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Issue Brief for Congress

Airport Improvement Program

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Airport Improvement Program

SUMMARY

The Airport Improvement Program (AIP) has provided federal grants for airport development and planning since the passage of the Airport and Airway Improvement Act of 1982 (P.L. 97-248). AIP funding is usually spent on projects that support aircraft operations including runways, taxiways, aprons, noise abatement, land purchase, and safety, emergency or snow removal equipment. Funds obligated for the AIP are drawn from the Airport and Airway Trust Fund, which is supported by user fees and fuel taxes.

The September 11, 2001 terrorist attacks on New York and Washington led to passage of the Aviation and Transportation Security Act (ATSA). ATSA broadened the range of security activities and projects that are eligible for AIP grants.

On April 5, 2000 President Clinton signed the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (FAIR21; P.L. 106-181). Two years in the making, this $40 billion multi-year Federal Aviation Administration(FAA) reauthorization bill included AIP authorizations of $3.2 billion for FY2001, $3.3 billion for FY2002, and $3.4 billion for FY2003. The Act also increased the Passenger Facility Charge (PFC) ceiling to $4.50 per boarding passenger.

Raising the ceiling on the PFC had been one of the most contentious policy issues related to AIP and airport development. The PFC is essentially a local tax on each boarding passenger that is levied by an airport with federal approval. The ceiling had been set at $3 since 1990. During the reauthorization airports had supported eliminating or raising the ceiling while airlines had argued for no change.

The House version of the reauthorization bill (H.R. 1000) would have taken the Aviation Trust Fund off-budget to encourage the spending of trust fund revenues and unexpended balances for aviation purposes. The off-budget proposal never emerged from conference. Instead of taking the trust fund off-budget, however, FAIR21 includes "point of order" provisions that, if utilized, could assure that all trust fund receipts and interest are spent annually and increases the likelihood that AIP will be fully funded at the authorized level. To date, this has been the case: AIP has received the fully authorized amounts of $3.2 billion and $3.3 billion for FY2001 and FY2002, respectively, and President Bush's FY2003 budget request proposes to fully fund AIP at $3.4 billion.

In 1996, airports had estimated their airport development spending needs at $10 billion annually over five years from all sources (the airlines estimated the need at only $4 billion). Record delays and cancellations during the summers of 1999 and 2000 have led to increased calls for airport capacity improvements, especially for new runway construction.

Noise mitigation spending is closely linked to airport capacity policy because airport noise levels are a major factor in local resistance to airport improvement projects. FAIR21 increased the set aside for noise mitigation from 31% to 34% of AIP discretionary funds.

On June 20, 2002, the House passed a bill (H.R. 1979) that would allow Contract Tower Program airports to use AIP formula grants to construct or improve their air traffic control towers.

MOST RECENT DEVELOPMENTS

The September 11, 2001 hijacking of four airliners from three airports and the enormous loss of life from their use as weapons has had an impact on the Airport Improvement Program (AIP). In the aftermath of the attack, many airports are seeking to use AIP funds for airport security improvements. Congress responded to the attacks by passing the Aviation and Transportation Security Act of 2001 (ATSA)(P.L. 107-38). ATSA includes provisions that broaden AIP eligibility to cover airport security costs incurred because of FAA mandated security changes imposed in response to the September 11 attacks.

On December 18, 2001 President Bush signed the Department of Transportation and Related Agencies appropriations bill (P.L. 107-87). The Act fully funds AIP at the authorized level of $3.3 billion and is in conformance with the recently passed Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (FAIR21; P.L. 106-181) which reauthorized the Federal Aviation Administration through FY2003.

The FY2002 Department of Defense Appropriations Act (H.R. 3338; H. Rept 107-350) included supplemental appropriations of $175 million (available until expended) for AIP security grants. The funds are to help reimburse airports for the costs of post-September 11 security mandates imposed by law or DOT and for other purposes.

On February 4, 2002, President Bush submitted his FY2003 budget request to Congress. The budget requests the fully authorized $3.4 billion for AIP.

On June 20, 2002, the House passed the Small Airport Safety, Security, and Air Service Improvement Act of 2002 (H.R. 1979; H. Rept. 107-496). The bill would expand the range of AIP eligible projects to include the building and equipping of air traffic control towers at airports participating in the FAA's Contract Tower Program.

BACKGROUND AND ANALYSIS

The Airport Improvement Program (AIP) provides federal grants to airports for airport development and planning. AIP funding is usually limited to improvements related to aircraft operations, typically for planning and construction of projects such as; runways, taxiways, aprons, noise abatement, land purchase, as well as security, safety, or emergency equipment. Commercial revenue producing portions of terminals (such as shop concessions or commercial maintenance hangars), automobile parking garages, and off-airport road construction are examples of improvements that generally are not eligible for AIP funding. AIP money cannot be used for airport operational expenses or bond repayments.

The AIP is one of five major sources of airport capital development funding. The other sources are tax-exempt bonds, passenger facility charges (PFCs), state and local grants, and airport operating revenue. Different airports use different combinations of these sources depending on the individual airport's financial situation and the type of project being considered. Small airports are more likely to be dependent on AIP grants than large- or medium-sized airports. The larger airports are also much more likely to participate in the tax-exempt bond market or finance capital development projects with a PFC.

The PFC is a local tax imposed, with federal approval, by an airport on each boarding passenger. PFC funds can be used for a somewhat broader range of projects than AIP grants and are more likely to be used for "ground side" projects such as passenger terminal and ground access improvements. PFCs can also be used for bond repayments.

This issue brief discusses the Airport Improvement Program and its complement, the Passenger Facility Charge (PFC). After a brief history of federal support for airport construction and improvement, the report describes AIP funding, its source of revenues, the impact of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (FAIR21, P.L. 106-181), funding distribution, the types of projects the program funds, AIP and PFC policy issues, and the allowable use of AIP funds for airport security purposes.

Founding Legislation

Prior to World War II the federal government limited its role in aviation to maintaining the airway system, viewing airports as a local responsibility. Some federal monies were spent on airports during the 1930s (about $150 million) but only as part of federal work relief activities. The national defense need for a strong system of airports during World War II led to the first major federal support for airport construction. After the war, the Federal Airport Act of 1946 (P.L. 79-377) continued federal aid under the Federal Aid to Airports Program, although at lower levels than during the war years. In the 1960s substantial funding also went to upgrade and extend runways for use by commercial jets. Congestion, both in the air and on the ground at U.S. airports, was seen as evidence by some that past federal support for airports had not been sufficient to maintain adequate airport capacity.

Airport and Airway Development and Revenue Acts of 1970 (P.L. 91-258)

Congress responded to the congestion problems and capacity concerns at airports by passing two Acts. The first, the Airport and Airway Development Act, dealt with the spending side of federal aid to airports. It established the forerunner program of the AIP, the Airport Development Aid Program (ADAP), and set forth the program's grant criteria, distribution guidelines, and first five years' authorization. The second Act, the Airport and Airway Revenue Act of 1970, dealt with the revenue side of airport development. This Act established the Airport and Airway Trust Fund (also known as the Aviation Trust Fund). Revenues from levies on aviation users and fuel were dedicated to the fund.

Airport and Airway Improvement Act of 1982 (P.L. 97-248)

This Act created the current AIP. Although the AIP maintained the ADAP's approach of using grants-in-aid to support an integrated national system of airports, it did make some significant changes in the operation of the program. The program differences included altering the funding distribution among the different categories of airports, extending aid eligibility to privately owned general aviation airports, increasing the federal share of eligible project costs, and earmarking a portion of total funding for noise abatement and compatibility planning.

Airport Improvement Program (AIP)

The structure of AIP funds distribution reflects the national priorities and objectives of assuring airport safety and security, stimulating capacity, reducing congestion, helping fund noise and environmental mitigation costs, and financing small state and community airports.

This section first discusses the source of the money used to pay for AIP grants, the Aviation Trust Fund. It then sets forth the overall impact on AIP of the recent passage of FAIR21, which reauthorized FAA through FY2003. Next, it explains the AIP's system of project grant distribution. The section then describes AIP funding in terms of what types of projects the grants are spent on and examines grant distribution by airport size. Finally, it discusses the Passenger Facility Charge (PFC).

The Airport and Airway Trust Fund

The money that goes into the Aviation Trust Fund comes from a variety of aviation user fees and fuel taxes. These tax revenues are authorized through September 30, 2007, by the Taxpayer Relief Act of 1997 (P.L. 105-34). Revenue sources include:

- 7.5% ticket tax;
- $3.00 flight segment tax;
- 6.25% tax on cargo waybills;
- 4.3 cents per gallon on commercial aviation fuel;
- 19.3 cents per gallon on general aviation gasoline;
- 21.8 cents per gallon on general aviation jet fuel;
- $13.20 international arrival tax;
- $13.20 international departure tax;
- 7.5% tax on second party sales of airline award miles (normally "frequent flyer" awards);
- 7.5% ticket tax at rural airports.

Over much of the life of the trust fund, these revenues plus interest on the trust fund's unexpended balances brought more revenue into the fund than was being paid out. This has led to the growth in the end-of-year unexpended balance in the trust fund. There are outstanding commitments against these unexpended balances, so not all of the unexpended balance would actually be available in any given year. Nonetheless, these unexpended balances (somewhat inaccurately referred to by some as a surplus) have been large enough relative to the FAA budget to make their existence controversial.

The scenario of an unexpended trust fund balance, that grows substantially larger each year, was expected to end with the FY2000 budget. For FY2000, the FAA's budget was funded entirely from the trust fund, with no contribution from Treasury general fund revenues. The trust fund estimates for FY2000, in President Clinton's FY2001 budget, indicated that trust fund revenues and interest would roughly equal expenditures in FY2000. However, the actual outgo from the trust fund during FY2000 was smaller than predicted and the unexpended balance again grew, although at a slower rate than in some previous years. The FY2001 DOT appropriations act provided $12.5 billion for FAA, including just over $2 billion from the Treasury general fund. However, because the expected trust fund

income, for FY2001 was $11.4 billion but only $10.5 billion, at the most, is expected to be drawn from the trust fund for the year, the unexpended balance in the trust fund may still have grown. The FY2002 DOT Appropriations Act (P.L. 107-87) provides $13.3 billion for FAA with a general fund share of just $1.1 billion, should again slow the rate of growth of the trust fund's unexpended balances. Emergency supplemental appropriations of $533.5 million, included in the FY2002 Department of Defense Appropriations Act (P.L. 107-117), as well as further supplemental appropriations proposed in House and Senate-passed H.R. 4775, also to be drawn from the aviation trust fund over the next few years, should also reduce the rate of growth in the balance. In addition, most observers believe the drop in demand for air travel that began during 2001, due to the recessionary economy and potential passengers' fear of flying following the September 11 attacks, will significantly constrain the revenues available from the trust fund. It is likely that the trust fund's end-of-year unexpended balances will decline for FY2002 and possibly for FY2003 as well. (For more on the aviation trust fund, see CRS Report RS20177. *Airport and Airway Trust Fund Issues in the 106th Congress,* by John W. Fischer)

AIP Funding

AIP spending since FY1982 is illustrated in **Figure 1**. From FY1982 to FY1992 annual spending (obligations) increased from $412.5 million to $1,954.5 million. From FY1982 to FY1992 the obligation limits increased every year except for FY1986, when it dipped by $28.6 million below the FY1985 level. For FY1993-FY1997 spending was reduced as part of overall deficit reduction. AIP spending declined in FY1993 and FY1994 before leveling off at about the $1.5 billion level during FY1995-FY1997.

Obligations for FY1998 rose to $1.7 billion. The FY1999 omnibus appropriations act (P.L. 105-277) provided obligational authority for $1.95 billion. However, the money was released intermittently as a series of partial year authorizations were passed. On October 1, 1999, with the beginning of the new fiscal year 2000, the AIP went into abeyance. The enactment of FAIR21 allowed the FY2000 AIP funds to be distributed.

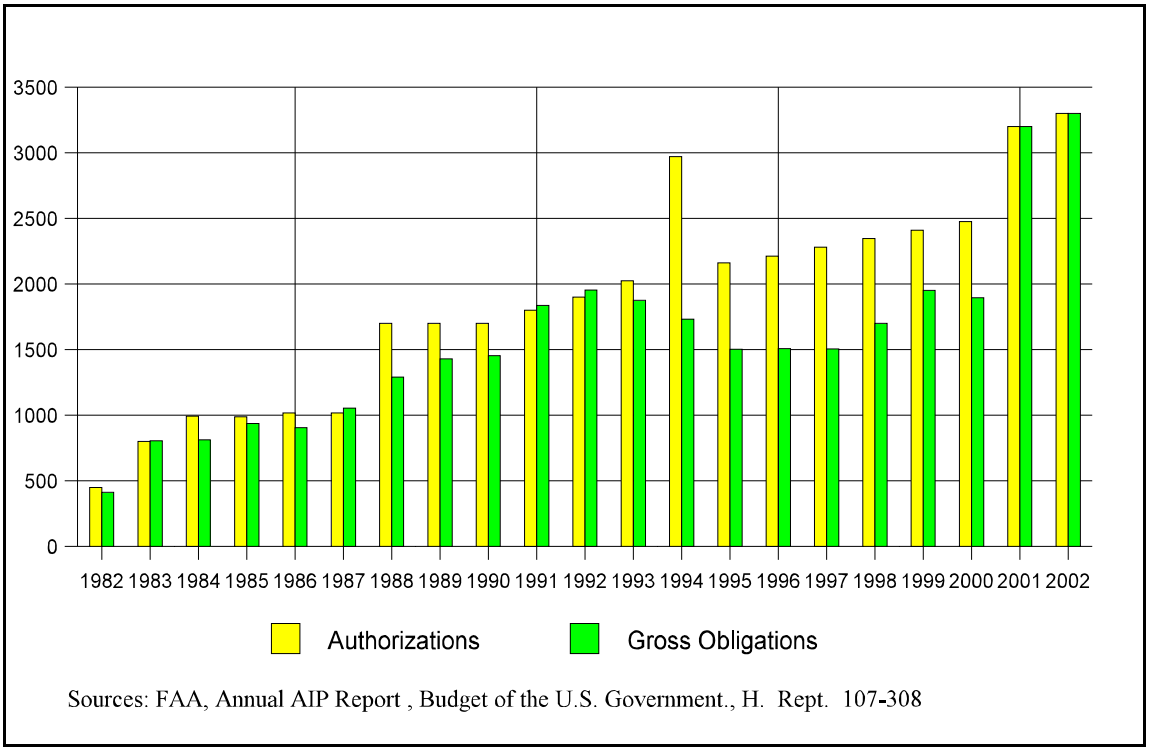
For FY2000 appropriations, the enacted appropriations legislation (P.L. 106-69) again provided for $1.95 billion. However, the Consolidated Appropriations Act for FY2000 (P.L. 106-113), called for an across-the-board cut of 0.38% from all discretionary budget authority and obligation limitations. Another $45 million is to be obligated to pay for the administration of the AIP. This allowed FAA to obligate just over $1.85 billion for airport grants in FY2000.

For FY2001, the DOT Appropriations Act funded AIP at the authorized level of $3.2 billion. This was an increase of nearly 70% over the FY2000 enacted funding. The Administration had proposed $1.95 billion for AIP. Following passage of the FY2001 DOT appropriations bill, the FY2001 Consolidated Appropriations Act (P.L. 106-554) provided for a government-wide rescission that reduced the amount available for AIP by roughly $7 million.

The FY2002 DOT appropriations act (P.L. 107-87) provides for the fully authorized funding of $3.3 billion for AIP. Of this amount, $57.05 million is set aside for administration and $20 million is to be provided for the Small Community Air Service Development Pilot Program. The proposal also rescinds $301.7 million in unused previous

years budget authority. This rescission will have no impact on the FY2002 funding available for AIP.

Figure 1. AIP Authorization and Obligations, FY1982-FY2002 (Millions of $)



Sources: FAA, Annual AIP Report , Budget of the U.S. Government., H. Rept. 107-308

In the aftermath of the September 11 terrorist attacks on New York and Washington, $175 million in FY2001 supplemental appropriations (available until expended), included in the Department of Defense Appropriations Act (H.R. 3338; H. Rept. 107-350), were made available for AIP to help reimburse airports for the costs of post-September 11 security mandates imposed by law or DOT. In addition, House and Senate-passed versions of a FY2002 supplemental appropriations bill (H.R. 4775) propose further funding for these security mandates. The House-passed version would provide $200 million, conditional on an official budget request by the President. The Senate-passed version proposes $100 million.

On February 4, 2002, President Bush submitted his FY2003 budget to Congress. The budget requests the fully authorized $3.4 billion for AIP. Of this amount, the President requests that $83 million be provided for the Essential Air Service Program. (For more see CRS Report RS31008, *Appropriations for FY2002: Department of Transportation and Related Agencies*, coordinated by Robert S. Kirk and David Randall Peterman).

The Impact of FAIR21 on AIP

The enactment of FAIR21, was the culmination of two years of legislative effort to pass a multi-year FAA reauthorization bill. The length of the effort was a reflection of the

difficult issues faced. Major issues that had to be resolved included the budgetary treatment of the aviation trust fund, raising the ceiling on the passenger facility charge (PFC), and the amounts to be spent and their distribution.

Provisions to take the aviation trust fund off-budget or erect budgetary "firewalls" to assure that all trust fund revenues and interest would be spent each year for aviation purposes never emerged from the conference committee. Instead, the enacted legislation includes a so-called "guarantee" that all of each year's receipts and interest credited to the trust fund will be made available annually for aviation purposes. The guarantee is enforced by changes made in House and Senate point-of-order rules. One rule makes it out-of-order to consider legislation that does not spend all trust fund revenues for aviation purposes. The second rule makes it out-of-order to consider legislation for funding FAA's O&M or RE &D budgets if AIP and the F&E budgets are funded below authorized levels. Although these provisions are not airtight, they do increase the likelihood that the budget resources made available for AIP for FY2001-FY2003 will equal the levels authorized in FAIR21 and, thus far, for FY2001 and FY2002, this has been the case.

FAIR21 does not, however, make any major changes in the structure or functioning of AIP. The big difference is the amount of money made available for airport development projects. From a funding level of approximately $1.9 billion for FY2000, AIP's authorization increases funding by nearly 70% to $3.2 billion for FY2001, then to $3.3 billion for FY2002, and to $3.4 billion for FY2003. Within the context of these increases, the formula funding and minimums for primary airports are doubled starting in FY2001. The state apportionment for general aviation airports is increased form 18.5% to 20%. The noise set-aside is increased from 31% to 34% of discretionary funding and a reliever airport discretionary set-aside of 0.66% is established.

FAIR21 also increases the PFC maximum to $4.50 per boarding passenger. In return for imposing a PFC above the $3 level, large and medium hub airports would give back 75% of their AIP formula funds. This will make more AIP funding available to the smaller airports.

AIP Funding Distribution

The distribution system for AIP grants is complex. It is based on a combination of formula grants (also referred to as apportionments) and discretionary funds. Each year formula grants are apportioned automatically to specific airports or types of airports including primary airports, cargo service airports, general aviation airports, and Alaska airports. The discussion below incorporates changes to AIP enacted in FAIR21.

Formula and Discretionary Funds.

Formula Funds. Sometimes referred to as apportionments, these funds are apportioned by formula or percentage (see, *16th Annual Report of the AIP: FY1997*. Washington, FAA, 1998: pp. 12-15). Formula funds may generally be used for any eligible airport or planning project. Formula funds are divided into four categories, primary airports, cargo service airports, general aviation airports, and Alaska supplemental funds. Each category distributes AIP funds by a different formula. Most airports have up to three years

to use their apportionments. Non-hub commercial service airports (the smallest of the primary airports) have up to four years.

Primary Airports. The apportionment for primary airports is based on the number of passenger boardings made at the airport during the prior calendar year. Beginning in FY2001, the amount apportioned for each fiscal year is equal to double the amount that would be received according to the following formulas:

- $7.80 for each of the first 50,000 passenger boardings;
- $5.20 for each of the next 50,000 passenger boardings;
- $2.60 for each of the next 400,000 passenger boardings;
- $0.65 for each of the next 500,000 passenger boardings; and
- $0.50 for each passenger boarding in excess of 1 million.

The minimum formula allocation is $1 million. The maximum is $26 million. New airports receive the minimum for their first fiscal year of operation.

Cargo Service Airports. 3% of AIP funds are apportioned to cargo service airports. The allocation formula is the proportion of the individual airport's landed weight to the total landed weight at all cargo service airports.

General Aviation Airports. Beginning in FY2001, 20% of AIP funds are to be apportioned for use at general aviation and reliever airports. From this share, all airports, excluding all non-reliever primary airports, receive the lessor of:

- $150,000; or

- one fifth of the estimated 5-year costs published in the most recent National Plan of Integrated Airport Systems (NPIAS) to a maximum of $200,000 per year.

Any remaining funds would be distributed based on state-based population and area formulas.

Alaska Supplemental Funds. Funds are apportioned to Alaska to assure that Alaskan airports receive at least as much as they did under the ADAP in 1980. FAIR21 doubles the Alaska Supplemental.

Forgone Apportionments. Large and medium hub airports that collect a passenger facility charge of $3 or less have their AIP apportionments reduced by an amount equal to 50% of their projected PFC revenue for the fiscal year until they have forgone 50% of their AIP formula grants. In the case of a fee above the $3 level the percentage forgone is 75%. The implementation of the reduction is not imposed until the first fiscal year following the calendar year in which the PFC is first imposed.

A special *small airport fund* gets 87.5% of these forgone funds. The discretionary fund gets the remaining 12.5%.

Discretionary Funding. The discretionary fund (49 U.S.C. sec. 47115-47117) includes the money not distributed under the apportioned entitlements as well as, the forgone

PFC revenues that were not deposited into the Small Airport Fund. Discretionary grants are approved by the FAA based on project priority and other selection criteria, including congressional directives in appropriations legislation. Despite its name, the discretionary fund is subject to three set-asides and certain other spending criteria. The three set-asides are:

Airport Noise Set-Aside. At least 34% of discretionary grants are set-aside for noise compatibility planning and for carrying out noise abatement and compatibility programs.

Military Airport Program (MAP). At least 4% of discretionary funds are set-aside for conversion and dual use of current and former military airports. 15 airports may participate.

Grants for Reliever Airports. There is a discretionary set-aside of 2/3 of 1% for reliever airports in metropolitan areas suffering from flight delays.

The Secretary of Transportation is also directed to see that 75% of the grants made from the discretionary fund are used to preserve and enhance capacity, safety and security at primary and reliever airports, and also to carry out airport noise compatibility planning and programs at these airports.

Subject to these limitations, the three set-asides, or priority directives from the appropriation committees (referred to by some as "place naming"), the Secretary, through the FAA, has discretion in the distribution of grants from the remainder of the discretionary fund.

The Federal Share of AIP Matching Funds. For AIP development projects, the federal government share differs depending on the type of airport. The federal share, whether funded by formula or discretionary grants, is as follows:

- 75% for large and medium hub airports (80% for noise compatibility projects);
- 90% for other airports; and
- 90% for integrated airport system planning grants;
- "not more than" 90% for airport projects in states participating in the state block grant program;
- 40% for projects funded from the discretionary fund at airports receiving exemptions under section 47134, the pilot program for private ownership of airports;
- 100% for FY2002 costs of security related activities required by the Secretary of DOT after the terrorist attacks of September 11, 2001.

The airports themselves must raise the remaining share from other sources. Unlike federal aid to highways, AIP grants generally go directly to airports rather than through the states.

This federal share regime means that smaller airports do not pay as high a percentage of AIP project costs as large and medium airports do. These are fixed percentages with the above mentioned exception of the state block grant states.

Distribution of AIP Grants by Airport Size. The appropriateness of the distribution of grants among airports of different size has, at times, been a source of debate (for airport definitions see CRS Report RL30096, p. 11). It is important to keep in mind that although smaller airports' individual grants are much smaller than the grants going to large and medium hub airports, the smaller airports are much more dependent on AIP to meet their capital needs. Based on 1996 data, a GAO report (GAO/RCED-98-71) found that about 10% of large and medium airports' capital funding comes from, contrasting with just over 50% for airports smaller than medium hub. (For graphic presentations of airport funding sources, see U.S. General Accounting Office (GAO). *Airport Financing: Funding Sources for Airport Development*, GAO/RCED-98-71. 1998. 52 p.) A recent GAO report (GAO-02-283) found, for the years FY1996 through FY1999, grants to small airports (small hub and smaller) grew 56% while grants to large and medium hub airports grew only 24%, indicating that AIP was becoming increasingly important to small airports.

FAIR21 will continue this trend and raise the percentage share for smaller airports. This is because large and medium hub airports will be foregoing 75% of their AIP formula funds in return for the ability to impose PFCs at the $4.50 level.

Passenger Facility Charges (PFCs)

During the late 1960s a number of airports began collecting a local "head tax" (the precursor of the PFC) on each paying passenger boarding an aircraft. There was severe criticism of the passenger charges, by both airlines and passengers. The complaints included: administrative problems for the airlines in collecting the charge; passenger inconvenience; and, especially, the diversion of head tax revenue for off-airport projects and projects not aviation related. In 1973, the Airport Development Acceleration Act banned the imposition of state and local passenger charges.

In 1990 expected tight budgets, resulting from the federal deficit, led to a reconsideration of head taxes. Concerns that the Aviation Trust Fund and other existing sources of funds for Airport development would be insufficient to meet national airport needs led to the legislation that developed the passenger facility charge (PFC). The PFC was seen as being complementary to AIP funding. The Aviation Safety and Capacity Expansion Act of 1990 (P.L. 101-508) allowed the Secretary of Transportation to authorize public agencies that control commercial airports to impose a passenger facility fee of $1 or $2 or $3 on each paying passenger boarding an aircraft at the airports. The money was to be used to finance eligible airport-related projects and, unlike AIP funds, could be used to make payments for debt service or indebtedness incurred to carry out the projects. There was a $3 cap on each airport's PFC and there was a $12 limit on the total PFCs that a passenger could be charged per round-trip. Although the FAA oversees the PFC program, the agency does not impose the fee. The PFC is a state, local, or port authority fee, not a federally imposed tax. Because of the complementary relationship between AIP and PFCs, PFC legislation is generally folded into the AIP provisions of FAA reauthorization legislation. The legislative origin of the PFC itself is Title IX of the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508).

FAIR21 increases the PFC ceiling to $4.50. To impose a PFC over the $3 level an airport has to show that the funded projects will make significant improvements in air safety, increase competition, reduce congestion or noise impacts on communities and that these

projects could not be funded using of AIP funds. Large and medium hub airports imposing PFCs above the $3 level forego 75% of their AIP formula funds. Beginning in FY2001, PFCs at large and medium hub airports may not be approved unless they have submitted a written competition plan to the FAA. The competition plans are to include information such as, the availability of gates, leasing arrangements, gate-use requirements, patterns of air service, controls over air- and ground-side capacity, intentions to build gates that could be used as common facilities, and airfare levels compared to other large airports.

PFCs are a significant source of capital improvement revenue for large, medium, small hub, and non-hub commercial airports. The PFC percentage of airport development funding in FY1996 by airport size is as follows: large hub, 19.9%; medium hub, 14%; small hub, 16.9%; nonhub commercial, 9.7%; and other commercial service, 0.5%. Under the AIP the corresponding percentages are: large hub, 9.7%; medium hub, 12%; small hub, 42%; non-hub commercial, 71%; and other commercial service, 76%. (These percentages were extrapolated from charts [FY1996 figures] in, GAO, *Funding Sources for Airport Development*, pp. 44-48.) As of early 1999, over 300 commercial service airports had PFC approval. A substantial portion of PFC revenues are used to make interest payments on bonds.

Airports have used PFC revenues for a broad range of purposes. Unlike AIP grants, of which almost three-quarters have gone to airside projects (runways, taxiways, aprons, and safety related projects) PFC revenues have been distributed more equally between airside and landside projects. The PFC statutory language lends itself to a broader interpretation of "capacity enhancing" and the implementing regulations are less constraining than those for AIP funds. Also the airlines, who historically have preferred funding be dedicated to airside projects, only have to be notified and provided with an opportunity for consultation about PFC funding requests and are therefore somewhat less involved in the PFC project planning and decision-making process than with AIP projects. The difference in the pattern of project types may also be influenced by the difference in project spending patterns between the larger airports, that collect most of the PFC revenue and have more substantial landside infrastructure, versus the smaller airports that are much more dependent on AIP funding.

The Aviation and Transportation Security Act (P.L. 107-38) requires that FAA expedite the processing and approval of PFC requests for security projects and for reimbursement of costs of DOT security mandates.

AIP Funding of Airport Security

The September 11 attack increased interest in what kinds of security spending could qualify for AIP funding and some confusion as to how airport security projects rate against other priorities in the program. In the aftermath of September 11, FAA advised its field offices that the policies that restricted AIP funding were being temporally lifted. FAA could now approve discretionary funding for security projects and airports could use their formula funds for equipment and facilities of any security project approved by the Civil Aviation Security Field Office. The projects may include security activities at an airport for the protection of persons, baggage, and cargo at an airport and on board an aircraft at an airport. Personnel, training, and uniform costs, as well as maintenance and operational costs remained ineligible due to statutory limitations. Security projects, along with safety projects, are considered the highest priority projects.

On November 19, 2001, President Bush signed the Aviation and Transportation Security Act (ATSA) (P.L. 107-71). Section 119 of the act expands AIP eligibility for FY2002 to cover any "additional security related activity required by law or by the Secretary after September 11, 2001, and before October 1, 2002." For non-primary airports located in the confines of enhanced class B airspace, funds apportioned in FY2002 and FY2003 can be used to fund any activity, including operational activities, if the activity was carried out when any restriction in the Notice to Airmen FDC1/0618 was in effect. Also eligible, in FY2002, are payments for debt service on indebtedness incurred by an airport sponsor or at a privately owned or operated airport passenger terminal financed by indebtedness incurred by the sponsor if the Secretary of DOT determines that such payments are necessary to prevent a default on the indebtedness. The federal share for these purposes is 100%.

As mentioned earlier, H.R. 3338 included supplemental appropriations of $175 million, available until expended, for AIP security grants. House and Senate-passed versions of a FY2002 supplemental appropriations bill (H.R. 4775) propose further funding for these security mandates. The House-passed version would provide $200 million, conditional on an official budget request by the President. The Senate-passed version proposes $100 million.

Congressional Issues

The safe operation of airports is, by statute, the highest aviation priority. Other priorities include minimizing noise impacts, increasing capacity to the maximum feasible extent, and encouraging efficient service to state and local communities. AIP legislation also links increasing capacity to increasing efficiency and safety. The issues discussed below are not only issues that rose to prominence during the recent reauthorization debate but also issues that will retain significance during the oversight years leading up the next reauthorization cycle.

The PFC Cap

The cap on the Passenger Facility Charge (PFC) is one of the most contentious policy issues related to the AIP . PFCs have been extremely popular with airports because they allow for a broader range of improvement projects than AIP, and also because PFCs give airports more freedom from airline involvement in the project decision-making process. Airports also argue that PFCs are pro-competitive in allowing airports to build gates and facilities that can encourage new entrant carriers without incumbent airline approval (although some would deny that this has been done). The airlines argue that the PFC is just another tax on air travelers and is anti-consumer because it raises travel costs. Airlines also argue that airports are using PFCs to fund projects of marginal value instead of projects that offer meaningful safety or capacity enhancements. As mentioned before, FAIR21 raised the PFC cap to $4.50. The agreement also increased to 75% the portion of AIP formula funds that large and medium airports must give up, if they impose a PFC at the $4 or $4.50 level, and also required these airports to submit competition plans to the FAA.

Ongoing post-FAIR21 oversight issues will most likely focus on questions concerning the pattern of spending of the higher PFC revenues. Will the increase in the PFC cap lead

to airport development projects that can be seen as being pro-competitive by encouraging new entrant carriers? Despite the requirement that projects funded by PFCs at the new ceiling increase competition among carriers, will the pattern of PFC spending, over time, benefit dominant carriers' facilities?

Budgetary Treatment of the Aviation Trust Fund

Of the three principal FAA reauthorization proposals, only the House version of AIR21 included provisions that would have altered the budgetary treatment of the Aviation Trust Fund. These provisions were intended to assure that all aviation trust fund revenues would be consistently expended for aviation purposes. In its initial version, reported out of committee on March 11, 1999, AIR21 both took the Aviation Trust fund off budget and created discretionary spending guarantees or "fire walls," similar to that were created for the Highway Trust Fund by the Transportation Equity Act for the 21st Century (P.L. 105-178) (TEA21). These provisions guaranteed the spending of the all the aviation revenues that flow into the aviation account and also mandated that the Treasury fund 30% of the guaranteed FAA funding levels set forth in the Bill from general tax revenues. From FY1982, when the AIP was enacted to FY1999, the percentage of the FAA budget drawn each year from general fund revenues has varied substantially from year to year, from as low as 16% to as high as 59%. In FY2000, for the first time in the history of the Trust Fund, the entire FAA budget was funded by the trust fund.

On May 27, 1999, AIR21, was amended in a second full committee mark up. The newly reported bill kept provisions to take the trust fund off budget but eliminated the "firewall provisions" and in place of a guaranteed 30% general fund share, the amended bill, capped the general fund share at the 1998 level ($3.351 billion). These trust fund changes faced resistance from Members in both Houses and also from many appropriations and budget committee members, who felt that the changes could hamper their ability to fund other transportation programs and would constrain their flexibility in meeting the goals of the budget process.

None of these proposals survived conference. Instead FAIR21, as enacted, includes language that makes it "out of order" in the House of Senate to consider legislation that does not use all aviation trust fund receipts and interest annually. A second capital priority "point of order" provision makes it out of order to consider legislation for any fiscal year through FY2003 for RE&D or O&M if the sum of the obligation limitation for AIP and the appropriation for F&E are below their authorized levels. (See *Airport and Airway Trust Fund Issues in the 106th Congress*, by John W. Fischer. CRS Report RS20177)

An ongoing issue will be the strength of FAIR21's spending "guarantees" and point-of-order enforcement provisions. For example, points-of-order can be waived. Although most observers believe that AIP will be fully funded, it is likely that sometime during the life of the FAIR21 reauthorization the point-of-order enforcement provisions will be tested.

Another issue is the impact of the aviation industry recession on trust fund revenues under the fund's existing tax and user fee structure. In addition, supplemental appropriations have drawn from the trust fund and are contributing to the decline in the trust fund's unexpended balances. The less robust condition of the trust fund could have funding implications in the upcoming FAA reauthorization.

Airport Capital Needs Debate

The federal government's interest in the needs debate is broader than just dealing with capacity constrained airports. It also deals with implementing federal safety, security, and noise policies. The needs estimates produced by airport and airline interests reflect their business perspectives. Congress has both national interests and local concerns to consider when making decisions on the federal role in airport finance.

During the 1996 reauthorization debate the airlines, the airports, and the FAA all projected widely differing long-term airport financial needs. At the low end, the airline estimate (prepared by the Air Transport Association of America) was that $4 billion would be needed each year, while the airport estimate (prepared by the Airports Council International-North America and the American Association of Airport Executives) was $10 billion. The FAA estimated the yearly need at $6.5 billion. During 1996 an estimated $7 billion was raised from all sources for airport capital development. Some advocates for the $10 billion spending level argue that there is a spending gap of approximately $3 billion per year. Others argue that the size of the gap is exaggerated by the inclusion of all proposed projects in the $10 billion need figure. Assuming the accuracy of the $10 billion dollar need level, the increase in AIP funding in FAIR21 increases the AIP share of overall airport development needs funding from below 20% to about 30%. Together, the AIP and PFC programs could now provide nearly 50% of needs.

Record delays and cancellations during the summers of 1999 and 2000 has led to increased calls for airport capacity improvements, especially for new runway construction. A congressional oversight issue will be whether the increased AIP spending under FAIR21 at the major congested airports will increase capacity on the air-side (e.g. new runways, aprons, taxiways, etc.) at congested airports.

A related issue is whether the decline in demand for air passenger air transportation, that coincided with the economic recession that began in 2001 and was exacerbated by the impact of the September 11 terrorist attacks, will lead to a delay in capacity enhancing airport projects. Also, will congestion in the security lines lead to a redirection of AIP spending toward security needs at airport terminals. (See, U.S. GAO. *Airport Development Needs.* GAO/RCED-97-99. April 1997, and also, National Civil Aviation Review Commission. *Airport Development Needs and Financing Options.* Washington, 1997.)

Noise Mitigation

During the reauthorization debate the immediate issue for Congress was what level to set the noise set-aside in AIP reauthorization legislation. In the longer-term the issue is maintaining noise abatement spending at levels that assure that noise abatement projects reflect their status as high AIP priority. Noise policy is linked to airport capacity policy because airport noise levels are a major factor in local resistance to airport expansion or improvement projects.

AIP discretionary funds are the primary source of noise mitigation projects. AIP formula funds, PFCs, or bond funding are less often used for noise mitigation projects. Small commercial and general aviation airports generally do not have alternative sources of funding for noise mitigation.

FAIR21 raised the discretionary set-aside from 31% to 34%. This will push noise mitigation spending above $300 million for FY2001-FY2003. Even given this increase, the adequacy of AIP funding for noise mitigation will remain an issue. The coming increase in the number of airport improvement and construction projects may well increase the incidence of noise-based opposition to airport expansion and improvement, and lead to pressure for even more noise mitigation spending. AIP funds other than the discretionary set-aside can also be used for noise mitigation projects.

Place Naming

Historically, Congress has not earmarked AIP funds in the manner typical to transit appropriations where specific projects have specific dollar amounts designated in the language of the appropriations bills. Instead of earmarking, AIP funds are subject to "place naming." Under place naming the appropriations committees direct FAA to give priority consideration to discretionary grant applications at airports named in the appropriations bill report language. Prior to FY2001, the dollar amount for each named airport was generally not specified. In FY2000 the number of airports named in the report language of the House, Senate, and conference agreement increased significantly. The enacted FY2001 conference agreement (H.Rept. 106-940) place named 158 airports and also specified dollar amounts to be awarded. The language was also more directive. The report directs FAA to "provide not less than the following funding levels, out of available discretionary resources." The FY2002 appropriations bill conference report (H. Rept. 107-308), place names 101 airports, sets the dollar amounts, and directs FAA to provide "not less than" the listed totals. At issue is the appropriate scope of place naming (now virtually indistinguishable from earmarking) and the impact it has on FAA's grant application process.

Aviation Security Legislation and AIP

With the passage of ATSA the congressional issues are ones of oversight. Will the elevation of security activities as high priorities (including in some cases operations costs) lead to a substantial shift of AIP resources away from its traditionally emphasized air-side capacity projects toward more spending on land-side security-related terminal improvements? Will this redirection of funds lead to delays and cancellations of planned air-side capacity projects and increase the likelihood of an airport capacity crisis in the future?

AIP Funding of Contract Towers: the Small Airport Safety, Security and Air Service Improvement Act (H.R. 1979; H.Rept. 107-496)

H.R. 1979 would expand AIP eligibility criteria to include the building and equipping of air traffic control towers at airports participating in the Contract Tower Program (CTP). Under this program, the FAA contracts with private companies to staff visual flight rule towers instead of using federal air traffic controllers. Air traffic control towers, are usually funded from the FAA's facilities and equipment (F&E) budget. The FAA's CTP contracts, require the a participating airport to provide the air traffic control facilities for the contract air traffic controllers and equipment at no expense to the federal government. H.R. 1979 would allow contract tower program airports to use their AIP entitlement (formula funds) or AIP state apportionments to build and equip air traffic control towers. The bill also allows contract tower airports to use their entitlements, but not state apportionments, for

reimbursement for past construction and equipment purchases made after October 1, 1996. AIP discretionary grants would not be made for these purposes. The federal share is limited to 90% and may not exceed a total federal cost of $1.1 million per tower. The bill does not provide any additional funding.

Supporters of the bill argue that many small airports with commercial service or high traffic general aviation activity would like to build control towers to enhance safety at their airports and are willing to use their AIP entitlement grants to fund their construction, given the unavailability of F&E funding for building towers at contract tower program airports. They also argue that the building of more towers would expand the contract tower program, and that program history indicates that the program improves safety, security, efficiency, increases the likelihood of commercial service to rural areas, and saves the FAA in air traffic control costs. Supporters also argue that the bill will not cost the federal government any additional money because it relies on existing AIP funding.

Opponents of the bill argue that it includes provisions that would undermine AIP's existing goals of enhancing airport safety, capacity, security, and efficiency. Although the bill only allows the use of formula funds that are allocated by formula to each of the contract tower airports, these airports would likely have to forgo planned spending on other needs to free up their AIP allocations for spending on a control tower. Opponents also argue that the contract tower operating agreements were signed with the full knowledge that AIP funds could not be used for the towers and also that, in consideration of the air traffic control service being provided by the federal government, the airport sponsor was to provide an airport traffic control tower structure at no cost.

The provisions that have generated the most active debate, however, are the provisions that allow for reimbursement of costs incurred after October 1, 1996 for tower construction and equipment purchases. Supporters argue that among smaller airports there are airports that took the initiative to build the towers themselves rather than waiting for federal funding. They should not be penalized relative to airports that waited for the federal funding being made available under H.R. 1979. Supporters also argue that since the reimbursement comes only from formula funds that an airport is given by law, the bill would give these airports the right to choose whether or not to use its entitlement money for reimbursement. They also deny that the bill would take any money away from capacity enhancing projects (at major airports) since it is limited to money allocated to small airports. Opponents of reimbursement, reiterate that the roughly 26 airports thought to be eligible for reimbursement, signed agreements to provide air traffic control tower facilities, and, in return, the federal government assumed the costs of staffing and operations. They also contend that since many of these airports are eligible for the minimum entitlement of $150,000, that a $1.1 million tower would absorb all their AIP entitlement funding for seven years, preventing them from spending federal aid on other important AIP priorities. They argue that with FAA reauthorization approaching, the bill sets a bad precedent that could lead to a multitude of reimbursement proposals for other infrastructure improvements during the reauthorization debate. There are no controls over what the reimbursed money could be spent on. Finally, the bill exempts these towers from AIP statutory and regulatory requirements, with the exception Davis-Bacon, small business, and veterans preference requirements (some argue that these three requirements, however, will be enough to prevent AIP reimbursement grants to many of the 26 eligible airports in any case). An amendment

to strike the reimbursement provisions was defeated and H.R. 1979 was passed by the House on June 20, 2002.

LEGISLATION

P.L. 106-181, H.R. 1000 (Shuster)

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (H.R. 1000), also referred to as AIR21 or FAIR21, was enacted on April 5, 2000. The Act provides for AIP authorizations of $2.475 billion for FY2000, $3.2 billion for FY2001, $3.3 billion for FY2002, and $3.4 billion for FY2003.

P.L. 107-87 (Rogers)

The Department of Transportation and Related Agencies Appropriations Bill, FY2002. The bill provides for $3.3 billion for AIP for FY2002.

P.L. 107-38 (Young)

The Aviation and Transportation Security Act (ATSA) broadened the eligibility of security projects and activities for AIP funding.

H.R. 3338; H. Rept. 107-350 (Lewis)

The FY2002 Department of Defense Appropriations Act included $175 million in emergency supplemental appropriations for AIP.

FOR ADDITIONAL READING

CRS Report RS20177. *Airport and Airway Trust Fund Issues in the 106th Congress.*

CRS Report 98-579. *Airport Finance: A Brief Overview.*

CRS Report RL31008. *Appropriations for FY2002: Department of Transportation and Related Agencies.*

CRS Report RL31308. *Appropriations for FY2003: Department of Transportation and Related Agencies.*

CRS Report RS20914. *Aviation Congestion: Proposed Non-Air Traffic Control Remedies.*

CRS Report RL30050. *Aviation: Direct Federal Spending, 1918-1998.*

CRS Report 97-657. *Aviation Taxes and the Airport and Airway Trust Fund.*

CRS Report RL31150. *Selected Aviation Security Legislation in the Aftermath of the September 11 Attack.*

CRS Issue Brief IB10032. *Transportation Issues in the 107th Congress.*