



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

Washington, DC 20515

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SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Aviation
FROM: Subcommittee on Aviation Majority Staff
SUBJECT: Federal Aviation Administration ("FAA") Reauthorization Act of 2009

PURPOSE OF HEARING

The Subcommittee will meet on Wednesday, February 11, 2009, at 2 p.m. in room 2167 Rayburn House Office Building to receive testimony regarding the FAA reauthorization.

Background

Funding authorization for aviation programs as set forth in *Vision 100 – Century of Aviation Reauthorization Act* ("Vision 100") (P.L. 108-176) and authorization for taxes and fees that provide revenue for the Airport and Airway Trust Fund ("Trust Fund") expired at the end of fiscal year ("FY") 2007. Revenue collections and FAA programs have been extended several times. Authorization has now been extended until March 31, 2009, by the *Federal Aviation Administration Extension Act, Part II* (P.L. 110-330).

I. Funding and Financing

The *Airport and Airway Revenue Act* of 1970 (P.L. 91-258) established the Trust Fund to help fund the development of a nationwide airport and airway system, as well as FAA investments in air traffic control ("ATC") facilities. The Trust Fund supplies all of the funding for the Airport Improvement Program ("AIP"), which provides grants for construction and safety projects at airports; the Facilities and Equipment ("F&E") program, which funds technological improvements to the ATC system; and a Research, Engineering, and Development ("RE&D") program.¹

The Trust Fund also partially pays for FAA salaries, expenses, and operations. The Trust Fund contribution to FAA operations varies from year to year depending on Trust Fund receipts

¹ The House Committee on Science and Technology (the "House Science Committee") has jurisdiction over the RE&D program.

and the amount invested in capital and research programs.² The Trust Fund, in turn, is supported by the following taxes on aviation users (as well as interest earned on the cash balance), grouped below per Internal Revenue Service/Treasury Line Items for FY 2008:³

Transportation of Persons: \$8.440 billion, accounting for 70.4 percent of Trust Fund Tax Revenue

- **Passenger ticket tax – 7.5 percent**
 - *Description:* A percentage of the fare that the passenger pays on a domestic flight.
- **Passenger flight segment tax – \$3.50 (increased to \$3.60 in 2009)**
 - *Description:* An additional tax paid by the passenger based on the number of segments in that passenger's trip. A segment is a take-off and a landing. For example, a person who flew from point A to point B would pay one segment tax while a person who flew from A to B with a stop at C would pay 2 segment taxes. Note that this tax does not apply to passengers departing from a rural airport, defined as an airport that has less than 100,000 passengers per year.
- **Rural airport tax – 7.5 percent**
 - *Description:* A ticket tax on passengers whose flights begin/end at rural airports. This tax is assessed in lieu of the general passenger ticket tax. When the rural airport tax applies, there is no segment fee assessed.
- **Frequent flyer award tax – 7.5 percent**
 - *Description:* A percentage tax on amounts paid by companies under frequent flyer marketing arrangements with airlines (e.g., credit card).

Transportation of Property: \$521 million, accounting for 4.3 percent of Trust Fund Tax Revenue

- **Freight waybill tax – 6.25 percent**
 - *Description:* A percentage of the amount that an air carrier charges a shipper for the carriage of domestic freight by air.

Use of International Air Facilities: \$2.462 billion, accounting for 20.5 percent of Trust Fund Tax Revenue

- **International departure and arrival taxes – \$15.40 per passenger (increased to \$16.10 in 2009)**
 - *Description:* A tax imposed on passengers on international flights departing or arriving in the United States.
- **Alaska/Hawaii Facilities Tax – \$7.70 per passenger (increased to \$8.00 in 2009)**
 - *Description:* A tax imposed on passengers on domestic flights to or from Alaska or Hawaii.

Aviation Fuel Taxes: \$568.5 million, accounting for 4.7 percent of Trust Fund Tax Revenue

- **4.3 cents per gallon on commercial aviation jet fuel;**
- **19.3 cents per gallon on general aviation gasoline; and**
- **21.8 cents per gallon on general aviation jet fuel.**

² Under Vision 100, the Trust Fund share of operations is calculated by subtracting the amount appropriated for capital and research programs (AIP, F&E and RE&D) from projected Trust Fund tax receipts and interest for that fiscal year.

³ The House Committee on Ways and Means (the "Ways & Means Committee") has jurisdiction over Trust Fund taxes.

Accordingly, in FY 2008, the Trust Fund supported 73 percent of the FAA's operations budget and 100 percent of the AIP, F&E, and RE&D programs. The \$2.343 billion remainder of the FAA operations budget is provided from the General Fund ("GF") of the Treasury. The GF contribution to the FAA's total budget has varied over time,⁴ and has ranged between 16-21 percent over the last four years.

Consideration of FAA reauthorization in the 110th Congress began with the introduction of the Bush Administration's proposal, entitled the *Next Generation Air Transportation System Financing Reform Act of 2007* (H.R. 1356/S. 1076, introduced by request), which recommended a new system for financing aviation costs through direct user fees and increased fuel taxes. Neither the House nor the Senate adopted the Bush Administration's proposal.

On June 27, 2007, the *FAA Reauthorization Act of 2007* (H.R. 2881) was introduced, and the House Committee on Transportation and Infrastructure ("T&I Committee") held a markup session the next day reporting the bill favorably with amendments. Funding authorization levels for FAA RE&D, contained in the *Federal Aviation Research and Development Reauthorization Act of 2007* (H.R. 2698), were reported from the House Science Committee and incorporated into H.R. 2881.

The House Ways and Means Committee reported H.R. 3539, the *Airport and Airway Trust Fund Financing Act of 2007*, on September 18, 2007. Title X of H.R. 2881, adopted from H.R. 3539, follows the general intentions communicated by the T&I Committee, which sought an increase in general aviation fuel taxes. Specifically, the Ways and Means Committee increased the general aviation jet fuel taxes from 21.8 cents per gallon to 35.9 cents per gallon (roughly a 65 percent increase), and aviation gasoline taxes from 19.3 cents per gallon to 24.1 cents per gallon (about a 25 percent increase).

The *FAA Reauthorization Act of 2009* (H.R. 915) is essentially the reintroduction of H.R. 2881 for the 111th Congress without a tax title. H.R. 915 provides historic funding levels for the FAA's programs between FY 2009 and FY 2012, including \$16.2 billion for the AIP; \$13.4 billion for F&E, \$38.9 billion for operations, and \$1.35 billion for RE&D.

The table below summarizes the FAA's FY 2008 enacted levels of funding for FAA programs, and funding levels provided in H.R. 915:⁵

FAA Program (in millions)	FY 2008 Enacted	FY 2009 H.R. 915	FY 2010 H.R. 915	FY 2011 H.R. 915	FY 2012 H.R. 915
Operations	\$8,740.0	\$9,013.5	\$9,551.3	\$9,956.3	\$10,370.2
F&E	\$2,513.6	\$3,246.0	\$3,259.0	\$3,353.0	\$3,506.0
AIP	\$3,514.5	\$3,900.0	\$4,000.0	\$4,100.0	\$4,200.0
RE&D	\$146.8	\$323.3	\$327.9	\$339.3	\$360.0
Total	\$14,914.9	\$16,482.8	\$17,138.2	\$17,748.6	\$18,436.2

⁴ The GF contribution has varied from year to year, but declined on average since the creation of the Trust Fund: The GF contribution has averaged approximately 38 percent since 1971; approximately 28 percent over the last 25 years; approximately 24 percent over the last 20 years; and approximately 16 percent over the last 10 years.

⁵ The Operations line in this table combines funding levels from Section 103 – Operations and Section 219 – Airspace Redesign.

II. Airports

Programs providing federal aid to airports began in 1946 and have been modified several times. The current AIP program began in 1982 and provides federal grants to airports for airport development and planning. AIP funding is usually limited to construction or improvements related to aircraft operations, typically projects such as runways, taxiways, aprons, noise abatement, land purchase, and safety, emergency or snow removal equipment.

There are approximately 19,815 airports in the United States. Of those, 14,625 are private use, and 5,190 are public use. Approximately 3,411 of the public use airports are included in the National Plan of Integrated Airport Systems ("NPIAS") 2009-2013. Listing in the NPIAS makes airports eligible for AIP grants.

The FAA estimates that \$49.7 billion of AIP-eligible infrastructure development will be needed between 2009 and 2013 based on the latest NPIAS report dated September 30, 2008. An airport association's most recent Capital Needs Survey estimates that airport capital development costs for AIP-eligible and other necessary projects will total approximately \$94.4 billion during the same time frame.

Each reauthorization act sets forth the method by which AIP funds are distributed among the various airports in the nation. Under current law, AIP money is divided into two broad categories: entitlement funds (also called apportionment funds) and discretionary funds. H.R. 915 provides \$16.2 billion for the AIP program. In addition, H.R. 915 makes several modifications to the current AIP distribution formula that provide significant increases in AIP funding for smaller airports, which are particularly reliant on AIP for capital financing, as well as more AIP discretionary funding.

Passenger and cargo entitlement funds are distributed to primary, commercial service airports (airports that board at least 10,000 passengers), and cargo service airports in accordance with a formula that takes account of the number of passengers and amount of cargo that go through each airport. The *Wendell H. Ford Aviation Investment and Reform Act for the 21st Century* ("AIR 21") (P.L. 106-181) ensured that beginning in FY 2001, primary, commercial service airports must receive at least \$650,000 (\$1 million if AIP is at least \$3.2 billion) per year. Larger airports can receive a passenger entitlement as high as \$26 million per year.

Currently, states are entitled to 20 percent of AIP funds for their general aviation airports and commercial service non-primary airports, which are distributed to states through the state apportionment program⁶ and directly to non-primary airports in those states through the non-primary entitlement program ("NPE").⁷ H.R. 915 separates the AIP state apportionment from the NPE program (which is kept intact as a separate program with its current \$150,000 annual grant cap) and sets the state apportionment at 10 percent of total AIP funding. The bill also provides for

⁶ The formula for the distribution of this money is based on the area and population of the state. In most states, the FAA, working with the state aviation authority, decides which general aviation airports receive AIP funding. Ten states (out of a total of 10 authorized slots) have authority to allocate the money themselves through the "Block Grant" program. Alaskan airports receive their own separate entitlement, in addition to the amount apportioned to Alaska as a state.

⁷ These entitlements are based on one-fifth of each airport's expected 5-year costs for airport improvements, as listed in the NPIAS, capped at \$150,000 annually.

a minimum state apportionment funding level of \$300 million per year. This modification will result in larger funding levels for the AIP state apportionment program.

The FAA has discretion over the allocation of any AIP money remaining after all entitlements are funded. Under current law, discretionary AIP must receive a minimum of \$148 million plus a calculated amount based on Letters of Intent (“LOI”)⁸ prior to January 1, 1996. H.R. 915 increases the minimum AIP discretionary funding level to \$520 million. This increase is necessary to cover LOI commitments (approximately \$280 million per year) and high priority safety and capacity projects (exclusive of the noise and environmental set-aside projects), which include statutorily mandated runway safety area improvement projects.

In addition, current law requires that a certain percentage of AIP discretionary funds go to designated set-asides that limit this discretion. Specifically, the law requires that 35 percent be allocated to environmental and noise abatement projects and 4 percent to current or former military airports designated by the FAA. An additional set-aside for reliever airports equal to 0.66 percent of the discretionary fund is distributed when AIP is at or above \$3.2 billion. H.R. 915 amends the discretionary environmental set-aside from 35 percent of annual AIP discretionary to a flat \$300 million a year, an increase of \$15 million over previous appropriations, and allows these AIP funds to be used for projects needed to comply with the Clean Water Act.

However, AIP meets only a portion of airport infrastructure needs. To provide additional resources for airport improvements, the *Omnibus Budget Reconciliation Act of 1990* (P.L. 101-508) permitted an airport to assess a fee on passengers. This airport fee is known as the Passenger Facility Charge (“PFC”). PFC eligibility is similar to AIP eligibility but with fewer limitations. PFCs are more likely to be used for “landside” projects (such as, terminals, airport access (roads and rail), and gates). The PFC is added to the ticket price, collected by the airlines, and then turned over to the airport imposing the fee. PFC funds are not deposited in the Federal Treasury. Rather, these fees are imposed and used locally. The FAA approves PFC applications from public agencies controlling commercial airports, and PFC authority is only in effect as long as is necessary to fund projects in approved applications for the airport.

Over the life of the PFC program, \$64.9 billion in revenue has been approved for collection (\$61.7 billion excluding Denver International Airport), including: \$11.7 billion for airside projects (18 percent); \$23.4 billion for landside projects (36 percent); \$2.6 billion for noise mitigation projects (4 percent); \$3.9 billion for access projects (i.e. roads, rail, land) (6 percent); and \$20.2 billion to pay interest on debt (31 percent). For Denver Airport, \$3.2 billion (5 percent of total PFC revenue) has been raised.

AIR 21 increased the cap on the PFC from \$3 to \$4.50 per passenger per flight segment, and no passenger can be required to pay more than \$18 in PFCs per round-trip. The FAA has approved PFC collections at 378 airports, including 97 of the top 100 airports. Of those, 305 airports are collecting at the maximum \$4.50 PFC. In 2008, the FAA estimates that actual PFC collections totaled approximately \$2.76 billion. H.R. 915 increases the PFC cap from the current maximum of \$4.50 to \$7.00. The FAA estimates that if every airport currently charging the maximum \$4.50 PFC

⁸ The FAA’s LOI program helps fund large-scale capacity projects at primary or reliever airports. In an LOI, the FAA commits to obligate discretionary and entitlement funds from future budget authority in an amount no greater than the Federal Government share of allowable costs for that project.

(plus two airports that are charging \$4.00) increased to \$7.00 it would generate an additional \$1.089 billion in local airport revenues annually.

Airports that have high passenger volumes are in a position to make more money through a PFC rather than accepting AIP funding. Therefore, current law requires that if a medium- or large-hub airport charges a PFC of \$3 or less, it must forego up to 50 percent of its primary AIP entitlement. If such an airport charges a fee greater than \$3, it must forego 75 percent of its primary AIP entitlement. The foregone entitlements are turned back into the AIP program and divided between discretionary AIP (12.5 percent) and the Small Airport Fund (87.5 percent), which is distributed primarily to non-hub and general aviation airports. H.R. 915 requires a large hub airport that charges a PFC greater than \$4.50 to turn back 100 percent of its AIP primary entitlement funding. This modification will result in more funding for both smaller airports and discretionary AIP.

AIP FUNDING CATEGORY (\$ in millions)	FY 2008 Enacted	FY 2009 H.R. 915	FY 2010 H.R. 915	FY 2011 H.R. 915	FY 2012 H.R. 915
APPORTIONMENTS					
Primary Airports	\$840	\$652	\$652	\$652	\$652
Cargo Airports	\$119	\$132	\$136	\$139	\$143
Alaska Supplemental	\$21	\$21	\$21	\$21	\$21
Non-primary (General Aviation) Airports	\$409	\$409	\$409	\$409	\$409
State Apportionment	\$269	\$379	\$389	\$399	\$409
SMALL AIRPORT FUND					
Small Hubs	\$69	\$86	\$86	\$86	\$86
Non-Hub Commercial Service	\$276	\$342	\$342	\$342	\$342
Non-primary	\$138	\$171	\$171	\$171	\$171
DISCRETIONARY FUND					
Capacity/Safety/Security/Noise	\$356	\$580	\$642	\$704	\$765
Pure Discretionary	\$119	\$193	\$214	\$235	\$255
SET ASIDES					
Environmental and Noise	\$275	\$300	\$300	\$300	\$300
Military Airport Program	\$31	\$45	\$48	\$52	\$55
Reliever	\$5	\$7	\$8	\$9	\$9

III. ATC Modernization and the Next Generation Air Transportation System

The FAA's F&E program includes development, installation, and transitional maintenance of navigational and communication equipment to aid aircraft travel. This program supplies equipment for more than 3,500 facilities, including ATC towers, flight service stations in Alaska, and radar facilities. The F&E program is also the FAA's primary vehicle for modernizing the National Airspace System ("NAS") with new surveillance, automation, and communications systems.

Vision 100 created the Joint Planning and Development Office (“JPDO”) within the FAA to leverage the expertise and resources of the Department of Transportation (“DOT”), Department of Defense, Department of Commerce, and Department of Homeland Security, as well as the National Aeronautics and Space Administration and the White House Office of Science and Technology Policy, for the purpose of completely transforming the NAS by the year 2025 and developing the Next Generation Air Transportation System (“NextGen”). These ATC system upgrades are intended to accommodate and encourage substantial growth in domestic and international transportation and improvement in environmental performance while encouraging continuing future technology enhancements.

H.R. 915 provides \$13.4 billion for the FAA’s F&E account. These funding levels will accelerate the implementation of NextGen; enable the FAA to replace and repair existing facilities and equipment; and provide for the implementation of high-priority safety-related systems, including systems to prevent runway incursions as well as mitigate weather and aircraft wake vortex hazards.

To increase the authority and visibility of the JPDO, H.R. 915 elevates the Director of the JPDO to the status of Associate Administrator for NextGen within the FAA, to be appointed by, and reporting directly to, the FAA Administrator (“Administrator”). H.R. 915 also makes the Associate Administrator a voting member of the Joint Resources Council, the FAA’s decision-making body for major acquisitions. Greater authority will enable the JPDO to prioritize NextGen-related capital investment at the FAA.

To increase accountability and coordination of NextGen planning and implementation, H.R. 915 requires the JPDO to develop a work plan that details, on a year-by-year basis, specific NextGen-related deliverables and milestones required by the FAA and its partner agencies. The bill also requires the Secretary of Transportation (“Secretary”) to report annually on the progress of the work plan – including the success or failure of meeting each specific milestone in the work plan -- and to explain why any milestones were not met, the ramifications, and any required corrective actions.

IV. Safety

The FAA’s Office of Aviation Safety (“AVS”) has the responsibility to promote aviation safety by regulating and overseeing the civil aviation industry. To fulfill this mission, AVS establishes aviation safety standards; monitors safety performance; conducts aviation safety education and research; issues and maintains aviation certificates and licenses; and manages the FAA rulemaking program.

AVS consists of eight distinct organizational elements employing over 7,000 personnel. Five of these organizations – the Office of Accident Investigation, the Office of Rulemaking, the Air Traffic Safety Oversight Service, the Office of Aviation Safety Analytical Services, and the Office of Quality, Integration, and Executive Services – are primarily managed by FAA headquarters in Washington, D.C. The other three organizations – Flight Standards Service, Aircraft Certification Service, and the Office of Aerospace Medicine – also have extensive field structures (including some overseas offices).

The FAA leverages its resources through the designee system. The designee program authorizes private persons and organizations to perform many activities acting on behalf of the

FAA. According to the FAA, the use of designees allows it to concentrate on the most critical safety areas, while designees conduct more routine functions. AVS currently uses more than 11,000 designees, plus another 28,000 people involved in programs such as Flight Check Pilots and Mechanics with Inspection Authority.

Much of the AVS workload is demand driven. These workload drivers can be grouped into four general areas: (1) growth in aviation activity, both commercial and general aviation, by existing operators; (2) the introduction of new operators, aircraft, equipment, and technology; (3) the introduction of new practices; and (4) the globalization of the aviation industry and the increasing need for international standardization of regulations and safety criteria.

H.R. 915 includes several safety provisions, such as authorizing additional funds for runway incursion reduction programs and the acquisition and installation of runway status lights. This bill increases the number of aviation safety inspectors and also requires safety inspections of foreign repair stations at least twice a year. Moreover, the legislation requires the FAA to commence a rulemaking to ensure that covered maintenance work (substantial, regularly scheduled, and required inspection items) on air carrier aircraft is performed by part 145 repair stations or part 121 air carriers. With regard to the designee program, GAO is directed to follow-up on FAA's response to recommendations made in GAO's October 2004 report on designee programs, including an assessment of improvements made and further actions needed to meet performance standards. There are also provisions dedicated to studying fatigue, as well as directing the FAA to initiate action to ensure crewmember safety by applying occupational health standards on-board aircraft.

In addition, language from the House-passed H.R. 6493, the Aviation Safety Enhancement Act of 2008, which addresses several issues raised by FAA whistleblowers and others at the April 3, 2008, hearing on *Critical Lapses in FAA Safety Oversight of Airlines: Abuses of Regulatory "Partnership Programs,"* is included in H.R. 915. This provision creates an independent Aviation Safety Whistleblower Investigation Office within the FAA, charged with receiving safety complaints and information submitted by both FAA employees and employees of certificated entities, investigating them, and then recommending appropriate corrective actions to the FAA. It directs the FAA to modify its customer service initiative to remove air carriers or other entities regulated by the FAA as "customers," to clarify that in regulating safety the only customers of the FAA are individuals traveling on aircraft. In addition, a two-year "post-service" cooling off period for FAA inspectors is established, and FAA is required to rotate principal maintenance inspectors between airline oversight offices every five years. Monthly reviews of the Air Transportation Oversight System database are required to ensure that trends in regulatory compliance are identified and appropriate corrective actions taken.

V. Small Communities

In 1978, the *Airline Deregulation Act* ("ADA") (P.L. 95-504) phased out economic regulation of the airline industry. It permitted airlines to decide which routes to fly and, in most instances, to terminate service at communities without seeking government approval. The rationale was that reliance on free market forces would be the best way to ensure an efficient air transportation system.

However, it was recognized that market forces alone would not ensure air service to many small communities which certificated air carriers had been required to serve because these communities do not produce enough passenger traffic to support profitable air service.

Accordingly, the ADA included a provision, known as the Essential Air Service ("EAS") program, to guarantee a minimum level of air service to small communities, which had been receiving service from certificated carriers. The EAS program provides subsidies to air carriers for providing service between selected small communities and hub airports.

The EAS budget has ranged from about \$100 million early in the program to \$26 million as recently as FY 1997. Beginning in FY 1998, Congress set up a permanent funding mechanism to guarantee at least \$50 million for EAS each year, derived from over-flight fees or the FAA's budget. Funding requirements for the EAS program increased significantly after the September 11, 2001, terrorist attacks, which caused carriers' revenues to decrease and costs to increase.

The carriers' increased costs, in turn, caused existing EAS contract costs to increase. In addition to existing contracts requiring more of a subsidy upon renewal, the number of subsidized EAS communities increased from 75 to 115 (not counting Alaska) as formerly profitable routes became unprofitable, and carriers filed notice to suspend service, thus triggering first-time subsidies. The number of subsidized communities increased each year before reaching 154 subsidized communities (including Alaska) in 2006. About 150 communities currently benefit from the EAS subsidies, at an estimated cost of approximately \$150 million in FY 2009.

As part of its annual budget recommendations over the last few years the Bush Administration proposed limiting EAS funding to \$50 million and requiring local cost-sharing as a condition for a community's continued participation in the program. Nevertheless, the program grew as Congress provided additional funding for EAS, appropriating \$110 million in both FY 2006 and FY 2007 and \$125 million in FY 2008 (including \$50 million from overflight fees, \$60 million appropriated from the Trust Fund, and \$15 million from spectrum auction proceeds).

H.R. 915 increases the total amount authorized for EAS each year from \$127 million to \$200 million. In addition, the bill requires that 50 percent of over-flight fees collected in excess of \$50 million be dedicated to EAS. To improve the quality of air service received by EAS communities, the bill authorizes the Secretary to incorporate financial incentives into EAS contracts based on specified performance goals, such as better on time performance, reducing the number of cancellations, establishing reasonable fares (including joint fares beyond the hub airport), creating convenient connections to hub airports, and increasing market efforts. To encourage increased air carrier participation, the bill authorizes the Secretary to enter into long-term EAS contracts that would provide more stability for participating air carriers. In addition, H.R. 915 reduces the local share of AIP project costs from 10 percent to 5 percent for certain economically depressed communities that receive subsidized air service under the EAS program.

H.R. 915 also includes several provisions to mitigate the effects of sharp increases in aviation fuel costs. It would require the Secretary, not later than 60 days after enactment of the Act, to increase the existing \$200 per passenger subsidy cap⁹ by an amount necessary to account for the increase in the cost of aviation fuel in the 24 months preceding the date of enactment of the Act. In addition, it authorizes the Secretary, subject to the availability of funds, to provide an across-the-board increase in EAS subsidy payments on an emergency basis to compensate EAS carriers for

⁹ The FY 1994 Transportation Appropriations Act (P.L. 103-122) established criteria limiting eligibility for the program. These criteria provided that a community is ineligible to receive subsidized essential air service if it is within 70 miles of a medium or large hub, or if its subsidy exceeds \$200 per passenger (unless it is more than 210 miles from a medium or large hub).

increased aviation fuel costs. Finally, it requires faster adjustments to subsidy rates to reflect changing costs. Specifically, it requires that an incumbent carrier that files a notice to withdraw, but is held in beyond the 90-day notice period, be provided increased compensation beginning after the 90-day notice period, rather than after 180 days, as in current law.

Regarding communities that have exceeded the maximum Federal subsidy per passenger, H.R. 915 makes two process changes. First, it would require the Secretary to: (1) notify each such community at least 45 days before issuing any final decision to end payment of the community's subsidy; and (2) establish procedures by which each community notified of an impending loss of subsidy may work directly with an air carrier to develop a proposal that would allow the community to stay within the maximum Federal subsidy per passenger. Second, it clarifies the procedure by which a community that has lost its EAS subsidy as a result of exceeding the maximum Federal subsidy per passenger may submit to the Secretary a proposal for restoring EAS compensation.

H.R. 915 would also repeal the EAS Local Participation Program, under which not more than then EAS communities located in proximity to hub airports could be required to assume 10 percent of their EAS subsidy costs for a four-year period. This program has never been implemented due to prohibitions included in annual appropriations acts.

In addition to EAS, the Small Community Air Service Development Program ("SCASD") program was established by AIR 21, initially as a pilot program, to make grants to small communities to help them enhance their air service. Under SCASD, the DOT is authorized to award grants to up to 40 communities each year that are served by small hub or nonhub airports and have demonstrated air service deficiencies. The SCASD program gives communities a great deal of flexibility in the use of grant funds in the hope that they will develop creative solutions to their air service problems. Grant sponsors have used a number of strategies, most commonly including subsidies and revenue guarantees to the airlines, marketing to the public and to the airlines, hiring personnel and consultants, and establishing travel banks in which a community guarantees to buy a certain number of tickets.

Demand for SCASD has far exceeded the funding available. When this program received its initial funding of \$20 million in FY 2002, DOT received 179 applications totaling more than \$142.5 million from communities in 47 states. The program continued to receive approximately \$20 million in each of FYs 2003 through 2005, and \$10 million in each of FYs 2006 and 2007. The number of applications has declined each year to 170 in 2003, 108 in 2004, 84 in 2005, and 75 in 2006; but total funding requested still exceeds amounts available for the program. H.R. 915 extends the program through FY 2011, at the current authorized funding level of \$35 million per year. In addition, H.R. 915 requires that 50 percent of overflight fees collected in excess of \$50 million be dedicated to SCASD.

VI. Consumer Protections

In 2007, with record numbers of passengers flying, flight arrival delays increased with the growing traffic. The introduction of extreme weather situations to the already crowded NAS system led to several highly publicized events where passengers were stranded on aircraft for hours without adequate food, water, and amenities. As a result, there were strong calls for increased oversight of airline customer service. In late 2007, the DOT Inspector General ("DOT IG") was asked to examine the airlines' customer service commitments, contracts of carriage and policies dealing with

extended ground delays aboard aircraft, as well as requested recommendations for what airlines, airports and the Federal Government can do to prevent such situations in the future.

H.R. 915 includes several provisions to ensure passenger needs are met on flights including a mandate that air carriers and airports submit emergency contingency plans and detail in their plans how they will allow passengers to deplane following excessive delays. These plans must be approved by DOT; and DOT can assess a civil penalty against an air carrier or airport that fails to adhere to an approved contingency plan. DOT is also required to publicize and maintain a hotline for consumer complaints, establish an Advisory Committee for Aviation Consumer Protection, expand consumer complaints investigated, and require air carriers to report diverted and canceled flight information monthly. H.R. 915 also requires DOT to ensure that denied boarding compensation is adequate every two years and make appropriate adjustments. The DOT IG is asked to report on the causes of air carrier flight delays and cancellations. This legislation also prohibits the use of voice communication using a mobile phone on scheduled flights.

VII. Environmental Provisions

As demand for aviation services continues to grow, so too does aviation's possible impact on the environment. The FAA forecasts that airlines are expected to carry more than 1 billion passengers in the next 7-12 years, increasing from approximately 769 million in 2007. At the same time, fuel costs are significant, causing air carriers to actively search for increased fuel efficiencies, which would also have positive impacts on the environment. Currently, aviation accounts for about 3 percent of the world's greenhouse gas emissions.¹⁰ According to the FAA, carbon dioxide ("CO₂") emissions dropped in the United States by 4 percent between 2000 and 2006, at the same time, commercial aviation moved 12 percent more passengers and 22 percent more freight. Environmental issues – unless forcefully addressed – could limit the ability to provide growth of capacity and fully utilize the capabilities of the NextGen program. Alongside the potential for growth, the industry has shown a history of self-help. According to the Air Transport Association ("ATA"), the airlines have achieved a 35 percent increase in fuel efficiency since 2001. Though jet fuel represents about thirteen percent of petroleum use, it represents only 3 percent of total U.S. energy consumption.

The legislation includes several provisions related to the environment, noise mitigation and land use initiatives. H.R. 915 allows airport operators to reinvest the proceeds from the sale of land that an airport acquired for a noise compatibility purpose, but no longer needs for that purpose – giving priority, in descending order, to the reinvestment in another noise compatibility project; environmentally-related project; another otherwise-eligible AIP project; transfer to another public airport for a noise compatibility project; and finally, payment to the Trust Fund. H.R. 915 also includes the Continuous Lower Energy, Emissions, and Noise ("CLEEN") Engine and Airframe Technology partnership to develop, mature and certify CLEEN engine and airframe technology for aircraft over the next 10 years. Under the program, FAA and industry would cost share maturation of promising technologies to reduce aircraft environmental impacts and energy usage. Other environmental provisions include: an environmental mitigation pilot program; the phasing out of noisy stage II aircraft; an aircraft departure queue management pilot program; broadened AIP eligibility to include several energy saving terminal projects; and requirements for the FAA to build sustainable air traffic control facilities.

¹⁰ Intergovernmental Panel on Climate Change ("IPCC"), *Aviation and the Global Atmosphere* (1999).

VIII. Labor

The *FAA Reauthorization Act of 1996* (P.L. 104-264) amended chapter 401 of 49 U.S.C. by adding section 40122, which set the parameters for negotiations between the FAA and the exclusive bargaining representatives of employees of the FAA, certified under section 7111 of title 5. Section 40122(1)(b) provides that if the FAA Administrator does not reach an agreement with the exclusive bargaining representatives, the services of the Federal Mediation and Conciliation Service (“FMCS”) shall be used to attempt to reach such agreement. If the FMCS is not able to reach an agreement, the Administrator’s proposed change to the personnel management system is transmitted to Congress, along with the objections and reasons for the objections of the exclusive bargaining representatives, and takes effect within 60-days, unless Congress acts to disapprove the Administrator’s proposed change.

In the fall of 2004, the FAA began formal contract negotiations with the National Air Traffic Controllers Association (“NATCA”). Soon after beginning negotiations, the FAA requested help from the FMCS. On April 5, 2006, the FAA announced formally that it had reached an impasse in its negotiations with NATCA regarding its agency-wide contract covering the air traffic controller workforce. In accordance with 49 U.S.C. section 40122(a)(2), the Administrator indicated that the FAA would send its last, best offer to Congress. On June 5, 2006, the FAA imposed a new labor contract on NATCA.

These terms resulted in about 95 percent of the controllers having pay in excess of the maximum for their band. FAA’s proposal was that these controllers would have their pay frozen for five years and would not receive government-wide cost of living increases in their base pay, but did provide for future locality increases and performance pay awards. FAA maintained that the new contract would save the government approximately \$1.9 billion over five years through various measures, including the creation of a separate, lower pay scale for new employees.¹¹ FAA’s imposition of wages, hours, and other terms and conditions of employment has had an impact on the controller workforce, including morale problems and an acceleration of retirements. According to NATCA, the shortfall in the number of experienced controllers has led to: more controller fatigue because controllers are working longer days for sustained periods; an alleged increase in the number of operational errors; and increased delays because there are not enough controllers available to safely manage demand.¹²

H.R. 915 amends section 40122 to modify the dispute resolution process for proposed changes to the FAA personnel management system, and replaces it with a new dispute resolution process. Under the process, if the FAA and one of its bargaining units do not reach agreement, the services of the FMCS be used or an alternative mutually agreed upon dispute resolution procedure. If mediation is unsuccessful, bargaining impasses shall be submitted to binding interest arbitration before a three-person board appointed under authority of the Federal Service Impasses Panel. The arbitration board would have 90 days from the date of appointment to render a decision. The parties would be bound by the decision issued by the arbitration board. If an agreement is reached voluntarily or at the conclusion of arbitration, the final agreement (other than those matters decided

¹¹ FAA (April 5, 2006). *FAA Contract Negotiations with NATCA Reach Impasse*. Press Release. Retrieved on 2009-1-27. http://www.faa.gov/news/press_releases/news_story.cfm?newsId=7008.

¹² NATCA, *The FAA’s Imposed Work Rules: The Effect on Air Traffic Controller Attrition, System Safety and Delays*, (March 2008), at 3.

by the arbitration board), would be subject to employee ratification and FAA head review under title 5 U.S.C. Chapter 71.

H.R. 915 also applies the new dispute resolution process to the ongoing dispute between NATCA and the FAA. Specifically, the changes implemented by the FAA on and after July 10, 2005, would be null and void and the parties will be governed by their last mutual agreement. In addition, FAA and NATCA are required to resume negotiations until a new contract is adopted. If an agreement is not reached within 45 days after negotiations resume, then the dispute would be governed by the new dispute resolution process. The provision would allow affected employees to receive "back pay" of any additional salary increase since the last agreed upon contract, and it authorizes \$20 million, subject to appropriation, for this purpose.

This legislation also amends the Railway Labor Act ("RLA") to clarify that employees of an "express carrier" shall only be covered by the RLA if they are employed in a position that is eligible for certification under FAA's rules, such as mechanics or pilots, and they are actually performing that type of work for the express carrier. All other express carrier employees would be governed by the National Labor Relations Act ("NLRA"). Because of historical anomalies involving different companies in the express package industry, drivers and package handlers working for one major company in the industry (Federal Express) do not have the same rights to organize and bargain collectively as employees performing the exact same jobs at other companies. This legislation gives all truck delivery employees who work for express carriers providing integrated air and truck delivery systems equal treatment under the law and the right to organize locally under the NLRA.

H.R. 915 also requires an assessment of training programs for controllers and air traffic technicians and requires that FAA include employee unions (such as NATCA and Professional Aviation Safety Specialists) as stakeholders in the development and planning for NextGen. To deal with aging air traffic control facilities, H.R. 915 requires the establishment of a Taskforce on Air Traffic Control Facility Conditions to determine whether employees are exposed to dangerous levels of mold, asbestos, poor air quality, radiation and other building and facility-related hazards, and its effect on employee health and safety; issue a report; and then the Administrator must report to Congress on its timeline and plans for implementation of the recommendations.

H.R. 915 also requires the Secretary to establish within the FAA a working group to develop criteria and make recommendations for the realignment and consolidation of services and facilities, comprised of at a minimum: the FAA; air carriers; the general aviation community; employees of the FAA field facilities; and the airport community. A report with justifications for each consolidation or realignment is required, public hearings can be held in affected communities should they be requested, and any interested person can file an objection. Not later than 60 days after the end of the public comment period, the Administrator shall submit final recommendations and public comments to the committees of jurisdiction. The Administrator cannot realign any facility until the final report is submitted to the committees of jurisdiction.

IX. Aviation Insurance

Aircraft insurance is essential to any airline operation. However, commercial insurance companies often will not insure flights to high-risk areas, such as countries at war or on the verge of war. Chapter 443 of title 49 of the U.S. Code authorizes the Secretary to provide insurance or reinsurance to air carriers if certain conditions specified in it are met. Prior to the September 11,

2001, terrorist attacks, the use of this authority typically involved the Secretary providing war risk insurance for flights operated to foreign locations that were considered high risk and which commercial insurance companies would not insure. Current law requires the FAA, for insurance that was in effect on November 25, 2002, to provide U.S. airlines' aviation insurance until March 31, 2009, from the first dollar of loss at capped premium rates. H.R. 915 extends this requirement until September 30, 2012, after which the requirement becomes discretionary until September 30, 2019. After December 31, 2019, such insurance must be provided instead by an airline industry-sponsored risk-sharing arrangement approved by the Secretary. In addition, H.R. 915 extends through December 31, 2012, air carrier liability limits for third party damages resulting from acts of terrorism.

WITNESSES

MEMBER PANEL

The Honorable Mike Thompson
Congressman
California, District 1

PANEL I

The Honorable Nancy LoBue
Acting Assistant Administrator
Aviation Policy, Planning, and Environment
Federal Aviation Administration

Dr. Gerald Dillingham
Director, Physical Infrastructure Issues
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The Honorable Calvin L. Scovel, III
Inspector General
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Mr. James P. Elwood, A.A.E.
Airport Director
Aspen/Pitkin County Airport

Mr. James C. May
President and CEO
Air Transport Association

Mr. Ed Bolen
President and CEO
National Business Aviation Association

Mr. Roger Cohen
President
Regional Airline Association

Mr. Craig Fuller
President
Aircraft Owners and Pilots Association

Mr. Clayton M. Jones
Chairman, President and CEO
Rockwell Collins
and on behalf of
General Aviation Manufacturers Association (GAMA)
Aerospace Industries Association (AIA)
Aeronautical Repair Station Association (ARSA)

PANEL III

Mr. Patrick Forrey
President
National Air Traffic Controllers Association

Mr. Tom Brantley
President
Professional Airways Systems Specialists (AFL-CIO)

Captain John Prater
President
Air Line Pilots Association, International

Ms. Patricia Friend
International President
Association of Flight Attendants-CWA

Mr. Robert Roach, Jr.
General Vice President
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Mr. Robert Gless
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