regional, and Headquarters levels on behalf of airport clients to address complex and controversial compliance issues of all types.

When consultation is not successful, we rely on our extensive experience in handling Part 16 cases brought both by airport users and FAA itself. We have handled two of the three contested evidentiary hearings under Part 16 and have successfully challenged and defended FAA compliance decisions in court.

We also have considerable experience advising clients seeking to terminate their grant assurance obligations.

### Representative Experience

- Access and Safety Restrictions. We represented the City of Santa Monica when FAA challenged the City's decision to ban C and D approach category aircraft to address safety concerns. We challenged FAA's Director's Determination in a Part 16 evidentiary hearing and subsequent appeals to the Associate Administrator for Airports and the United States Court of Appeals for the D.C. Circuit. *In the Matter of Compliance with Federal Obligations by the City of Santa Monica*, FAA Docket No. 16-02-08 (Final Agency Decision, 2009), *affirmed*, 631 F.3d 550 (D.C. Cir. 2011).
- Airport Closure. When the City of Cincinnati decided to close Blue Ash Airport and sell the land to the neighboring City of Blue Ash, we worked with FAA to structure the transaction to avoid revenue diversion issues and allow the City of Cincinnati to use the proceeds from the sale for urgent city projects. Subsequently, we defended the City of Cincinnati when airport users challenged the transaction under the Revenue Use Policy and Assurance 25. *Meyer v. City of Cincinnati*, FAA Docket No. 16-12-10 (Director's Determination, Sept. 12, 2014).
- Exclusive Rights. We assisted a commercial airport in Colorado in addressing exclusive rights issues in a manner which complies with FAA policies and reduces the airport's exposure to a potential Part 16 proceeding.
- Low-Cost Carrier Incentives. We advised a Florida airport in the design of an airline incentive program for an ultra-low-cost carrier that incentivized new service consistent with FAA policies on airlines incentives.
- Master Plan Compliance Planning. We assisted several small commercial airports in the Northwest Mountain region in preparing compliance plans in accordance with FAA's new initiative to require "planning for compliance" in connection with preparation of master plans. As some of the first airports in the nation to undertake such planning, our clients had to address unforeseen issues in ensuring full disclosure while minimizing liability for identified compliance problems.
- Non-Aeronautical Uses of Hangars. We advised a small general aviation airport in California in resolving an informal compliance investigation over the use of hangars for non-aeronautical purposes, the rates charged for aeronautical and non-aeronautical tenants, and the development of procedures and rules for short-term leasing of hangars for non-aeronautical purposes.



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- Revenue Diversion. We assisted a Part 139 airport in Kansas when it discovered that its use of airport revenue did not comply with FAA policies. We negotiated a voluntary corrective action plan that not only minimized the airport's liability but also avoided the cost and burden of a formal FAA investigation or Part 16 proceeding.
- Skydiving. We have assisted two general aviation airports in California in developing procedures, rules, and regulations to allow the introduction of skydiving operations in the face of threats of compliance actions by skydiving operators.
- Stage 2 Aircraft Ban. We represented the City of Naples Airport Authority in its effort to address a local noise problem by banning Stage 2 aircraft pursuant to procedures under the Airport Noise and Capacity Act and 14 C.F.R. Part 161. We advised the Airport Authority throughout the Part 161 process and in fighting off challenges from FAA and airport users. We obtained the reversal of FAA's determination that the Stage 2 ban was an unreasonable restriction on access in violation of Grant Assurance 22(a) and obtained a favorable ruling from FAA in a subsequent collateral Part 16 proceeding by an FBO. *City of Naples Airport Auth. v. FAA*, 409 F.3d 431 (D.C. Cir. 2005); *Jet 1 Center v. Naples Airport Authority*, FAA Docket No. 16-04-03 (Final Agency Decision, 2005).
- Two-Tiered FBO Lease Structure. We helped Westchester County structure a two-tiered leasing structure to reflect the different markets served by different FBOs at the airport types and successfully defended that structure in Part 16 litigation before FAA and the United States Court of Appeal for the Second Circuit. *Avitat Westchester v. County of Westchester*, FAA Docket No. 16-07-13 (Final Decision and Order, 2009), *affirmed*, 41 North 73 West, Inc. v. U.S. Dep't of Transp., Case No. 09-4810 (2d Cir. Nov. 2, 2010).