



U.S. House of Representatives
Committee on Transportation and Infrastructure

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SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Aviation
FROM: Staff, Subcommittee on Aviation
RE: March 2007 Federal Aviation Administration (FAA) Reauthorization hearings.

PURPOSE OF HEARING

In March 2007, the Subcommittee on Aviation will hold four hearings on the FAA's reauthorization proposal:

- At 10:00 a.m. on Wednesday, March 14, 2007: The Administration's FAA Reauthorization Proposal.
- At 10:00 a.m. on Wednesday, March 21, 2007: FAA's Financing Proposal.
- At 10:00 a.m. on Thursday, March 22, 2007: FAA Operational and Safety Programs.
- At 10:00 a.m. on Wednesday, March 28, 2007: FAA's Airport Improvement Program.

This memo highlights the major financing and programmatic aspects of the FAA's proposal, and will serve as the Summary of Subject Matter for all four reauthorization hearings. For more detailed information about the FAA's proposal or about the FAA's current financing and programmatic structure, please see the FAA's *Next Generation Air Transportation Financing Reform Act of 2007*, FAA's section-by-section analysis of its proposal and the Subcommittee's jurisdictional statement explaining the FAA's current financing and programmatic structure, as attached. Witness lists will be forwarded under separate cover.

The Subcommittee will hold a hearing on the Essential Air Service program, and any proposed changes to the program, in April, 2007.

I. Funding and Financing

The Administration's FAA reauthorization proposal, the *Next Generation Air Transportation Financing Reform Act of 2007*, is a three year authorization with an estimated cost of approximately \$44.766 billion.

Most of the FAA's funding is currently derived from the Airport and Airway Trust Fund (commonly known as the "Aviation Trust Fund"). The Aviation Trust Fund holds the revenues from the various aviation excise taxes that are paid by aviation system users. The Aviation Trust Fund receipts totaled \$10.6 billion (\$11.1 billion including interest) in fiscal year (FY) 2006, with approximately \$5.5 billion of this total derived from the 7.5 percent passenger ticket tax.

The FAA's proposal would make significant changes to the current Aviation Trust Fund tax structure. Specifically, the FAA proposes to eliminate a number of excise taxes, increase fuel taxes and decrease the International Arrival/Departure tax as follows:

<u>Tax</u>	<u>Taxable Unit</u>	<u>2007</u>	<u>Proposal</u>
Domestic Ticket Tax	Price of ticket	7.50%	Eliminated
Frequent Flyer Tax	Value of miles purchased	7.50%	Eliminated
Domestic Segment Tax	Per passenger per flight segment	\$3.40	Eliminated
International Arrival/Departure Tax	Per passenger	\$15.10	\$6.39
Alaska/Hawaii Arrival/Departure Tax	Per passenger	\$7.50	Eliminated
Cargo Shipments	Price paid for transportation by air	6.25%	Eliminated
Commercial Jet Fuel	Per Gallon	\$0.043	\$0.136
General Aviation Jet Fuel	Per Gallon	\$0.218	\$0.70
Aviation Gasoline	Per Gallon	\$0.193	\$0.70

Under the FAA's proposal, most of the FAA's revenue would come from new cost-based user fees. The FAA also proposes new certification and registration fees. These new fees would not be deposited into the Aviation Trust Fund, but instead would be deposited into two proposed new accounts¹ at the Treasury as offsetting collections.² The fee rates would be determined by FAA and driven primarily by FAA's cost requirements, with input from a proposed new governance board called the Air Transportation System Advisory Board. Fee expenditures would be subject to appropriation.

¹ The proposal eliminates the current Operations account (primarily for personnel costs) and the Facilities and Equipment (F&E) account (primarily for capital) and creates the "Air Traffic Organization" and "Safety and Operations" accounts. Under the current account structure, the FAA's estimated F&E funding would be: FY 2008 - \$2.462 billion; FY 2009 - \$2.959 billion; FY 2010 - \$3.115 billion. The FAA's estimated Operations funding would be: FY 2008 - \$8.726; FY 2009 - \$8.978; FY 2010 - \$9.305 billion. The FAA's estimated total requirement for F&E funding in its new three year proposal is approximately \$380 million less than what it requested for the first three years of its last reauthorization proposal - the *Centennial of Flight Aviation Authorization Act*.

² As offsetting collections, the fees would offset the cost of discretionary appropriations to the FAA.

In proposing a cost-based user fee, the FAA has cited its desire to better align its costs or services with its revenues. By doing so, the FAA believes it would operate in a more efficient and business-like manner. Additionally, the FAA states that its fees would be more equitable to airspace users because users would be charged based on the costs that they impose on the system. The FAA also cites the move to the Next Generation Air Transportation System (NGATS) as a reason to transition to a new financing structure.

The chart below describes the proposed authorized funding levels for FAA’s Airport Improvement Program (AIP) and Research Engineering & Development (RE&D), and the FAA’s estimated cost and funding requirements for the Air Traffic Organization (ATO) and Safety & Operations accounts:

(in \$ millions)

PROGRAM	FY 2008	FY 2009	FY 2010	TOTAL
Air Traffic Organization	9,308.0	10,016.0	10,469.0	29,793.0
User Fees:	---	7,513.0	7,971.0	
Trust Fund:	7,916.0	1,130.0	1,126.0	
General Fund:	1,392.0	1,373.0	1,372.0	
Safety & Operations	1,879.0	1,921.0	1,951.0	5,751.0
User Fees:	---	544.0	569.0	
Trust Fund:	672.0	69.0	69.0	
Cert. & Licensing Fees:	---	116.0	120.0	
General Fund:	1,208.0	1,192.0	1,193.0	
Airport Improvement Program (100% Trust Fund)	2,750.0	2,900.0	3,050.0	8,700.0
Research, Engineering & Development	140	191	191	522.0
Trust Fund:	123.0	174.0	174.0	
General Fund:	17.0	17.0	17.0	
Total	14,077.0	15,028.0	15,661.0	44,766.0

a. Governance

The FAA’s proposal would create a new 13-member Air Transportation System Advisory Board. This Board would include the FAA Administrator and a representative of the Department of Defense, three individuals representing the public interest, and eight representatives from the airport community, airlines, cargo airlines, general aviation, business aviation, and aviation manufacturing. In setting user fees and certification and registration fees, the FAA would be required to rely on the FAA’s cost accounting and cost allocation systems. Prior to imposing or adjusting a fee, the FAA would also be required to consult with air carriers, including foreign carriers, and with other persons who are subject to paying fees under the auspices of the new Board.

b. Cost-Based User Fees

The FAA's proposal includes two new cost-based user fees: 1) an En Route and Oceanic fee; and 2) a Terminal fee that would be adjusted specifically for takeoffs and landings at large hub airports.³ Military, other public use, and air ambulance aircraft would not pay these fees.

Further, aircraft paying general aviation fuel taxes are exempt from the En route and Oceanic fee and the Terminal fee, except if they takeoff or land at a large hub airport, in which case they would be subject only to the Terminal fee at the large hub airport.

Under the proposal, En Route and Oceanic fees would be charged for high altitude and oceanic flights, with the FAA basing these fees on distance traveled, or other methods consistent with treaties and international agreements.

Terminal fees would be charged for takeoffs and landings at airports with more than 100,000 passenger boardings per year. There are approximately 200 airports with over 100,000 passenger boardings per year. The proposal also permits the FAA to base its Terminal fee on aircraft weight. The Government Accountability Office (GAO) has questioned the connection between the weight of an aircraft and the cost it would impose on the system, stating:

While there may be a relationship between the distance a plane travels in the [national airspace system] and the costs that it imposes, the introduction of the weight component into the formula weakens any such connection. For example, since heavier planes would be charged more than lighter planes, they would be required to contribute more for traveling the same distance in the system, even though they may not impose greater costs on the ATC system.⁴

FAA officials contend that a weight-based fee accounts for the fact that large aircraft require more spacing on departure and approach in the terminal area, and therefore cost the FAA more to handle. However, FAA officials acknowledge that it is challenging to quantify this issue, and that the FAA has initiated a study to quantify the cost implications of aircraft weight in the terminal area. In addition, FAA officials and the GAO point out that a weight-based fee is consistent with International Civil Aviation Organization (ICAO) guidance and international charging structures. FAA also notes that a fee that does not account for weight would negatively affect regional airlines and air taxis that operate smaller aircraft.

Under the proposal, the Terminal fee may be higher for aircraft that takeoff and land at a large hub airport. There are currently 30 large hub airports, which are defined as commercial service airports with at least 1 percent of annual U.S. passenger boardings. The Administrator may also vary this fee with the time of day or day of the week, or for a particular large hub airport if an aircraft

³ While FAA officials state that this fee is intended to pertain only to flights that actually takeoff from or land at a large hub airport, and is not specific to the terminal airspace surrounding a large hub airport, the proposed legislative language is unclear in this regard.

⁴ GAO-06-973, *Aviation Finance: Observations on Potential FAA Funding Options*, p.26, September 2006.

operates in terminal airspace that is congested (as a sort of cost-based congestion fee) if such fees would help reduce delays.

The FAA has provided the following data to illustrate who would likely pay the proposed user fees:

- The FAA preliminarily estimates that there would be approximately 14 million billable flights each year.
- The top 101 companies (those with over 10,000 flights per year) would account for 87 percent of the billable flights. Of those, the top 33 companies (those with over 100,000 flights per year) would account for 73 percent of the billable flights. Less than 500 companies account for 95 percent of the billable flights. These companies include legacy, low cost and regional airlines, cargo airlines, and some fractional operators.
- An additional 2,500 air taxi operators, and another roughly 2,400 smaller commercial operators (primarily regional airlines with fewer than 10,000 flights per year) would be subject to the fees.
- There are approximately 18,000 general aviation users who takeoff or land at large hub airports. The FAA expects that many of these users may choose to use an alternative airport in the same metropolitan area where they would not be subject to user fees.

The FAA's proposal would require the establishment of procedures for the collection of user fees and would permit the FAA Administrator to establish reduced fees as an incentive for aircraft owners to equip with new technology. In addition, the proposal would also give the FAA broad authority to establish a reserve fund. The establishment of a reserve fund is similar to other international user fee models. The reserve could be tapped if fee revenue falls short of expected levels and additional funding is needed. While the proposal gives no specific dollar amount or percentage, FAA officials preliminarily estimate that a reserve of two months of costs (approximately 16.7 percent of the ATO's annual budget) might be necessary, but caution that additional analysis is needed.

Objections to the proposed user fees may be appealed to the Secretary of Transportation. The Secretary would be required to disapprove the proposed fees if the Secretary finds that they are not based on appropriate costs, do not fairly allocate costs among users, are unreasonably discriminatory to a particular category of users, or are not in accordance with the FAA's strategic business plan. The Secretary's decision would not be subject to judicial review.

c. Certification and Registration Fees

The FAA proposes to impose fees to pay for the costs of certification and registration activities, including: registering an aircraft (\$130); replacing an aircraft registration (\$45); issuing an original dealer's aircraft certificate (\$130); issuing an additional aircraft certificate (\$105); issuing or renewing a special registration number (\$80, \$50 respectively); recording a security interest (\$130); recording a security interest in aircraft parts (\$130); issuing or replacing an airman certificate (\$50,

\$25, respectively); issuing an airman medical certificate (\$42); and for providing legal title opinions pertaining to aircraft transactions (\$100).

The FAA is also requesting authority to propose additional fees for certain activities pertaining to the issuance of certificates to both foreign and domestic repair stations, flight and maintenance technical schools, training of designees, appointment of delegated organizations, and training of foreign aviation authorities. The FAA would determine the charges for these activities at a later date. The FAA’s proposal would also give it the authority to establish additional, unspecified fees to cover the cost of other aviation regulation, certification and related services. The FAA’s proposal would exempt it from the rulemaking requirements of title 5 of the U.S. Code in setting these fees.

d. Fuel Tax

The FAA’s proposal would increase the tax on commercial aviation jet fuel from 4.3 cents per gallon to 13.6 cents per gallon. The commercial jet fuel tax would be deposited into the Aviation Trust Fund to pay for the users’ share of AIP, RE&D and EAS. The proposed \$6.39 (reduced from \$15.10) International Arrival/Departure tax would also be deposited into the Aviation Trust Fund as a funding stream for AIP, RE&D and EAS.

The proposal would also raise the tax on general aviation jet fuel from 21.8 cents per gallon to 70.0 cents per gallon: 13.6 cents per gallon would be deposited into the Aviation Trust Fund to pay for the users’ share of the AIP, RE&D and EAS programs and the remaining 56.4 cents per gallon would also be deposited into the Aviation Trust Fund for the ATO.

In addition, the FAA’s proposal would raise the tax on aviation gasoline, used primarily for piston general aviation, from 19.3 cents per gallon to 70 cents per gallon: 13.6 cents per gallon would be deposited into the Aviation Trust Fund to pay for the users’ share of the AIP, RE&D and Essential Air Service (EAS) programs and the remaining 56.4 cents per gallon would also be deposited into Aviation Trust Fund for the ATO.

<u>Tax</u>	<u>Taxable Unit</u>	<u>2007</u>	<u>Proposal AIP/RED/EAS</u>	<u>Proposal ATO Costs</u>	<u>Proposal Total Fuel Tax</u>
Commercial Jet Fuel	Per Gallon	\$0.043	\$0.136	User Fees	\$0.136
General Aviation Jet Fuel	Per Gallon	\$0.218	\$0.136	\$0.564	\$0.70
Aviation Gasoline	Per Gallon	\$0.193	\$0.136	\$0.564	\$0.70

Under the proposal, the 13.6 cent per gallon portion of the fuel taxes that are dedicated to AIP and also RE&D and EAS and the \$6.39 International Arrival/Departure tax would be regularly adjusted for inflation.

In addition, the 56.4 cent per gallon portion of the general aviation fuel taxes (for both general aviation jet fuel and aviation gasoline) that are dedicated to the ATO would be adjusted every two years based on the FAA’s cost accounting and cost allocation systems.

e. Borrowing Authority

The FAA’s proposal would authorize, during fiscal years 2013 through 2017, borrowing authority for the Secretary of Transportation through the Department of the Treasury to finance capital investments in the air traffic system to be owned and operated by the FAA. This borrowing authority would be capped at a maximum of \$5 billion of principal debt, and all indebtedness issued under this authority must be repaid by the end of fiscal year 2017. The FAA would not be able to issue any obligations without first obtaining approval by the Office of Management and Budget (OMB) of the proposed investments to be financed.

f. Cost Allocation

The FAA has based its proposed new financing scheme on a new cost allocation methodology to determine what level of system costs are assignable to which aviation user groups. With its new cost allocation report, the FAA intends to establish a firm link between the costs incurred by the Agency for supplying air traffic services and fees paid by the users of those services. The FAA believes that the argument for this link is on much firmer ground than its previous attempts to link agency costs to taxes and fees. This is due to its relatively new cost accounting system, which for the first time is providing detailed cost information down to service delivery points (SDP, e.g. an air traffic control tower).

The FAA’s new cost allocation report, which is based on FY 2005 data, differs from previous efforts by assigning costs only to that portion of the FAA’s budget associated with ATO. Previous cost allocation studies have included other significant cost items, such as the AIP.

The FAA’s cost allocation system, the Cost Assignment Methodology for Estimating Resource Allocation (CAMERA), assigns each user group into one of two principle user groups: 1) “high performance,” which includes all fixed-wing turbine engine aircraft operations; and 2) “piston,” which includes piston engine aircraft and helicopters. CAMERA then assigns FAA’s costs into one of three tiers. The chart below depicts the results of the FAA’s cost allocation study:

(in \$ millions)

FAA FY 2005 Cost Allocation Study Results			
	High Performance (% of Cost)	Piston (% of Cost)	Total (% of Cost)
Commercial	\$6,745 (73%)	\$50 (0.5%)	\$6,794 (73.5%)
General Aviation	\$896 (9.7%)	\$546 (5.9%)	\$1,441 (15.6%)
Public	\$433 (4.7%)	\$11 (0.1%)	\$445 (4.8%)
Flt Svc Stations (Funded from the General Funds)			\$564 (6.1%)
Total	\$8,074 (87.3%)	\$607 (6.6%)	\$9,245 (including \$564 FSS)

General aviation groups, who generally oppose the FAA's methodology, have raised questions regarding whether the FAA adequately takes into account price sensitivity and users' willingness/ability to pay. These groups argue that failure to take these factors into account when allocating costs and setting tax and fee rates could result in some users (particularly low-end piston general aviation users) being priced out of the market.

The Congressional Research Service (CRS) has noted that since the existing tax structure was created in 1970 there has been general acceptance of the concept that there is a public interest component to the operation of the national aviation system.⁵ The term "public interest" has generally referred to that portion of the cost of the FAA's operation of the airway system that is appropriated from the Treasury's general fund. This is the amount that is supposed to equate to what certain public users (e.g. military, government users) and nonuser beneficiaries (also known as societal users)⁶ of the aviation system might have contributed to the Aviation Trust Fund through the payment of taxes or fees, if they actually paid these taxes or fees. According to CRS, this has historically been one of the most contentious elements of the aviation funding debate. In the past, many aviation interest groups and Congressional authorizing committees have taken the position that the general fund contribution to the FAA's annual appropriation is too small to correspond to the existing and potential public benefits of the aviation system. Conversely, CRS states that the FAA, OMB, and other government agencies, as well as Congressional appropriations and budget committees, usually believe the general fund contribution is too large. In its 2007 cost allocation study, the FAA has chosen to assign costs to public users, but not to societal users.

II. Airport Improvement Program

According to the FAA's Operational Evolution Plan (OEP), new runways and runway extensions provide the most significant capacity increases. In addition, projections developed by the DOT, FAA, and the MITRE Corporation indicate that as early as 2013, 15 airports and 7 metropolitan areas will need additional capacity to meet expected demand. The FAA's National Plan of Integrated Airport Systems (NPIAS) states that during the next five years, there will be \$41.2 billion of AIP-eligible infrastructure development, an annual average of \$8.2 billion. The Airports Council International / North America (ACI-NA) Capital Needs Survey estimates total airport capital needs – including the cost of non-AIP-eligible projects – to be about \$17.5 billion per year from 2007 through 2011.

The FAA's proposal provides \$8.7 billion total for the AIP from FY 2008 to FY 2010. In total, this is approximately \$1.8 billion less than the program received between FY 2005 and FY2007. FAA officials acknowledge that airport capital requirements are up. However, FAA officials also contend that even with lower AIP funding levels, the FAA's proposed programmatic changes to AIP and the Passenger Facility Charge (PFC), coupled with a PFC increase, would provide the FAA and airports with more capital and flexibility to target investments and meet airport

⁵ CRS Report (RL33698), *Reauthorization of the Federal Aviation Administration: Background and Issues for Congress*, p.19, January 29, 2007.

⁶ In other words, benefits received by the public at large from the aviation system regardless of whether they fly or not.

capital needs, including planned runway and runway safety area improvements at critical OEP airports.

The FAA's proposal would reduce primary airport AIP entitlements for medium and large hub airports by 50 percent in FY 2008 and FY 2009 and would phase them out completely by FY 2010. FAA officials reason that because of high PFC revenues drawn from high passenger volume larger airports have better access to private capital markets. The FAA further points out that most of these airports are already turning back 50 to 75 percent of AIP entitlements under current law by charging a \$3.00 - \$4.50 PFCs respectively.⁷ The proposal would also reduce the Federal AIP share for runway and taxiway reconstruction projects at large and medium hub airports from 75 percent to 50 percent. FAA officials state that all airports receiving AIP funds have an obligation to maintain their airport pavement.

In addition, the FAA's proposal would increase the current \$4.50 cap on the PFC to \$6.00. The FAA points out that the PFC cap has not been raised since 2000, and that inflation and construction cost increases have eroded the PFC's value. Airport groups have raised similar points, and have argued for raising the PFC cap to \$7.50 and possibly indexing the cap to inflation or construction costs. In the past, airlines have tended to resist increasing the PFC, viewing it as an increased ticket tax.

FAA officials believe that the proposed PFC increase would offset capital funding forgone by its proposal to eliminate primary airport entitlements for medium and large hub airports. For FY 2007, the FAA estimates approximately \$2.7 billion in PFC collections. The FAA estimates that raising the PFC cap to \$6.00 would raise an additional \$1.5 billion for airport capital improvements, approximately \$1 billion of which the FAA believes would go to large airports.

In addition to raising the PFC cap, the proposal would expand the types of projects for which PFCs can be used. Under current law, PFC eligibility today tracks with AIP eligibility; however, there is somewhat broader eligibility for noise compatibility projects and "ground-side" projects, such as passenger terminals and ground access improvements. The FAA's proposal would expand PFC eligibility to encompass any airport capital project that is eligible to be funded with airport revenue, provided that the project is not anticompetitive. Under the proposed expanded eligibility, PFCs could be used to finance airline offices and operations areas in the terminal as well as structural work to support revenue producing concessions. Revenue producing parking garages would also be PFC eligible. These projects would not be eligible under current law.

The FAA's proposal would expand PFC eligibility for intermodal rail ground access projects. Under current law, PFCs may be used to fund these projects only if they are dedicated to 100 percent airport use. The FAA's proposal would apply the same usage standard currently in place for airport revenue funding of ground access projects – "direct and substantial" airport use. The FAA's proposal would also eliminate the requirement for airport ownership of the system.

⁷ Airports that have high passenger volume are in a position to make more money through PFC charges rather than accepting AIP money. Current law requires that an airport charging a \$3.00 - \$4.50 PFC return part of their AIP money or charge a lower PFC amount. They cannot both accept full AIP entitlement money and charge the maximum PFC amount.

The FAA's proposal would increase minimum annual discretionary AIP from \$148 million to \$520 million. The proposal would also restructure discretionary AIP set-aside programs:

- The current noise set-aside, which receives 35 percent of discretionary AIP, would be expanded to cover other environmental uses and redesignated as the "environmental" set-aside that would receive 8% of total AIP funding.
- As a result of phasing out primary airport AIP entitlements for medium and large hub airports, the FAA would eliminate the Small Airport Fund. However, the FAA would create a new discretionary AIP set-aside that would dedicate 20 percent of discretionary AIP to projects at small hub, nonhub, nonprimary commercial service, reliever, or general aviation airports.
- The military airport program (MAP) discretionary set-aside would be eliminated. The FAA states that the MAP set-aside is no longer needed given that MAP airports compete well for AIP funding. However, the special AIP eligibility rules that currently apply to these airports would be retained. There are currently 14 airports that participate in this program.
- The reliever airport set-aside would be eliminated. The FAA states that the airports that participate in this program have high activity and historically receive more discretionary funding than the approximately \$5 million in the program. There are currently 18 airports that meet the criteria to participate in this program.

Under current law, if overall AIP funding levels fall below \$3.2 billion, several significant changes in the AIP entitlement formula funding would be triggered. For example, if total AIP funding falls below \$3.2 billion, primary airports would receive 50 percent of their normal apportionment, and the minimum primary airport entitlement would be reduced from \$1 million to \$650,000, the state apportionment would be calculated at a lower percentage of total AIP, and nonprimary AIP entitlements for general aviation airports would be eliminated. The FAA's proposal would eliminate this "\$3.2 billion trigger."

The chart below illustrates current funding levels for AIP programs, and proposed funding levels for AIP programs with programmatic changes:

(in \$ millions) **Current Law**

<u>AIP Funding Category</u>	<u>FY 2007</u>
<u>Apportionments</u>	
Primary Airports	857.7
Cargo Airports	119.1
Alaska Supplemental	21.3
Nonprimary Airports	409.0
State Apportionment	271.3
<u>Small Airport Fund</u>	
Small Hubs	66.7
Non-Hub Commercial Service	266.8
Non-primary	133.4
<u>Discretionary</u>	
Capacity/Safety/Security/Noise	365.9
Pure Discretionary	121.9
Noise Set-Asides (35% of Disc. AIP)	283.0
Military Airport Program Set-Asides	32.3
Reliever Set-Asides	5.3

(in \$ millions) **FAA Proposal**

<u>AIP Funding Category</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2010</u> \$3.5 billion⁸
<u>Apportionments</u>				
Primary Airports	628.0	672.0	569.0	569.0
Large	81.0	86.0	0	0
Medium	49.0	52.0	0	0
Small	230.0	246.0	262.0	262.0
Non-Hub	269.0	288.0	307.0	307.0
Cargo Airports	81.0	91.0	103.0	118.0
Alaska Supplemental	19.0	20.0	21.0	21.0
Nonprimary Airports	309.0	365.0	425.0	431.0
State Apportionment	300.0	300.0	300.0	339.0
<u>Discretionary</u>				
Capacity/Safety/Security/Noise	390.0	390.0	475.0	682.0
Pure Discretionary	130.0	130.0	158.0	227.0
Environmental Set-asides (8% of total AIP)	211.0	223.0	235.0	271.0
Small/Non-Hub Discretionary (20% Disc. AIP)	136.0	162.0	217.0	295.0

The FAA's proposal would separate the state AIP apportionment from the nonprimary entitlement program and set the state apportionment at 10 percent of total AIP funding. The proposal also provides for a minimum state apportionment funding level of \$300 million per year. If the overall level of AIP funding results in a state apportionment of below \$300 million, the funds would be taken on a prorated basis from the nonprimary entitlement program to make up the difference.

The FAA proposes significant changes to the current nonprimary airport entitlement program. Under current law, general aviation airports, commercial service airports that boarded between 2,500 and 10,000 passengers annually, non-primary airports, and reliever airports receive entitlements (if AIP is at least \$3.2 billion) based on one-fifth of their expected infrastructure requirements as published in the NPIAS, capped at \$150,000 annually. There are approximately 3,100 nonprimary airports in the NPIAS. In FY 2006, there were approximately 2,700 non-primary airports that qualified for this entitlement.

⁸ Since AIP funding levels in the FAA's proposal are substantially lower than current AIP funding levels, this column is intended to illustrate how the FAA's proposed new AIP formula might hypothetically work with the approximate FY 2007 \$3.5 billion AIP funding level.

The FAA would modify the current nonprimary entitlement program by providing for tiered funding levels based on airport size and aviation activity. The entitlement would range from \$400,000 per fiscal year for the largest general aviation airports to \$100,000 for those airports with 10 to 49 based aircraft. Airports with less than 10 based aircraft would not be eligible for a guaranteed annual apportionment.

Nonprimary Entitlements

Current Law	FAA Proposal
<ul style="list-style-type: none"> ➤ Over 2,400 nonprimary airports receive the \$150,000 maximum nonprimary entitlement. ➤ 280 nonprimary airports receive between \$0 and \$150,000. 	<ul style="list-style-type: none"> ➤ 540 “General Aviation Advanced” airports (with more than 100 based aircraft) would receive a \$400,000 per year entitlement. ➤ 375 “General Aviation Intermediate” airports (with 50 to 99 based aircraft or with 3 based jets) would receive a \$200,000 per year entitlement. ➤ 1,445 “General Aviation Basic” airports (with 10 to 49 based aircraft) would receive a \$100,000 per year entitlement. ➤ 750 “General Aviation Limited” (less than 10 aircraft) would not receive entitlements, but the federal share for state apportionment AIP and discretionary AIP would remain 95%.

In the past, the GAO has noted that smaller airports are particularly reliant on AIP grants, because AIP generally represents a larger percentage of capital funding for smaller airports than it does at larger airports. It is worth noting that under the FAA’s proposed programmatic changes and requested funding levels, there is less total funding for programs traditionally and specifically associated with small airports when compared with the current programmatic structure and funding levels.⁹ In fact, about 300 airports that currently receive nonprimary entitlement grants would no longer receive these grants under the FAA’s proposal. In addition, the proposal would reduce the Federal AIP contribution to 90 percent from 95 percent for small airports (however, nonprimary airports that would no longer receive nonprimary entitlement funds would still receive 95 percent Federal contribution for discretionary and state apportionment AIP).

However, FAA officials assert that the proposal’s tiered approach to nonprimary entitlements would channel larger grants to busier small airports (e.g., Teterboro, NJ; Van Nuys, CA; or Centennial, CO) to meet the demand of emerging markets such as very light jets, air taxis, and fractional ownership. The FAA estimates that the largest general aviation airports make up nearly 50 percent of the capital needs of the entire general aviation airport system.

⁹ More specifically, comparing current funding for the Small Airport Fund, nonprimary entitlement and state apportionment programs with proposed funding for the small airport discretionary set-aside, nonprimary entitlement, and state apportionment programs.

The FAA is also proposing two pilot programs that would involve airports and airport-related funds in air traffic control modernization efforts:

- An Automatic Dependant Surveillance – Broadcast (ADS-B) (FAA’s flagship program to transition to satellite-based surveillance) deployment pilot program that would broaden AIP eligibility to include installing ADS-B ground stations at no more than 10 airport locations.
- A Terminal Navaid Takeover Pilot Program in which 10 large airports would be authorized to charge a \$7.00 PFC in exchange for taking over ground based terminal navigational and weather equipment at those airports.

III. Environmental Provisions

The FAA’s proposal includes two new environmental programs. The first program, the environmental mitigation demonstration pilot program, would allow the FAA to fund six projects at public-use airports to take laboratory-proven environmental research concepts into the actual airport environment for demonstration. FAA would publish information on best practices based on project results. Funding would come from the noise set-aside of the AIP discretionary fund (redesignated as the “environmental” set aside). FAA would fund up to a maximum of \$2.5 million per project.

The second program would require the FAA to enter into a cooperative agreement with the Partnership for Air Transportation Noise and Emissions Reduction Center of Excellence to form a research consortium for the development, maturing and certification of Continuous Lower Energy, Emissions, and Noise (CLEEN) engine and airframe technology. The consortium’s work is to be carried out over the next decade and have performance objectives for aircraft fuel efficiency, nitrous oxide emissions from aircraft engines, aircraft noise, alternative fuels, and retrofit technologies. It would be funded through the FAA’s NGATS program.

Other environmental provisions include:

- Making permanent the Airport Cooperative Research Program (ACRP). (§601) This provision is linked to another provision to increase AIP funding of the ACRP to \$5 million per year for environmental research for the airport environment.
- Codifying current practice that State participants in the AIP State Block Grant Program (SBGP) (i.e., Illinois, Michigan, Missouri, North Carolina, Pennsylvania, Tennessee, Texas and Wisconsin) have the responsibility and authority to comply with environmental requirements for projects at non-commercial service airports within the SBGP, and that other Federal agencies must recognize State environmental review analyses for Federal approvals, licenses, or permits related to these projects.
- Broadening FAA’s authority to accept airport or AIP funds from airport sponsors to fund additional FAA staff and/or contract support to help streamline environmental reviews for airport capacity projects to include special environmental studies for ongoing Federally funded airport projects, studies to support approved airport noise compatibility measures or

environmental mitigation commitments in an agency record of decision or a finding of no significant impact.

- Allowing airports to use AIP funds to conduct environmental review of airport-proposed, FAA approved flight procedures as well as allow the FAA to accept funds, including AIP/PFC funds from an airport sponsor to hire staff or obtain services to provide environmental reviews for new flight procedures that have been approved for airport noise compatibility planning purposes.

IV. Congestion Management

a. LaGuardia Airport

On August 29, 2006, the FAA issued a proposed rule to address congestion at LaGuardia Airport (LGA) in anticipation of the High Density Rule expiring in January 2007.¹⁰ The proposed rule would cap operations at 75 per hour and would allocate operating authorizations (OA) to scheduled air carriers, which would have a 10-year expiration period ranging from 2010 to 2019. As the OAs expire (approximately 10% per year), they would be reallocated for a new 10-year period. FAA's proposed rule would also mandate that an average size aircraft be used to serve LGA. In addition, the FAA indicated in its proposed rule that it would seek legislative language to allow it to use market based mechanisms (such as auctions or congestion-based pricing) at LGA. Such a provision was included in the FAA's reauthorization proposal, as discussed below.

Under the FAA's reauthorization proposal, the Port Authority of New York and New Jersey (Port Authority) would be allowed to implement a market-based mechanism to allocate OA's at the airport, if the Secretary determines that using such a mechanism is appropriate and after the Secretary issues a rule to establish the terms and conditions of any selected mechanism. Any surplus revenue generated by the imposition of such mechanism would be placed in an escrow account for use on otherwise eligible airport related projects or any other project that the Secretary approves. If the Port Authority failed to implement an approved market-based mechanism within one year, the Secretary would reserve the right to do so under the pilot program described below.

b. Pilot program for market based mechanisms

The FAA's proposal would create a pilot program for market-based pricing mechanisms for domestic flights to address airport congestion at up to fifteen airports. Under the pilot program, either an affected airport or the FAA would be authorized to impose approved market-based mechanisms, such as auctions or congestion pricing. For delays affecting regional airspace, participating airports would be able to impose an approved market-based mechanism on aircraft operators directly. Surplus revenue resulting from the imposition of a market-based mechanism would be placed in escrow for use on airport-related projects or any other project the Secretary approves. For airport congestion that negatively affects the national airspace, the Secretary would

¹⁰ See 71 Fed. Reg. 51360. On December 27, 2006, the FAA issued an order that temporarily limited flights at LGA to permit 75 scheduled and six unscheduled operations between 6 a.m. and 10 p.m. M-F, and 12 noon -10 p.m. on Sundays until such time as a permanent regulation is in place. (71 Fed. Reg. 77854).

be permitted to adopt a market-based mechanism directly, if the airport has not already done so. Any surplus revenue generated by a DOT-imposed market-based mechanism would be placed into a special Treasury account for regional or national capacity enhancing or delay reducing projects.

V. Other Provisions

a. Realignment and Consolidation of Aviation Facilities and Services.

The reauthorization proposal would allow the Secretary to establish a “Realignment and Consolidation of Aviation Facilities and Services Commission (Commission)” to conduct an independent review and analysis of FAA’s recommendations for realignment of facilities or services (e.g., air traffic control towers). The Commission would be made up of five members appointed by the Secretary and would serve a three-year term.

The Commission would review the FAA’s recommendations, seek public comment and, after completing its review, forward its recommendations to the President. If the President accepts the Commission’s recommendations, the proposal would be transmitted to Congress. Congress would have 60 days from the transmission date to pass a joint resolution objecting to the total package of recommendations or the recommendations would be considered accepted and the Administrator would implement them. If the President does not send the Commission recommendations to Congress, the process would end.

b. War Risk Insurance

The Secretary is authorized to provide insurance or reinsurance to air carriers, and currently provides war-risk insurance for both foreign and domestic flights of U.S. air carriers. The FAA’s proposal would extend this authority, which is set to expire on March 30, 2008, through March 30, 2013. In addition, the Secretary is authorized to limit the liability of airlines, aircraft manufacturers, and engine manufacturers for third party damages from an act of terrorism to \$100 million and prohibits punitive damages for such occurrences. The liability limit does not apply to passengers but only to people and property on the ground. The FAA’s reauthorization proposal would extend this third-party liability limitation, which is set to expire on September 30, 2007, to December 31, 2011.

Current law also requires the FAA to provide hull loss, passenger and third party liability war risk insurance to airlines that it insured on Nov. 25, 2002, from the first dollar of loss at capped premium rates (i.e., a total premium that is no more than double what the airlines were paying on June 19, 2002.) through September 30, 2007. The FAA reauthorization proposal would repeal the first dollar of loss coverage requirement and allow it to set deductible levels for such insurance. FAA states that commercial insurers would then be able to provide some war risk coverage for U.S. airlines. The FAA’s goal is to move the airlines towards the private insurance market for war risk coverage.