

CRS Issue Brief for Congress

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Airport Improvement Program

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Airport Improvement Program

SUMMARY

The Airport Improvement Program (AIP) (49 U.S.C. Chapter 471) has provided federal grants for airport development and planning since the passage of the Airport and Airway Improvement Act of 1982 (P.L. 97-248). AIP funding is usually spent on projects that support aircraft operations including runways, taxiways, aprons, noise abatement, land purchase, and safety, emergency or snow removal equipment. Funds obligated for the AIP are drawn from the Airport and Airway Trust Fund, which is supported by user fees and fuel taxes.

The September 11, 2001 terrorist attacks on New York and Washington led to passage of the Aviation and Transportation Security Act (ATSA) (P.L. 107-71). ATSA broadened the range of security activities and projects that are eligible for AIP grants.

FY2003 is the last year of AIP's existing authorizing legislation, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21; P.L. 106-181). Two years in the making, this \$40 billion multi-year Federal Aviation Administration (FAA) reauthorization bill greatly increased AIP's annual obligational authority from less than \$2 billion to \$3.2 billion for FY2001, \$3.3 billion for FY2002, and \$3.4 billion for FY2003. The Act increased the Passenger Facility Charge (PFC) ceiling from \$3 to \$4.50 per boarding passenger. The PFC is essentially a local tax on each boarding passenger that is levied by an airport with federal approval.

AIR21 included "point of order" provisions that were designed to assure that all trust fund receipts and interest are spent annually and increased the likelihood that AIP will be fully funded at the authorized level. AIR21 also increased the set aside for noise mitigation from 31% to 34% of AIP discretionary funds.

The FY2003 Consolidated Appropriations Act (P.L. 108-7) authorized \$500 million for FY2003-FY2007 to fund "letters of intent" for airport security projects. This provision could lessen the demand for AIP funding for security purposes. The bill also expanded AIP's eligibility requirements to include the construction and equipping of air traffic control towers at contract tower program airports.

The House and Senate have both passed FAA reauthorization bills. The House-passed bill, Flight 100-Century of Aviation Reauthorization Act (H.R. 2115), would authorize AIP at \$3.4 billion for FY2004, \$3.6 billion for FY2005, \$3.8 billion for FY2006, and \$4.0 billion for FY2007. The Senate-passed version, the Aviation Investment and Revitalization Vision Act (H.R. 2115 as amended by S. 824), would authorize AIP at \$3.4 billion for FY2004, \$3.5 billion for FY2005, and \$3.6 billion for FY2006.

On July 11, 2003, the House Appropriations Subcommittee on Transportation, Treasury, and Independent Agencies voted favorably on a FY2004 appropriations bill that recommends AIP funding of \$3.5 billion.



MOST RECENT DEVELOPMENTS

On July 11, 2003, the House Appropriations Subcommittee on Transportation, Treasury, and Independent Agencies marked-up a bill that recommends AIP be funded for FY2004 at \$3.5 billion.

On June 11, 2003, the House passed a bill, the Flight 100–Century of Aviation Reauthorization Act (H.R. 2115), recommending a four year authorization of AIP at \$3.4 billion for FY2004, \$3.6 billion for FY2005, \$3.8 billion for FY2006, \$4.0 billion for FY2007. On June 12, 2003, the Senate passed the Aviation Investment and Revitalization Vision Act (S. 824) (AIR-V), recommending a three year authorization of AIP at \$3.4 billion for FY2004, \$3.5 billion for FY2005, and \$3.6 billion for FY2006.

BACKGROUND AND ANALYSIS

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

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

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

This issue brief discusses the Airport Improvement Program and its complement, the Passenger Facility Charge (PFC). After a brief history of federal support for airport construction and improvement, the report describes AIP funding, its source of revenues, funding distribution, the types of projects the program funds, AIP and PFC policy issues, and the allowable use of AIP funds for airport security purposes.

Founding Legislation

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

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

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

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

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

Airport Improvement Program (AIP)

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

This section first discusses the source of the money used to pay for AIP grants, the Aviation Trust Fund. It then sets forth the overall impact on AIP of the passage of AIR21, which reauthorized FAA through FY2003. Next, it explains the AIP's system of project grant distribution. The section then describes AIP funding in terms of what types of projects the grants are spent on and examines grant distribution by airport size. Finally, it discusses the Passenger Facility Charge (PFC).

The Airport and Airway Trust Fund

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

- 7.5% ticket tax;
- \$3.00 flight segment tax;
- 6.25% tax on cargo waybills;
- 4.3 cents per gallon on commercial aviation fuel;
- 19.3 cents per gallon on general aviation gasoline;
- 21.8 cents per gallon on general aviation jet fuel;
- \$13.40 international arrival tax;
- \$13.40 international departure tax;
- 7.5% tax on second party sales of airline award miles (normally “frequent flyer” awards);
- 7.5% ticket tax at rural airports.

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

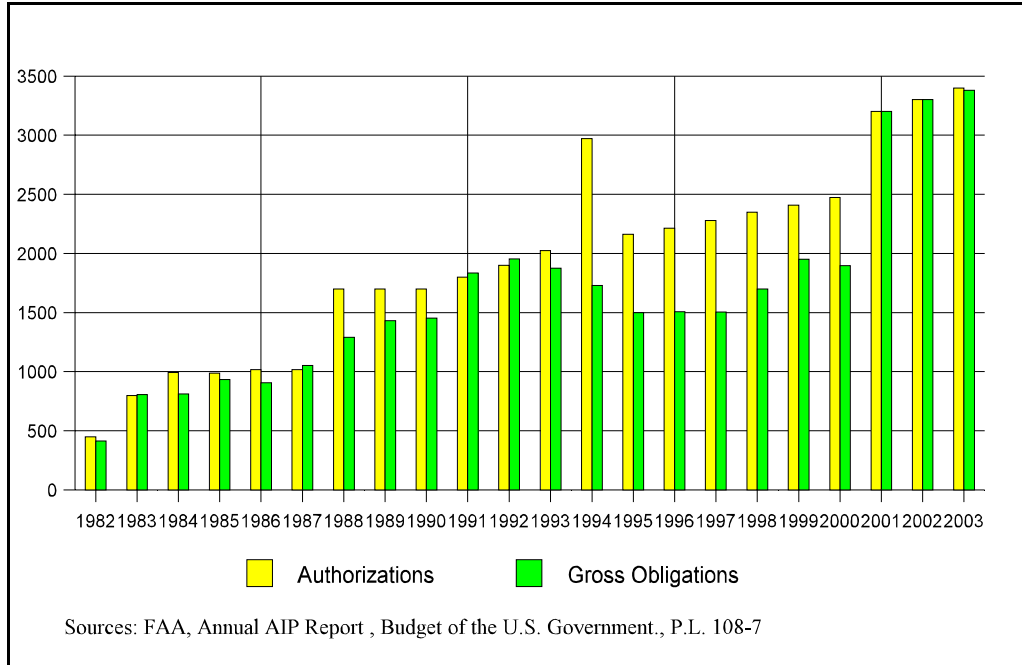
The scenario of an unexpended trust fund balance, that grows substantially larger each year, ended in FY2001. Most observers believe the drop in demand for air travel that began during 2001, due to the recessionary economy and potential passengers’ fear of flying following the September 11 attacks, significantly constrained the revenues available from the trust fund. The end of year balance for the trust fund dropped from a high of \$14.5 billion for FY2001 to \$12.6 billion for FY2002. Estimated balances for FY2003 and FY2004 are \$12.3 billion and \$10.6 billion, respectively. (For more, see CRS Report RS21321. *Aviation Taxes and Fees: Major Issues*, by John W. Fischer)

AIP Funding

AIP spending since FY1982 is illustrated in **Figure 1**. From FY1982 to FY1992 annual spending (obligations) increased from \$412.5 million to \$1,954.5 million. From FY1982 to FY1992 the obligation limits increased every year except for FY1986, when it dipped by \$28.6 million below the FY1985 level. For FY1993-FY1997 spending was reduced as part of overall deficit reduction. AIP spending declined in FY1993 and FY1994 before leveling off at about the \$1.5 billion level during FY1995-FY1997. Obligations for FY1998 rose to \$1.7 billion. The FY1999 omnibus appropriations act (P.L. 105-277) provided obligational authority for \$1.95 billion For FY2000 appropriations, the enacted appropriations legislation (P.L. 106-69) again provided for \$1.95 billion. However, the Consolidated Appropriations Act for FY2000 (P.L. 106-113), called for an across-the-board cut of 0.38% from all discretionary budget authority and obligation limitations. This allowed FAA to obligate just over \$1.85 billion for airport grants in FY2000.

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

**Figure 1. AIP Authorization and Obligations, FY1982-FY2003
(Millions of \$)**



In the aftermath of the September 11 terrorist attacks on New York and Washington, \$175 million in FY2001 supplemental appropriations (available until expended), included in the Department of Defense Appropriations Act (H.R. 3338; H.Rept. 107-350), were made available for AIP to help reimburse airports for the costs of post-September 11 security mandates imposed by law or DOT. The FY2002 DOT Appropriations Act (P.L. 107-87) provided for the fully authorized funding of \$3.3 billion for AIP. The FY2003 Consolidated Appropriations Resolution (P.L. 108-7) provided for the fully authorized \$3.4 billion less the 0.65% across-the-board rescission (roughly \$20 million). (For more see CRS Report RL31308, *Appropriations for FY2003: Department of Transportation and Related Agencies*, coordinated by David Randall Peterman and John Frittelli).

The Impact of AIR21 on AIP

AIR21, the existing authorization, expires at the end of FY2003. Its enactment, was the culmination of two years of legislative effort to pass a multi-year FAA reauthorization bill. The length of the effort was a reflection of the difficult issues faced. Major issues that had to be resolved included the budgetary treatment of the aviation trust fund, raising the ceiling on the passenger facility charge (PFC), and the amounts to be spent and their distribution.

Provisions to take the aviation trust fund off-budget or erect budgetary “firewalls” to assure that all trust fund revenues and interest would be spent each year for aviation purposes never emerged from the conference committee. Instead, the enacted legislation 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 (RE &D) budgets if AIP and the Facilities and Equipment (F&E) budgets are funded below authorized levels. Although these provisions are not airtight, they did increase the likelihood that the budget resources made available for AIP for FY2001-FY2003 would equal the levels authorized in AIR21 and, thus far, this has been the case.

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.

AIP Funding Distribution

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

Formula and Discretionary Funds.

Formula Funds. Sometimes referred to as apportionments, 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. Each category distributes AIP funds by a different formula. Most airports have up to three years to use their apportionments. Non-hub commercial service airports (the smallest of the primary airports) have up to four years.

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

apportioned for each fiscal year is equal to double the amount that would be received according to the following formulas:

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

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

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

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

- \$150,000; or
- one fifth of the estimated 5-year costs published in the most recent National Plan of Integrated Airport Systems (NPIAS) to a maximum of \$200,000 per year.

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

Alaska Supplemental Funds. Funds are apportioned to Alaska to assure that Alaskan airports receive at least as much as they did under the ADAP in 1980. AIR21 doubled the Alaska Supplemental.

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

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

Discretionary Funding. The discretionary fund (49 U.S.C. sec. 47115-47117) includes the money not distributed under the apportioned entitlements as well as, the forgone PFC revenues that were not deposited into the Small Airport Fund. Discretionary grants are approved by the FAA based on project priority and other selection criteria, including congressional directives in appropriations legislation. Despite its name, the discretionary fund is subject to three set-asides and certain other spending criteria. The three set-asides are:

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

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

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

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

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

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

- 75% for large and medium hub airports (80% for noise compatibility projects);
- 90% for other airports; and
- 90% for integrated airport system planning grants;
- “not more than” 90% for airport projects in states participating in the state block grant program;
- 40% for projects funded from the discretionary fund at airports receiving exemptions under section 47134, the pilot program for private ownership of airports;

The airports themselves must raise the remaining share from other sources. Unlike federal aid to highways, AIP grants generally go directly to airports rather than through the states. This federal share regime means that smaller airports do not pay as high a percentage of AIP project costs as large and medium airports do. These are fixed percentages with the above mentioned exception of the state block grant states.

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

smaller) grew 56% while grants to large and medium hub airports grew only 24%, indicating that AIP was becoming increasingly important to small airports.

AIR21 continued this trend and raised the percentage share for smaller airports. This is because large and medium hub airports now forego 75% of their AIP formula funds in return for the ability to impose PFCs at the \$4.50 level.

Passenger Facility Charges (PFCs)

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

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

AIR21 increased the PFC ceiling to \$4.50. To impose a PFC over the \$3 level an airport has to show that the funded projects will make significant improvements in air safety, increase competition, reduce congestion or noise impacts on communities and that these projects could not be funded using of AIP funds. Large and medium hub airports imposing PFCs above the \$3 level forego 75% of their AIP formula funds. Beginning in FY2001, PFCs at large and medium hub airports may not be approved unless they have submitted a written competition plan to the FAA. The competition plans are to include information such as, the availability of gates, leasing arrangements, gate-use requirements, patterns of air service, controls over air- and ground-side capacity, intentions to build gates that could be used as common facilities, and airfare levels compared to other large airports.

PFCs are a significant source of capital improvement revenue for large, medium, small hub, and non-hub commercial airports. The PFC percentage of airport development funding in FY1996 by airport size is as follows: large hub, 19.9%; medium hub, 14%; small hub,

16.9%; nonhub commercial, 9.7%; and other commercial service, 0.5%. Under the AIP the corresponding percentages are: large hub, 9.7%; medium hub, 12%; small hub, 42%; non-hub commercial, 71%; and other commercial service, 76%. (These percentages were extrapolated from charts [FY1996 figures] in, GAO, *Funding Sources for Airport Development*, pp. 44-48.) As of November 1, 2002, 308 airports were collecting PFCs and 332 had received PFC approval. A substantial portion of PFC revenues are used to make interest payments on bonds.

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

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

AIP Funding of Airport Security

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

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

sponsor if the Secretary of DOT determines that such payments are necessary to prevent a default on the indebtedness. The federal share for these purposes is 100%.

FY2003 Consolidated Appropriations Act (P.L. 108-7) General Provisions That Impact AIP

Two sections in P.L. 108-7's general provisions could have a significant impact on AIP.

Letters of Intent for Airport Security Projects (Section 367)

Section 367 allows the Under Secretary of Transportation for Security to issue "letters of intent" to airports that commit to obligate from future budget authority for airport security improvement projects that involve the replacement of baggage conveyer systems or reconfiguration of terminal baggage areas in order to install explosive detection systems. The letters establish schedules of reimbursement to the airports for the federal government's share of costs as amounts become available, if the airport, after the letter is issued, carries out the project without AIP funding. Section 367 authorizes \$500 million, annually, for FY2003-FY2007 to carry out the Section. This could reduce the demand for AIP funds for airport security improvement projects.

AIP Funding of Contract Tower Program Towers (Section 370)

Section 370 of P.L. 108-7 included the text of the Small Airport Safety, Security and Air Service Improvement Act (H.R. 1979; H.Rept. 107-496), which had passed the House on June 20, 2002 but had not been acted on by the Senate. Section 370 expands AIP eligibility criteria to include the building and equipping of air traffic control towers at airports participating in the Contract Tower Program (CTP). Under the CTP, the FAA contracts with private companies to staff visual flight rule towers instead of using federal air traffic controllers. Air traffic control towers, are usually funded from the FAA's facilities and equipment (F&E) budget. Prior the enactment of P.L. 107-7, the FAA's CTP contracts, required the a participating airport to provide the air traffic control facilities for the contract air traffic controllers and equipment at no expense to the federal government. Section 370 allows contract tower program airports to use their AIP entitlement (formula funds) or AIP state apportionments to build and equip air traffic control towers. The bill also allows contract tower airports to use their entitlements, but not state apportionments, for reimbursement for past construction and equipment purchases made after October 1, 1996. AIP discretionary grants can not be made for these purposes. The federal share is limited to 90% and may not exceed a total federal cost of \$1.1 million per tower. The bill does not provide any additional funding.

During the floor debate in the House on Section 370's predecessor bill, H.R. 1979, the provisions that generated the most active debate, were the provisions to allow for retroactive reimbursement of costs incurred after October 1, 1996 for tower construction and equipment purchases. Supporters argued there are airports that took the initiative to build the towers themselves, rather than waiting for federal funding, and that these airports should not be penalized relative to airports that waited for the federal funding under H.R. 1979. Supporters also asserted that, since the reimbursement would only come from formula funds that an airport is given by law, the bill would give these airports the right to choose whether or not

to use its entitlement money for reimbursement. Opponents of reimbursement, countered that the roughly 26 airports thought to be eligible for reimbursement, signed agreements to provide air traffic control tower facilities, and, in return, the federal government assumed the costs of staffing and operations. Opponents pointed out that there were no controls over what the reimbursed money could be spent on and that the bill exempted these towers from AIP statutory and regulatory requirements, with the exception Davis-Bacon, small business, and veterans preference requirements (some argue that these three requirements, however, will be enough to prevent AIP reimbursement grants to many of the 26 eligible airports in any case). Finally, they argued that with FAA reauthorization approaching, the bill would set a bad precedent that could lead to a multitude of reimbursement proposals for other infrastructure improvements during the reauthorization debate. In addition, Section 370, requires DOT to study the “feasibility, costs, and benefits” of allowing CTP airports to use up to 10% of their AIP apportionments to pay the non-federal share of the operating costs of a CTP control tower.

AIP Reauthorization Proposals in 2003¹

Aviation Investment and Revitalization Vision Act (S. 824) (AIR-V)

AIR-V (or Air-Vision), a three year FAA reauthorization bill passed by the Senate on June 12, 2003, includes provisions that will impact AIP in a number of ways. Some of the impacts, such as the funding levels and the noise set aside, affect AIP directly but other impacts are less direct. Relative to AIP, much of AIR-V’s legislative attention is directed toward facilitating capacity enhancing projects, especially toward the major airports included in the 2001 Airport Capacity Benchmark study. AIR-V also includes streamlining provisions such as expedited coordinated environmental review and design-build contracting. These provisions could both increase major airport runway projects and accelerate the pace of project development and thereby increase the demand for AIP funding in some future years.

- AIR-V would authorize AIP at \$3.4 billion for FY2004, \$3.5 billion for FY2005, and \$3.6 billion for FY2006.
- The bill would extend the AIR21 point-of-order enforcement provisions and spending guarantees designed to assure that the FAA capital programs, including AIP, are funded at their fully authorized levels.
- The discretionary set aside for noise compatibility projects would be raised from 34% to 35%. Eligibility would be expanded to include noise mitigation projects approved in an environmental record of decision for projects designated as national capacity projects.
- For FY2004, any airport that had fewer than one-half of 1% (excludes all large hub and some medium hub airports) of total U.S. passenger boardings for the calendar year used for determining AIP formula funds and also had declining boardings such that they had fewer than 10,000 passenger boardings in calendar year 2002, but more than 10,000 boardings in calendar year 2000, would be apportioned an amount equal to that received for FY2002.

¹ This Issue Brief is not the FAA reauthorization tracking report. For tracking reauthorization see CRS Issue Brief IB10121, *Federal Aviation Administration Reauthorization*.

- For FY2004 the bill would also raise the federal share to 95% at all national system airports smaller than medium hub.
- DOT would be able to authorize an airport sponsor to award a design-build contract under certain conditions.
- The bill calls for DOT to identify, from the FAA's Airport Capacity Benchmark Report 2001, airports experiencing delays that significantly affect the national transportation system. DOT is to direct any of these airports that is not engaged in a runway expansion process to establish a delay reduction task force to conduct a capacity enhancement study and submit, within 9 months, recommendations for capacity enhancement at the airport. If runway expansion or reconstruction is recommended then DOT and the airport have five years to complete the planning and environmental review process. Airports that decline to undertake the recommended expansions would be ineligible for AIP planning and expansion funds and no PFCs would be approved for five years for the airport. DOT is to expedite funding for those airports that take action.
- DOT would be required to implement an "expedited coordinated environmental review process" for national capacity projects that would make use of designated project coordinators and environmental impact teams to: provide for better coordination among the federal, state, and local agencies concerned with the development of environmental impact statements or environmental assessments under the National Environmental Policy Act of 1969 (42 U.S. C. 4321 et. seq.). Federal agencies with jurisdiction over environmental reviews would accord such reviews of national capacity projects the highest possible priority. Also directs DOT to initiate a five year pilot program to improve the environmental review of national capacity projects.
- The bill defines the conditions that must be met under alternatives analysis for an alternative for a congested airport to be considered "reasonable" under the bill. The conditions include that the airport alternative: not create an unreasonable burden on interstate commerce, the national aviation system, or the navigable airspace; it must maintain the safe and efficient use of airspace; it must result in the same reduction of congestion as the proposed project; and it may not conflict with any federal law or regulation.
- DOT would be required to present to the Senate Committee on Commerce, Science and Transportation a list of current and proposed categorical exclusions from the National Environmental Protection Act (42 U.S.C. 4321 et seq) environmental review and environmental impact statements requirements.
- AIR-V would provide for AIP grants to state and units of local governments for land use compatibility plans directly related to national capacity projects under certain conditions.
- Would require notice to purchasers that a property is located within the noise contours of an airport.
- The bill includes a number of provisions to streamline the PFC public notice requirement as well as the requirement of notice and consultation of air carriers at applicant airports. Would eliminate the "significant contribution" project requirement on large and medium hub airports that wish to impose PFCs at the \$4 and \$4.50 level.

- Would establish a pilot program to test alternative procedures for authorizing small airports to impose PFCs.
- Large and medium hub airports would have to notify DOT of any denial of access to an applicant airline to gates and other facilities.
- The bill would create an Aviation Security Capital Fund with an annual authorization of \$500 million derived from existing security fees (language was added by amendment to clarify that these authorized funds would also require appropriation. This could help lessen the demands for AIP funds for security purposes.

Flight 100 – Century of Aviation Reauthorization Act (H.R. 2115)

The House passed its proposal for FAA reauthorization, including its AIP authorization proposals on June 11, 2003. The proposals differ from S. 824's treatment of AIP in a number of ways, including its four year duration and its more generous annual increases. The bill would fund AIP at \$3.4 billion for FY2004, \$3.6 billion for FY2005, \$3.8 billion for FY2006, and \$4.0 billion for FY2007. The bill also includes environmental streamlining provisions but does not include provisions similar to the Senate bill's national capacity projects. The bill includes a number of significant program changes.

- The bill restricts the eligibility of baggage conveyor replacement to AIP formula funds.
- Small airports would be allowed to use their formula funds for post-911 security costs.
- DOT may require a written assurance from an airport that it will undertake improvement of a runway's safety area prior to approving a grant for the construction, reconstruction, or repair of a runway.
- An airport would be allowed to keep the proceeds of land sales if the airport uses the proceeds for airport development or for noise compatibility purposes.
- The bill would reduce apportionments to airports with more than 3.5 million annual enplanements by 5 cents per boarding passenger.
- Cargo service airport formula is increased from 3% to 3.5%.
- For FY2004, any airport that had fewer than one-half of 1% (excludes all large hub and some medium hub airports) of total U.S. passenger boardings for the calendar year used for determining AIP formula funds and also had declining boardings such that they had fewer than 10,000 passenger boardings in calendar year 2002, but more than 10,000 boardings in calendar year 2000, would be apportioned an amount equal to that received for FY2002.
- Would allow an airport to use AIP noise set aside funds for projects approved in a record of decision (ROD) for an airport project, for land use planning, and for certain Clean Air Act requirements. This could mean that some airports that have not submitted a noise mitigation plan to FAA could still be eligible for AIP noise mitigation funding in some cases.
- Would make eligible the costs of construction or modification of parking facilities needed to meet security requirements.

- Airports smaller than medium hub would be allowed to use AIP funds for the costs of interest payments, bond insurance, and other credit enhancement costs associated with a bond issue used to finance eligible projects.

Congressional Issues

The safe operation of airports is, by statute, the highest aviation priority. Other priorities include minimizing noise impacts, increasing capacity to the maximum feasible extent, and encouraging efficient service to state and local communities. AIP legislation also links increasing capacity to increasing efficiency and safety.

Budgetary Treatment of the Aviation Trust Fund

AIR21 included language that made it “out of order” in the House of Senate to consider legislation that does not use all aviation trust fund receipts and interest annually. A second capital priority “point of order” provision made it out of order to consider legislation for any fiscal year through FY2003 for RE&D or O&M if the sum of the obligation limitation for AIP and the appropriation for F&E are below their authorized levels. (See CRS Report RS20177, *Airport and Airway Trust Fund Issues in the 106th Congress*, by John W. Fischer.)

Following the passage of AIR21 an ongoing issue was the strength of the Act’s spending “guarantees” and point-of-order enforcement provisions. For example, points-of-order can be waived. There were, however, no serious challenges to the point-of-order enforcement provisions. AIR-V would extend these provisions through FY2006. Flight-100 is silent on the issue, however it would fund FAA operations at 79% from the Airport and Airway Trust Fund. Funding all or most of FAA operations from the trust fund, coupled with the potential of declining trust fund revenues, could put pressure on the funding of AIP in the out years of a FAA reauthorization bill.

Airport Capital Needs Debate

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

Record delays and cancellations during the summers of 1999 and 2000 has led to increased calls for airport capacity improvements, especially for new runway construction. A congressional oversight issue will be whether the increased AIP spending under AIR21 at the major congested airports will increase capacity on the air-side (e.g. new runways, aprons, taxiways, etc.) at congested airports. A related issue is whether the decline in demand for air passenger air transportation, that coincided with the economic recession that began in 2001 and was exacerbated by the impact of the September 11 terrorist attacks, will lead to a delay in capacity enhancing airport projects. Also, will congestion in the security lines lead to a redirection of AIP spending toward security needs at airport terminals.

In a recent examination of airport capital needs the FAA estimated that just over \$9 billion per year would be needed to meet the costs of projects that would be eligible for AIP grants. Airports Council International estimated that just under \$15 billion per year would be needed for projects that may or may not be AIP eligible. (See, U.S. GAO. *Airport Development Needs*. GAO/RCED-97-99. April 1997, and *Airport Finance: Past Funding Levels May Not Be Sufficient to Cover Airports' Planned Capital Development*. GAO-03-497t February 25, 2003)

Noise Mitigation

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

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

AIR-V would raise the noise set-aside from 34% to 35% of discretionary funding where as Flight-100 would change the calculation to 9% of the total program level (but drawn from the discretionary fund). Although the 9% formula could approximate the current level of funding, the bill broadens eligibility to include air quality improvement and also allows formula fund spending on noise mitigation and air quality improvements be counted toward the 9% total. Under certain conditions this could lead to a reduction in AIP spending on noise mitigation.

“Place Naming” in Annual Appropriations Legislation

Historically, Congress has not earmarked AIP funds in the manner typical to transit appropriations where specific projects have specific dollar amounts designated in the language of the appropriations bills. Instead of earmarking, AIP funds are subject to “place naming.” Under place naming the appropriations committees direct FAA to give priority consideration to discretionary grant applications at airports named in the appropriations bill report language. Prior to FY2001, the dollar amount for each named airport was generally not specified. In FY2000 the number of airports named in the report language of the House, Senate, and conference agreement increased significantly. The enacted FY2001 conference agreement (H.Rept. 106-940) place named 158 airports and also specified dollar amounts to be awarded. The language was also more directive. The report directs FAA to “provide not less than the following funding levels, out of available discretionary resources.” The FY2002 appropriations bill conference report (H.Rept. 107-308), place named 101 airports, set the dollar amounts, and directed FAA to provide “not less than” the listed totals. The FY2003 Consolidated Appropriations Resolution (P.L. 108-7) place named 164 airports. At issue is the appropriate scope of place naming and the impact it has on FAA’s grant application process.

Aviation Security Legislation and AIP

With the elevation of security activities as high priorities, a substantial portion of AIP funding is being used for airport security costs (including in some cases operations costs). This has led to a proportional decline of AIP resources dedicated to air-side projects. The findings of a recently released General Accounting Office (GAO) report (GAO-03-27) bear this out. The report found that 17% of the \$3.3 billion in AIP appropriations for FY2002 are being awarded for security projects. The average for AIP through FY 2001 was less than 2%. The \$561 million awarded for security purposes for FY2002 was an 800% increase over the \$57 million awarded for FY2001. GAO also found that there were reductions in AIP funding awarded for non-security projects for FY2002 from the award levels of FY2001. The provision in the Consolidated Appropriations Act (P.L. 108-7), for airport security letters of intent supported by a \$500 million authorization could ease the pressure on AIP. AIR-V's provision for the creation of an Aviation Security Capital Fund with an annual appropriation of \$500 million could also reduce the demands for AIP grants for security purposes. The question that is not yet resolved is whether both the letters of intent and the Aviation Security Capital Fund are both needed, and if not, whether the Capital Fund proposal should replace the enacted letter of credit mechanism, or should the Capital fund provision be struck from AIR-V.

LEGISLATION

P.L. 108-7, H.J.Res. 2

The FY2003 Consolidated Appropriations Resolution. The bill provides \$3.4 billion for AIP for FY2003. Signed into law February 20, 2003.

S. 824 (McCain)

Aviation Investment and Revitalization Vision Act (AIR-V or AIR-Vision). As reported, would reauthorize AIP for three years: \$3.4 billion for FY2004; \$3.5 billion for FY2005; and \$3.6 billion for FY2006. Passed June 12, 2003.

H.R. 2115 (Young)

Flight 100–Century of Aviation Reauthorization Act. As reported, would authorize AIP for four years: \$3.4 billion for FY2004, \$3.6 billion for FY2005, \$3.8 billion for FY2006, and \$4.0 billion for FY2007. Passed June 11, 2003.

FOR ADDITIONAL READING

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

CRS Issue Brief IB10032. *Transportation Issues in the 108th Congress.*

CRS Issue Brief IB10121. *Federal Aviation Administration Reauthorization.*