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CRS Report for Congress

Airport Improvement Program: Issues for Congress

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Airport Improvement Program: Issues for Congress

Summary

The Airport Improvement Program (AIP) has been providing 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 such as runways, taxiways, aprons, noise abatement, land purchase, and safety or emergency equipment. The funds obligated for the AIP are drawn from the Airport and Airway Trust Fund (hereafter referred to as the trust fund), which is supported by a variety of user fees and fuel taxes.

The AIP is one of five major sources of airport capital development funding. The other sources are tax-exempt bonds, passenger facility charges (PFCs: a local tax levied on each boarding passenger), 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 dependent on AIP grants than large or medium-sized airports. The larger airports, whose projects tend to be much more costly, are more likely to participate in the tax-exempt bond market or finance capital development projects with a PFC.

AIP is currently authorized through September 30, 2007 under Vision 100 — Century of Aviation Reauthorization Act (P.L. 108-176). The aviation user fees and taxes that support the trust fund are also authorized through September 30, 2007, in this case, under provisions of the Taxpayer Relief Act of 1997 (P.L. 105-34).

The AIP and PFC issues that could be considered during the upcoming reauthorization of the Federal Aviation Administration (FAA) include the national level of need for airport development and the appropriate AIP funding level; the appropriate federal role in airport development; whether an existing federal spending guarantee mechanism should be extended, modified, or eliminated; the criteria for the distribution of funding across airports of different types and sizes; the sufficiency of AIP discretionary funding, especially for major capacity enhancing projects; accommodating new system users such as the Airbus A380 super-jumbo jet and very light jets (VLJs); airport privatization; defederalization of large airports; raising or eliminating the $4.50 ceiling now imposed on PFCs; the use and tax treatment of airport bonds; and noise mitigation funding and eligibility.

During the FAA reauthorization debate in the 110th Congress, virtually all of the policy issues and options concerning AIP will be influenced by the broader budget issues of the adequacy of trust fund revenues and the availability of money for the FAA from the Treasury general fund. Should ample revenues be available, the reauthorization of AIP could maintain the program's structure and perhaps even increase AIP spending. A constrained-budget scenario would probably increase interest in such issues as defederalization or a tightening of program formula funding and eligibility criteria, which could provide cost savings. It could also increase interest in raising or eliminating the PFC ceiling, which could help airports fund more projects, either directly or by supporting increased bonding.

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The Airport Improvement Program (AIP) provides federal grants to airports for airport development and planning. The airports participating in the AIP range from very large publicly-owned commercial primary airports to small public use general aviation airports that may be privately-owned.[1] AIP funding is usually limited to construction or improvements related to aircraft operations, typically for planning and construction of projects such as runways, taxiways, aprons, noise abatement, land purchase, and safety, emergency or snow removal equipment. Commercial revenue producing portions of terminals (such as shop concessions or commercial maintenance hangars), automobile parking garages, and road construction outside the airport boundry, are examples of improvements that generally are not eligible for AIP funding. Airports smaller than medium hub, however, have broader eligibility on terminal projects under certain conditions.[2] AIP money cannot be used for an airport's operational expenses.[3]

The passenger facility charge (PFC) is a local tax imposed, with federal approval, by an airport on each boarding passenger. The spending of PFC program revenues is meant to complement AIP grants. PFC funds can be used for a broader range of projects than AIP grants and are more likely to be used for "landside" projects such as passenger terminal and ground access improvements that are

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[1] General aviation airports do not serve military (with a few Air National Guard exceptions) or scheduled commercial service aircraft but typically do support one or more of the following: business/corporate, personal, instructional flying; agricultural spraying; air ambulances; on-demand air-taxies; charter aircraft. See **Appendix B**, at the end of this report for airport definitions.

[2] Primary commercial airports are categorized by the percentage of the total national passenger boardings (enplanements) that occur at the individual airport during a year: large hub airports enplane at least 1% of the national total; medium hub airports enplane at least 0.25% but less than 1%; small hub airports enplane 0.05% but less than 0.25%; and nonhub airports enplane more than 10,000 passengers but less than 0.05% of total national enplanements. Large and medium hub airports accounted for almost 89% of all enplanements in 2005. See **Appendix B** at the end of this report for more detail.

[3] For AIP eligibility criteria and prohibitions, see FAA, *AIP Handbook*, chapter 3, at [http://www.faa.gov/airports_airtraffic/airports/resources/publications/orders/media/aip_5100_38c.pdf]. Generally, all work items must be located within the airport boundary. Exceptions, however, include such items as removal of obstructions, relocation of roads and utilities to allow for eligible airport development projects, some environmental mitigation work, and noise program projects.

generally not eligible for AIP funding .[4] PFCs can also be used for bond repayments and in some cases to provide the local match for AIP projects.

This report discusses the Airport Improvement Program and its complement, the PFC, within the broader context of airport capital development finance.[5] After a brief history of federal support for airport construction and improvement, the report describes AIP funding, its source of revenues, funding distribution, and the types of projects the program funds. This is followed by a review of AIP legislative and policy issues that may be considered in the course of the Federal Aviation Administration (FAA) reauthorization debate during the 110th Congress.[6]

AIP is currently authorized through September 30, 2007 under Vision 100 — Century of Aviation Reauthorization Act (P.L. 108-176). AIP spending is supported by funding from the airport and airway trust fund (hereafter referred to as the trust fund). The aviation user fees and taxes that support the trust fund are also authorized through September 30, 2007, in this case, under provisions of the Taxpayer Relief Act of 1997 (P.L. 105-34).

Background and Selected Legislative History[7]

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 such as Works Progress Administration (WPA) projects. 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; the 1946 Act) continued federal aid under the Federal Aid to Airports Program, although at lower levels than during the war years. Under the 1946 Act, funds were appropriated annually from the general fund of the U.S. Treasury. Initially much of this spending supported a policy

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[4] The terms airside and landside are terms of art often used in discussions of airport development and planning. Although their meanings may vary depending on the user and context, airside generally refers to parts of an airport that directly involve the arrival and departure of aircraft (i.e. runway, taxiway, and ramp areas, etc.), landside generally refers to other areas of the airport (i.e. buildings such as terminals, hangars, firehouses and other facilities and infrastructure such as fuel farms, roads, perimeter facilities, etc.). Although most would describe AIP as primarily an airside program, its eligibility criteria allow for some projects that are landside as well as for noise and environmental mitigation projects, which do not fit neatly into the airside/landside distinction.

[5] For an overview of how airports fund their operating expenses and the sources of funding commonly used to pay for airport capital development, see CRS Report 98-579, *Airport Finance*, by Robert S. Kirk.

[6] For a broad discussion of FAA reauthorization that goes beyond AIP reauthorization issues, see CRS Report RL33698, *Reauthorization of the Federal Aviation Administration: Background and Issues for Congress*, by Bart Elias, Coordinator, and others.

[7] This is a summary of a more detailed legislative history of federal grants-in-aid to airports provided in **Appendix A**, at the end of this report.

of conversion of military airports to civilian use. In the 1960s substantial funding also was used to upgrade and extend runways for use by commercial jets.[8] Increasing congestion during the 1960s, 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.[9]

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

In 1970, 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 programs of AIP — the Airport Development Aid Program (ADAP) and the Planning Grant Program (PGP) — and set forth the programs' grant criteria, distribution guidelines, and authorization of grant-in-aid funding for the first five years of the program.[10] 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 (AATF, also referred to as the Aviation Trust Fund, and in this report, simply the trust fund). Revenues from levies on aviation users and fuel were dedicated to the fund.[11] Since enactment of the 1970 Act, the trust fund has been the principal source of federal aid to airports (first under ADAP and then under the AIP starting in FY1982).

In 1976, the Airport and Airway Development Amendments Act of 1976 (P.L. 94-353), responding to concerns over the amounts made available in appropriations bills for ADAP, included "cap and penalty" provisions which placed an annual cap on spending for costs of air navigation systems and a penalty that reduced these caps if airport grants were not funded each year at the airport program's authorized levels.[12] Some form of cap and penalty mechanisms were in effect until FY1998.

ADAP grants totaled about $4.1 billion from 1971 through 1980. In part because of a debate over proposed "defederalization" provisions, Congress did not pass authorizing legislation for the taxes that supported the trust fund or for the

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[8] For a general discussion of the U.S. airport system see Alexander R. Wells, *Airport Planning & Management*, (New York, TAB Books, 1992), 1-76.

[9] U.S. President (1969-1974: Nixon), *Problems of Air Transportation in America: Message from the President of the United States*, 91st Cong. 1st Sess., June 1969, (Washington, U.S. Govt. Print. Off. , 1969), H.Doc. 91-130.

[10] Grants-in-aid to airports refer to the giving of federal money (that does not have to be repaid) to an airport sponsor, such as an airport authority, to subsidize an FAA approved airport project.

[11] See CRS Report RS21321, *Aviation Taxes and Fees: Major Issues*, by John W. Fischer.

[12] For a detailed discussion of the history of the various cap and penalty provisions and other spending guarantees, see CRS Report RL33654, *Aviation Spending Guarantee Mechanisms*, by Robert S. Kirk.

fund's operation during FY1981 and FY1982, which meant that the Aviation Trust Fund lapsed during those two years, although spending for airport grants continued.[13]

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

The 1982 Act created the current AIP and reactivated the trust fund. Although the AIP maintained the ADAP's approach of using grants-in-aid (as opposed to providing loans) 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 newly defined categories of airports and extending aid eligibility to privately owned general aviation airports.[14] The Act also required the Secretary of Transportation to publish a national plan for the development of public-use airports in the United States. This biannual publication is called the *National Plan of Integrated Airport Systems (NPIAS)*. The NPIAS identifies airports that are considered important to national transportation. For an airport to receive AIP funds it must be listed in the NPIAS.[15] In reauthorizing the Aviation Trust Fund the Act also adjusted the schedule of aviation user fees.

Although the Act was amended often in the 1980s and early 1990s, the general structure of the program remained the same.[16]

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century of 2000 (AIR21, P.L. 106-181)

AIR21's enactment was the culmination of two years of legislative effort to pass a multi-year FAA reauthorization bill.[17] The length of the effort was a reflection

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[13] Airport aid for those years was appropriated at $450 million per year. Certain aviation fee revenues went into the Treasury's general fund and the Highway Trust Fund. The defederalization debate centered around proposals to withdraw federal aid from major air carrier airports on the grounds that the federal government was overly involved in airport development finance and that large airports could finance any needed development themselves.

[14] See the discussion in **Appendix A**, at the end of this report, for more detail.

[15] Federal Aviation Administration, *National Plan of Integrated Airport Systems (NPIAS) 2007-2011*, (Washington, FAA, 2006), 1. According to the FAA, 3,431 (including 67 proposed NPIAS airports) of the 19,847 airports existing in the United States are listed in the NPIAS. Unless otherwise stated, the discussion in this paper refers to the NPIAS or "national system" airports.

[16] Authority to collect taxes for the trust fund expired on January 1, 1996 and the trust fund received no revenues for nearly eight months until it was extended to the end of the calendar year. Tax authority then expired for another two months. Spending from the trust fund continued during these lapses, however.

[17] During the debate AIP underwent four separate authorization extensions: P.L. 105-227 extended AIP through March 31, 1999; P.L. 106-6 through May 31, 1999; P.L. 106-31 through August 6, 1999; and, finally, P.L. 106-59 through September 30, 1999. The AIP (continued...)

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

Rather than enacting further modifications of the "cap and penalty" provisions, AIR21instead included 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 Operations and Maintenance (O&M) or Research, Engineering and Development (R,E&D) budgets if AIP and the Facilities and Equipment (F&E) budgets are funded below authorized levels. As is discussed later in this report, the funding guarantees have not been enforced in recent years because points-of-order have either been waived by the House Rules Committee or have not been raised by Members on the floor of the House or Senate.

AIR21 did not, however, make any major changes in the overall structure or functioning of AIP. It did make a major change in the amount of money made available for airport development projects. From a funding level of approximately $1.9 billion for FY2000, AIP's authorization increased funding by nearly 70% to $3.2 billion for FY2001, then to $3.3 billion for FY2002, and to $3.4 billion for FY2003. The bill also made changes in funding distribution to facilitate the larger amounts authorized. The formula funding and minimums for primary airports were doubled starting in FY2001; the state apportionment for general aviation airports was increased from 18.5% to 20%; the noise set-aside was increased from 31% to 34% of discretionary funding and a reliever airport discretionary set-aside of 0.66% was established.[18]

AIR21 also increased 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, or "forgo," 75% of their AIP formula funds. This made more AIP funding available to the smaller airports.

Vision 100: Century of Aviation Reauthorization Act of 2003 (P.L. 108-176; H.Rept. 108-334)

Vision 100, the FAA reauthorization act, signed by President George W. Bush on December 12, 2003, included some changes to AIP but not on the scale of the changes made under AIR21. Both the funding increase and the programmatic

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[17] (...continued)
was held in abeyance from October 1, 1999 until AIR21 was enacted on April 5, 2000. See CRS Report RS21621, *Surface Transportation and Aviation Extension Legislation: A Historical Perspective*, by John W. Fischer and Robert S. Kirk.

[18] An increase in AIP funding of the size of the AIR21 increase, faces a number of obstacles in the 110th Congress, that are discussed later in this report, including deficit reduction efforts, enforcement of pay-as-you-go rules, and the spending of limited available funds on other initiatives such as air traffic control modernization.

changes were modest by comparison. Vision 100 funded AIP for four years at the following annual levels: $3.4 billion for FY2004; $3.5 billion for FY2005; $3.6 billion for FY2006; and $3.7 billion for FY2007. The law extended the AIR21 spending "guarantees" through FY2007.

Sources of Project Funding for Airports

The AIP is one of five major sources of funding for airport development and improvement.[19] Airports also fund capital projects using tax-exempt bonds, passenger facility charges (PFCs; a local tax levied on each boarding passenger), state and local grants, and airport revenue.[20] 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 the proceeds generated from PFCs. Each of these funding sources places differing legislative, regulatory, or contractual constraints on airports that use them.

Bonds, AIP, and PFCs are the primary sources of funding for airport capital projects. Based on 1999-2001 data, the U.S. General Accounting Office (now the Government Accountability Office) (GAO), found in 2003 that the airport system received an average of $12 billion per year from all sources for capital development. Of this amount, bonds accounted for 59%, AIP for 21%, PFCs for 13%, state and local contributions for 4%, and airport revenue for 4%.[21] The average amounts made available for AIP and the average annual PFC collections have been significantly higher since FY2001 (because of the AIR21 increase in AIP funding and the raised PFC ceiling), so the AIP and PFC percentages of total capital spending are probably now higher than was the case in date range covered in the GAO study.[22] Bonds, however, doubtless remain the largest source of funding for airport capital projects.[23]

Of the 3,364 airports in the national airport system all but 113 are public sector enterprises that usually operate under a city, county, or state department or a specially contrived organization such as an airport or port authority. Generally, airports can

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[19] For more see, CRS Report 98-579, *Airport Finance*, by Robert S. Kirk.

[20] Airport revenue sources include airfield area fees/landing fees, terminal area concessions and rent, airline leases, parking, etc. PFCs are sometimes referred to as a "head tax."

[21] General Accounting Office (GAO), *Airport Finance: Past Funding Levels May Not be Sufficient to Cover Airports' Planned Capital Development* (Washington: GAO), GAO-03-497T, 2003, 7.

[22] The 2007-2011 NPIAS estimates that AIP and PFCs together account for about 40% of capital spending needs.

[23] Because PFCs are often used to make debt payments, this use reduces the total of PFC revenues used to directly pay for airport projects. This means that the amounts actually available for airport projects will be somewhat less that the grand total of AIP, PFCs, bonds, local grants, and airport revenues dedicated to capital improvements.

do little to influence their financial relationship to their governmental sponsors. On the other hand, airports that handle commercial service aircraft are able to negotiate the terms and conditions of their agreements with their major users and creditors.

The source of airport development funds sets the different limitations and obligations that influence how project money can be raised and spent. The availability and conditions of one source of funding may also influence the availability and terms of other sources of funding. The two financing sources for airports with the most significant federal involvement are the AIP and PFC programs.

As mentioned above, the dependence on AIP to pay for capital needs varies greatly according to airport size categories, with the smaller airports being more dependent on AIP funding.[24] Large and medium-hub airports finance much of their capital expenditures by using bonding and PFCs, and rely on AIP for only 16% and 29%, respectively, of their total capital spending. For small-hub airports the dependence on AIP grants rises to 51%. For non-hub commercial service airports AIP dependence rises to 89% and for other non-hub airports to 94%.[25]

Airport Improvement Program (AIP)

The AIP provides federal grants to airports for airport development and planning. The airports participating in the AIP range from very large publicly-owned primary commercial service airports to small public use general aviation airports that may be privately-owned (but are required under AIP to be available for public use). As mentioned earlier, AIP funding is usually limited to construction or improvements related to aircraft operations, such as runways and taxiways. Commercial revenue producing facilities are generally not eligible for AIP funding, nor are operational costs.[26] The structure of AIP funds distribution reflects legislatively set national priorities and objectives of assuring airport safety and security, stimulating capacity building, reducing congestion, helping fund noise and environmental mitigation costs, and financing small state and community airports. There is less federal involvement in the four other sources of airport development funds.

The main financial advantage of AIP to airports is that, as a grant program, it can provide funds for a known range of capital projects without the financial burden placed on airports by bond or other debt financing. Limitations on the use of AIP grants include the range of projects that AIP can fund and the requirement that airports adhere to all program regulations and grant assurances.

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[24] See **Appendix B** for airport definitions.

[25] Based on FY2003 data, see FAA. *Airports Data Package for Stakeholders.* Available at [http://www.faa.gov/about/office_org/headquarters_offices/aep/aatf/media/Airports%20Data%20Package.pdf].

[26] For detailed guidance on allowable costs see chapter 3 of the *AIP Handbook*, at [http://www.faa.gov/airports_airtraffic/airports/resources/publications/orders/media/aip_5100_38c.pdf].

This section begins with a brief discussion of the source of the money that is used to pay for AIP grants, the Airport and Airway Trust Fund (AATF: aviation trust fund, hereafter simply referred to as the trust fund), followed by a description of 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 AIP's complement, the PFC program.

The Airport and Airway Trust Fund

Modeled on the Highway Trust Fund, this trust fund was designed to assure an adequate and consistent source of funds for federal airport and airway programs.[27] The trust fund is also the primary funding source for most FAA activities in addition to federal grants for airports. These include, facilities and equipment (F&E); research, engineering, and development (R,E&D); and FAA operations and maintenance (O&M). O&M also, however, receives some funding from the Treasury general fund. Air traffic system capital maintenance and improvement falls primarily under the F&E category. Under the 1970 Act the trust fund was to have been both a capital account and, when excess funds existed, a user-pay system to help support FAA's administrative and operations costs.[28]

The money that goes into the Aviation Trust Fund comes from a variety of aviation user fees and fuel taxes.[29] As mentioned earlier, these tax revenues are authorized until September 30, 2007, by the Taxpayer Relief Act of 1997 (P.L. 105-34). Revenue sources (current rate as of January 1, 2007) include:

- 7.5% ticket tax
- $3.40 flight segment tax[30]
- 6.25% tax on cargo waybills
- 4.3 cents on commercial aviation fuel
- 19.3 cents on general aviation gasoline

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[27] Although the Airway and Airport Trust Fund was modeled after the Highway Trust Fund, there are differences in the way funds are distributed. One major difference is that highway spending is funneled through the states whereas most airport development funds go directly to airports.

[28] See Government Accounting Office, *Congressional Intent: Whether or Not the Airport and Airway Trust Fund Was Created Solely to Finance Aviation "Infrastructure,"* "B-281779" (Washington, GAO, 1999), 16 p. For another discussion of congressional intent regarding the debate over the use of aviation trust fund revenues for both airport and airway infrastructure as well as spending on FAA operations, see also Congressional Budget Office, *The Status of the Airport and Airway Trust Fund* (Washington, CBO, 1988), 1-18.

[29] U.S. Internal Revenue Code sec. 4041,4081, 4091, 4261-4263,4271, 9502. See also P.L. 105-34 sec. 1031-1032. See also, CRS Report RS31321, *Aviation Taxes and Fees: Major Issues*, by John W. Fischer, and CRS Report RL30050, *Aviation: Direct Federal Spending, 1918-1998*, by John W. Fischer and Robert S. Kirk.

[30] A flight segment is defined as "a single take-off and a single landing." The flight segment fee has been inflation adjusted (rounded off to the nearest dime) on an annual basis beginning on January 1, 2004.

- 21.8 cents on general aviation jet fuel
- $15.10 international arrival tax[31]
- $15.10 international departure tax
- 7.5% "frequent flyer" award tax[32]
- 7.5% ticket tax at rural airports[33]

Over much of the life of the trust fund, these revenues plus interest on the trust fund's unexpended balances often brought more revenue into the fund than was being paid out. This 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, at times, during the history of the aviation trust fund to make their existence controversial.

The scenario of an unexpended trust fund balance, that grows substantially larger each year, ended in FY2001. Most observers believe the drop in demand for air travel that began during 2001, due at first to a recessionary economy and later to potential fear of flying following the September 11 attacks, significantly reduced the revenues flowing to the trust fund. In addition, AIR21established a mechanism to ensure that all trust fund receipts would be committed to spending on aviation each year. The forecast levels of receipts were drawn from the President's budget baseline projection for each year. For FY2002 through FY2005, actual trust fund revenues fell below the forecast revenues. Consequently, this meant that more money was being committed than was being collected in revenues and the difference was drawn from the trust fund's uncommitted balance. The uncommitted balance in the aviation trust fund fell from $7.3 billion at the end of FY2001 to $1.9 billion at the end of FY2005. The U.S. Government Accountability Office (GAO) projects that, under Vision 100 spending levels, the uncommitted balance will fall to $1.7 billion in FY2007.[34] Although it appears that the uncommitted balance will remain positive through FY2007, it is important to keep in mind that the taxes that provide revenue to the trust fund will lapse unless reauthorized by the end of FY2007. Historically, achieving agreement on the authorization of aviation taxes has been difficult. The authority to collect aviation taxes lapsed for significant periods in 1980 and 1996. At the times of these lapses there existed in the trust fund large accumulated unobligated balances, which permitted the funding of AIP and other FAA programs to continue in spite of the absence of new tax revenue. It appears that this will not

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[31] Both the international arrival and departure taxes have been adjusted (rounded off to the nearest dime) for inflation on an annual basis since January 1, 1999. The rate for U.S. flights to and from Alaska or Hawaii is $7.50.

[32] This tax is not limited to frequent flyers but includes all second party purchases of airline miles.

[33] Rural airport passengers pay no segment tax on the segment to or from the rural airport.

[34] Government Accountability Office, *Federal Aviation Administration: An Analysis of the Financial Viability of the Airport and Airway Trust Fund,* GAO-06-562T, (Washington, GAO, 2006), 15 p. GAO also estimated that if revenues were 5% less than projected the uncommitted balance would fall to $595 million in FY2007 and to $0 if revenues were 10% less than projected.

be the case after September 30, 2007. Based on GAO's projections, the trust fund's uncommitted balance would not be sufficient to fund FAA programs, including AIP, for long in the event that the aviation taxes are allowed to lapse.

The adequacy of trust fund revenue under the current tax regime, for the years ahead, has recently also been an issue of significant debate.[35] The basic question is whether the current revenue streams from the existing tax sources at their existing rates will be adequate to fund FAA programs and activities without the trust fund going into deficit before or during the next authorization cycle. The expected availability of trust fund revenues could influence whether the transportation authorizing committees in Congress recommend modest, significant or no growth in AIP funding in their legislative proposals. Both the FAA and the Department of the Treasury projections indicate that any increases in revenues flowing into the trust fund will be modest.[36] The Congressional Budget Office (CBO) has produced an estimate that is somewhat more positive about future revenues.[37] The Aircraft Owners and Pilots Association (AOPA) has also produced revenue forecasts that suggest that the trust fund will have adequate revenues well into the future.[38] Because of the current small size of the uncommitted balance in historical terms, the assumptions of the size of the annual revenue flows to the trust fund in the forthcoming FAA reauthorization bill could have an impact on both the AIP authorization levels and the programmatic provisions in the upcoming authorization bills.

AIP Funding

AIP spending authorized and the amounts actually made available since FY1982 are illustrated in **Figure 1**. From FY1982 to FY1992 the yearly amounts made available (obligation limitations) in the annual appropriations bills trended upwards, increasing from $450 million to $1,900 million.

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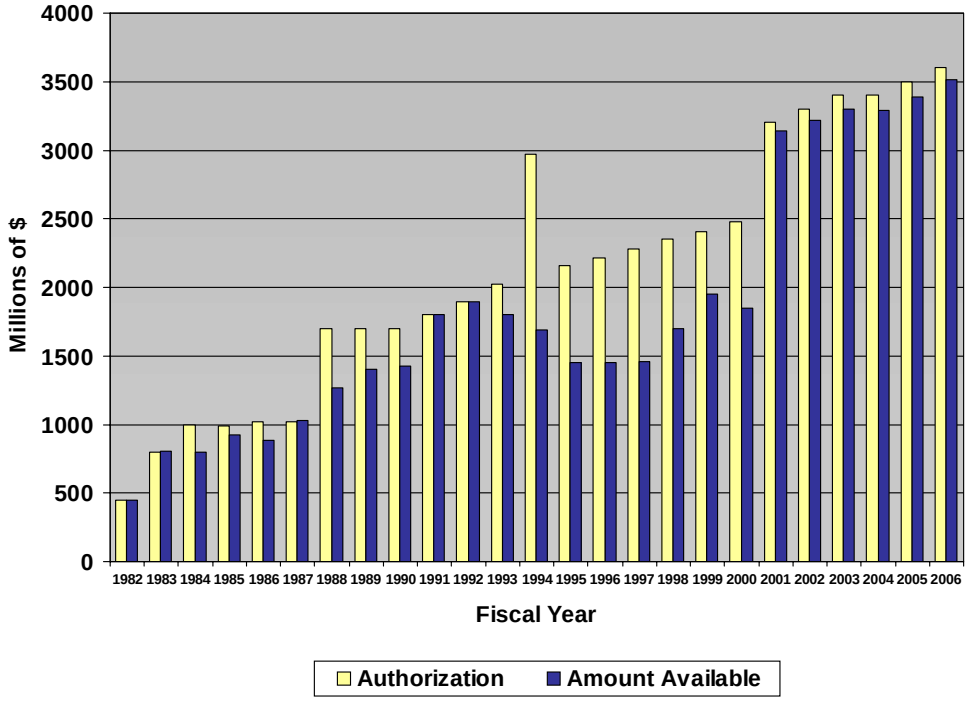
[35] For a concise description of the aviation trust fund adequacy debate see CRS Report RL33698, *Reauthorization of the FAA*, by Bart Elias et al.

[36] For the FAA view, see [http://www.faa.gov/airports_airtraffic/trust_fund/media/Trust_Fund.pdf]

[37] CBO, *Financing Investment in the Air Traffic Control System: Statement of Donald Marron, Testimony Before the House Committee on Transportation and Infrastructure, Subcommittee on Aviation*, September 27, 2006.

[38] Statement available at [http://www.aopa.org/whatsnew/la-userfees.html].

Figure 1. AIP Authorizations and Amounts Made Available for AIP, FY1982-FY2006



Source: FAA.
Note: FY2006 amount made available is preliminary.

This upward trend was reversed in the mid-1990s. For FY1993-FY1997 spending was reduced as part of overall federal deficit reduction efforts. As can be seen in both **Figure 1** and **Table 1**, below, the amounts made available for AIP spending declined in FY1993 and FY1994 before leveling off at about the $1.5 billion level during FY1995-FY1997. The amounts made available increased significantly in FY1998-FY1999 but the gaps between these funding levels and AIP's authorized levels remained in the neighborhood of $500 million. The gaps were a major target of criticism from both airport advocates and members of the transportation authorizing committees in Congress during the debate that preceded the enactment of AIR21.[39]

[39] In some years the annual AIP obligation limitation has supported some other uses. This reduced the amounts made available for AIP below the obligation limitation in some years.

Table 1. Annual AIP Authorizations and Amounts Made Available FY1992-2006

($ millions)

Fiscal Year	Authorization	Amount Made Available
1992	$1,900	$1,900
1993	$2,025	$1,800
1994	$2,970	$1,690
1995	$2,161	$1,450
1996	$2,214	$1,450
1997	$2,280	$1,460
1998	$2,347	$1,700
1999	$2,410	$1,950
2000	$2,475	$1,851
2001	$3,200	$3,140
2002	$3,300	$3,223
2003	$3,400	$3,295
2004	$3,400	$3,294
2005	$3,500	$3,384
2006	$3,600	$3,515

Source: Various authorization acts, FAA, Airports Branch.
Note: FY2006 amount made available is preliminary.

The major increases in AIP's authorization, provided for in AIR21, began in FY2001 at $3.2 billion. This was an increase of nearly 70% over the FY2000 enacted funding. FY2001 was also the first year that the AIR21 point-of-order spending guarantees of AIP and F&E spending were active. During FY2001-FY2006 AIP was funded near its fully authorized levels. The difference between the authorized levels and the yearly amounts made available narrowed significantly in comparison to the previous eight years. The remaining shortfalls mostly reflected the impact on AIP of government-wide across-the-board rescissions and of some administrative and minor programmatic funding transfers that were included in the annual appropriations bills.

Vision 100, as mentioned earlier, continued the spending guarantees included in AIR21 through FY2007. During the years the guarantees were in effect (FY2001-FY2006), appropriators initially provided funding at the authorized level in four of the five years. For four of the five years, however, AIP funding was reduced by the imposition of across-the-board rescissions. Technically the failure of the amount made available to achieve the authorized level should have made these spending levels subject to the spending guarantee's point of order provisions. In recent years, however, all points of order on appropriations bills have been waived by the Rules

Committee in the House or have not been raised on the floor of the House and Senate. This, as well as the recent failure to fully fund the F&E account, brings into question the effectiveness of the so-called spending guarantees for AIP.[40]

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 or entitlements) and discretionary funds.[41] Each year the entitlements are first apportioned by formula to specific airports or types of airports including primary airports, cargo service airports, states and insular areas, and Alaska airports. The remaining funds are defined as discretionary funds. Discretionary funds are applied for by airports to pay for planned airport capital development needs. In recent years, however, significant amounts of AIP discretionary funding have been earmarked by Congress.[42] Formula grants and discretionary funds are not mutually exclusive, in the sense that airports receiving formula funds may also apply for and receive discretionary funds.

Airport legislation sets forth definitions of airports by type that are relevant both in discussions of the airport system in general and AIP funding distribution in particular. Because the statutory provisions for the allocation of both formula and discretionary funds depend on some of these definitions, these definitions are set forth in **Appendix B** at the end of this report.

Formula and Discretionary Funds.

Formula Funds. Sometimes referred to as apportionments or entitlements, these funds are apportioned by formula or percentage. 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 (see **Appendix B** for airport definitions). 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. The formula changes implemented in AIR21 and, in some cases, modified in Vision 100 are contingent on an AIP funding level of $3.2 billion or more. If this threshold is not met, most formulas revert to prior authorized funding levels. For instance in the case of the primary airport entitlement the Vision 100 authorized doubling of the formula amounts would not take place.

Primary Airports. The apportionment for primary airports is based on the number of passenger boardings made at the airport during the prior calendar year.

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[40] See CRS Report RL33654, *Aviation Spending Guarantee Mechanisms*, by Robert S. Kirk.

[41] See U.S.C. 49 Chapter 471 and FAA, *Airport Improvement Program Handbook*. Available at [http://www.faa.gov/airports_airtraffic/airports/resources/publications/orders/media/aip_5100_38c.pdf].

[42] For an explanation of FAA's policy for selecting discretionary projects see the *21st AIP Annual Report of Accomplishments*. P. 25-27. Available at [http://www.faa.gov/airports_airtraffic/airports/aip/grant_histories/media/Annual_Report_2004.pdf].

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.

Virtual Primary Airports. Vision 100 included a special rule for certain airports that no longer meet the requirement of 10,000 enplanements to be categorized as primary airports but had met the requirement in calendar years 2000 or 2001.[43] The Act allowed these airports to continue to receive their full entitlement (i.e. of formula funds), usually the $1 million primary airport minimum, for FY2004 and FY2005. The entitlement would otherwise have dropped to $150,000 in most cases. The FY2006 Transportation/Treasury Appropriations Act (P.L.109-115) extended the virtual primary airport eligibility through FY2006 but at a reduced entitlement of $500,000. The explanatory language in the conference report expresses the conferees' intent that FY2006 be the last year for virtual primary airport entitlements. Accordingly, the FY2007 Continuing Resolution (H.J.Res. 20) did not extend the virtual primary funding distribution, in effect, eliminating the virtual primary distribution category. Paying the higher entitlements to the virtual primary airports reduces the amount of funding available for discretionary spending.

Cargo Service Airports. 3.5% of AIP funds subject to apportionment 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.

State/Insular Areas. 20% of AIP funds are to be apportioned to general aviation, reliever, and nonprimary commercial service airports. From this share, all airports, excluding all non-reliever primary airports, receive the lessor of:

- $150,000; or
- one fifth of the estimated five-year costs for AIP eligible development costs for each of these airports published in the most recent National Plan of Integrated Airport Systems (NPIAS) to a maximum of $200,000 per year.

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[43] Vision 100 required that the Secretary of Transportation find that the decline in passenger boardings at each of these airports was due to the 9/11 attacks. There were 55 virtual primary airports in FY2005.

Any remaining funds are distributed according to a state-based population and area formula.[44] The FAA makes the project decisions on the use of these funds in consultation with the states. Although FAA has ultimate control of the use of these remainder funds, some states view these funds as an opportunity to address some general aviation needs from a state-wide, rather than a local or national, perspective.[45]

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

Foregone Apportionments. Large and medium hub airports that collect a passenger facility charge of $3 or less have their AIP formula entitlements reduced by an amount equal to 50% of their projected PFC revenue for the fiscal year until they have foregone (sometimes referred to as a "give back") 50% of their AIP formula grants. In the case of a fee above the $3 level the percentage foregone 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, which provides grants on a discretionary basis to airports smaller than medium hub, gets 87.5% of these foregone 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 foregone PFC revenues that were not deposited into the Small Airport Fund. In recent years, AIP discretionary funds have ranged from roughly 25%-30% of the total annual AIP funding distribution.[46] 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 35% of discretionary grants are set-aside for noise compatibility planning and for carrying out noise abatement and compatibility programs.

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[44] For FY2006, 99.4% of the remaining funds ($298 million) were distributed to the 50 states, the District of Columbia, and Puerto Rico. The remainder 0.6% was apportioned to Guam, American Samoa, the U.S. Virgin Islands and the Commonwealth of the Northern Mariana Islands.

[45] Block grant states, discussed later in this report, receive a block grant consisting of their general aviation airports' apportionments and, if available, AIP discretionary funds. These states select and fund AIP projects at their small airports. They also perform most of FAA's inspection and oversight roles at these airports.

[46] Based on figures from the *AIP Annual Reports of Accomplishments*, for FY2001-FY2003 and FY2004 and FAA's Airports Branch for FY2005. The discretionary funding percentage for FY2001 was 30%, for FY2002 was 25%, for FY2003 was 25%, for FY2004 was 27%, and for FY2005 was 25%.

Military Airport Program (MAP). At least 4% of discretionary funds are set-aside for conversion and dual use of current and former military airports. Fifteen airports may participate. The MAP provides financial assistance for capacity and /or military-to-civilian use conversion projects at former military or current joint-use airports. MAP allows funding of some projects not normally eligible under AIP.[47]

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. From the remaining 25%, the FAA is required to set aside $5 million for the testing and evaluation of innovative aviation security systems.

Subject to these limitations, the three set-asides, or priority directives from the appropriation committees (referred to by some as "place naming,"),[48] the Secretary, through the FAA, has discretion in the distribution of grants from the remainder of the discretionary fund.

Figure 2 presents an overall picture of both apportioned and discretionary grants, based on FY2005 data.

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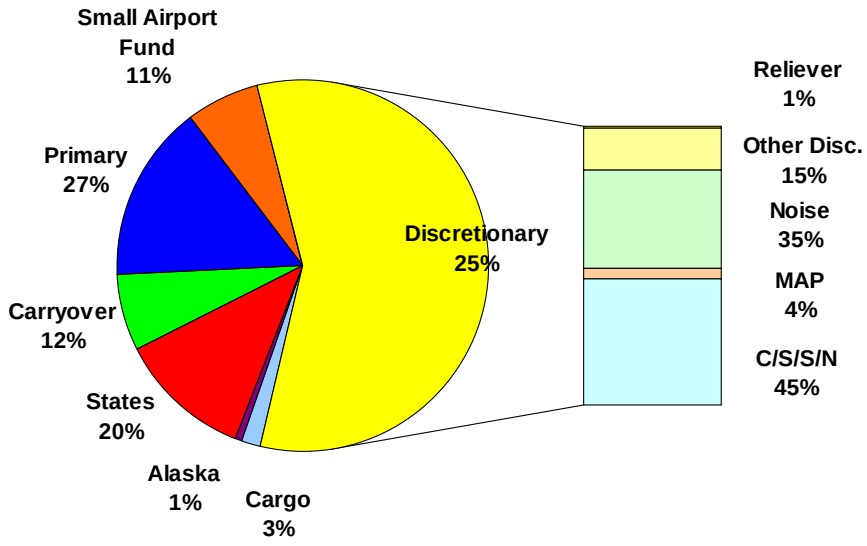
[47] For more on MAP, see [http://www.faa.gov/airports_airtraffic/airports/aip/military_airport_program/]

[48] See the discussion of place naming in the following the "Congressional Issues" section of this report.

Figure 2. Distribution Entitlement and Discretionary Grants for FY2005



Source: FAA.
Notes: Figures have been rounded to the nearest percent. C/S/S/N = Capacity, Safety, Security, & Noise Abatement.

State Block Grant Program.[49] Under this program the FAA provides funds directly to participating states for projects at airports classified as other than primary airports (non-primary commercial service, reliever and general aviation airports). Each participating state receives a block grant made up of the state's apportionment (formula) funds and available discretionary funds. A block grant program state is responsible for selecting and funding AIP projects at the small airports in the state. In making the selections the participating states are required to comply with federal priorities, however. Each block grant state is responsible for project administration as well as most of the inspection and oversight roles normally done by the FAA. Up to ten states may participate. Currently the state block grant program states are, Illinois, Michigan, Missouri, North Carolina, Pennsylvania, Tennessee, Texas, and Wisconsin.

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:

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[49] 49 U.S.C. Sec. 47128. For program requirements see 14 C.F.R. Part 156. See also *21st AIP Annual Report of Accomplishments*, p.29-30. Available at [http://www.faa.gov/airports_airtraffic/airports/aip/grant_histories/media/Annual_Report_2004.pdf].

- 75% for large and medium hub airports (80% for noise compatibility projects);
- 95% for other airports; and
- "not more than" 95% for airport projects in states participating in the state block grant program;
- 70% for projects funded from the discretionary fund at airports receiving exemptions under, 49 U.S. sec. 47134, the pilot program for private ownership of airports.

Vision 100 included a sunset clause that returns the federal share of the projects eligible for 95% share to 90% after FY2007. The increase in share to 95% was established to provide relief to operators of small airports after the 9/11 terrorist attacks.

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 eligible funded project costs as large and medium airports do. Some argue that the high federal share for small airports may be a factor in the low level of participation by small airports in the bond market (i.e., why borrow when federal AIP grants may eventually be available at a 95% federal share).

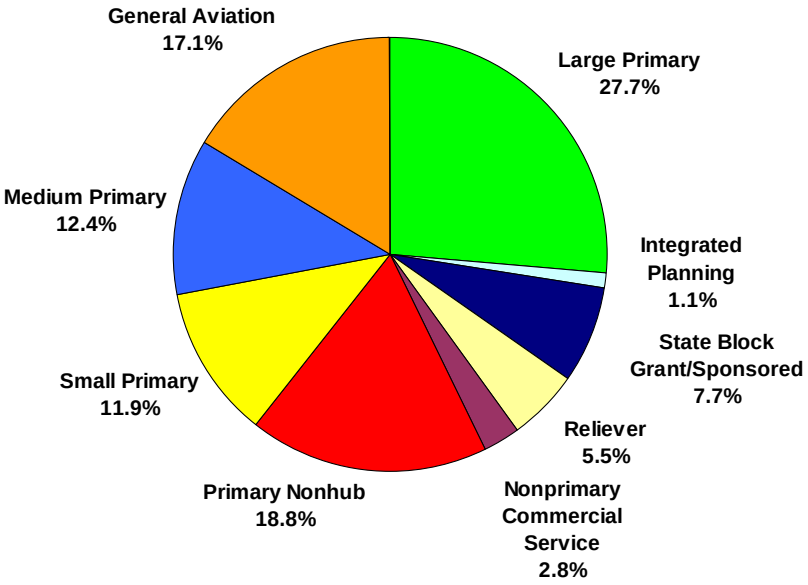
Distribution of AIP Grants by Airport Size. The appropriateness of the distribution of grants among airports of different sizes has, at times, been a source of debate. Although smaller airports' individual grants are of much smaller dollar amounts than the grants going to large and medium hub airports, the smaller airports are much more dependent on AIP to meet their capital needs. In FY2005, of the 2,099 grants issued by the FAA, 210 (10%) of the grants (representing, by value, 35.1% of AIP grant amounts) financed projects at large and medium-hub airports. For the same fiscal year, small airports were awarded 1,833 grants (or 87.4% of the total individual airport grants awarded). By dollar value these small airport grants accounted for 63.8% of the total dollar value of AIP grants for FY2005.[50]

The FY2005 percent value of AIP grants awarded, broken out by airport size, is displayed in **Figure 3**. The chart displays the percentage aggregates of all AIP funds derived from all categories of both formula and discretionary funds. Depending on how the chart is viewed, it could either support or refute the contention that AIP funding distribution favors large airports. Although the large hub primary airports got the highest percentage (22.7%) of the total funds awarded, the smaller of the primary airports — the primary non hub airports and the small hub airports — also received substantial percentages of the total AIP funds awarded (18.8% and 11.9%, respectively). If one counts only the large and medium hub airports as "major" airports and all the others as "small" airports one could argue that only 35.1% of grant awards went to major airports. On the other hand, general aviation

[50] Source: FAA, Airports Branch data. By value, an additional 1.1% of AIP grants were provided for airport system planning (comprised of 56 grants or 2.6% of all grants).

advocates could point out that primary airports as a group were awarded 65.8% of AIP grants amounts.[51]

Figure 3. FY2005 % Value of AIP Grant Distribution, by Airport Size



Source: FAA. Airports Branch.

AIR21's provisions raised the percentage share of total AIP funding for smaller airports. This may be, in part, because, beginning with AIR21, large and medium hub airports have to forego 75% of their AIP formula funds in return for the ability to impose PFCs at the $4.50 level.

What the Money is Spent On. **Figure 4** below, displays AIP grants awarded by type of project during FY1992-FY2005. For the most part, AIP development grants support "airside" development projects such as runways, taxiways, aprons, navigational aids, lighting, and airside safety projects. Substantial AIP funds also go for state block grants and noise planning and abatement. AIP spending on roads is generally restricted to roads on or entering airport property.[52]

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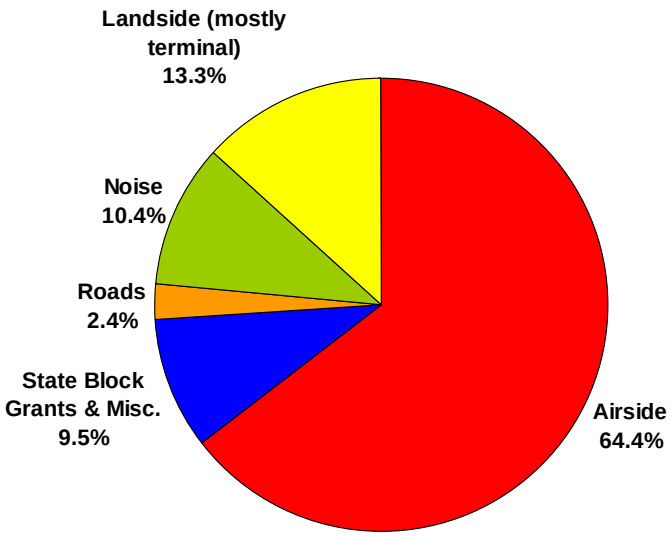
[51] As set forth in **Appendix B** of this report, of all national enplanements, large hub airports account for 68.7%, medium hub airports for 20%, small hub airports for 8.1%, non-hub primary airports for 3%, and non-primary commercial service airports for 0.1%.

[52] For AIP eligibility criteria and allowable costs see the *AIP Handbook*, 27-37. See [http://www.faa.gov/airports_airtraffic/airports/resources/publications/orders/media/aip_5100_38c.pdf].

Figure 4. AIP Grants Awarded, by Type, FY1992-FY2005



Source: FAA, Airports Branch.

Letters of Intent (LOI). In cases where an airport sponsor may want to begin an AIP eligible airport project without waiting for the funds to become available, the FAA is authorized to issue a letter of intent (LOI).[53] Under the LOI program, a primary or reliever airport sponsor may notify the FAA of their intent to carry out an AIP eligible airport development project in advance of federal funding and request that the FAA issue an LOI for the project. If the FAA agrees, it issues a letter (the LOI) stating that the eligible project costs, up to the allowable federal share, will be reimbursed according to a schedule set forth in the letter. Although the LOI is technically not an obligation of the federal government to pay, it is an indication of the FAA's approval of the scope and timing of the project, as well as the federal intent to fund the project in future years. Because most primary airports fund their major development projects with tax-exempt revenue bonds, the evidence of federal support that the LOI provides is likely to lead to favorable bond rates in financing the project.[54] With an LOI, the airport may proceed with the project both without waiting for the AIP grants to become available and with the assurance that all AIP allowable costs in the LOI will remain eligible for reimbursement over the life of the LOI. Both entitlement and discretionary funds are used to fulfill LOIs. The FAA limits the total of discretionary funds in all LOIs subject to future obligation to roughly 50% of forecast available discretionary funds.

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[53] 49 U.S.C. 47110. See also [http://www.faa.gov/airports_airtraffic/airports/aip/loi/].

[54] The interest on these bonds is not an allowable AIP cost, however.

LOIs have certain eligibility restrictions. They can only be issued to cover projects at primary and reliever airports. The proposed airport development project or action must "enhance airfield capacity in terms of increased aircraft operations, increased aircraft seating or cargo capacity, or reduced airfield operational delays." For large and medium hub airports, the project must enhance "system-wide airport capacity significantly."[55]

Voluntary Airport Low Emissions (VALE) Grants. Vision 100, directed the FAA to establish a national program to reduce airport ground emissions at commercial service airports located in air quality nonattainment and maintenance areas (currently, roughly 160 airports can participate). The Voluntary Airport Low Emissions (VALE) program allows airport sponsors to use Airport Improvement Program (AIP) grants and Passenger Facility Charge (PFC) funds to help finance the purchase of low emissions vehicles, refueling and recharging stations, gate electrification, and other airport air quality improvements.[56] VALE is restricted to financing capital improvements and cannot pay for operations or maintenance costs such as fuel purchases. The range of VALE uses for PFC funding is broader than those allowable under AIP. For example, AIP funds are limited to vehicles and infrastructure for "alternative fuel" use as defined by the Department of Energy, whereas the PFC program allows for use of clean conventional fuels. Significantly, VALE program funding is restricted to the "incremental" cost differential between the higher priced low-emission vehicle and the lower price of a conventional fuel vehicle. Retaining, changing, or eliminating these restrictions or eligibility criteria could be considered during reauthorization.

AIP Grant Assurances. Airports' grant applications are conditioned on assurances regarding future airport operations. Examples of such assurances include making the airport available for public use on reasonable conditions and without unjust discrimination; charging air carriers making similar use of the airport substantially comparable charges; maintaining a current airport layout plan; making financial reports to the FAA; and expending airport revenue only on capital or operating costs at the airport.[57] Within the AIP context, assurances are an important means of guaranteeing the implementation of federal policy. In many cases, when airport managers or interest groups express concerns about federal regulation and the "strings attached" to AIP funding, they are usually referring to AIP grant assurances.

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[55] *AIP Handbook*, chapter 10, section 8.

[56] According to the FAA gate electrification is the aircraft equivalent of vehicle idle reduction. It provides for air conditioning and electricity for an aircraft parked at the gate.

[57] 49 U.S.C. sec. 47107. The layout plan must be approved by the Secretary of DOT as must any revision or modification of the plan. This, in effect, generally means that any AIP project must be written into the airport's plan. The nondiscrimination provision protects a wide variety of users, including for example, nighttime users and cargo carriers.

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.[58] Although the legality of the head tax was affirmed by the Supreme Court in Evansville-Vanderburgh Airport Authority v. Delta Airlines, there was severe criticism of the passenger charges, by both airlines and passengers. The complaints included administrative problems for the airlines collecting the charge; passenger inconvenience, especially when the passengers had to make payments separately at the airport; and the use of head tax revenue for off-airport projects and projects not aviation related.[59] In 1973, the Airport Development Acceleration Act (P.L. 93-44) banned the imposition of state and local passenger charges.

In 1990, expected tight budgets, resulting from federal deficit concerns, 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, $2 or $3 on each paying passenger boarding an aircraft at their 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.[60] 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. Large and medium hub airports had their AIP apportionments reduced by 50% of their projected PFC revenues until they had forgone 50% of their apportionments. As mentioned earlier, 87.5% of these forgone entitlement funds are credited to the Small Airport Fund and the discretionary fund is credited the remaining 12.5%.[61] 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).

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[58] The head tax was similar but not exactly the same as a PFC. There were no limits on how the head tax could be spent. Head taxes and similar devices are common outside the United States.

[59] House Committee on Public Works and Transportation, Subcommittee on Aviation, *Passenger Facility Charges*. Hearing, 101st Cong., 2nd sess., June 19, 1990, v-vi.

[60] 49 U.S.C. sec. 40117.

[61] The Airport Capacity Funding Advisory Committee, which had recommended many of the PFC characteristics, including that of forgone entitlements, recommended that small hub and nonhub airports should not be required to forgo any AIP entitlement funds. The committee also recommended that the forgone funds should all be shifted to the discretionary fund and allocated proportionally across all "categories of the discretionary category."

AIR21 increased the PFC ceiling to $4.50. To impose a PFC above 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 by using the airport's AIP formula funds or through AIP discretionary grants. 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 could not be approved unless they had submitted a written competition plan to the FAA. The competition plans 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. The Airports Council International/North America (ACI-NA) favors the elimination of the competition plan requirement. The competition plan provision, however, was supported by Members of Congress who wanted to assure that the major airports be "available on a reasonable basis to all air carriers wishing to serve those airports."[62]

Vision 100 included a number of relatively minor changes to the PFC program. The Act included provisions to streamline PFC public notice requirements as well as to end the "significant contribution" project requirement on large and medium hub airports that wish to impose PFCs at the $4 and $4.50 level. As of December 1, 2006, 48 large and medium-hub airports and 215 smaller airports had been approved to collect PFCs at the $4.50 level. The requirement of notice and consultation of air carriers at applicant airports was limited to carriers having no less than 1% of the boardings at the airport, having 25,000 or more boardings, or airports providing scheduled service. Vision 100 also established a pilot program to test alternative procedures for authorizing small airports to impose PFCs. It made conversion of ground support equipment to low emission technology eligible for PFC funds. The Secretary of Transportation was also empowered to allow the use of PFCs for debt service on what would normally be non-eligible non-airport related projects, if the Secretary finds that such project funding is necessary due to an airport's financial need. The act requires that airlines filing for bankruptcy must place PFC collections in a segregated account to prevent their loss as airport revenue. Vision 100 required DOT to publish in the Federal Register its policy under current law on the eligibility of airport ground access projects for PFC funding.

Airports have used PFC revenues for a broad range of purposes. Unlike AIP grants, of which 64.4% since 1992 have gone to airside projects (runways, taxiways, aprons, and safety related projects), PFC revenues have been increasingly used for landside and interest payments purposes (15.4% of approved PFCs have been for airside spending since FY1992). **Table 2** shows the AIP grant awards and PFC approvals by project type for FY1992-FY2005.[63]

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[62] See AIR21 Conference Report, H.Rept. 106-513, 29-30, 165.

[63] FAA, Airports Branch.

Table 2. Distribution of PFC Approvals and AIP Grants, by Project Type, FY1992-FY2005

Type of Project	Percentage of PFC	Percentage of AIP
Airside	15.4	64.4
Landside	34.1	13.3
Noise	5.3	10.4
Roads/Access	7.3	2.4
Interest on Bonds	31.8	0.0
Other (AIP)/ Denver (PFC)	6.0	9.5
Total	**100.0**	**100.0**

Source: FAA, Passenger Facilities Branch.
Note: Totals may not add because of rounding.

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 and have comparatively limited land side facilities.

In recent years, PFC approvals have most often been for interest on bonds and for landside projects. In FY2005 PFCs approved were 35.1% for interest on bonds, 44.4% for landside (primarily terminal) projects, 9% for access (mostly roads), 9.6% for airside projects, and 1.9% for noise projects.

According to the FAA, as of the end of December 1, 2006, the agency has approved $57.2 billion in PFC collections at a total of 362 locations over the life of the program.[64] Large and medium-hub airports are the most likely to impose a PFC, with 96% collecting PFCs. Small hub and nonhub primary airports participate at rates of 91% and 77%, respectively. Only 21% of nonprimary commercial airports participate. Small airports often do not have a high enough ticketed passenger volume to provide a sufficient revenue surplus over the costs associated with implementing a PFC. A major use of PFCs at non-hub primary and smaller airports

[64] FAA, Passenger Facility Branch, *PFC Applications per Hub Size.*

is to pay for the local share for AIP funded projects. Actual annual system-wide collections have grown from $85.4 million in 1992 to $2.5 billion in 2005.[65]

AIP Funding of Airport Security

Prior to the passage of Vision 100, the AIP was the main source of federal grants for airport security capital projects. In the years preceding the 9/11 terrorist attacks, however, security projects only amounted to about 2% of AIP's total project spending. In FY2002, following the 9/11 terrorist attacks, the spending of AIP funds for security projects expanded to 17% of the amounts made available for AIP grants for that year ($561 million of the $3.2 billion of amounts made available). As the AIP funding of security projects grew there was a proportional decline of AIP resources dedicated to non-security projects. There were concerns among AIP supporters that the program's traditional priorities of enhancing capacity, safety, and noise mitigation were in danger of being underfunded.[66]

Vision 100 made two major changes regarding the funding of airport security projects. First, the Act included a provision that repealed the language of the Federal Aviation Reauthorization Act of 1996 (P.L. 104-264) that permitted the use of AIP and PFC funds for security-related improvement of facilities and the purchase or deployment of equipment for security purposes. Second, Vision 100 established the Aviation Security Capital Fund to fund airport security related projects. Together, these provisions were expected to relieve the AIP of the demands on its funds for most security projects. The aviation security fee revenues credited to the fund, however, have been insufficient to fully fund security costs.[67] Consequently, despite the Vision 100 prohibition, some still view AIP as a potential source of funding for certain security-related airport improvements in the future. The use of AIP grants for security purposes could reemerge as an issue during FAA reauthorization.[68]

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[65] For PFC collections by year see [http://www.faa.gov/airports_airtraffic/airports/pfc/monthly_reports/media/stats.pdf]

[66] See GAO, *Airport Finance: Using Airport Grant Funds for Security Projects Has Affected Some Development Projects*, "GAO-03-27," (Washington, GAO, 2002), 1-22.

[67] See CRS Report RL32498, *Vision 100: Historical Review of the Century of Aviation Reauthorization Act*, by Bart Elias, John W. Fischer, and Robert S. Kirk.

[68] Vision 100 did allow for use of AIP formula funds for the replacement of baggage conveyor systems, and the reconfiguration of terminal baggage areas, necessary to install bulk explosive detection devices. Such use, however, has been specifically prohibited each year by appropriators in the legislative language for Grants-in-Aid for Airports in recent transportation appropriations acts.

Congressional Issues[69]

There is little disagreement at the national level among the airport interests, the airlines, general aviation interests, the military, or within Congress that a strong national network of airports is in the national interest. However, views of how to best support the national airport system can vary greatly from group to group depending on the issues involved. A related issue is the appropriate degree of federal participation in airport development and finance.

By statute, the safe operation of airports is the highest aviation priority. Other priorities include increasing capacity to the maximum feasible extent, minimizing noise impacts, and encouraging efficient service to state and local communities (i.e. support for general aviation airports). These priorities along with the assessment of airport capital needs and the availability of budgetary resources for AIP all influence the scope and structure of the program.

During the FAA reauthorization debate in the 110th Congress, virtually all of the policy issues and options concerning AIP will be influenced by the broader budget issues of the adequacy of aviation trust fund revenues and the availability of money from the Treasury general fund. If AIP funding is increased significantly, the program may well remain basically as it is. If AIP's funding is reduced, the funding formulas and project eligibility requirements might be used to assure that the AIPs statutory priorities can still be met at the lower funding levels.

Because this report is about an existing program, the analysis of the program necessarily discusses the existing programmatic structure and the historical funding levels of the periods being discussed. Advocates of AIP view the fully authorized funding of the program as a good thing. Over time, however, there has also been an alternative view, that too much was being spent on AIP, particularly at smaller airports that do not play a significant role in commercial aviation. These critics often view the breadth of AIP spending, decreasing local share requirements, and ever-widening project eligibilities as allowing for spending that is increasingly inefficient, unfocused, and of questionable federal purpose.

Airport Capital Needs Assessments

The debate over the scope of airport capital needs is of concern to Congress because a reliable assessment of needs can help facilitate determining the appropriate federal support needed to foster a safe and efficient national airport system.[70] 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 and noise policies.

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[69] See CRS Report RL33698, *Reauthorization of the Federal Aviation Administration*, by Bart Elias et al., which includes a summary of AIP issues for Congress.

[70] See FAA, *NPIAS (2007-2011).*

Views on the scope of airport capital needs vary among airport stakeholders. Historically, air carriers preferred that federally supported capital projects be restricted mostly to airside capacity enhancing projects.[71] Airports generally view their capital needs within the context of the business needs of the airport's operations as a whole (i.e. airside, landside, as well as some off-airport access projects). The FAA view is from within the more limited context of the NPIAS, the national plan that is used by FAA management to administer the AIP and, therefore, is focused more narrowly on AIP eligibility as the primary criterion for making its capital needs assessments.

Both the FAA and the Airports Council International-North America (ACI-NA) have projected different long-term airport financial needs. In the most recent NPIAS report the FAA has estimated that the national system's capital needs for 2007-2011 will total $41.2 billion (an annual average of $8.24 billion).[72] ACI-NA capital needs survey resulted in an estimate of $71.5 billion for 2005-2009 (an annual average of $14.3 billion).[73]

The studies' differing conclusions are the result of a number of factors. The two studies examine needs for different five year periods and use data from different data collection periods. This limits the comparability of the two estimates. Both of these timing issues could either broaden or narrow the differences between the estimates in the two studies. The main reasons, however, for the widely differing estimates are the differing views on what kinds of airport projects were appropriate to include in the estimates.

The NPIAS report was based on planned project information taken from airport master plans and state system plans. FAA planners screened out projects that were not justified by aviation activity forecasts or that were not eligible for AIP grants. Only designated NPIAS airports were included in the study. Implicit in this methodology is that the planning has been carried through to the point where financing is identified. Not all projects used to develop the NPIAS estimates are actually completed, however. Economic conditions, the financial conditions in the aviation industry, constraints on federal funding, and, on a project-by-project basis, legal challenges, can prevent the completion of some projects or delay them beyond the range of years covered in the NPIAS estimates. Some observers argue that the

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[71] As of this writing, the Air Transport Association, which represents the major air carriers, has not done an estimate of airport capital needs for the upcoming 2007 FAA reauthorization debate. However, during the 1996 reauthorization debate the airlines estimated the annual airport capital needs at $4 billion. This was significantly less than the FAA estimate of $6.5 billion and much less than the airport estimate of $10 billion per year. A GAO study, concluded that the widely differing estimates were primarily a result of different views on what kinds of projects and airports to include in the estimates. See GAO, *Airport Development Needs: Estimating Future Costs. April 1997,* GAO-RECD-97-99, 38 p.

[72] The five year total is $1.7 billion higher than the estimate in the previous NPIAS (2001-2005).

[73] A fact sheet of ACI-NA's, *2005 Airport Capital Development Needs,* is available at [http://www.aci-na.org/docs/70_capitalneeds2005.pdf].

NPIAS under estimates AIP eligible needs because not all such needs will be in the current airport plans.[74]

The ACI-NA study reflects the broader business view of major airport operators and casts a substantially broader net, including non-AIP funded projects (funded by PFCs, bonds, or state/local funding); airport-funded air traffic control facilities; airport or TSA funded security projects; "necessary" AIP-ineligible projects such as parking facilities, hangars, revenue portions of terminals, off-airport roads/transit facilities; and AIP-eligible projects not reported to FAA in the belief that there would be a low probability of receiving additional AIP funding.[75] Because the $14.3 billion is based on "proposals" for airport development projects, some would argue that this figure is high because it reflects wants rather than needs and includes projects that may never be completed.

Views of the Adequacy of Funding Availability . The ACI-NA and the FAA also disagree on the adequacy of funding. ACI-NA concludes that airports face an annual $3-4 billion shortfall every year through FY2009.[76] The 2007-2011 NPIAS report finds that recently "together, AIP grants and PFC collections account for about 40 percent of annual U.S. airport capital spending needs. Historically the combined resources have been adequate to achieve needed development."[77]

The case can be made that the projected shortfall in the range of $3-4 million, annually, for FY2005-2009 is questionable. Looking at FY2001-2004, years when the average level of AIP funding and PFC funding were less than current levels, the availability of funding from all sources for airport capital needs averaged well over $12 billion annually.[78] Although this is below the $14.3 billion annual average need projected by ACI-NA, even if one accepts all the projected needs as being valid, the gap between funding sources and needs is likely less than the projected $3-4 billion annual shortfall.

In FY2004, according to the NPIAS, there was roughly $8.5 billion of airport capital improvement spending at commercial service airports. For the same year the amount available for AIP was $3.29 billion, or roughly 39% of spending at these

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[74] In the Dept. of Transportation Inspector General's November 15, 2006 report, *Top Management Challenges: Department of Transportation*, the discussion of keeping planned short- and long-term aviation capacity enhancing initiatives on schedule shows in tabular form that of the six major new runway projects underway in September 2006 only two were listed in the 2001 Operational Evolution Plan.

[75] ACI-NA. *Executive Summary ACI-NA 2005 Airport Capital Development Needs.* Washington, ACI-NA, 2006. 3 p.

[76] ACI-NA, *ACI-NA 2005 Airport Capital Needs Survey v. FAA's NPIAS*, (Washington: ACI-NA), 2005.

[77] NPIAS:2007-2011, 56. Counting all five sources of airport funding.

[78] See also GAO report no. GAO-03-497T, *Past Funding Levels*. GAO found that average annual funding available for FY1999-FY2001 airport capital projects was about $12 billion. Both annual AIP amounts and PFC collections since FY2001are above the FY1999-FY2001 average.

airports. Calculating the same percentage using the AIP obligation limitation for FY2005 of roughly $3.38 billion and the projected NPIAS average annual need of $8.24 billion, the AIP percentage is 41% of NPIAS average annual needs. Calculating the percentage against the average annual ACI-NA derived level of $14.3 billion the AIP percentage is 24% of all funding sources (should all "needs" be met).[79]

The estimates are important because the primary AIP reauthorization issue is the program's appropriate level of funding. Because the ACI-NA airport needs projection includes much that is not eligible for AIP grants, its accuracy may not be as critical to policy makers considering AIP funding as the NPIAS projections. On the other hand, the broader ACI-NA estimate may be more significant to bonding and PFC policies, since these sources fund a broader range of projects than AIP.

Airport Capacity Needs at the 35 Busiest Airports.[80] In March 2004, FAA Administrator, Marion C. Blakey, stated that the agency's goal was to improve the overall capacity at the top 35 U.S. airports by 30% over a ten year period. These airports account for about 73% of commercial passenger boardings. The FAA's Operational Evolution Plan (OEP, recently also referred to as the Operational Evolution Partnership) is intended to increase the capacity and efficiency of the National Airspace System (NAS) over a ten-year period to keep up with the expected growth in demand for air travel and air cargo. The plan focuses on "infrastructure — primarily new runways — and technological and procedural initiatives at the top 35 airports."[81] The focus on runways is based on estimates from 2004 *Airport Capacity Benchmark Report* data that the 12 OEP airports planning new runways would achieve an average capacity increase of 31%. This would be a much larger improvement than the expectation that technology enhancements could net of 3% to 8%.[82]

The June 2004 FAA study of airport capacity, *Capacity Needs in the National Airspace System: an Analysis of Airport and Metropolitan Area Demand and Operational Capacity in the Future*, first examined which of the 35 OEP airports would and would not be able to meet future demand, and then examined whether other areas of the United States might be unable to accommodate the demand for air transportation in the future. The study examined airports that would need capacity increases (mostly new or reconfigured runways) from a base year of 2003 and also

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[79] Comparing existing spending levels against future projections leads to results that should be taken as approximations, at best. Recent AIP funding may not be an accurate base for future AIP funding projections.

[80] For a broad discussion of aviation congestion issues, see CRS Report RL32707, *Avoiding Gridlock in the Skies: Issues and Options for Addressing Growth in Air Traffic*, by Bart Elias.

[81] FAA and Mitre, *Capacity Needs in the National Airspace System.* See also FAA, Operational Evolution Plan, 2005-2015: Executive Summary; Version 7.0, (Washington, FAA, 2005) 24 p.

[82] See CRS Report RL32707, *Avoiding Gridlock in the Skies: Issues and Options for Addressing Growth in Air Traffic*, by Bart Elias.

projected which airports would need capacity increases in 2013 and 2020. It identified five airports plus the Atlanta metropolitan area that needed additional capacity in 2003. The study projected that, assuming that planned OEP improvements for 2003-2013 were completed, capacity improvements would be needed at 15 airports for 2013. For the year 2020, assuming implementation of runway construction project not included in the OEP, as well as improvements in technologies and procedures (an ambitious assumption, the study notes), the study still identifies 18 airports as likely needing additional capacity (some not currently part of the OEP).[83]

Interestingly, the airports identified for 2013, and especially for 2020, show increased needs at some medium hub airports that are considered secondary to large hub airports in major metropolitan airports. Part of this trend may be that some major metropolitan airports are approaching the point that they may have limited room to add new runway capacity but could also result from the expansion of secondary metropolitan area airports that have found favor with low cost air carriers in recent years. This also could reflect a shift to more point-to-point service and a somewhat diminished reliance on the hub-and-spoke model by the legacy carriers.[84]

If valid, the study has implications for AIP within the context of reauthorization. To begin with, although the life cycles of FAA authorization bills are usually only for two to four years, large runway projects, that are the focus of the OEP, can require long lead times (10 or more years from concept to initial construction is not unusual). Because of this, some costs from projects needed by 2013 and even 2020 may need to be funded in the next few years. At large and medium hub airports, runway projects are usually paid for, in part, by AIP funds (there is a 75% maximum participation: at large airports the participation, however, is generally significantly below this maximum). These funds are generally used in combination with other sources of funding such as PFCs, tax-free airport bonds (often paid for using PFC revenues), airport revenues, and sometimes state funds.

As mentioned earlier, most large and medium airports impose PFCs on each boarding passenger. In return for permission to levy the PFC, these airports forgo either 50% or 75% of their AIP formula entitlement funds. This means that federal funding for major runway projects at large and medium hub airports will probably need to be, for the most part, funded with AIP discretionary funds. The pool of discretionary funds is primarily the remainder of provided annual funding after the entitlement formula requirements are satisfied. Of the forgone PFC funds, 87.5% are reserved for a small airport fund and are also not available for OEP airports.

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[83] *Capacity Needs in the National Airspace System*, I-X.

[84] Some have argued that, because some of the large airports, included in the OEP 35, have been losing market share to low-cost secondary airports in their urban areas, it might make more sense, in these cases, to consider increasing AIP funding to these secondary airports rather than supporting major capacity enhancement projects or airside reconfigurations at "legacy airports." Discussed during session "Effects of Airline Restructuring on Airport Systems," at the 2007 Transportation Research Board 86th annual meeting, Washington, January 23, 2007.

If there is a confluence of a policy of overall federal budget deficit reduction with an inability to either increase trust fund revenues or to increase the general fund share for the FAA budget, there could be a meaningful reduction in the amount of funding available for discretionary grants once the entitlement (i.e. formula) funding requirements are satisfied. In other words, if the AIP budget is constrained, either under a reauthorization bill or during the annual appropriation process, and the entitlement formulas remain as they are, the squeeze-down effect will be likely on the discretionary portion of the AIP budget.

Within this context, it is important to also keep in mind that a significant portion of AIP discretionary funds have, in recent years, been earmarked to hundreds of airports, based primarily on local needs and wants rather than in accordance with a national capacity plan. This situation could also limit or reduce AIP participation in some of the capacity increasing projects at OEP airports.

Caveats. Predicting the future is difficult and, although the FAA has a reasonably good record for accuracy in its activity forecasts, the FAA itself has pointed out that since the events of 9/11 the instability of the industry has led to larger errors in the agency's short-term forecasts.[85] The recent unpredictability of fuel prices, a major component of aviation business costs, also brings a degree of uncertainty to aviation forecasts. In addition, trends in business jet use and the potential impact of very light jets (VLJs), discussed later, may also influence the accuracy of forecasts.

AIP's Financial Future Under an Uncertain Budgetary Outlook

The AIP is a good example of how broader budget issues can have implications for not only a program's funding level but also the program's scope and benefit distribution. Should ample revenues be available, the reauthorization of AIP could likely maintain the programmatic status quo with relatively few changes to the program's structure, although project eligibility criteria could be broadened. Given, however, the recent decline in the uncommitted balance of the aviation trust fund, for the AIP to grow substantially some observers expect that something will have to change in the budgetary environment. Increased tax revenues (either through new taxes, higher fares, or faster economic growth) or an increase in the general fund share would be needed to provide for an AIP increase on the order of the increases initiated by AIR21and maintained in Vision 100[86]. Otherwise, any AIP increase would have to come at the expense of other FAA programs.

For a variety reasons, some within the transportation community expect budgetary constraints will restrict the size of the AIP budget. As mentioned earlier, the uncommitted balance in the trust fund is much smaller than it was during the last authorization cycle. More money may be needed to fund the F&E component of the FAA budget to support the modernization of the air traffic control system under the Next Generation Air Transportation System (NGATS) and, in a constrained

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[85] *FAA Aerospace Forecast Fiscal Years 2006-2017*, p. 51.

[86] As mentioned earlier in this report, the FY2001 increase in the AIP budget under AIR21 was a 70% increase over the FY2000 amount made available.

budgetary environment, this could exert downward pressure on the AIP component of the FAA budget. The enforcement of pay-as-you-go rules and a renewed commitment to reduce the federal budget deficit could also make it difficult to increase AIP funding.[87] In recent years, the George W. Bush Administration, and the FAA itself, have consistently proposed AIP budgets significantly below the program's authorized levels. Most recently, the President's FY2008 budget proposed $2.75 billion for AIP. This is $766 million below the estimated amount made available for FY2007 and nearly $1 billion below the FY2007 funding authorized in Vision 100.

Within a constrained-budget scenario, interest would probably increase in such issues as defederalization of the larger airports which, by allowing them to opt out of the AIP program, could reduce AIP spending on large hub airports. Another possibility would be to make the AIP formulas more restrictive. Project eligibility criteria could also be tightened. Perhaps the greatest concern, at the federal level, may be the availability of AIP discretionary funds for major capacity enhancing projects as those set forth in the OEP.

Given the disagreement concerning the adequacy of trust fund revenues and the lack of consensus on aviation taxation, one option could be a one or two year extension of existing taxes at current rates and a continuation of existing FAA programs and activities at FY2007 levels. This would allow time for more data to accumulate and help policymakers better evaluate the accuracy of the various tax revenue and trust fund projections.

AIP Spending "Guarantees"[88]

As discussed earlier, congressional concerns, especially among transportation authorizing committee members, that aviation trust fund revenues first be used to fund FAA's two capital programs (AIP and F&E), before being drawn down to pay for the agency's operations activities, have led to the enactment of a series of "cap and penalty" and other so-called spending "guarantee" mechanisms. Although the various "cap and penalty" mechanisms, that were in place prior to passage of AIR21 in 2000, succeeded in restricting spending from the aviation trust fund on operations, they did not consistently succeed in forcing full appropriation of authorized AIP and F&E funding levels.[89] This situation led to the growth of the trust fund's

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[87] See CRS Report RL32835, *PAYGO Rules for Budget Enforcement in the House and Senate*, by Robert Keith and Bill Heniff Jr.

[88] For a detailed discussion of the history of funding guarantees, see CRS Report RL33654, *Aviation Spending Guarantee Mechanisms*, by Robert S. Kirk. The spending guarantee issues are also summarized in CRS Report RL33698, *Reauthorization of the Federal Aviation Administration: Background and Issues for Congress*, by Bart Elias et al.

[89] The cap set a ceiling on the amount of aviation trust fund money that could be used to fund FAA operations. The penalty would reduce this cap by a formula linked to FAA capital program appropriations shortfall below their authorizations for the fiscal year.

uncommitted balance. As a Congressional Budget Office (CBO) report explained in 1988, but still applicable today,[90]

> Primarily because of program constraints, these provisions have merely altered the accounting for aviation spending, forcing the general fund to finance more of these expenditures.... In addition, there still remains an incentive to limit capital spending for aviation programs. Given the annual level of excise tax revenue from aviation, each dollar of aviation spending greater than these tax revenues must be funded by general revenues. Therefore, regardless of the actual accounting for aviation spending, each dollar reduction in spending on aviation either reduces the need for the general fund to finance aviation spending, or produces a trust fund surplus from which the Treasury can borrow to cover non-aviation expenditures.

In effect, within the context of the unitary federal budget, appropriators and budgeteers were more concerned about the overall budget level or the size of the federal budget deficit than whether below-authorized spending on AIP and F&E caused a reduction of trust fund spending for O&M. Broader budget concerns trumped the cap and penalty provisions.

Current Law: Point-of-Order Enforced Spending Guarantees. There are two existing spending guarantees which are different than the previously discussed cap and penalty provisions. One makes it "out-of-order" in the House or Senate to consider legislation that failed to use all aviation trust fund receipts and interest annually. The second makes it out-of-order to consider any bill that provided any funding for RE&D or O&M if it failed to fully fund the FAA's two capital programs, AIP and F&E, at their authorized levels. As a penalty of sorts, any failure to fully fund F&E would lead to an increased appropriation (referred to as "pop-up" budget authority) for AIP equal to the appropriations shortfall for F&E.

During the first years of the AIR21 guarantees, FY2001-FY2003, these measures appear to have successfully assured that both AIP and F&E were funded at or very near their authorized levels in the annual appropriations acts. However, congressional support, in the annual appropriation bills, for adherence to the guarantees during the last three years has been mixed. On the one hand, the obligation limitations for AIP for FY2004-FY2006 have been very close to their authorized levels for these years. On the other hand, F&E spending has been cut significantly in each of these years. F&E's annual appropriation fell below its authorization as follows: $320 million for FY2004; $468 million for FY2005; and $498 million for FY2006. These F&E funding levels were out of conformance with the guarantees and should have made the funding of the O&M and RE&D components of FAA's budget out of order during these years. It also should have led to additional "pop-up" budget authority for the AIP equal to the annual underfunding of F&E.

There are a number of reasons that the guarantee provisions have not been adhered to. Specific to F&E spending has been the lack of confidence in Congress in the ability of the FAA to oversee the national air system modernization. The

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[90] CBO. *Status of the Airport and Airway Trust Fund: 1988.* p. 10-11.

hesitance to fully fund F&E may have more to do with this than with resistance to adherence to the funding guarantees. However, some other weaknesses in the current guarantee mechanism have manifested themselves in recent years. Spending guarantees that are enforced by point-of-order actions only work if the point-of-order is raised by a Member and if they have not been waived by rule. In the House, recent annual appropriations bills have had all points-of-order waived by the Rules Committee. Senators have also chosen not to raise points-of-order against violations of the AIP and F&E funding guarantees.[91] Points-of-order have not been allowed on appropriations bill conference reports. Also the "pop-up" AIP budget authority, which some viewed as part of the mechanism for preventing appropriators from spending any F&E shortfall for noncapital aviation spending, can and has been rescinded in recent appropriations legislation. These rescissions allow appropriators to bring down the nominal total cost of the Transportation/Treasury Appropriations bills, generally in the following budget year. As was true during the cap and penalty era (FY1977-FY1998), the current spending guarantees can still be trumped by broader budget policy goals (such as deficit reduction) or, at times, by the spending priorities of appropriators.

Spending Guarantee Options. Aviation funding guarantees are expected to be considered in the FAA reauthorization debate during the 110th Congress and could include keeping the current system, modifying the current guarantees, resurrecting a mechanism analogous to the cap and penalty provisions, reconsidering taking the trust fund "off-budget," or erecting budgetary "fire walls" as was done for the highway and transit programs in 1998. Some would argue that there should be no guarantees and that the normal congressional budget process should be allowed to progress unfettered. The absence of a large uncommitted trust fund balance could also have an impact on the support for new or continued aviation spending guarantee mechanisms during FAA reauthorization in the 110th Congress.

Partial Defederalization

One way to reduce the amount of trust fund revenue needed for AIP would be to allow large and medium hub airports to opt out of the AIP program in favor of unrestricted or higher PFC financing. This would, in the view of some airport executives, also give them the flexibility they would prefer to have in managing their airports. These airports would no longer be bound by all of the grant assurances that are currently required of participants.

If the large and medium hub airports are able to defederalize, there would be implications for the degree of policy influence the federal government could wield in airport development. Some argue that, because the threat of withdrawal of federal AIP funds provides the federal government with substantial leverage to enforce grant assurances that implement federal policy (for example the "fair and reasonable rates"

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[91] In part, this may have been because, if a point of order were upheld, the entire AIP or F&E financing provision would be stricken from the bill that Senate conferees would take to conference. This absence of a funding provision could put the Senate conferees at a disadvantage in negotiating with House conferees over the contents of the bill to be voted out of conference.

requirement or diversion assurances), other means of maintaining federal influence might be considered during reauthorization should defederalization gain significant legislative attention.

Privatization

For Congress the privatization debate is both about saving money on airports that can be less dependent on federal assistance and also, in the broader sense, whether federal involvement in airport infrastructure is excessive. Airport privatization differs from defederalization in that privatization denotes a change in ownership from a public entity to a private one. Airport privatization in the United States has, for the most part, been limited to what some would refer to as commercialization of airport management or services. The use of private companies to provide airport services is widespread. At the largest airports in the United States employees of private companies — the airlines, concessionaires and other contractors — account for 90% of all employees.[92]

The Airport Privatization Pilot Program (49 U.S.C. sec. 47134; Section 149 of the Federal Aviation Reauthorization Act of 1996, P.L. 104-264), authorizes the FAA to exempt up to five airports from certain federal restrictions on the use of airport revenue off-airport. Participating airports may be exempted from such requirements as repayment of federal grants. Privatized airports may still participate in the AIP, but at a lower federal share (70%). During the nine years since the application procedures were published only one airport, Stewart International Airport in New York, has obtained an approved exemption.[93] In January 2007, however, the British lease holder, National Express Group Plc, agreed to sell the operating lease (which has 93 years remaining) at Stewart International to the Port Authority of New York and New Jersey, for $78.5 million. National Express had bought the lease for $35 million in 2000. This means that the only successfully privatized airport under the Airport Privatization Pilot program is returning to public sector control.[94] The case can be made that neither the repurchase of a privatized airport by a public airport authority, nor the quick resale at a significant profit of a long-term airport lease of an airport built with public funds, was what some supporters had in mind when they supported the privatization program.

Recently the discussion of airport privatization has taken place within the context of the recent leasing agreements of the Chicago Skyway toll road and the Indiana toll road to private investors. The Skyway sale was especially controversial because the money payed to the City of Chicago was used by the city to defray normal city budgetary expenses and not to support or improve transportation infrastructure. On September 14, 2006, the City of Chicago submitted a preliminary application under the Airport Privatization Pilot Program for the long term lease of

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[92] NCARC. *Development Needs and Financing Options*, p. 13.

[93] The owner of the 99 year lease at Stewart Airport, the United Kingdom-based, National Express Group (NEG), has announced that the remainder of its lease will be put up for sale. NEG held the lease for seven years.

[94] Joe Mysak, "Airport Privatization," *Pittsburgh Tribune Review* (Feb. 4, 2007).

Chicago Midway Airport.[95] Some observers of Chicago's Midway Airport lease proposal have described it as a "value extraction" proposal because they expect that the lease payments would be simply used as general City revenue and would not add value (i.e. make improvements) to the airport or to any transportation infrastructure.[96] Supporters of privatization generally take the view that, if lease revenues or profits from airport sales can only be used for airport purposes, there is no incentive for an airport authority to sell or a for-profit company to purchase an airport or airport lease.

As mentioned earlier, the pilot program provides for exemptions on the AIP grant assurance restrictions on use of revenues. The Airport Privatization Pilot Program, however, requires that the airport sponsor may only recover from the sale or lease the amount that may be approved by at least 65% of the air carriers serving the airport; and air carriers that account for 65% of the total landed weight at the airport for the year. Proponents of privatization argue that this requirement of air carrier approval (air carriers have historically not favored privatization) of the use of airport revenue off-airport or into a city or county budget, as a major reason there has been limited interest in the privatization pilot program. Given the limited success of the Airport Privatization Pilot Program, Congress may wish to modify, replace or eliminate the program.[97]

There is no certainty that any AIP cost savings from either privatization or defederalization would be retained as AIP funds for use by the remaining airports. AIP spending is determined by the authorization and appropriations process and there is no guarantee that the savings would be made available to the remaining eligible airports. Any savings could also be used to lower the program size, to marginally assist in deficit reduction, to lower the needed general fund payment, or to make money available for spending elsewhere.

Apportionment and Eligibility Changes

Apportioned funds (sometimes referred to as entitlements) were substantially increased in AIR-21 and the range of land-side projects eligible for AIP grants was increased somewhat in both AIR-21 and Vision 100. Most of the eligibility changes benefitted airports smaller than medium-hub size. Although the increase in apportioned funding and the broadening of eligibility criteria could continue in the next reauthorization bill, if the budget environment is constrained the opposite could happen. In particular, the apportioned funds may have to be reduced to assure that sufficient funds remain to fund discretionary grants (in particular for operational evolution plan projects). The ACI-NA supports the maintenance of AIP funding for smaller airports and argues further for giving these airports increased flexibility in the use of their entitlements. The case can be made that, over the years, the broadening

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[95] New Orleans Lakefront Airport's application is pending final FAA action.

[96] Government Accountability Office, *"Financing Airport Capital Development: a Roundtable Discussion,"* Meeting held January 27, 2007.

[97] See Robert W. Poole, Jr, "U.S. Airport Privatization, the Second Time Around," *Airport Policy News*, no. 23, (February 2007), 4-5. The issues were also discussed at the GAO roundtable, *Financing Airport Capital Development*.

of AIP eligibility at small airports has made it increasingly difficult to identify the federal interest that has been met by such spending. As mentioned earlier, air carriers are skeptical of the benefit to the national airport system of some proposals seeking to broaden project eligibility, in part because they feel it shifts spending away from airside projects at large airports and to projects at small airports that do not play a key role in commercial aviation. General aviation and small airport supporters defend the distribution of AIP funds to small airports, noting that smaller airports are more dependant on AIP and do not often have the access to the bond market that larger airports have. In addition, they stress the importance of small airports to broad regions of the United States and their role in fulfilling the national goal of having an" extensive" national airport system.[98]

Federal Share

Vision 100 raised the federal share from 90% to 95% for smaller than large and medium-hub airports and for airports in states participating in the state block grant program, but included a sunset clause that returns the federal share back to 90% after FY2007. Should the federal or FAA budget be constrained or held at current levels, Congress may wish to consider adjusting the federal share as either a cost cutting measure or to encourage more local financial participation. The federal share for most projects at large and medium-hub airports is 75%. Those who favor a significant local matching share in federal transportation projects generally argue that it helps prevent the construction of projects of questionable value that may be built only because federal funds may be obtained at little cost to local governments or airport authorities. Some also argue that a high federal share discourages local government financial participation and makes smaller airports less interested in seeking funds through the bond market.

Discretionary Fund Set-Asides

The discretionary funds (which are the remainder funds after the apportionments are satisfied) are subject to set-asides for noise mitigation, the Military Airports Program (MAP), reliever airports, and the capacity/safety/security/noise set-aside. Any of these could be modified during reauthorization. However, the greater the total of all the set-asides, the smaller the remaining amounts that are truly unrestricted discretionary funds. Some observers argue that this could limit the ability of the FAA to respond to national aviation priorities, such as the OEP.

Minimum Discretionary Fund

49 U.S.C. 47115 requires that a minimum amount ($148 million plus any outstanding pre-January 1, 1997 letters of intent) remains available for the discretionary fund after all apportionments and set-asides are satisfied. If less money remains, the apportionments are reduced pro rata to bring the discretionary funding

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[98] *NPIAS*, 4. The NPIAS includes the attribute that " the airport system be extensive, providing as many people as possible with convenient access to air transportation, typically by having most commuters with no more than 20 miles of travel to the nearest NPIAS airport."

up to the required level. Because AIP has been funded since FY2001 at historically high levels, the minimum discretionary fund provision has not been a factor in AIP funding. If, however, AIP's budget is reduced substantially or if the entitlements are increased substantially, the appropriate minimum discretionary fund level may need to be reconsidered.

Grant Assurances

As mentioned earlier, along with the acceptance of AIP funds come certain obligations (generally referred to as assurances) that airports must agree to. These assurances include the obligation to maintain and operate their facilities safely and efficiently, as well as more specific obligations such as not to discriminate against any class of air system users,[99] to adhere to "Davis-Bacon" prevailing wage requirements, and to use airport revenue solely for spending on airport operations and capital costs.[100] Proposals to alter the AIP grant assurances can be expected to arise during the reauthorization debate. For example, the ACI-NA is seeking a bill that "simplifies airport grant assurances including reforms that permit airports to use non-aeronautical revenue sources to attract new and competitive air service to their communities."[101] Supporters of maintaining the grant assurances generally argue that the assurances not only help establish and enforce federal policy priorities but also insulate airports from local efforts to limit or shut down airport operations (for example, because of noise concerns or for land development).

Noise Mitigation

Historically, the basic funding issue is whether to change the existing discretionary fund noise set-aside. The noise set-aside, however, has been raised in each of the last two reauthorization acts and is now 35% of discretionary funding. Although some support for another increase could develop, it would likely face resistance from proponents of spending on capacity and safety enhancing projects that also rely on AIP discretionary spending. This scenario would change should the aviation trust fund revenue outlook improve enough to allow for a significant increase in AIP funding.

Other noise issues that may arise are funding eligibility issues. One issue is whether FAA should be granted the flexibility to fund some noise mitigation projects that are outside the 65 decibel noise impact area. Supporters argue that, at some airports expanding noise mitigation to areas subject to slightly lower than 65 decibel impact could significantly lower local resistance to airport projects. Some air carriers and airports, however, are concerned that any lowering would eventually, in effect, be applied nation-wide and the resulting demand for AIP funds would divert resources from capacity and safety projects. Another issue is whether or not to make

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[99] For example, against cargo or commuter aircraft, or night time flight operators.

[100] 49 U.S.C. sec. 47107

[101] Board of Directors, Airports Council International-North America, *The ACI-NA Board of Directors Endorses an Aviation Reauthorization Program That Includes a Balanced Financing Program*, (Washington, ACI-NA, 2006) 1.

the planning for noise mitigating arrival and departure operational (air traffic control) procedures eligible for AIP funding. In what was a major expansion of AIP noise funding eligibility, Vision 100 authorized the FAA to make grants for land use compatibility planning and projects around large and medium hub airports that have not submitted a part 150 noise compatibility plan (under 14 C.F.R. Part 150), as was previously required. The provision is limited to grants that are awarded through FY2007. Congress may wish to review this provision and extend or modify it, or allow it to lapse.

Very Light Jets (VLJs) and the Airbus A380: Impact on AIP

Some predictions of the rapid growth of a new type of aircraft, the VLJs (jets with a takeoff weight less than 12,500 pounds that can land on a 3,000 foot runway), have, in turn led to concerns that increased airport funding will be needed to accommodate them.[102] Even if the optimistic estimates of the speed of introduction of VLJs pan-out, given that VLJs have been specifically designed to operate at most existing general aviation airports, existing airport facilities should be able to handle the traffic. If, however, the advent of VLJs leads to increasing demands for installing all weather capabilities at small airports or if insurers place requirements on VLJ use, for example that VLJs only be used at airports with runways longer than 3,000 feet, the demand for AIP-funded improvements at small airports could increase over time. In either case, unless the reauthorization bill covers an unusually long time frame, it is unlikely that VLJs will be a major AIP concern at this time. As mentioned previously, small airports are more dependent on AIP funding for their capital projects than larger airports.

More likely to have an impact on AIP funding in the near term is the Airbus super jumbo A380. The GAO identified 18 U.S. airports making changes to accommodate the A380 at an estimated cost of roughly $927 million. These airports identified AIP as the planned source for 50% of these costs and PFCs for another 21%.[103]

"Place Naming" in Annual Appropriations Legislation

Historically, Congress has not earmarked AIP funds in the manner typical to mass 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. The enacted

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[102] For a more detailed discussion of the issues related to the advent of VLJs, see the VLJ discussion in the chapter "Accommodating Future Airspace Users," in CRS Report RL33698, *Reauthorization of the Federal Aviation Administration: Background and Issues for Congress*, by Bart Elias et al.

[103] U.S. Government Accountability Office, *Commercial Aviation: Costs and Major Factors Influencing Infrastructure Changes at U.S. Airports to Accommodate the New A380 Aircraft,* " GAO-06-571" Washington, DC: GAO, 2006. Available at [http://www.gao.gov/new.items/d06571.pdf].

FY2001 conference agreement (H.Rept. 106-940) place named 158 airports and also specified dollar amounts to be awarded (totaling just under $300 million). The language was also more directive than had been the case previously. The report directed FAA to "provide not less than the following [specified] funding levels, out of available discretionary resources." Since then each annual conference report has named over 100 airports with set dollar amounts. Most recently, the FY2006 Transportation/Treasury Appropriations conference report (H.Rept. 109-307) "place named" 124 airport for projects totaling just under $196 million. One of the issues related to this form of earmarking is the impact it has on the grant application process. Another is the impact of place naming on the availability of limited discretionary funds for national priorities such as the operation evolution plan (OEP). For FY2007 the continuing appropriations resolution (H.J.Res. 20) passed the House free of earmarks or place naming. Place naming of airports for AIP grants could reemerge as an issue during the FY2008 appropriations process.

Passenger Facility Charge Issues

The central PFC issue is whether to raise the $4.50 per enplaned (i.e., boarding) passenger ceiling or to eliminate the ceiling all together. Airports have long argued for elimination of the cap, but would also be pleased with an increase of some sort. The overall historical arguments for and against raising or eliminating the $4.50 cap on passenger facility charges are similar to the current arguments and are similar to the arguments for and against the PFC in general. Most air carriers and some passenger advocates will probably oppose an increase in the PFC. The pros and cons of increasing or eliminating the PFC cap are discussed below.

Pro. PFC supporters feel that the PFC is more reliable than AIP funding. They also argue that PFCs are pro-competitive, helping airports build gates and facilities that both encourage new entrant carriers and allow incumbent carriers to expand. Airports also argue that the PFC has proven an appropriate user fee that has travelers pay for airport improvements and capacity expansion at the airport where the fee is collected. In addition, supporters argue that over time the value of the PFC has been eroded by inflation and an adjustment is therefore necessary. Airport interests also want even fewer restrictions on the use of PFC revenue.

Con. The airlines object to increasing the PFC cap. They argue that the PFC is just another head tax.[104] They also argue that it is anti-consumer because it increases passenger costs and that, by raising these travel costs, it could at some point lead to a reduction in passenger traffic. Airline interests object to what PFCs have been spent on, arguing that airports have learned to "game the system" to provide money for marginal proposals of debatable value instead of high priority projects that offer meaningful safety or capacity enhancements. The major air carriers are also unhappy with the less influential decision making role they have in project decisions under PFCs. Airports only have to consult with resident air carriers under the PFC rules; they do not have to get air carrier agreement on PFC funded projects.

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[104] Merlis, Edward A. Passenger Facility Charge Increase: Statement on Behalf of the Air Transport Association of America Before the House of Representatives Aviation Subcommittee. March 12, 1998. 6 p.

Although PFC revenues can be used for a broader range of projects than AIP, some airport advocates argue there is still room for more flexibility in PFC eligibility requirements. For example, some would like more freedom to use PFC funds on off-airport projects, such as transportation access projects. Airports would also like the application process to be streamlined. Additionally, they would also to eliminate the competition plan requirement that is placed on large and medium hub airports that charge PFCs at the $4.50 level. As mentioned earlier, supporters of the competition plan provision hoped the requirement would help assure that the major airports would be available on a reasonable basis to all air carriers wishing to serve those airports.

Air carrier advocates have expressed concerns about the expansion of project eligibility under the PFC program. They are especially concerned about the use of PFCs to fund certain airport access projects, such as rail mass transit projects, that would spend PFC revenues beyond the airport boundary. They view the broadening of PFC project eligibility as shifting resources away from airport infrastructure projects that support the operation of aircraft at the airport. In their view, this creates a situation where the airside projects generally favored by air carriers are more likely to be funded by AIP grants, bonds, and airport revenues and less likely to be funded with PFCs. Part of this concern is driven by air carrier belief that the broadening of PFC project eligibility, in effect, makes some large airports more likely to raise the rates and fees (such as landing fees) charged to air carriers that use the airport.

If the AIP budget faces a period of constraint, which could limit the availability of AIP discretionary funding for national priorities such as the OEP, Congress may wish to revisit the distribution of the AIP apportionments that are foregone by the large and medium-hub airports that impose a PFC. Currently 87.5% of the foregone funds are directed to a small airport fund and 12.5% to the discretionary fund. Adjusting these percentages could be one way of increasing the money available to support OEP projects. In 1990, the Airport Capacity Funding Advisory Committee recommended that all foregone funds should be "shifted to the discretionary fund and allocated proportionally across all categories of the discretionary category."[105] This original recommendation could be reconsidered.

Airport Bonding Issues

Recently, there has been interest in increased use of private activity bonds (PABs) for transportation development. Private activity airport bonds could allow a private entity to enter the tax-exempt bond market to raise funding for a capital project at a public use airport. As a possible precedent, the recently passed surface transportation act, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (P.L. 109-59; SAFETEA-LU), allowed for up to $15 billion in private facility bond funding for highways or freight transfer facilities.[106]

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[105] FAA, *Report of the Airport Capacity Funding Advisory Committee* (Washington: FAA), p. 3.

[106] For a description of the Federal Highway Administration program, see [http://www.fhwa.dot.gov/ppp/private_activity_bonds.htm].

Airport bonds, however, have long been a major source of funding for capital projects at primary airports. Because most airports are owned by public authorities, they can seek funds in the tax-exempt bond market. The majority of these bonds are already treated by the Internal Revenue Service as private activity bonds because they fund projects that benefit the activities of private entities (usually airlines at the airport) and because they directly or indirectly (through fees) depend on revenue from such private entities to make the bond payments. Income from PABs are subject to the alternative minimum tax.

This situation differs from the use of PABs envisioned in SAFETEA-LU. Many of the supporters of the SAFETEA-LU provisions envisioned PABs as a means of facilitating public-private partnerships between the public authority and an outside investor (see the privatization issue discussion earlier in this report). Within the airports context, this would be analogous to an airport authority agreeing to a long term lease with an outside private investor who would have the ability to enter the market for tax-exempt bonds to finance improvements at the airport and, perhaps, also to finance the costs of the lease itself.[107]

Alternative Minimum Tax (AMT) Issues. As mentioned above, income from PABs is subject to the AMT.[108] Income from tax-exempt governmental purpose bonds is not subject to the AMT (the majority of airport bonds are PABs). One change sought by ACI-NA would be to broaden the definition of governmental purpose airport bonds to, in effect, include either all airport bonds or at least those bonds issued for public use projects that meet AIP or PFC eligibility requirements.[109]

Opponents of such changes express concerns that these changes could cost the U.S. Treasury revenues. Some also argue it would make more sense to change the AMT as part of a tax bill rather than as a specific exemption provided for income on airport bonds in an FAA reauthorization bill. In either case, such a change would not be under the jurisdiction of the congressional committees that will have jurisdiction over most reauthorization provisions. Changes to the AMT would be under the jurisdiction of the congressional tax-writing committees, the House Committee on Ways and Means and the Senate Committee on Finance.

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[107] See also the discussion of privatization of airports earlier in this report.

[108] The AMT was originally enacted to make sure that all taxpayers pay at least a minimum amount of federal taxes on their income so that individual taxpayers could not take unfair advantage of the various federal tax preferences and incentives. Because the tax was not indexed for inflation the impact of the tax has grown beyond the small group of tax payers for whom it was originally intended. See CRS Report RS22563, *The Alternative Minimum Tax for Individuals: Legislative Initiatives in the 110th Congress*, by Gregg A. Esenwein.

[109] ACI-NA, *Reforming the Federal Tax Treatment of Airport Bonds*, (Washington, ACI-NA) 2006. The ACI-NA also proposes that the advance refunding of PABs (which is usually done to take advantage of lower interest rates) be allowed.

The Congressional Budget Office (CBO), the Office of Management and Budget (OMB) and the Treasury Department, however, have generally opposed bonding as adding additional government-borne costs to the airport improvement process.[110]

[110] CBO reiterated this position at recent (September 27, 2006) House Aviation Subcommittee hearings on *Financing Options for FAA and Redesign of the Air Transportation System.* GAO also expressed the reasons for its concerns about the costs of bonding. See GAO. *National Airspace System Modernization: Observations on Potential Funding Options for FAA and the Next Generation Airspace System.* "GAO-06-1114T" Washington, GAO, 2006. p. 16-17.

Appendix A. Legislative History of Federal Grants-in-Aid to Airports

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 such as Works Progress Administration (WPA) projects. 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, hereafter referred to as the 1946 Act) continued federal aid under the Federal Aid to Airports Program, although at lower levels than during the war years. Under the 1946 Act, funds were appropriated annually from the general fund of the U.S. Treasury. Initially much of this spending supported a policy of conversion of military airports to civilian use. In the 1960s substantial funding also went to upgrade and extend runways for use by commercial jets.[111] By the end of the 1960s, 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.[112]

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

In 1970, 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 Airport Development Aid Program (ADAP), the Planning Grant Program (PGP), and set forth the programs' grant criteria, distribution guidelines, and authorization of grant-in-aid funding for the first five years of the program. 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.[113] Modeled on the Highway Trust Fund, this fund was designed to assure an adequate and consistent source of funds for federal airport and airway programs.[114] The Aviation Trust Fund also funds most FAA activities in addition to grants-in-aid for airports. These include, facilities and equipment (F&E); research, engineering, development (R,E&D); and FAA operations. Air traffic

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[111] For a general discussion of the U.S. airport system see Alexander R. Wells, *Airport Planning & Management*, (New York, TAB Books, 1992), 1-76.

[112] U.S. President (1969-1974: Nixon), *Problems of Air Transportation in America: Message from the President of the United States*, 91st Cong. 1st Sess., June 1969, (Washington, U.S. Govt. Print. Off. , 1969), H.Doc. 91-130, 1-4.

[113] See CRS Report RS21321, *Aviation Taxes and Fees: Major Issues*, by John W. Fischer.

[114] Although the Airway and Airport Trust Fund was modeled after the Highway Trust Fund, there are differences in the way funds are distributed. One major difference is that highway spending is funneled through the states whereas most airport development funds go directly to airports.

system maintenance and improvement fall under the first two of those categories. Under the 1970 Acts the trust fund was to have been both a capital account and, when excess funds existed, a user-pay system to help support FAA's administrative and operations costs.[115]

Airport and Airway Development and Revenue Acts Amendments of 1971 (P.L. 92-174; the 1971 Amendments Act)

The Nixon Administration's FAA budget requests for FY1971 and FY1972 under the new trust fund system brought it into immediate conflict with Congress over the budgetary treatment of trust fund revenues.[116] The Administration treated the new financing system as a user-pay system, whereas many Members of Congress viewed the trust fund as primarily a capital fund for the ADAP and F&E (although spending on FAA operations was allowable).[117] The 1971 Amendments Act was a strong congressional reaction consistent with many Members' perceptions that the Nixon Administration was ignoring the intent of Congress under the 1970 Acts. The Amendment made the trust fund a capital-only account (although only through FY1976), disallowing the use of trust fund revenues for FAA operations.[118]

Airport and Airway Development Amendments Act of 1976 (P.L. 94-353; the 1976 Act)

The 1976 Act made a number of adjustments to the ADAP and reauthorized the Aviation Trust Fund through FY1980. The Act again allowed the use of trust fund resources for the costs of air navigation services (a part of operations and maintenance). However, in an attempt to assure adequate funding of airport grants, the Act included "cap and penalty" provisions which placed an annual cap on spending for costs of air navigation systems and a penalty that reduced these caps if airport grants were not funded each year at the airport program's authorized levels.[119]

ADAP grants totaled about $4.1 billion dollars from 1971 through 1980. In part because of a debate over "defederalization," Congress did not pass authorizing legislation for ADAP during FY1981 and FY1982, which meant that the Aviation

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[115] See GAO, *Congressional Intent*. For another discussion of congressional intent regarding the debate over the use of aviation trust fund revenues for both airport and airway infrastructure as well as spending on FAA operations, see CBO. *The Status of the Airport and Airway Trust Fund*.

[116] See CBO, *Status of the Airport and Airway Trust Fund*, 3-11.

[117] The Administration's FY1972 budget proposal would have provided more aviation trust fund monies for FAA operations than for AIP and F&E combined.

[118] CBO, *Status of the Airport and Airway Trust Fund*, 5-7.

[119] For a detailed discussion of the history of the various cap and penalty provisions and other spending guarantees, see CRS Report RL33654, *Aviation Spending Guarantee Mechanisms*, by Robert S. Kirk.

Trust Fund lapsed during those two years, although spending for airport grants continued.[120]

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

The 1982 Act created the current AIP and reactivated the Aviation Trust Fund. 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 newly defined categories of airports,[121] extending aid eligibility to privately owned general aviation airports, increasing the federal share of eligible project costs, and earmarking 8% of total funding for noise abatement and compatibility planning. The Act also required the Secretary of Transportation to publish a national plan for the development of public-use airports in the United States. This biannual publication is called the *National Plan of Integrated Airport Systems (NPIAS)*. The NPIAS identifies airports that are considered important to national transportation. For an airport to receive AIP funds it must be listed in the NPIAS.[122] In reauthorizing the Aviation Trust Fund the Act also adjusted the schedule of aviation user fees.

Although the Act was amended often in the 1980s and early 1990s, the general structure of the program remained the same. The Airport and Airway Safety and Capacity and Expansion Act of 1987 (P.L. 100-223; 1987 Act) authorized significant increases for AIP and added a cargo service apportionment. The 1987 Act also included modified "cap and penalty" provisions as well as a "tax reduction trigger," in part, to encourage full funding of AIP at the fully authorized level.[123] Title IX of P.L. 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA), included the Aviation and Airway Safety and Capacity Act of 1990 which allowed airports, under certain conditions, to levy a Passenger Facility Charge (PFC) to raise revenue and

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[120] Airport aid for those years was appropriated at $450 million per year. Certain aviation fee revenues went into the Treasury's general fund and the Highway Trust Fund during the lapse. The defederalization debate centered around proposals to withdraw federal aid from major air carrier airports on the grounds that the federal government was over-involved in airport development finance and that large airports could finance any needed development themselves.

[121] The 1982 Act defined four categories for the distribution of formula funds: commercial service, primary, reliever, and general aviation. Of the distribution, not more than 50%was to primary airports, based on the number of enplanements. 12 % of the authorization was for use within the states and insular areas and the remainder was defined as discretionary. A sizable portion of the discretionary funding was dedicated to specified funding minimums.

[122] FAA, *NPIAS 2007-2011*. According to FAA 3,431 (including 67 proposed NPIAS airports) of the 19,847 airports existing in the United States are listed in the NPIAS. Unless otherwise stated, the discussion in this paper refers to the NPIAS or "national system" airports.

[123] The 1987 Act added a provision for FY1988-FY1989 that would trigger a reduction in aviation tax rates, if the total of the amounts made available for AIP, F&E, and R,E&D were less than 85% of the amounts authorized for these programs.

also established the Military Airport Program (MAP), which provided AIP funding for capacity and/or conversion-related projects at joint use or former military airports. The Airport Noise and Capacity Act of 1990, also set a national aviation noise policy. OBRA included the Revenue Reconciliation Act of 1990 which reauthorized the Aviation Trust Fund and adjusted some of the aviation taxes. Finally, OBRA again modified the cap and penalty provisions and eliminated the tax reduction trigger. The Federal Aviation Reauthorization Act of 1994 (P.L. 103-305) reauthorized AIP for two more years and again made modifications in the cap and penalty provisions.[124]

Federal Aviation Reauthorization Act of 1996 (P.L. 104-264)

The 1996 authorization of the AIP provided $2.28 billion for FY1997 and $2.37 billion for FY1998. The Act made a number of adjustments to entitlement funding and discretionary set-aside provisions. It also included a number of directives concerning intermodal planning, cost reimbursement rules, letters of intent (LOIs), and the Small Airport Fund. A demonstration airport privatization program and a demonstration program for innovative financing techniques were established. The pilot status of the state block grant program was removed. The 1996 Act again altered the cap and penalty provisions. The Act did not reauthorize the taxes that supported the aviation trust fund. This was done by the Taxpayer Relief Act of 1997 (P.L. 105-34), which extended, subject to a number of modifications, the existing aviation trust fund taxes for ten years, through September 30, 2007.

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century of 2000 (AIR21, P.L. 106-181)

AIR21's enactment, was the culmination of two years of legislative effort to pass a multi-year FAA reauthorization bill.[125] 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), as well as the amounts to be spent and their distribution.

Rather than debating further modifications of the "cap and penalty" provisions the initial debate focused on 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. These proposals, however, never emerged from the conference committee. Instead, the enacted legislation included a so-called

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[124] The 1994 Act was preceded by two acts that extended the AIP program. The Airport and Airway Safety, Capacity, Noise Improvement and Intermodal Transportation Act of 1992 (P.L. 102-581) extended AIP through FY1993 and the AIP Temporary Extension Act of 1994 (P.L. 103-260) extended AIP through June 30, 1994.

[125] During the debate AIP underwent four separate authorization extensions: P.L. 105-227 extended AIP through March 31, 1999; P.L. 106-6 through May 31, 1999; P.L. 106-31 through August 6, 1999; and, finally, P.L. 106-59 through September 30, 1999. The AIP was held in abeyance from October 1, 1999 until AIR21 was enacted on April 5, 2000. See CRS Report RS21621, *Surface Transportation and Aviation Extension Legislation: a Historical Perspective*, by John W. Fischer and Robert S. Kirk.

"guarantee" that all of each year's receipts and interest credited to the trust fund would 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 Operations and Maintenance (O&M) or Research, Engineering and Development (R,E&D) budgets if AIP and the F&E budgets are funded below authorized levels. Although these provisions are not considered airtight, the budgetary resources made available for AIP during the years (FY2001-FY2003) that the AIR21guaranties were in effect were at or near the program's authorized levels.

AIR21 did not, however, make any major changes in the structure or functioning of AIP. The big difference was the amount of money made available for airport development projects. From a funding level of approximately $1.9 billion for FY2000, AIP's authorization increased 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 were doubled starting in FY2001. The state apportionment for general aviation airports was increased from 18.5% to 20%. The noise set-aside was increased from 31% to 34% of discretionary funding and a reliever airport discretionary set-aside of 0.66% was established.

AIR21 also increased 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, or "forgo," 75% of their AIP formula funds. This made more AIP funding available to the smaller airports.

Vision 100: Century of Aviation Reauthorization Act of 2003 (P.L. 108-176; H.Rept. 108-334)

Vision 100, the FAA reauthorization act, signed by President George W.Bush on December 12, 2003, included some significant changes to AIP but nothing of the scale or consequence of the changes made under AIR21. Both the funding increase and the programmatic changes were modest by comparison. Vision 100 funded AIP for four years at the following annual levels: $3.4 billion for FY2004, $3.5 billion for FY2005, $3.6 billion for FY2006, and $3.7 billion for FY2007. The law codified the AIR21 spending "guarantees" through FY2007. The agreement does not authorize the use of AIP funds for the administration of the program.

Vision 100 increased the discretionary set aside for noise compatibility projects from 34% to 35%. It increased the amount that an airport participating in the Military Airport Program (MAP) could receive to $10 million for FY2004 and FY2005, but in FY2006 and FY2007 it returned the maximum funding level to $7 million. The Act allowed non-primary airports to use their entitlements for revenue generating areas if the Secretary of DOT determines that the sponsor has made adequate provisions for the air-side needs of the airport. The agreement permitted AIP grants at small airports to be used to pay interest on bonds used to finance an airport project. The Act included a pilot program to test procedures for authorizing

small airports to impose PFCs. Vision 100 repealed the authority to use AIP or PFC funds for most airport security purposes.

Appendix B. Airport Definitions[126]

Commercial Service Airports

Publicly owned airports that receive scheduled passenger service and board (enplane) at least 2,500 passengers each year (517 airports).

Primary Airports. All 382 primary airports board more than 10,000 passengers each year. Primary airports are subdivided into four categories of airport:

Large Hub Airports. Board 1% or more of total system-wide enplanements (30 airports that together account for 68.7% of all enplanements)

Medium Hub Airports. Board 0.25% but less than 1% (37 airports that together account for 20% of all enplanements)

Small Hub Airports. Board 0.05% but less than 0.25%.(72 airports that together account for 8.1% of all enplanements)

Non-hub Primary Airports. Board more than 10,000 but less than 0.05% (243 airports that together account for 3% of all enplanements)

Non-Primary Commercial Service Airports. Board at least 2,500 but no more than 10,000 passengers each year (135 airports that together account for 0.1% of all enplanements)

Other Airports

Cargo Service Airports. Airports that are served by aircraft that provide air transport for cargo only and have a total "landed weight" of over 100 million pounds.

Reliever Airports. Airports designated by the FAA to relieve congestion at commercial airports and provide improved general aviation access to a community (i.e. to draw general aviation activity away from congested commercial metropolitan airports). There are 274 airports classified as reliever airports.

General Aviation Airports. All other airports. General aviation airports do not serve military or scheduled commercial service but typically do support one or more of the following: business/corporate, personal, and instructional flying; agricultural spraying; air ambulances; on-demand air-taxies; and/or charter aircraft service. There are 2,573 general aviation airports in the national airport plan (NPIAS). In addition there are 16,476 non-NPIAS low-activity airports that together accounted for 0.1% of all enplanements. Non-NPIAS airports are not eligible for AIP funding.

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[126] *2007-2011 NPIAS*, 4-9. Passenger enplanements are the total number of passengers boarding aircraft, including originating passengers as well as those changing aircraft.