

# Airports & Financially Distressed Stakeholders – Legal & Practical Considerations For Airport Sponsors



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## Overview

- How did we get here?
- Background legal (and practical) principles
- Issue spotting accommodation issues
- Bankruptcy and preparation
- Returning to normal



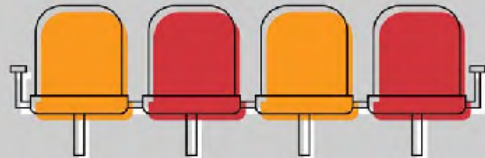
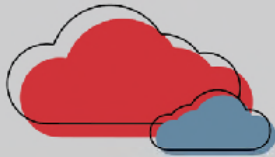
## Pandemic-induced financial distress



COVID-19 has had cascading impacts on the entire air travel industry.

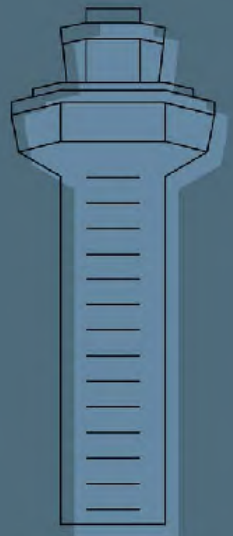
The full impact has not yet been realized...





# Background Legal Principles

Grant Assurances  
Existing Contracts  
Local Law and Governance  
Public Finance  
Bankruptcy



# Background Legal Principles: AIP Grant Assurances

## Grant Assurance 24, *Fee and Rental Structure* and Policy Regarding Establishment of Airport Rates and Charges

- Airport must “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, taking into account such factors as the volume of traffic and economy of collection.”
- Rental structure may be pursuant to a compensatory or residual fee methodology, or any combination thereof.

# Background Legal Principles: AIP Grant Assurances (Cont'd)

Grant Assurance 25, *Airport Revenues*, and the *Policy and Procedures Concerning the Use of Airport Revenue*

- Generally prohibits “[u]se of land by the sponsor for aeronautical purposes rent-free or for nominal rental rates.”
- Airport must “receive **fair market value for the provision of nonaeronautical facilities and services**, to the extent practicable considering the circumstances at the airport.”
- “If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the airport proprietor should establish **long-term goals and targets to make the airport as financially self-sustaining as possible.**”

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# Background Legal Principles: AIP Grant Assurances (Cont'd)

Grant Assurance 22, *Economic Nondiscrimination*

Airport must be available for use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

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# Background Legal Principles: Existing Contracts

- Existing provisions regarding relief
  - MAG abatement
  - Force majeure
  - Calculations of rates and charges
- Amendment or memorialization of relief
- Interpretations of contract can establish course of conduct





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# Background Legal Principles: Public Finance Law and Bankruptcy

- Bond Ordinances/Official Statements
- Funding Limitations
- Bankruptcy Law



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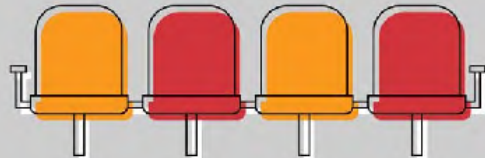
## Knowing Your Role (and Everyone Else's)

- Political pressure to accommodate (or not)
- Interconnectedness of airport finance and relief packages;  
the Aviation Ecosystem



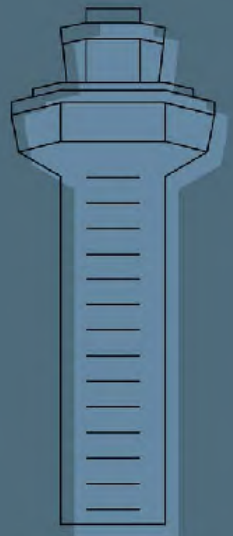


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# Issue-Spotting Accommodation Issues

Aeronautical v. Non-Aeronautical  
Types of Tenants/Users  
Types of Accommodation/Relief  
Grant Assurance Implications  
*Quid Pro Quo*  
Financial Implications  
Disclosure  
Funding Limitations



## Threshold Accommodation Questions



- Are you *required* to accommodate a tenants' financial problems?
- *Should* you accommodate a tenants' financial problems?
  - Puts "partnership" to the test
- This session is about how (and how not) to accommodate tenants, if you choose to do so

# Aeronautical and Non-Aeronautical Users



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# Types of Tenants/Agreements

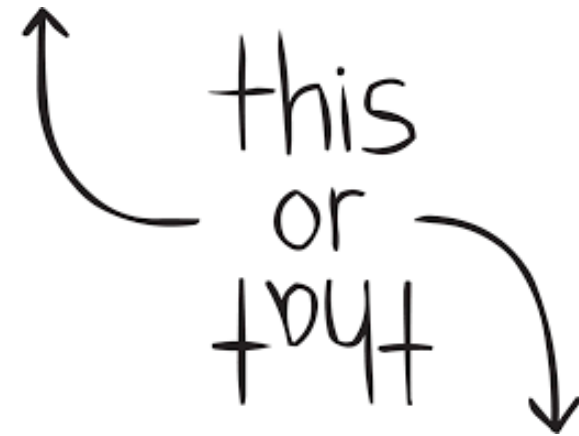
- RACs
- Concessions
- Airlines
- FBOs
- Cats & Dogs



# Types of Relief Available

- Direct subsidies
- Waivers/abatements versus deferrals
  - Implications for future bankruptcy: potential for disgorgement; rejection damages; more later!
  - Impact upon airport finances (short- and medium-term)
- Contributions to airline cost centers (indirect airline impact?)
- Deferring capital programs or O&M expenses
- Other creative requests (i.e., loans)

this  
or  
+out+



## FAA's Evolution of Thinking Regarding Grant Assurance Implications

- March 28, 2020, *Information for Airport Sponsors Considering COVID-19 Restrictions or Accommodations*
  - “Airports have **flexibility** to **defer** the collection of rents and/or fees if the circumstances warrant. The terms and interest rates applied should be reasonable and applied fairly to similarly situated businesses. Deferral of rental payments and or fees, if adequately justified, is not likely to violate FAA’s grant assurances. A primary goal of the statutory sustainability principle is to keep the airport solvent to ensure that the airport can remain open and operate safely.”
  - “In general, there is **no authority that would allow an airport to waive landing fees and terminal rents**; any such request should be discussed with FAA’s Office of Airports.”



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## FAA's Evolution of Thinking Regarding Grant Assurance Implications

- April 4, 2020, *Information for Airport Sponsors Considering COVID-19 Restrictions or Accommodations*
  - “A decision to abate rent . . . **is a local decision.**”
  - Tied to the changed circumstances.
  - Sponsors are encouraged to consult with all affected parties and implement a consensus approach if possible.
  - Must be reasonable under the circumstances and reflect “the decline in fair market value, loss of services, and/or changes to volume of traffic and economy of collection.”
  - “In cases where bond restrictions or other conditions may prevent airports from offering rent abatements, the **deferrals of rents and/or fees may be possible.**”

# FAA's Evolution of Thinking Regarding Grant Assurance Implications

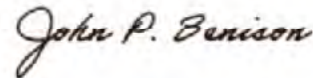
Temporary rent abatement and minimum annual guarantee waivers for tenants, as referenced in the April 4, 2020 FAA Office of Airports Guidance, *Information for Airport Sponsors on Considering COVID-19 Restrictions or Accommodations*, are tools that sponsors can use to assist businesses.<sup>1</sup> Rent deferments, rather than abatements, and unjustified hurdles for consideration of relief are not as supportive of the “we are all in this together” approach sponsors should take during this public health emergency.

We encourage sponsors to use available tools to mitigate adverse impacts on large and small businesses to ensure the airport community emerges from these trying times stronger than ever.

Sincerely,



D. Kirk Shaffer  
Associate Administrator, Office of Airports



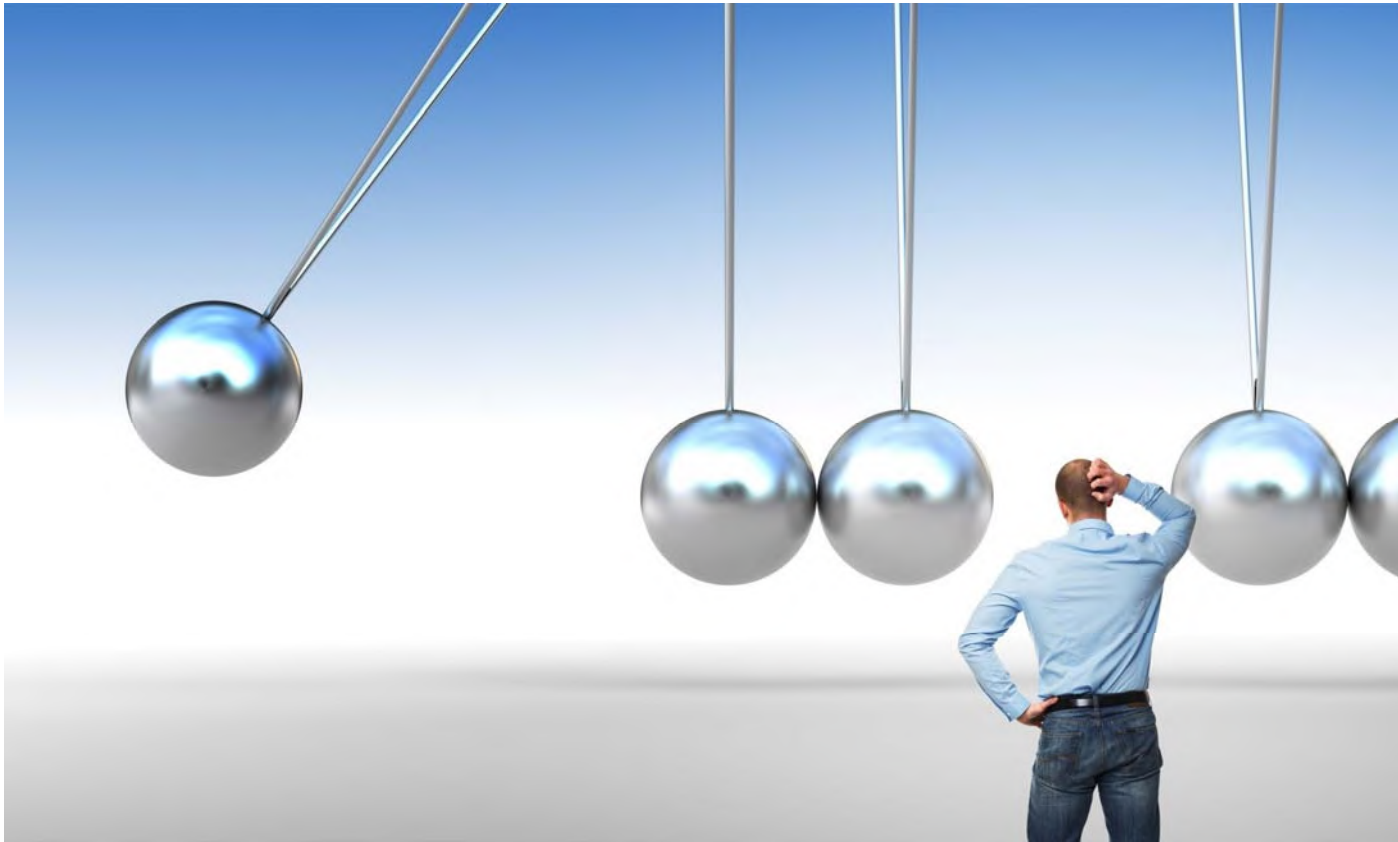
John P. Benison  
Assistant Administrator, Office of Civil Rights

June 22,  
2020

<sup>1</sup> This guidance is not legally binding in its own right. Conformity with this guidance, as distinct from existing statutes, regulations, and grant assurances, is voluntary only, and nonconformity will not affect existing rights and obligations.

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## FAA's Evolution of Thinking Regarding Grant Assurance Implications



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## *Quid Pro Quo?*

What conditions are appropriate to place on relief or accommodation?

- Memorialize accommodations and a return to normal (or the plan to do so)
- Update FAA required provisions or other nagging issues?
- Require payment of arrears?
- Impose reporting obligations?
- Require workforce retention/benefit provisions?
- Subordinate to changes in law?

## Points to Ponder...

How will Airport cover the cost of providing the relief...

- CARES Act funds
- Other federal/state programs
- Subsidization from general fund

...And how will that effect Airport finances going forward

- Downstream consequences on rate base recovery
- Impact on bonds
- Involving FAs and bond counsel – restructuring debt may be important



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## Airline Relief, Specifically

- What are airlines asking for?
  - O&M and Capital budget reductions
  - Deferral or abatement of landings fees and rents
  - Don't defer or abate non-aeronautical revenue
  - Giving back space / preferential gate use requirements
  - Modify rates and charges to break even – no accumulation of revenues
  - Extension of existing agreements w/o renegotiation
  - Refund of PFCs

# Airline Relief, Specifically

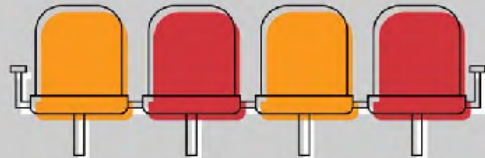


# Airline Incentive Programs

- May undertake new importance, and require new interpretations
- What is “new service” now?
  - Airport destination not currently served
  - New nonstop service
  - New entrant carriers
  - Increased frequency of flights to a specific destination

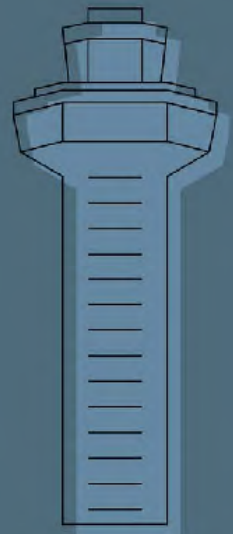






# Bankruptcy: Preparing for the Inevitable?

- Purpose/Lifecycle of a Bankruptcy
- Preparing for the Process
- The Automatic Stay
- First Day Motions
- Proofs of Claim



## General Overview



- Purpose of Bankruptcy
- Types of Bankruptcies
- Lifecycle of Bankruptcy
  - Filing
  - Pre- and Post-Petition Divide
  - Special Mention - Administrative Priority
  - Assumption/Rejection
  - Claims Processing

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## How to Prepare for Bankruptcies

- Keep accounts current
  - Minimize pre-petition arrears
  - CFCs/PFCs
- Contract security
- Insurance coverage
- Survey agreements
- Internal bankruptcy inquiries
- Assemble team



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## The Automatic Stay

- Stop billing pre-petition amounts due
- Stop calculating interest
- Stop applying pre-petition credits



## Bankruptcy- Practical Items To Consider

Bankruptcy Principle: Keep the good, dump the bad

What could that mean at your airport?

Gates?

Exclusive use space?

Hangars?

Crew base?

RACs?

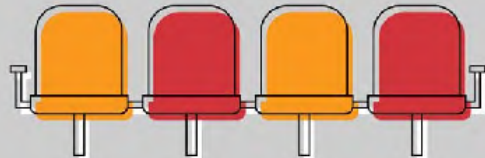
Concessions?

Bankruptcy implications



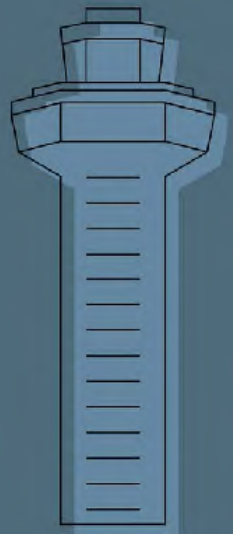
*In preparing for battle I have always found that plans are useless, but planning is indispensable.*

*Dwight D. Eisenhower*



# Returning to "Normal"

- Right-sizing Operations
- Mitigating Claims
- Financial Self-Sustainability
- Revisiting "Boilerplate"





## **Emerging From COVID- Land**

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## Returning to Normal

- Air Service & Terminal Space
- Concessions
- Limitations on Liability
- Debt Service Payments





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## Revisiting Boilerplate

- MAG adjustment triggers
- *Force majeure*
- Residual methodologies



## Wrap-Up / Q & A



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## Conversation



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