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A Return to Private Security Screening at Airports?: Background and Issues Regarding the Opt-Out Provision of the Aviation and Transportation Security Act

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A Return to Private Security Screening at Airports?: Background and Issues Regarding the Opt-Out Provision of the Aviation and Transportation Security Act

Summary

A provision in the Aviation and Transportation Security Act (ATSA, P.L. 107-71 § 108; 115 Stat. 611) permits each airport where federal screeners are currently deployed to request private screeners instead of federal screeners starting in November 2004. A pilot program created by the act was established at five airports to examine the advantages and disadvantages of private airport screening. Concerns have been raised, however, that the pilot program may provide too small a sample and, as currently implemented, is too similar in design to the federal screening function to make a valid comparison of federal and private screening, and that the pilot program airports may not serve as ideal models for future private screening systems. Also, no regulatory framework or guidelines currently exist for evaluating private screening proposals and overseeing private screening firms. The Transportation Security Administration (TSA) is currently working on these and expects to have preliminary information for airports on the program's implementation by mid-May 2004.

Many airports have expressed interest in pursuing private screening options but believe that legal protections, program flexibility to adapt to local needs, and stable funding mechanisms are needed for successful implementation. Other issues to be addressed regarding private screening are related to how private screening entities will interface with federal aviation security functions such as intelligence gathering and data sharing, and deployment of new screening technologies. The effect of private screening on the security screening workforce is also a critical issue, since high turnover rates among screeners before September 11, 2001, were a key factor in the decision to create a federal screening workforce under ATSA.

Implementation of the security screening opt-out provision is likely to be an issue of considerable interest during the remainder of the 108th Congress. While privatization advocates are calling for an expansion of the opt-out provision to allow for greater program flexibility and less federal control of private airport screening, advocates for federal control of aviation security view a return to private screening as a move that could reintroduce deficiencies in aviation security that existed before the federalization of passenger screening under ATSA.

This report will be updated as warranted by events.

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A Return to Private Airport Security Screening?: Background and Issues Regarding the Opt-Out Provision of the Aviation and Transportation Security Act

Background

A particularly interesting facet of the Aviation and Transportation Security Act (ATSA; P.L. 107-71) is the security screening opt-out provision (Sec. 108) that allows airports, with the approval of the Transportation Security Administration (TSA), to implement a system using private screeners in lieu of federal screeners to inspect airline passengers and baggage beginning in November 2004. Specifically, ATSA required the TSA to fully deploy a federal screening workforce within one year after enactment, and permits airports to opt out of the federal screening program two years thereafter. Therefore, airports will officially be eligible to opt out of the federal screening program on or after November 19, 2004. What distinguishes the opt-out program is that it delegates the authority of deciding whether to pursue private screening to airport operators, but leaves the actual oversight and contract monitoring responsibilities in the hands of the TSA.

The opt-out provision proposes a shared responsibility between the federal government, airport operators, and private screening firms, with specific roles and responsibilities for each to be formally defined in the TSA's implementation of this program. Private screening systems have been in place at many European airports for some time and are generally regarded as being efficient and effective. For example, the U.S. General Accounting Office (GAO) reported that airport operators are responsible for screening operations at airports in Belgium, France, and the United Kingdom.¹ At many of these locations, airports contract with screening companies to conduct screening operations, while some airports in the United Kingdom directly manage and conduct screening operations. However, successful implementation of the opt-out program in the United States is likely to be highly dependent on the specific policies and guidelines established by TSA to implement and manage the program. Consequently, the implementation of the opt-out provision of ATSA is likely to be of considerable interest to Congress as it engages in oversight to assess whether the program achieves its intended objectives, or whether the program or its implementation should be modified through recommended policy changes or legislative action.

¹ U.S. General Accounting Office, *Aviation Security: Terrorist Acts Illustrate Severe Weaknesses in Aviation Security*, Statement of Gerald L. Dillingham, Director, Physical Infrastructure Issues, Testimony Before the Subcommittees on Transportation, Senate and House Committees on Appropriations, September 20, 2001.

Screening contracts awarded under the opt-out provision would be determined by the TSA and federally managed by the TSA. Therefore, the opt-out program, as defined in ATSA, does not eliminate the federal responsibility for security screening at airports or place airport operators or airlines directly in charge of security screening contract oversight. Thus, the security screening opt-out program is not a return to the operational structure for aviation security that existed before the passage of ATSA, where airlines were directly responsible for screening operations, nor is it a program that would place the responsibility for direct oversight of screening contracts in the hands of individual airport operators. Rather, the opt-out program establishes a federally funded and managed, contractor-operated framework for security screening at airports. Nonetheless, the opt-out provision affords each airport operator the opportunity to assume an active role in deciding whether private screening operations are suitable for a given airport and providing recommendations for private screening operations. In some cases, airports may elect to take an active role in private screening operations by directly employing screeners and managing screening activities. The opt-out provision as defined in statute offers such flexibility in the implementation of private screening operations at each airport, leaving it up to TSA to decide if an airport's proposal for private screening will meet the desired objectives without compromising security. On the other hand, while airlines are clearly major stakeholders in aviation security, their input or involvement in implementing private screening operations role is not specifically addressed in the provision, leaving it largely up to TSA to determine how airline input or involvement in the planning, decision-making, and implementation of private screening operations will be handled.

Historical Overview of the Role of Airports, Airlines, and the Federal Government in Passenger Screening

The FAA first implemented domestic passenger security screening at airports in the United States in 1973, requiring that airlines conduct pre-board screening of passengers and their carry-on items. The Air Transportation Security Act of 1974 (P.L. 93-366, 88 Stat. 409) specifically required the screening of all passengers and their carry-on baggage and required the FAA to submit semiannual reports to Congress detailing the effectiveness of screening procedures. This policy of screening domestic passengers, as well as passengers on international flights, was implemented in response to the large number of hijackings on domestic flights in the United States during the 1960s and early 1970s. Between 1961 and 1972, 134 domestic flights had been hijacked in the United States, most destined for Cuba.² By the 1990s, incidents of air piracy were virtually nonexistent in the United States.

Nonetheless, deficiencies in passenger pre-board screening practices had been identified in several Department of Transportation (DOT) Inspector General's

² U.S. Department of Transportation, Federal Aviation Administration, *Study and Report to Congress on Civil Aviation Security Responsibilities and Funding*, December 1998; Paul Stephen Dempsey, *Aviation Security: The Role of Law in the War Against Terrorism*, U.S. Department of Transportation, Research and Special Programs Administration, 2003.

investigations and GAO examinations of airport security.³ However, based on the precipitous decline in domestic acts of air piracy after the implementation of passenger screening, the FAA and the airline industry generally viewed pre-board screening as an effective deterrent against hijackings. While the existing policy and airline-operated system for screening passengers and their carry-on items was generally viewed favorably by both the FAA and industry stakeholders, the growing threat of aircraft bombings spurred significant policy debate over aviation security practices in the 1990s. Following the 1988 bombing of Pan Am flight 103 over Lockerbie, Scotland, and other high-profile bombings of civilian airliners overseas, the threat of aircraft bombings was perceived to be the most significant and growing threat to aviation security and was the primary impetus behind efforts to revise aviation security policy in the United States.

In response to increasing threat of terrorist acts against aircraft, Congress passed the Aviation Security Improvement Act of 1990 (P.L. 101-604). This comprehensive measure responded to the national security risk of threats to aviation by increasing the FAA's role in aviation security intelligence, and requiring the deployment of federal security managers to oversee airport security at all Category X airports⁴ and other airports where the FAA determined deployment of a federal security manager was needed to meet aviation security needs. The statutory duties of federal security managers included the oversight and enforcement of federal security requirements implemented by air carriers and airport operators, including screening operations. However, the legislation did not address or alter the existing system of airline-managed screening operations.

The Federal Aviation Authorization Act of 1996 (P.L. 104-264, 110 Stat. 3213) required the FAA to study and assess whether and, if so, how to transfer certain responsibilities, such as passenger screening, from air carriers to either airport operators or the federal government or to provide for shared responsibilities between air carriers on the one hand and airport operators or the federal government on the other. During the ensuing debate, proposals to either federalize security screening operations or make airport operators responsible for security screening were both evaluated but were ultimately dismissed for a variety of reasons.⁵

³ Statement of the Honorable Kenneth M. Mead, Inspector General, U.S. Department of Transportation, *Actions Needed to Improve Aviation Security*, Testimony Before the Committee on Governmental Affairs and the Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia, U.S. Senate, September 25, 2001; U.S. General Accounting Office, *Aviation Security: Long Standing Problems Impair Airport Screeners' Performance*, GAO/RCED-00-75, June 2000.

⁴ Airports are grouped into five security risk categories (Category X, I, II, III, IV) based on the number of boarding passengers and other security considerations. Category X is the highest risk category and includes major hubs like Chicago-O'Hare (ORD) and Atlanta Hartsfield (ATL) as well as airports with unique security concerns such as Washington Reagan National (DCA).

⁵ U.S. Department of Transportation, Federal Aviation Administration, *Study and Report to Congress on Civil Aviation Security*.

From the perspective of airport operators at the time, placing airports in charge of screening operations introduced logistic complexities and diffusion of responsibility that they believed would erode security and increase the risk of terrorist infiltration of the aviation system. In 1996, Richard Marchi, senior vice president for technical and environmental affairs for the Airports Council International - North America (ACI-NA), speaking for his organization and the American Association of Airport Executives (AAAE), the two primary trade organizations representing airports in the United States, summarized the airports' collective position on airport involvement in passenger screening at the time, stating that:

By interposing another controlling entity — an airport or federal employee — into the midst of the check-in process continuity is lost, and the suspect person and/or their baggage would have the opportunity to evade security measures such as a positive passenger/baggage match.... [Airline-managed screening] works because a single entity — in this case, the airline — is responsible for controlling all aspects of that passenger's screening process. If airport or federal government employees were to become responsible for effective screening of suspect passengers and/or baggage, they would multiply the number of points in the system where there must be a hand-off of responsibility and, in turn, multiply the number of opportunities for a miscue.⁶

Ultimately, the FAA elected to retain the system of airline-controlled screening operations while proposing increased federal involvement in research and acquisition of screening technologies such as explosive detection systems (EDS) and regulatory oversight of screening companies. Both the airlines and the airports supported this evolutionary approach that maintained the status quo with regard to airline responsibility for conducting screening operations while increasing federal involvement in the deployment of screening technologies and oversight of screening operations.

Under the Federal Aviation Administration Reauthorization Act of 1996 (P.L. 104-264), the FAA was directed to certify screening companies and develop uniform performance standards for screening operations to increase federal oversight of these activities. However, the FAA was still engaged in the rulemaking process to implement these certification standards when the terrorist attacks of September 11, 2001 occurred. Thus, up until the terrorist attacks of September 11, 2001, and for about six months thereafter when the TSA assumed control over screening contracts, the airlines were responsible for the pre-board screening of passengers and their property. However, screening operations were typically carried out by private security firms under contracts with the airlines. Under this system, there was a lack of uniform standards for screening operations, there were frequent incidents of poor job performance, and high turnover rates were commonplace among low-paying screener positions.

⁶ As quoted in U.S. Department of Transportation, Federal Aviation Administration, *Study and Report to Congress on Civil Aviation Security*.

In 1999, there were 66 private screening companies providing airport screening at the nation's commercial passenger airports.⁷ Many of these contracts were on a month-to-month basis. Furthermore, at some larger airports, multiple contracts were in place at a single airport, with multiple screening companies providing screening at security checkpoints in different parts of the passenger terminal. In 2000, the FAA reported that the average hourly wage for airport screeners was \$5.75, and not all screeners received additional benefits. The FAA further noted that average annual turnover rates for screeners exceeded 100% in many locations. Also, at that time, there were no uniform standards for the selection, training, performance, and certification of private screening companies and their employees.⁸ Such standardization had been recommended by the White House Commission on Aviation Safety and Security,⁹ and a requirement to certify screening companies and develop uniform performance standards was included in the Federal Aviation Authorization Act of 1996 (P.L. 104-848).

Five years later, when the terrorist attacks of September 11, 2001 occurred, the FAA was moving forward¹⁰ — many argue much too slowly — with plans to establish the required regulatory regime for certification and oversight of screening companies. However, the terrorist attacks prompted the introduction and enactment of ATSA, which established a federal airport security screening force within the newly established Transportation Security Administration (TSA).

During the 107th Congress, debate over the establishment of the TSA focused, in part, on the extent of federal involvement in screening operations. Whereas the House-proposed legislation (H.R. 3150, S. 1447 Engrossed Amendment as Agreed to by House, 107th Congress) would have only required those supervising screening operations to be federal employees, the Senate bill (S. 1447, 107th Congress) proposed to establish a federal screening workforce within the Department of Justice. The conference substitute that became the cornerstone of ATSA consisted of the establishment of the TSA and the requirement for the TSA to assume existing screening contracts and convert to a security screening workforce composed entirely of federal workers within one year.

During the debate over aviation security following September 11, 2001, airport managers neither advocated nor dismissed the possibility of airport-managed screening operations. This represented a shift in perspective on the part of the airports, which had previously viewed their role as being limited to providing the

⁷ Federal Aviation Administration, Office of Aviation Policy and Plans, Operations Regulatory Analysis Branch (APO-310), *Draft Regulatory Evaluation, Initial Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Determination — Notice of Proposed Rulemaking, Certification of Screening Companies*, FAA Docket FAA-1999-6673, April 1999.

⁸ *Ibid.*

⁹ White House Commission on Aviation Safety and Security, *Final Report to President Clinton*, February 12, 1997.

¹⁰ Department of Transportation, Federal Aviation Administration, "Certification of Screening Companies (Proposed Rule)," *Federal Register* 65:3 (January 5, 2000), pp. 560-611.

physical space for airport operations and security of that physical space, but remaining at arm's length from the operational aspects of air transportation, including the pre-board screening of passengers.¹¹ Airports generally viewed their role in aviation security as significantly increasing following September 11, 2001. Airports also recognized that this increasing responsibility and accountability for implementation of airport security programs would require close coordination and integration with the newly formed TSA, who would serve in a dual capacity as both the overseer of airport security programs and the direct provider of security screening operations within the airport. Airport operators recognized the importance of a shared responsibility for airport security between themselves and the TSA, as articulated in the following statement by Charles Barclay, president of the American Association of Airport Executives (AAAE):

As we move forward, it is clear that the TSA can and should do even more to turn to airports as a partner in the quest to develop and implement cost-effective solutions to security issues. Airports are at their very core public institutions and therefore much different from the rest of the aviation industry, which is to a large extent driven by the need to show profits. The primary mission of an airport is not to make money, but rather to serve the community and the national aviation system by encouraging competitive air service and ensuring a safe and secure environment for the public. As local governments, airports have always been responsible for the safety and security of their facilities and the people who use them. This will continue to be so, regardless of the roles assumed by the TSA. Since we share the same mission as the TSA with regard to security, it is only appropriate that we develop a cooperative and coordinated approach to solving problems.¹²

While the airports advocated a stronger partnership between themselves and TSA, the airports never formally indicated that they wanted to take on a more active role in managing or defining the nature of passenger screening operations. Nonetheless, ATSA, as enacted, provided for future airport involvement in security screening in a limited capacity involving shared responsibilities between the TSA and airport operators under the opt-out provision. ATSA also established a pilot program to assess private screening operations at five airports. Specifically, ATSA contained two separate provisions for the use of private screening companies at airports. The first provision established a private screening pilot program at five airports.¹³ The second provision was the opt-out provision, which specifies that two years after the federal screening force is fully deployed, airports can begin submitting applications to the TSA requesting to use private screening entities in place of federal screening

¹¹ See U.S. Department of Transportation, Federal Aviation Administration, *Study and Report to Congress on Civil Aviation Security*.

¹² Statement of Charles Barclay, President of the American Association of Airport Executives, on Behalf of the American Association of Airport Executives/Airports Council International-North America, Senate Aviation Subcommittee Hearing on Aviation Security, February 5, 2003.

¹³ Title 49 U.S. Code, §44919.

operations.¹⁴ Under this provision, it would ultimately be up to TSA to approve such requests from airports on a case-by-case basis, oversee private screening operations, and monitor private screening contracts where they are deemed appropriate.

Airports' Perspective on the Opt-Out Provision

Because airport operators have the option to pursue private screening under the opt-out program, they have a significant vested interest in determining the potential costs and benefits of doing so. On the whole, airport operators are approaching the prospect of private screening under the opt-out provision with cautious optimism. While the prospect of private screening appears to offer some foreseeable benefits, the potential costs and implications of pursuing private screening operations are not yet fully understood, since no specific details of the program's implementation have been provided by TSA to date.

The ACI-NA has indicated that more than 50 airports are participating in its initiative to gather information and formulate input for the development of the opt-out program. It expects that 20 to 30 of these airports, about 4% to 7% of all commercial airports with federal screeners, will pursue private screening options under the opt-out program as currently defined in law.¹⁵ If airport concerns are addressed in TSA's implementation plan or through legislation, ACI-NA thinks that the number of airports looking to opt out could grow to 50 to 100 (roughly between 11% and 22% of airports with federal screeners).

Research by the Reason Public Policy Institute suggests that interest among airports in private screening under the opt-out provision may be even higher.¹⁶ In interviews with 19 airport directors, they found that nine (47%) expressed interest in pursuing private screening, and another five (26%) indicated that they may pursue privatizing screening depending on the specific details of the opt-out program developed by TSA. Of the five airport directors who did not express an interest in the opt-out provision, three indicated that they believed the opt-out provision in ATSA was too restrictive because it did not relinquish control of the security screening contracts from the TSA to the airport authority. These directors indicated that they might be interested in an opt-out program that gave them more direct control over security screening contracts.

The rationale for considering opting out of the federal screening program from the perspective of some airport operators largely reflects their concern over the impact of federal screening operations on airport facilities and services as well as their perception of TSA's effectiveness in addressing local airport factors relevant to passenger and baggage screening operations, security performance, and passenger

¹⁴ Title 49 U.S. Code, §44920.

¹⁵ Christopher Fotos, "ACI-NA, AAAE Promote Opt-Out Strategies," *Aviation Week's Airports*, March 2, 2004.

¹⁶ Robert W. Poole, Jr., *Improving Airport Passenger Screening*, Policy Study 298, Reason Foundation, Reason Public Policy Institute, Los Angeles, CA, September 2002.

service at the airport. This sentiment was reflected in the concerns of George Doughty, executive director of the Lehigh Valley International Airport in Allentown, Pennsylvania, who was quoted as stating that "[t]he problem inherent in the federally controlled screening process is that you end up having a federal agency sitting in the middle of your terminal, essentially answerable to nobody."¹⁷ In the current environment of heightened terrorist threats and enhanced security measures, airports view themselves as major stakeholders in aviation security policies, because these policies and the manner in which they are implemented have the potential to significantly impact airport operations and passenger safety and service. These impacts, in turn, reflect upon the perception of the airport by air travelers. Airport operators indicating an interest in opting out of the TSA federal screening program and implementing private screening contracts at their airports indicate four main objectives for doing so: (1) increasing the quality of airport screening; (2) increasing flexibility to handle local factors affecting security requirements; (3) increasing the uniformity and consistency of security operations at the airport level; and (4) improving customer service. Airports hope that the opt-out program as implemented will address these goals, and the extent to which airports pursue private screening under the opt-out provision will likely be indicative of how favorably they perceive the TSA's implementation plan for the opt-out program with regard to these objectives.

In general, most airports are currently taking a "wait and see" position, not committing to any particular course of action until more details of the implementation of the opt-out provision are provided by the TSA. Currently, the details of the implementation plan are being developed but have not been released by the TSA. The implementation plan is expected to be released by May 19, 2004, six months prior to the effective date of the opt-out provision.

A TSA-sponsored assessment of the ongoing private contractor pilot program in place at five airports found that, in general, there was no distinguishable difference in cost or performance between private screening contracts and federal screening operations.¹⁸ Similarly, both the Department of Homeland Security (DHS) Inspector General and the GAO concluded that, based on limited performance testing data, private screeners performed similarly to federal screeners.¹⁹ The DHS Inspector General, however, cautioned that these findings were insufficient to conclusively determine any differences between private screeners and federal screeners and

¹⁷ John Hilkevitch, "Airports Not Sold on Federal Screeners," *Chicago Tribune*, April 6, 2002.

¹⁸ Bearing Point and Abt Associates, *Private Screening Operations Performance Evaluation Report: Summary Report*, U.S. Department of Homeland Security, Transportation Security Administration, April 16, 2004.

¹⁹ Statement of Clark Kent Ervin, Inspector General, U.S. Department of Homeland Security, Before the Committee on Transportation and Infrastructure, Subcommittee on Aviation, U.S. House of Representatives, April 22, 2004; U.S. General Accounting Office, *Aviation Security: Private Screening Contractors Have Little Flexibility to Implement Innovative Approaches*, Statement of Norman J. Rabkin, Managing Director, Homeland Security and Justice, Before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives, April 22, 2004, GAO-04-505T.

suggested that the performance of both groups was below expectations, while the GAO concluded that the pilot program was not established in a manner that permits a meaningful assessment of any differences in performance between federal and private screening and the underlying reasons for these differences. These findings are likely to be somewhat of a disappointment to airports that were hoping to obtain meaningful data from the pilot study to assist them in determining whether private screening operations may be of benefit to them.

Officially, the ACI-NA has indicated that it supports an expanded opt-out provision.²⁰ The ACI-NA, along with the AAAE, has identified four key issues to be addressed in implementing or potentially modifying the opt-out provision.²¹ These include allowing for more direct control over screening operations; increasing flexibility in scheduling and deployment of screening personnel; resolving airport liability issues; and addressing funding for private screening.

First, airports want sufficient flexibility in the implementation of the opt-out program so that they may choose to manage and conduct screening operations themselves, rather than through contracts with third-party private screening firms. The prospect of such an arrangement is particularly appealing to smaller airports, which can increase staff flexibility if they have direct control over screening operations. For example, airports may be able to assign screeners to other duties, such as airport perimeter patrols, during lulls in passenger traffic. Another option that airports would like to be able to consider is a hybrid model where TSA screeners could be supplemented by private screeners during peak periods to meet needs for a more flexible workforce. It is unclear whether such an arrangement would be permissible under the existing opt-out program; however, it is not explicitly excluded in statute.

Along these same lines, the airports also want sufficient flexibility in scheduling and deploying private screeners. Flexible scheduling could, for example, allow airports to adjust for local factors affecting passenger volume at checkpoints. Many believe that current scheduling of TSA screeners is far from optimal, and screener deployment strategies are inefficient. This may largely be due to TSA's difficulties in hiring and retaining part-time screeners and establishing the right balance of full-time and part-time screeners to staff screening positions.²²

Third, airports have expressed significant concerns over the potential liability exposure of an airport if it submits a proposal for private screening under the opt-out provision. Their concern is that, in the event of a security incident, the airport could be exposed to significant liability because of its decision to pursue private screening

²⁰ Airport Council International - North America, "Non-Governmental Screening Options Discussed at Recent Conference," *Highlights*, June/July, 2003, Washington, DC.

²¹ Christopher Fotos, "ACI-NA, AAAE Promote Opt-Out."

²² U.S. Government Accounting Office, *Aviation Security: Challenges Exist in Stabilizing and Enhancing Passenger and Baggage Screening Operations*, Statement of Cathleen A. Berrick, Director, Homeland Security and Justice, Testimony Before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives, February 12, 2004.

operations. While the direct oversight of private screening would be handled by the TSA, airports may have liability exposure because of their involvement in actively pursuing a private screening operation and, to some degree, making recommendations regarding how that private screening operation is to be organized and implemented. While no formal proposal has been made, airports may recommend amending the opt-out provision or adopting some other statutory protection that would indemnify or limit the liability of airports whose private screening proposals are adopted and implemented by the TSA. Some airport officials have suggested that such protection is critical for their consideration of the opt-out program.

Finally, airports have expressed continuing concern over funding allocations for airport screening. This issue extends beyond the opt-out provision to screening operations in general. However, exactly how private screening operations will be calculated into the allocation of security screening appropriations among airports remains to be determined. Airports are seeking an agreed upon index to determine funding allocations based on data such as numbers of origin and destination passengers, numbers of checked bags processed, and local factors such as an airport's physical layout and the number of checkpoints and screening lanes. The index will also likely need to consider projected growth in passenger demand at each airport and any specific airport projects that will significantly impact screening operations over the course of a fiscal year.

Some Possible Options for Congress

Besides addressing the concerns of airport operators through oversight of TSA's implementation of the opt-out program and possible legislative action to further define the program and address the above mentioned issues raised by airports, Congress may engage in further debate over the merits of the opt-out provision. The fundamental issue regarding the degree of federal involvement in screening operations may re-emerge during this debate. Consequently, Congress may debate options to repeal the opt-out provision or to amend the provision in a manner that would limit its applicability. On the other hand, Congress may consider options to expand or encourage participation in the opt-out program if it is believed that increased screening efficiency could be realized through private screening contracts without compromising the level of security provided by federal screening operations.

Options for Maintaining a Federal Screener Workforce

A principal consideration in the debate over the opt-out provision, and more generally, the debate over the appropriate federal role in aviation security, is the extent to which screening activities should be considered 'inherently governmental' functions to be carried out by federal employees. While this issue was an implicit central theme in much of the debate over aviation security following the terrorist attacks of September 11, 2001, it may be revisited by Congress in evaluating the merits of the opt-out provision.

The issue is related to ongoing debate over the appropriate federal role in critical aviation functions that affect safety as well as the security of the traveling public. Some members of Congress advocated the need for direct government involvement in providing critical safety-related aviation functions during the debate over protecting air traffic controllers and other air traffic related functions from possible outsourcing to private entities.²³ In that case, the argument for federalized air traffic operations focused on the fact that air traffic controllers and other air traffic related functions provide safety critical services that, in the opinion of some, are so intimately related to the public interest as to mandate performance by government personnel. However, the opposing viewpoint contends that the provision of air traffic services is a commercial enterprise and has been privatized in other countries, including Canada, Australia, and several European countries, as well as on a limited basis in the United States under the federal contract tower program and at non-federal air traffic control towers. Other safety critical workers in aviation such as pilots, flight attendants, aircraft dispatchers, and aircraft maintenance workers are also the employees of private entities whose safety-related activities are regulated by the FAA at arms-length. Thus, numerous functions directly affecting the safety and well-being of passengers are carried out by private entities making it possible to conclude that such activities may not necessarily be inherently governmental in nature.

In the current environment of heightened concern over threats to homeland security, airport screening operations are considered by many to have a unique importance that is fundamentally linked to national security objectives. In fact, one key argument for the federalization of airport screening functions following the attacks of September 11, 2001 focused on the recognition by some that screening activities had been elevated to a level of strategic importance for homeland security. That is, screening operations were seen as critical front line measures to prevent further terrorist attacks against aviation assets and the traveling public, as well as, to protect citizens and property from additional suicide hijackings using aircraft as weapons of mass destruction. From the viewpoint of those advocating federalization of airport screening operations, screener positions are seen as having a critical role in homeland security that has been compared to the functions of customs and immigration officers, particularly at larger airports. Among many, there is an expectation that screening activities should be performed by government personnel. This sentiment appears to be reflected in public opinion. For example, one year after TSA assumed responsibility for screening, pollsters from Zogby International found that 69% of likely voters felt safer knowing that the federal government has a trained professional screening workforce, and only 5% indicated that they now felt less safe. Of those polled, 47% indicated they would feel less safe if private screening companies, like those who conducted airport screening prior to September 11, 2001, were used for baggage screening operations instead of the federal government under the opt-out provision.²⁴

²³ See, for example, *Congressional Record, Senate*, November 17, 2003, pp. S14940-S14952.

²⁴ Zogby International. *Results from October Zogby America Poll*. October 21, 2003. Washington, DC.

Specific Office of Management and Budget (OMB) guidelines on identifying inherently governmental functions includes among the characteristics of such functions activities that significantly affect the life, liberty, or property of private persons.²⁵ While activities such as air traffic control and airport security screening may seemingly be eligible to be classified as inherently governmental activities based on consideration of the critical role they play in the safety and security of the air traffic system and the protection of the traveling public and their property, the current administration has maintained that such functions are not inherently governmental. In keeping with the current administration's agenda to encourage competitive sourcing when appropriate, a stringent interpretation of what functions are considered inherently governmental has been adopted.²⁶ Supporters of this viewpoint argue that this is also consistent with the fact that airport screening operations had been conducted by private entities in the past and are conducted by private firms at many foreign airports.

From the Administration's standpoint, the determination that aviation security screening functions are not inherently governmental has already been made and is consistent with the current use of private screeners under the private screening pilot program and the impending implementation of private screening operations under the opt-out provision of ATSA. Under the Federal Activities Inventory Reform (FAIR) Act (P.L. 105-270), federal jobs considered commercial in nature must be listed on an annual inventory for each agency.²⁷ The federal security screener positions within the TSA are already designated as being commercial in nature on this inventory, but are presently listed as being exempt from public-private competition because of a statutory requirement that those jobs be carried out by federal employees. As of November 19, 2004, that exemption will no longer be extended to security screeners at airports seeking to use private screeners because of the opt-out provision in ATSA. Therefore, a modification of existing statutes through legislation, either repealing or modifying the opt-out provision, would be required if Congress determines that maintaining a federal force of airport security screeners nationwide is in the best interest of aviation security.

While the debate over whether operational functions such as passenger screening and air traffic control should be inherently governmental in nature is fundamentally linked to philosophical differences in opinion regarding the appropriate role of the federal government in operational aspects of aviation safety and security, there are two pragmatic considerations for evaluating whether privatizing screening operations are of potential benefit to the federal government. These two considerations are: 1) the potential for cost savings, and 2) the elimination of conflicts of interest that exist when the federal government serves as both a service

²⁵ Executive Office of the President. Office of Management and Budget. *Performance of Commercial Activities*. OMB Circular No. A-76 (Revised). May 29, 2003. Washington, DC.

²⁶ See *CRS Report RL31409, The President's Management Agenda* for further discussion of competitive sourcing.

²⁷ See *CRS Report RL31024, The Federal Activities Inventory Reform Act and Circular A-76*.

provider and a regulator of that service as is the case currently in airport screening operations and air traffic control.

Privatization advocates often cite the conflicting role of government entities serving in the capacity of both regulator and service provider as being inherently problematic from the standpoint of accountability.²⁸ Airport security, they argue, may be compromised by the fact that the TSA, in its role as both the regulator and the provider of aviation security, is essentially self-regulating. As such, the TSA is seen as having an inherent conflict of interest that may prevent deficiencies in its operations from being properly identified and corrected. A similar line of reasoning has been used to bolster the argument for privatizing air traffic controllers and other air traffic related functions within the FAA.

Privatization advocates argue that TSA's long term role should be focused on the following functions, leaving the day-to-day airport security operations in the hands of private security firms, as the opt-out program provides for:

- Developing aviation security specifications;
- Sponsoring aviation security research and development;
- Coordinating intelligence sharing between federal agencies and the aviation community; and
- Conducting oversight and monitoring performance of a unified, airport-run security system.²⁹

However, a system of federal oversight over privately operated airport security system does not necessarily ensure better accountability of screening operations. The federal government's ability to regulate and conduct oversight of private entities at arms-length has often been questioned, and adequate oversight is often resource intensive. For example, within aviation, deficiencies in the FAA's ability to provide adequate resources to oversee aircraft operators and maintenance repair stations has been identified in NTSB accident investigations³⁰, Department of Transportation Inspector General's findings³¹, and GAO³² probes. These assessments have raised

²⁸ Robert W. Poole, Jr. *Improving Airport Passenger Screening*.

²⁹ Ibid.

³⁰ See, for example: National Transportation Safety Board, *Loss of Pitch Control Caused Fatal Airliner Crash in Charlotte, North Carolina Last Year*, Press Release SB-04-03, February 26, 2004; National Transportation Safety Board, *Aircraft Accident Report: Loss of Control and Impact with Pacific Ocean Alaska Airlines Flight 261, McDonnell Douglas MD-83, N963AS About 2.7 Miles North of Anacapa Island, California, January 31, 2000*. NTSB Number AAR-02/01.

³¹ See, for example, Department of Transportation, Office of the Inspector General, *Oversight of FAA's Aircraft Maintenance, Continuing Analysis, and Surveillance Systems*. AV-2002-066.

³² See, for example: U.S. General Accounting Office. *Aviation Safety: FAA Oversight of Repair Stations Needs Improvement*. GAO/RCED-98-21, October 1997; U.S. General Accounting Office. *Aviation Safety: New Airlines Illustrate Long-Standing Problems in* (continued...)

significant questions regarding the adequacy of FAA inspector staffing levels and training.

Similar concerns over the FAA's ability to oversee security screening at airports were raised when the FAA had oversight authority of airline-managed screening operations.³³ Also, the DOT Office of the Inspector General found TSA's financial oversight of private screening operations during the transition from airline-managed screening to federal screening operations to be significantly lacking, leading to significant overcharges for screening functions and improper billing and time accounting by screening companies and their employees.³⁴ During this period, TSA was under pressure to meet a large number of mandates required under ATSA and did not have the resources to adequately monitor and audit contractor operations. In response to these findings, the TSA contracted with the Defense Contract Management Agency and the Defense Contract Audit Agency for contract support and oversight of private screening contracts prior to the full deployment of federal screeners. While similar problems have not been observed with TSA's oversight of the pilot program contract operations currently in place at 5 airports, the adequacy of TSA's capabilities to monitor and audit contractor operations under the opt-out program may be an issue for congressional scrutiny.

This past experience indicates that developing a comprehensive plan for the oversight of private screening contracts under the opt-out provision will be important if private screening options are to be effective. In addition to overseeing the development of TSA's oversight plan for monitoring contract screening operations, Congress may also debate whether or not screening performance can be assured under a system of federally-managed contract screening operations.

If Congress determines that it is in the best interest to retain a federal force of airport screeners throughout the aviation system, then legislative action would be required to repeal the opt-out provision of ATSA. A concurrent resolution (H.Con.Res. 275) was introduced in the House on September 9, 2003 by Representative Andrews. This resolution contains language expressing the sense of Congress that all airport screening functions should be continued to be performed by federal employees. While this measure, if adopted, may encourage the TSA and airports to continue using federal screeners or discourage the pursuit of private screening options, it does not provide any statutory authority revoking or modifying the opt-out provision.

If it is believed that the opt-out program may be applicable only in specific situations, Congress may debate whether the opt-out provision should be statutorily limited in its scope. Congress may consider proposals specifically outlining the

³² (...continued)

FAA's Inspection Program. GAO/RCED-97-2, October, 1996.

³³ Department of Transportation, Office of the Inspector General. *Aviation Security - Federal Aviation Administration*. AV-1999-068, March 10, 1999.

³⁴ Department of Transportation, Office of Inspector General. *Memorandum: Report on Oversight of Security Screener Contracts, TSA FI-2003-025*. February 28, 2003.

applicability of the program, and prohibiting outsourcing of screening operations outside of these defined applications. Congress may also consider proposals to establish stringent criteria for airports in order to be eligible for opting-out of the federal security screening program.

Options for Increasing Privatization of Screening Operations

On the other hand, if Congress determines that it is in the best interest for aviation security to expand private screening options, it may do so in a variety of ways. One technique may be to offer specific incentives for airports to elect private screening options in lieu of federal screeners. Another option that may be considered is increasing the statutory flexibility of the opt-out program through measures that would provide airports with more direct control over the management and oversight of security operations. Either of these options may work to increase the attractiveness of the opt-out program to airports. More aggressive options may include abandoning the opt-out provision, which currently requires each airport to submit a proposal to TSA for establishing a non-federal screening system at their airport, and instead establishing a comprehensive system-wide privatization program for airport screening at all commercial passenger airports. While no formal proposals to expand the federal screening opt-out provision of ATSA have been offered to date, such options may be considered once further details of the opt-out program implementation are made available.

One group of airports that may be able to utilize private screeners to implement passenger screening where there currently is none are those airports with infrequent commercial flights using small aircraft with 60 or fewer passenger seats. While ATSA specifically requires pre-board screening of all passengers on air carrier flights, TSA's interpretation of this requirement has exempted certain airports that have a limited number of daily flights using these small commuter aircraft. Consequently, some of these airports do not currently have federal screeners.³⁵ At some of these airports, passengers and their property are not screened at all prior to boarding, and in other cases, airline employees may inspect carry-on items by hand. While these airports would seemingly benefit from private screening operations as a means to put in place cost-effective physical screening of passengers and their property, it is unclear if these airports would be eligible to apply for private screening under the opt-out program since TSA has exempted them from federal screening requirements. Also, since funding for screening operations at these airports is currently not budgeted, additional budget resources would be required to implement private screening, or for that matter federal screening, at these airports. Congress may debate whether to explicitly include these airports without current federal screening operations among airports eligible for the private screening program, and examine the costs needed to conduct private screening operations at these airports where federal screening is currently not budgeted for or implemented.

Another potential benefit of private screening operations is that increased flexibility in staffing may make it possible to screen some or all airport workers at

³⁵ Sara Kehaulani Goo. "Security Lax At Smallest U.S. Airports; Terrorists Could Exploit Gaps, Managers Fear." *The Washington Post*, March 9, 2004, p. A1.

airports where screening of employees with access to secured areas is currently not conducted. While the specific security procedures for airport workers vary from airport to airport and are detailed in each airports security program, ATSA did not address the screening of airport workers and existing federal statutes do not require the screening of these individuals, even if they work in secured airport areas or have access to aircraft. ATSA only requires that these individuals undergo a fingerprint-based criminal history records check. Some Members of Congress have raised concerns over the practice at some airports of allowing workers to bypass screening checkpoints and enter secured areas through employee access points where they only have to show their airport worker identification.³⁶ Since there is no statutory requirement for screening of airport workers, airports could propose to use private contractors to screen airport workers as part of their security program and could implement such procedures if approved to do so by the TSA. This could be done independent of the screening of passengers by private screening firms under the opt-out provision. However, the cost of implementing such a program, which is likely to come directly out of an airport's operating budget, would likely make this option unattractive to many airports. If airports are able to leverage funds for private screening under the opt-out program through savings obtained from more flexible staffing of checkpoints, reduced overhead costs, and so on, then airports may be able to carry out full or random screening of airport workers with access to secured areas of the airport while minimizing the cost associated with screening airport workers.

Another proposal that has been suggested by airport trade organizations is the use of a combined screening force consisting of both federal screeners and private screeners.³⁷ Under such a model, airports may elect to augment or supplement a core federal screening force with private screeners. Additional flexibility in scheduling private screeners may allow airports choosing such an option to address unique demand characteristics, such as high volumes of seasonal traffic, with part-time or seasonal screeners. While the opt-out provision does not appear to preclude such an arrangement, the TSA and airports may seek clarification from Congress whether a mixed-model of private screeners working alongside federal screeners is in keeping with the intent of the opt-out provision.

Additional Considerations for Congress

Airport Liability Risk. One issue raised by airports is their potential liability under the opt-out program. The question of liability remains unclear and may need further clarification through legislation. In essence, an airport that requests private screening would have an indirect role in implementation of private screening. The level of direct involvement of the airport authority would largely depend on the specific manner in which the opt-out program is implemented and the details of any specific proposal offered by a airport authority under the implementation framework established by the TSA. Some airports may seek minimal involvement, whereas other airports may want to directly manage screening operations.

³⁶ Jonathan Krim. "TSA Defends Its Scrutiny of Airport Workers." *The Washington Post*, March 18, 2004.

³⁷ Christopher Fotos. "ACI-NA, AAAE Promote Opt-Out."

While the degree of liability for screening failures may reflect the degree of direct involvement that an airport has in screening operations, this may not necessarily be the case. Also, it is unclear whether simply requesting private screening under the opt-out program would introduce a liability risk for an airport. This may depend, in part, on the level of specificity regarding private screening operations that will be required from airports by the TSA. A greater level of specificity may expose airports to greater liability risk if details of the proposed program are implemented and can be shown to have resulted in screening deficiencies. The extent of liability exposure of an airport operator under the opt-out program is somewhat speculative since few details of the program are available. However, airport operators are likely to weigh liability risk, as well as the availability and cost of insurance to guard against such risk, heavily in their decision whether to pursue private screening under the opt-out provision. Airports may seek specific liability protections from Congress, although no formal proposals to amend the private screening opt-out provision to address liability protection have been offered to date.

Exclusion of Foreign-Owned Security Firms. One concern over the opt-out program is the statutory requirement that security screening providers under the provision be U.S. owned and operated firms. ATSA requires that private screening firms be owned and controlled by a citizen of the United States, so long as TSA is able to identify U.S. firms with the capability to carry out screening operations at those airports seeking private screening. This measure was presumably included in response to perceived inadequacies of airport screening firms identified in the aftermath of the September 11, 2001 attacks. Several of the largest airport security firms in operation at the time were foreign controlled.³⁸ Consequently, these firms would not be permitted to resume private screening operations under the opt-out provision.

The Reason Foundation concluded that the current array of U.S.-owned security firms, which includes three relatively large corporations and several smaller firms that once operated at five or more large to medium sized airports, has the potential to provide screening at up to 10% of commercial passenger airports where federal screeners are deployed.³⁹ This capacity is likely to keep up with demand for private screening at least over the short term as it will take some time for TSA to review each opt-out proposal and implement a transition plan at each airport. As the opt-out program evolves, it is likely that these existing U.S.-owned security firms would be able to grow their capacity to meet demand, or new U.S.-owned entities could emerge.

However, there may be other reasons why Congress may reconsider the prohibition on foreign ownership of security screening entities under the opt-out provision. Some privatization advocates have criticized the restriction on foreign ownership as being inconsistent with free trade principles and possibly with

³⁸ "...As Move Sparks Hill Debate Over Federalizing Security". *Congress Daily*, August 8, 2003.

³⁹ Robert W. Poole, Jr. *Improving Airport Passenger Screening*.

international trade agreements.⁴⁰ Advocates for removing the ban on foreign participation in the opt-out program also point out that many of these security firms are located in countries that are close allies in the war on terrorism that pose no specific terrorist threat to the United States. Furthermore, many of these firms have extensive experience in aviation security that can be brought to bear in implementing private screening under the opt-out provision. Consequently, some privatization advocates have proposed an option to amend the opt-out provision to allow participation by firms owned by nationals of U.S. allies in the war against terrorism.⁴¹

Private Screener Employment Rights and Benefits. Both the opt-out provision and the security screening pilot program specify that private screeners are to be compensated and provided with other benefits that are at least equivalent to that received by federal screeners. However, some Members of Congress have raised concerns over apparent differences between benefits for most contract screeners in the private pilot screening program and their federal counterparts.⁴² Specifically, a defined-benefit pension plan, such as that offered to federal screeners and other federal employees, in addition to participation in a 401(k) retirement program, is currently only offered at one of the five private screening pilot airports: Jackson Hole, Wyoming. At the other four private screening pilot airports, screeners are only eligible to participate in a 401(k) plan, and do not have a defined-benefit pension plan in addition to or in lieu of those 401(k) programs. Some Members of Congress have asked the TSA to look into the specific benefits offered to private screeners to ensure that statutory obligations are being met, and if not, to correct any deficiencies.

Another issue that may be debated in Congress is the potential impact of organized labor and collective bargaining activities on private screening operations. While collective bargaining rights are given to most federal employees, TSA screeners may not join labor organizations or engage in collective bargaining activities. Title 5, *U.S. Code*, § 7102 gives federal employees the right to represent an organized labor group before entities of the U.S. government and engage in collective bargaining with regard to employment conditions. The Homeland Security Act of 2002, in establishing the Department of Homeland Security, established a new human resources management system for the department to be more flexible and responsive to meeting unique homeland security needs. However, in defining this new system, statutory requirements specifically stated that the system shall "ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them."⁴³ However, the TSA was given broad authority under ATSA to develop standards for hiring and retaining screeners under Title 49, *U.S. Code*, §114(e) that has been interpreted to include the right to make determinations regarding screener participation in labor organizations.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² "Oberstar, DeFazio Question TSA On Private Screener Benefits." *Aviation Week's Aviation Daily*, March 30, 2004, p. 6.

⁴³ Title 5, U.S. Code, §9701(b)(4).

The TSA determined that "mandatory collective bargaining is not compatible with the flexibility required to wage the war against terrorism" and, based on this assessment, issued an order precluding collective bargaining by TSA screeners.⁴⁴ This policy has been challenged in federal court in a suit filed with the U.S. District Court for the District of Columbia by the American Federation of Government Employees (AFGE), a public employee union that has been trying to organize screeners at several airports.⁴⁵ The court ruled in November that the Federal Labor Relations Authority (FLRA) had jurisdiction over this matter.⁴⁶ The FLRA had previously ruled that the prohibition against collective bargaining for federal screeners was legal. AFGE has filed an appeal with the U.S. Court of Appeals for the District of Columbia.

While a final determination as to whether federal screeners may join labor unions and engage in collective bargaining is presently a matter under review by the federal courts, the role of organized labor in private screening operations under the opt-out program may be an issue of particular interest to Congress. The TSA does not have any apparent statutory authority to prohibit private screeners under the opt-out program from unionizing and engaging in collective bargaining practices with their contract screening firm employers. Rather, the specific TSA authority to develop standards for hiring and retaining security screeners appears to apply only to federal screening operations.

The TSA's conclusion that the presence of organized labor and the need for collective bargaining actions are incompatible with the need for a flexible screening workforce may conflict with the possibility that private screeners could be unionized under the opt-out provision. The TSA may seek legislative action from Congress to broaden its authority to include setting employment standards for private screeners as well as for federal screeners.

On the other hand, Congress may debate whether federal screeners, as well as private screeners, should be allowed to join unions and engage in collective bargaining as their private screening counterparts will presumably be able to do under current statute. This issue may rise to significance as the opt-out program evolves, particularly if morale and esprit de corps among federal screeners declines because of a perceived imbalance in their employment rights compared to private screeners. The potential for such an effect may be heightened if combined screening forces are implemented at some airports resulting in unionized private screeners working alongside federal screeners who are prohibited from unionizing.

⁴⁴ Transportation Security Administration. *TSA's Loy Determines Collective Bargaining Conflicts with National Security Needs*. Press Release. January 9, 2003.

⁴⁵ Christopher Lee and Sara Kehaulani Goo. "TSA Blocks Attempt To Unionize Screeners." *The Washington Post*. January 10, 2003, p. A19.

⁴⁶ Tom Ramstack. "Union Goes to Court Over Airport Workers ; AFGE Files to Overturn Ban on Collective Bargaining for Security Screeners." *The Washington Times*. January 24, 2004, p. C10.

Evaluating the Ongoing Private Screening Pilot Program

In order to examine the relative cost and effectiveness of private screening, ATSA contained a provision establishing a pilot program using private screeners at five airports. Under the provision, one airport from each security risk category was selected from the pool of airports that had applied to participate in the pilot program. The five airports selected are listed in **Table 1**. These five airports, dubbed the "PP5" by TSA, have operated under TSA managed contracts for about the last 1 ½ years.

Table 1. Airports in the Security Screening Pilot Program

| Cat. | Airport, State | Contractor |
|-------------|---|--|
| X | San Francisco International (SFO), CA | Covenant Aviation Security |
| I | Kansas City International (MCI), MO | FirstLine Transportation Security (formerly known as International Total Services, Inc. (ITS)) |
| II | Greater Rochester International (ROC), NY | McNeil Security International |
| III | Jackson Hole Airport, WY (JAC) | Jackson Hole Airport Board |
| IV | Tupelo Airport, MS (TUP) | Covenant Aviation Security |

The TSA recently contracted with Bearing Point and Abt Associates to develop a comparative assessment technique and conduct a formal evaluation comparing airports in the private screening pilot program to airports with federal screeners. However, the implementation of the private screening program has not been without criticism. This criticism points to perceived flaws in the pilot program that may limit the conclusions that can be drawn from this ongoing evaluation.

First, the limited scope of the pilot program raises concern that inferences drawn from comparing these five airports to other airports under the federal screening system may not truly represent differences between private screening contracts and federal screening operations, but may simply reflect airport specific characteristics unique to the sites chosen for the pilot program. Five airports represent only about one percent of the total number of U.S. airports (currently 445) with scheduled passenger service where airport passenger screening is required, and the number of originating passengers at these five airports represent less than 4 percent of the nationwide total.⁴⁷ Furthermore, only one airport from each of the 5 airport security

⁴⁷ Based on Department of Transportation, Bureau of Transportation Statistics T-100 Origin (continued...)

risk categories is represented in the pilot program. So, in essence, the sample size for evaluating the effectiveness of private screening is only one data point per risk category. Moreover, the selection of airports was not done randomly. Rather, selections were made from airport who voluntarily elected to apply for private screening under the pilot program. Therefore, there was no process to select a representative sample of airports for participation in the pilot program.

Because of the limited scope of the pilot program, observations and statistical conclusions regarding the program are open to criticism regardless of what they indicate. As advocates for expanding the pilot program have pointed out, findings from the current pilot program may be skewed by confounding local factors for a given airport or a given security contractor and may not be representative of private screening operations in general. For this reason, an expanded pilot program, consisting of 5-10 percent of commercial passenger airports, was originally advocated as a means for providing a more meaningful basis for evaluating private screening programs.⁴⁸ However, as mandated, the pilot program consists of only 5 airports.

This is not to say that assessments of the pilot program airports cannot reveal valuable insights and data to assist airports in identifying many of the pros and cons of private screening operations, and perhaps identify certain elements of private screening operations that may be useful in developing proposals for participation in the opt-out program. The pilot program airports may serve as insightful case studies for assessing private screening operations and comparing them to federal screening operations. Also, to assuage some of the concerns over the potential for unique local factors confounding conclusions about specific private screening operations at the pilot program airports, the TSA-sponsored comparison study has matched the 5 airports to those airports using federal screeners considered to be most similar in security related characteristics.⁴⁹

The evaluation compared each of the five pilot program locations to 5 or 6 comparable airports where federal screeners are currently deployed. The comparison airports were selected from airports in the same security risk category that had available performance data such as covert testing data, and were selected based on their similarity to the pilot program airports on 15 variables reflecting passenger volume at security screening checkpoints, security staffing levels, airport configuration, and equipment types for checked baggage screening. The pilot program locations and TSA screening locations used in the comparison study are listed in **Table 2**.

Besides the small sample size, the pilot program, as implemented, has also been criticized because of its perceived lack of differentiation from TSA's federal

⁴⁷ (...continued)

and Destination Data and Origin-Destination Survey Data for 2002 and 2003.

⁴⁸ Robert W. Poole, Jr. *Improving Airport Passenger Screening*.

⁴⁹ Transportation Security Administration. *Briefing on the Evaluation of Private Contractor Screening Operations*. January, 2004.

screening practices that would allow a more robust comparison of alternative practices that may improve the efficiency of screening operations or reduce costs. In its report on the Department of Homeland Security Appropriations Bill for 2004 (H.Rept. 108-169), the House Appropriations Committee expressed its concern that the TSA required the five airports in the pilot program to follow virtually identical operating procedures to TSA's own federal workforce. The committee noted that these five airports are required to operate at staffing levels and compensate their personnel using TSA policies and procedures, with little or no flexibility allowing for alternative scheduling or staffing models. The committee noted that using this methodology will not give Congress an adequate basis for comparing the cost and benefits of passenger screening by private security firms at these five airports to TSA screening at other commercial passenger airports. The committee report directed the TSA to review this policy, and recommended that they provide the contract screener pilot locations as much operational flexibility as possible so that a more comprehensive assessment of the advantages and disadvantages of private screening approaches can be made.

Table 2. Pilot Program Airports and Comparison TSA Screening Locations

| Pilot Program Location | TSA Screening Locations Used for Comparison |
|-------------------------------|--|
| San Francisco, CA (SFO) | Newark, NJ; Dallas-Fort Worth, TX; Boston, MA; Seattle, WA; Chicago O'Hare, IL; Detroit, MI |
| Kansas City, MO (MCI) | Las Vegas, NV; Minneapolis/ St. Paul, MN; Charlotte, NC; New Orleans, LA; Tampa, FL |
| Rochester, NY (ROC) | Syracuse, NY; Portland, ME; Greenville-Spartanburg, SC; Columbia, SC; Buffalo, NY; Manchester, NH |
| Jackson Hole, WY (JAC) | Pueblo, CO; Aspen, CO; Key West, FL; Fayetteville, NC; Bellingham, WA; Idaho Falls, ID |
| Tupelo, MS (TUP) | Bemidji City, MN; Grand Rapids/Itasca, MN; Morgantown, WV; Chisolm-Hibbing, MN; Brainerd Lakes, MN |

The TSA, in response, reiterated its policy of flexibility for new, innovative solutions to the existing private screening companies.⁵⁰ Examples of innovative solutions may include implementing new scheduling software to better match staffing to passenger demand, or new training programs on customer service for screeners. However, the TSA maintains that the core security functions, such as training and procedures for carrying out searches of passengers and property, must be

⁵⁰ Hans Miller, Transportation Security Administration, telephone conversation, January 15, 2004.

standardized across the entire system, and these are not subject to modification at individual airports. TSA also reiterated its support for staffing initiatives such as split-shifts and reliance on part-time screeners when appropriate to better match staffing levels at security checkpoints to passenger demand. One example of a procedure implemented at San Francisco International Airport (SFO) is the use of skycaps with background checks to move checked baggage through the screening process, thus eliminating the need for screeners to handle the baggage thereby improving efficiency and throughput.

Despite these efforts, the GAO concluded that the TSA provided private screening contractors in the pilot program with only limited operational flexibility.⁵¹ In those limited instances where private screening firms were given some latitude in operational aspects, practices adopted by private screening companies sometimes enabled them to achieve additional efficiency. Besides the aforementioned use of baggage handlers to improve the efficiency of baggage screening, the GAO also noted the use of assessment centers to pre-screen screener applicants, and the selection of screening supervisors from within the screener workforce rather than from TSA hiring assessments as additional examples of flexible operational practices. Nonetheless, GAO concluded that the "TSA provided the screening contractors with little opportunity to demonstrate innovations, achieve efficiencies, and implement initiatives that go beyond the minimum requirement of [ATSA]."⁵²

In general, the TSA-sponsored comparative evaluation of the PP5 program found few notable differences between private screening and federal screening. The evaluation compared private screening operations to federal screening operations in terms of effectiveness, cost, and customer and stakeholder impact. In terms of screening effectiveness, private screening was found to be essentially indistinguishable from federal screening. Private screening costs were found to be on par with what federal screening would have been expected to cost had it been implemented instead at the five pilot program airports. There was a slight trend indicating the private screening may be more cost advantageous at larger airports like SFO and MCI and less cost effective at smaller airports like TUP. However, these results were within the margin of error and therefore were inconclusive. Also, it is important to reiterate that only one airport per risk category was examined in the pilot program, so airport unique characteristics affecting cost limit the ability to generalize these findings. For example, the higher costs of private screening at TUP were largely attributable to the contractor operating with a screening staff that was larger than predicted for a federal operation using information about staffing patterns at other Category IV airports. Finally, in terms of customer satisfaction and stakeholder impact, there were mixed results for the larger airports (SFO and MCI). Both of these airports had significantly shorter wait times than comparable airports with federal screening. However, while overall customer satisfaction at SFO was better than at comparable airports with federal screeners, customer satisfaction at MCI was lower than at comparable airports with federal screeners. Satisfaction data were not

⁵¹ U.S. General Accounting Office. *Aviation Security: Private Screening Contractors Have Little Flexibility*. [<http://www.gao.gov/new.items/d04505t.pdf>]

⁵² *Ibid.*, at [<http://www.gao.gov/docsearch/abstract.php?rptno=GAO-04-505T>]

available for the Category II, III, and IV airports. There were no significant differences in the number of complaints between pilot program airports and the comparison airports with federal screeners. Therefore, in general, the pilot program evaluation found little to distinguish private screening contacts from federal screening operations.

The failure of the evaluation to identify significant differences between the contract screening operations and federal screening operations significantly limits the usefulness of the pilot program to draw conclusions regarding the effectiveness, cost, and impact of private screening operations. The failure to identify differences could be attributable to a lack of sensitivity to detect differences in the methods used to evaluate the program. Furthermore, in light of the aforementioned limitations of the pilot program, namely its limited scope and the significant constraints imposed upon pilot program contractors that limited program flexibility, few, if any, conclusions can be drawn from these results. Furthermore, the ambiguous nature of these findings may result in inappropriate conclusions by either advocates for privatizing screening operations or advocates for maintaining a federal screening workforce.

On the one hand, advocates for privatizing screening operations may highlight the lack of demonstrated differences in performance between federal and private screeners as an indicator that security effectiveness will be maintained under private screening contracts. Privatization advocates may also point to selected customer and stakeholder impact metrics, such as decreased passenger wait times, to emphasize potential efficiency improvements at private screening airports. On the other hand, advocates for retaining a federal screening workforce may emphasize the lack of differentiation between federal and private screening to argue that privatization is not necessary. That is, they may argue that given no foreseeable benefits in terms of performance, efficiency, or cost, privatizing screening operations is unnecessary and could cause unwanted interruptions and security lapses during the transition phase. Neither position is supported by the results of the pilot study because the pilot study was largely inconclusive. Even in instances where conclusions could be drawn from the pilot study, these results are confounded by the limited scope and flexibility of the pilot program. The failure of the pilot program to develop adequate metrics and methodologies for comparing federal and private screening poses a significant challenge to the TSA to develop the framework for assessing screening operations under the opt-out program to meet the requirements of ATSA in a manner that will be acceptable to Congress and legally defensible.

Comparing Federal and Private Screening Operations

The opt-out provision of ATSA requires the TSA to determine and certify that the level of screening services and protection provided by private screening entities meets or exceeds that provided by federal screeners. This mandate presents a significant challenge to TSA to develop and implement standard metrics and methods of comparison that will be robust enough to detect performance differences and serve as a legally defensible means of evaluating the performance of private screening companies. Since no single metric or evaluation method is likely to provide a

complete analysis of screening service and performance, a protocol using multiple metrics and methods of analysis will likely be needed. TSA is working toward developing such a protocol by integrating screening effectiveness metrics into their Performance Management Information System (PMIS) and developing a screening performance index to assess screening performance at the individual screener, airport, and system-wide levels of analysis. However, in November 2003, the GAO cautioned that, while the TSA has a number of methods to measure the effectiveness of its passenger screening program at its disposal, none are being fully utilized.⁵³ Some of the principle screening metrics available for assessing screener performance and analysis techniques are discussed below.

Metrics for Comparative Evaluations

Passenger Wait Times and Passenger Satisfaction. One of the principle reasons stated by airports for considering private screening under the opt-out program is to establish a security screening program that has greater flexibility to address local airport factors to better accommodate passenger demand characteristics. Throughput metrics at screening checkpoints, while primarily a concern for meeting passenger expectation and minimizing the so-called hassle factor associated with airport security screening, also has direct implications for airport security. Long queues at screening checkpoints may pose security risks. Long waits may increase the pressure and demand on screeners thereby increasingly the likelihood of human error, and also may result in large congregations of people awaiting screening that can themselves serve as terrorist targets.

It has been a stated goal of the DOT and the TSA to keep average passenger wait times at security checkpoints to under 10 minutes. According to an August 2003 survey by the Bureau of Transportation Statistics (BTS), the system-wide average wait time was 14 minutes (see **Table 3**). However, at individual airports, managers may place a greater emphasis on other indicators of the ability to meet passenger demand at security checkpoints. For example, some airport managers may be particularly interested in keeping virtually all wait times below a certain threshold, such as 30 minutes, that may correlate highly with missed flights, passenger complaints, or high levels of dissatisfaction among passengers. Therefore, airport managers may wish to examine data on 90th or 95th percentile wait times for example. The BTS data suggests that, at least system-wide, the 95th percentile wait times are about 30 minutes, however these waits may be considerably longer at certain airports.

Also, some airport operators may wish to keep wait times relatively constant, that is without much variation throughout the day and relatively constant across days to maximize the likelihood that passenger expectations will be met. Consequently, some airport managers may be interested in looking at the variation in wait times as a function of time of day or day of the week. Thus various criteria for passenger throughput, which may vary from airport to airport based on local factors and airport

⁵³ U.S. General Accounting Office. *Aviation Security: Efforts to Measure Effectiveness and Strengthen Security Programs*. Statement of Cathleen A. Berrick, Director, Homeland Security and Justice. Testimony Before the Committee on Government Reform, House of Representatives. November 20, 2003, GAO-04-285T.

priorities, may exist and cannot be discerned through a single throughput metric such as mean passenger wait times. Mitigating local factors may have important effects on security screening throughput and includes variables such as average ticket counter wait times, as well as airport layout, which can affect transit times between the ticket counter and the security checkpoint, and between the security checkpoint and enplaning gates.

Table 3. Wait Times at Airport Ticket Counters and Screening Checkpoints

| Queue: | Ticket Counter | Screening Checkpoint |
|--------------------------|-----------------------|-----------------------------|
| <i>Average Wait Time</i> | <i>22 minutes</i> | <i>14 minutes</i> |
| <15 Minutes | 37% | 55% |
| 15-30 Minutes | 47% | 40% |
| More than 30 Minutes | 16% | 5% |

Source: U.S. Department of Transportation, Bureau of Transportation Statistics.

Another factor that airports will likely consider significant in evaluating the potential benefits of the opt-out program is the ability of the security screening program at the airport to meet growth in passenger demand. Over the past three years, demand for air travel has declined. However, recent projections suggest that system-wide demand for air travel will surpass pre-September 11, 2001 levels by 2005, and has already done so at some airports.⁵⁴ The ability to meet both current and future throughput demand at checkpoints will be an important consideration in implementing the pilot program. While airport operators may look to the opt-out program as a means to increase screener staffing flexibility to better match the daily, weekly, and seasonal flux in passenger volume at screening checkpoints, they have expressed concerns over the possibility that the TSA may apply different methods for assessing screener staffing requirements at airports with private screeners.

Screening Performance. One of the main criteria to be used by TSA in determining whether a private screening program may be implemented at an airport is whether that program can assure adequate performance. ATSA specifies that the TSA must determine and certify to Congress that the level of screening and protection provided under contract will be equal to or greater than the level that would be provided at the airport by federal screeners. However, gauging the effectiveness of screening operations at airports requires robust, validated metrics to assess comparative performance among airports.

⁵⁴ Demand as indicated by revenue passenger boardings. Source: Federal Aviation Administration, Office of Aviation Policy & Plans. *FAA Aerospace Forecasts, Fiscal Years 2004-2015*; Federal Aviation Administration, Office of Aviation Policy & Plans. *Terminal Area Forecast System*.

In order to successfully implement the opt-out program, TSA will likely have to develop a system for evaluating private screening firms that is legally defensible. In essence, the TSA will have to demonstrate that they have the capability to measure and assess screening performance in a manner that will:

- certify to Congress that screening operations at an airport with private screeners provide at least equivalent security as federal screening operations; and
- if TSA takes adverse action, such as termination of contract, against a private screening firm for failure to provide screening at a level equivalent to federal screening operations, be able to provide legally defensible data of screening performance to justify such an action.

To accomplish this, TSA will likely have to develop means of evaluating screening performance at the airport level that has the sensitivity and validity to meet these requirements. A variety of screening performance metrics are available. Some of these metrics are discussed briefly below and include data on confiscation of prohibited items at checkpoints, results of covert testing at checkpoints, and the use of computer projected images of threat objects to test screener performance using x-ray equipment. While several metrics for evaluating screening operations are available, none of the metrics alone are likely to be capable of providing a complete and thorough comparative assessment of private screening operations. Therefore, it is likely that a composite assessment of screening operations using some or all of the metrics described below, and perhaps others, will be needed to meet the requirements of ATSA to demonstrate that private screening operations are on par with federal screening operations and provide legally defensible justification for any adverse actions against private screening entities.

Confiscation of Threat Objects. While the absolute number of threat objects confiscated at security screening checkpoints has been touted by TSA⁵⁵, these statistics do not reflect the effectiveness of security measures in place. These metrics, on the other hand, illustrate the extent of the challenge faced by screeners and define the operational environment. These metrics are limited because they do not, and cannot, provide any indication regarding the relative rate of detection of threat objects at screening checkpoints since it is impossible to know how many of these objects may have passed through security checkpoints undetected. Also, because the number and type of prohibited items has changed significantly over time it may not be possible to establish meaningful comparisons for all types of threat objects. While evidence that hard to detect, well-concealed objects are being identified and confiscated does provide some indication of screening effectiveness, using this data to make meaningful comparisons over time or at different airports is likely to be extremely difficult.

⁵⁵ Department of Homeland Security, Transportation Security Administration. *Air Travelers' Security Enhanced as TSA Intercepts Over 4.8 Million Prohibited Items in First Year Including 1,101 Firearms*, Press Release, March 10, 2003.

Covert Team Testing. Because covert tests to penetrate airport checkpoints with threat objects have changed over time in response to the need to make these tests more realistic and comparable to methods terrorists may use to infiltrate these checkpoints, no direct comparisons can be made regarding the performance of private screeners prior to establishing the TSA and existing performance in today's aviation security environment. Prior to September 11, 2001, the FAA relied heavily on the use of covert teams that they referred to as "Red Teams" to attempt to pass concealed threat objects through airport checkpoints.

Since establishing the TSA, covert testing has been conducted by the TSA's Office of Internal Affairs and Program Review (OIAPR). In November, 2003, the GAO noted that while over 700 covert tests had been conducted at 92 commercial passenger airports since TSA assumed responsibility for passenger screening in November 2002, only a small percentage of TSA screeners had been subject to a covert test.⁵⁶ Consequently, it is unclear whether the results of these tests are representative of system-wide screener performance. It is likely that additional baseline data on the performance of federal screeners subjected to covert testing will be needed before robust comparisons between federal and private screeners can be made on the basis of covert testing. The GAO reported that TSA planned to double its OIAPR staff this fiscal year and, correspondingly, plans to conduct twice as many covert tests this year.⁵⁷ More recent analyses of covert testing by the DHS Office of Inspector General characterized screener performance levels during these tests as poor.⁵⁸ While specific test results are considered security sensitive information, it has been reported that the current failure rates are comparable to those observed in 1987 when screeners failed to detect about 20 percent of concealed items during covert testing.⁵⁹ However, the TSA noted that the testing methods used at that time was in no way comparable to current covert testing methods used by OIAPR.

In fact, a major challenge in using covert testing to evaluate relative performance of private screening to federal screening operations is that covert testing procedures are likely to evolve over time in response to intelligence information gathered regarding new techniques for concealing weapons, new weapon types, and methods terrorists may employ to distract screeners. As testing methods evolve over time, they no longer permit a direct comparison of performance from one test to another. That is, it would be impossible to conclude whether differences in test performance were attributable to changes in test procedures or actual changes in screening performance. This limitation highlights a key tradeoff that must be considered in designing covert testing procedures, or implementing other screening assessment tools. This tradeoff is between implementing changes in evaluation procedures so that the operational relevance of those procedures can be maintained

⁵⁶ U.S. General Accounting Office. *Aviation Security: Efforts to Measure Effectiveness and Strengthen Security Programs*. Statement of Cathleen A. Berrick

⁵⁷ *Ibid.*

⁵⁸ Statement of Clark Kent.

⁵⁹ Sara Kehaulani Goo. "Airport Screeners Do Poorly, Panel Told." *The Washington Post*, April 23, 2004, p. A8.

on the one hand and maintaining consistency in the application of those procedures so that changes in performance over time can be compared on the other.

Threat Image Projection. Threat Image Projection (TIP) provides the capability to overlay virtual, computer-generated, threat objects over x-ray images of passenger's screened property during normal screening operations. TIP was first fielded by the FAA in 1999. The FAA viewed TIP as an important tool for evaluating the performance of private screening companies and it was to be an integral part of the evaluation of private screening companies under the FAA's proposal to certify those companies. That plan had not yet been widely implemented when the terrorist attacks of September 11, 2001 occurred. TIP, however, was in use at that time on a limited basis.

Following the terrorist attacks of September 11, 2001, TIP was discontinued as an operational performance tool over concerns that screener responses to TIP images would increase delays in a atmosphere of heightened security alert. TIP has now been reintroduced using a greatly expanded database of threat images said to be more representative of concealment tactics that may be used by terrorists.⁶⁰ The TIP database, which consisted of about 200 images before September 11, 2001, now has 2,400 images.⁶¹ Like the FAA, the TSA has ambitious goals for TIP and sees it as an integral tool for evaluating screener performance. TIP is capable of providing valuable data on screener alertness and detection capabilities during on-the-job x-ray monitoring of carry-on items.

However, TIP is limited in its scope and provides data on only one aspect of screening operations. For example, TIP does not provide data on whether proper procedures were carried out once a threat object was suspected and flagged by the x-ray screener, whether explosive trace detection (ETD) systems were properly used to conduct secondary evaluations of suspected explosives, and so on. Also, TIP does not provide any data on the screening of passengers themselves or their checked baggage; it only provides data on the screening of carry-on baggage.

Methods for Comparative Evaluations. As mentioned before, the TSA is likely to face significant challenges in developing techniques to conduct comparative evaluations of private screening operations to ensure they provide the same level of security as federal screening operations. Besides developing a composite index that captures all critical aspects of screening operations, the TSA faces the additional challenge of establishing a representative baseline of federal screening performance against which private screening operations can be compared. There are essentially two ways that the TSA can compare private screening operations to demonstrate whether they provide security that is equal to or greater than the level of security that would be provided at the airport by federal screeners.

⁶⁰ Ibid.

⁶¹ Transportation Security Administration. *Aviation Security System of System: THEN and NOW.*

The first method is to conduct what statisticians refer to as time-series analyses. In a time-series analysis, screening performance at a specific airport could be examined and compared for the time period when federal screeners conducted screening and the time period after a private screening entity assumes screening responsibilities. Such an approach, however, can be problematic, because other aspects of screening or techniques for evaluating screening operations are likely to change over time and may confound the comparison. For example, covert testing criteria may become more stringent, TIP imagery may become more complex, passenger volume at checkpoints may increase, and so on. While mitigating factors such as these may be able to be identified, the degree to which they impact metrics used to evaluate screening performance may be difficult to quantify.

The alternative approach is to compare screening operations at airports with private screening to operations at comparable airports with federal screeners. This approach, sometimes referred to as a cross-sectional comparison, also has limitations. Regardless of how well airports are matched based on similarities, unique airport characteristics that may impact the evaluation of screener performance may skew the results of such a comparison. While some unique airport factors affecting security may be identifiable, others may be difficult to identify. For those factors that can be identified, it will likely be difficult to quantify their impact on the aviation security performance metrics used for comparison.

Because both time series and cross-sectional assessments of screener performance may impose certain limitations on the ability to draw inferences regarding the comparative performance of private screeners compared to federal screeners, a combination of both techniques may be needed to provide the most robust capability for conducting comparative assessments of private screening contracts. Also, prior to the implementation of private screening operations, agreed upon policies and protocols for collecting and comparing screening performance data will likely be needed. These protocols will likely be needed as soon as possible in order to allow for collection of adequate baseline data of federal screening operations. The TSA is progressing toward such a capability with the development of a screening performance index that will provide system-wide metrics to evaluate and compare screener performance through TIP and covert testing results, unit costs for screening passengers and baggage, as well as customer satisfaction through assessments of survey and complaint data.⁶² The adequacy of TSA's procedures for comparing performance of private screening contracts to federal screening operations is likely to be an enduring issue for congressional oversight during implementation of the opt-out program.

⁶² U.S. Government Accounting Office. *Aviation Security: Challenges Exist in Stabilizing and Enhancing Passenger and Baggage Screening Operations*. Statement of Cathleen A. Berrick.

Assessing Comparative Costs and Allocating Funding

One of the main objectives of the security screening opt-out provision is to provide for increased flexibility in work scheduling practices and deployment of security screening personnel and resources that can more easily adapt to the dynamic nature of airport operations thereby resulting in reduced operating costs. The opt-out provision is constrained by statutory requirements that private screeners be compensated with pay and benefits identical to that received by federal screeners. Consequently, private entities will not be able to reduce unit labor costs compared to federal screening operations. Therefore, any direct savings that will be realized through the opt out program will be derived from modifications to work scheduling practices, reduction of overhead costs, and so on.

Two areas where private screening entities may look to reduce costs are through streamlining the process of hiring screeners and implementing flexible scheduling practices. Flexible scheduling practices of private screening entities are likely to rely heavily on the use of part-time screeners. However, the GAO reported that TSA has experienced difficulties in hiring new staff, particularly part-time staff. These difficulties in recruiting and retaining part-time screeners appears to be most acute in areas with tight labor markets, and high costs of living and commuting, which is generally characteristic of areas where the larger Category X and Category I airports are located. The GAO identified airport location, lack of accessible and affordable parking or public transportation, and high living costs as the main factors contributing to TSA's inability to hire new staff, particularly part time staff, at large Category X airports. Since the largest direct cost savings that can be achieved by implementing private screening under the opt-out program is likely to be through efficient use of part-time staff and increased flexibility in staff scheduling, TSA's current difficulties in meeting staffing needs suggest that doing so may be a significant challenge, especially at larger airports.

However, even if private screening operations under the opt-out provision cannot realize meaningful savings in direct costs for aviation security, opt-out proposals may result in significant indirect savings, particularly to airports. Airports are likely to see merit in the opt-out program if it can result in identifiable cost savings for the airport. One factor that airports may consider, for example, is whether private screening operations can be conducted with reduced space demands. Reduced demands for physical space in the airport may translate to more space available for retail shops, restaurants, and other revenue-generating activities. Also, airports are likely to consider whether private screening operations can improve passenger and baggage throughput which could translate to adequately keeping pace with local growth in demand for air travel and improving passenger satisfaction with airport operations.

Increasing the efficiency of screening operations could increase public confidence and consumer satisfaction with airport security thereby increasing the likelihood that they will choose to take a flight from a particular airport or choose air travel over other transportation alternatives. Since, these indirect cost savings are

most likely to benefit airports directly, they are likely to weigh heavily in an airport's evaluation and ultimate decision whether to pursue a private screening program.

In 2003, \$30 million dollars were appropriated for third party screening contracts. These appropriations were made available in addition to an estimated \$100 million dollars received in contract recoveries received by TSA that was made available for private screening contracts in FY2003. Based on this data, private screening contracts accounted for just under 5% of total TSA funding available for system-wide passenger and baggage screening. In FY2004, screening pilots at the five airports were appropriated a total of \$119 million, representing about 3.81% of total appropriations for passenger and baggage screening. These appropriations appear to be roughly in-line with the proportion of system-wide screening operations they account for.

Originating passenger statistics actually show that appropriations for the pilot program airports may be slightly higher than expected, given the proportion of originating passengers at these five airports compared to the system-wide total. However, several airport specific factors may account for this. The number of originating passenger is the primary factor for determining screener workforce at an airport. Based on TSA's modeling numbers for allocating federal screeners, the number of originating passengers at an airport has a correlation⁶³ of about 0.97 with the number of screeners allocated to that airport, indicating that this factor alone accounts for almost all of the difference between airports in terms of screener workforce and, in turn, operating costs for screening functions.⁶⁴ Nonetheless, unique factors among the pilot program airports, such as airport layout, the number of screening lanes, and other unique logistic factors, may result in higher comparative costs that should be considered when drawing conclusions about the relative cost of private screening compared to federal screening. It is also important to note that some costs associated with administering and evaluating the pilot program may be included in the costs for private screening activities. Also, the above discussion is based only on appropriated funding levels and does not reflect comparisons of actual outlays for private screening compared to federal screening.

As part of the TSA contract to evaluate the private screening pilot program, Bearing Point and Abt Associates provided a formal assessment of comparative costs by comparing actual costs paid for contract screening operations to estimated costs assuming that the pilot program airports had instead been staffed by federal screeners. Separate cost comparisons were developed for each of the five pilot program airports and are presented in **Table 4**.

⁶³ Correlation measures the degree to which two sets of numbers, such as originating passenger numbers and screener numbers, are related. If the two sets of numbers were totally unrelated, the correlation would be 0. If the sets of numbers were perfectly related the correlation would be 1. If the sets of numbers were inversely related (that is, if the values of one set decreased when the values of the other set increased), then the correlation would have a negative value. Thus, correlation scores can range between -1 and 1.

⁶⁴ CRS calculations based on updated TSA modeling numbers as of June 6, 2003.

In general, the cost assessment found that across the five pilot program airports, private screening costs were about 3.5% less than the estimated cost of federal screening. However, the difference in cost at each of the airports was within the margin of error, so no specific conclusions can be made regarding the relative costs of private screening compared to federal screening. Since there was a statutory mandate requiring the private screening companies in the pilot program to provide wages and other compensation and benefits at a level that was at least equivalent to that of federal screeners, it would have been unlikely to observe any significant cost savings for private screening, especially since significant constraints were imposed on the program that limited flexibility in: determining screener staffing levels; utilizing part-time personnel; and implementing other cost-saving innovations.⁶⁵

Table 4. Cost Comparison at the Pilot Program Airports
(\$ millions)

| Airport | Private Screening Estimate | Federal Screening Estimate | Difference | Percent Difference | Error |
|----------------|-----------------------------------|-----------------------------------|-------------------|---------------------------|--------------|
| SFO | 118.9 | 119.0 | 0.1 | 0.1% | +/- 20.7 |
| MCI | 51.1 | 59.0 | 7.9 | 15.5% | +/- 9.1 |
| ROC | 15.3 | 14.2 | -1.2 | -7.6% | +/- 2.4 |
| JAC | 3.5 | 3.6 | 0.1 | 2.3% | +/- 1.5 |
| TUP | 1.5 | 1.1 | -0.4 | -28.4% | +/- 0.54 |
| TOTAL | 190.3 | 196.9 | 6.3 | | |

Source: Bearing Point and Abt Associates, Inc. *Private Screening Operations*.

Note: Costs cover the 12-month period from December 2002 through November 2003.

In addition to performing the evaluation of screening operations at the five pilot program airports, the TSA has indicated that they are examining the OMB's guidelines for federal-commercial cost comparisons, often referred to as the A-76 process, to identify elements of that process that may effectively be incorporated into the evaluation process being developed for the security screening opt-out program. However, the TSA maintains that the security screening opt-out program is not appropriately suited for extensive public-private cost comparison studies under the A-76 process. This is largely due to the constraints of the opt-out program that require private screening entities to provide compensation and other employment benefits to screening personnel at a level equal to or greater than that provided to federal screeners.

⁶⁵ U.S. General Accounting Office. *Aviation Security: Private Screening Contractors Have Little Flexibility*

The TSA has also indicated that they are examining other federal contract programs such as the FAA's contract tower program to assess best contracting practices that can be incorporated into the security screening opt-out program. The FAA's contract tower program may provide some interesting insights for private airport screening operations, however the extent to which desirable attributes of that program can be incorporated into the security screening opt out program is likely to be significantly constrained. The FAA contract tower program has been able to achieve significant cost savings as compared to similar federally operated non-radar air traffic control towers. Specifically, the DOT Office of the Inspector General found that contract towers were, on average, 79% cheaper to operate compared to federal towers.⁶⁶ However, these cost savings have mostly been realized through lower per unit labor costs and lower staffing levels at contract towers. By comparison, since the security screening opt-out provision requires that compensation and benefits provided to private screeners be at least on par with that provided to federal screeners, any cost savings will likely have to be realized through other means such as increased flexibility in work scheduling and extensive use of part-time screeners.

Unlike the FAA contract tower program where airports with low levels of activity and no radar operations have been specifically targeted for participation in the program, the security screening opt-out program is open to all airports regardless of passenger volume and security risk factors. Also, unlike the contract tower program where determinations regarding which airports should have contract towers have been made by the federal government, under the security screening opt-out program, it will be left up to individual airport operators and not the TSA to make the initial decision to pursue private screening. As requested by the OMB, the TSA will not make any specific recommendations regarding what airports or airport characteristics may be best suited for inclusion in the opt-out program. Rather, the TSA will only provide information, such as results of the pilot program evaluation, to airport operators for use in their evaluation of whether or not to apply for private screening operations under the opt-out provision.

⁶⁶ U.S. Department of Transportation, Office of Inspector General. *Safety, Cost and Operational Metrics of the Federal Aviation Administration's Visual Flight Rule Towers*. September 4, 2003. Report Number: AV-2003-057.

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