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Aviation Finance: Federal Aviation Administration (FAA) Reauthorization and Related Issues

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Summary

Authorization legislation providing for the collection of the aviation taxes and fees associated with the funding of the Federal Aviation Administration's (FAA) activities expired at the end of FY2007. Revenue collections and the operation of the FAA and its programs have continued, however, as a result of continuing and consolidated appropriations legislation (P.L. 110-92, P.L. 110-116, and P.L. 110-161). The program has now been extended until June 30, 2008, by the Airport and Airway Extension Act of 2008 (P.L. 110-190).

The taxes and fees provided for in FAA authorization legislation are deposited in the airport and airways trust fund (aviation trust fund) to pay for the majority of FAA's activities. The FAA and others have expressed concern that the current funding system is inadequate to meet future federal needs for upgrading, expanding, maintaining, and operating the existing federal air navigation system as part of the FAA's Next Generation Air Transportation System (NGATS). This view is disputed by some aviation industry groups who believe that the existing trust fund based system is adequate for the foreseeable future. Many of these same groups would even argue that overall federal spending on certain federal aviation programs could be increased in new authorization legislation without a new funding system. There is also a third view, which suggests that the current financing system needs to be reexamined because it is potentially unreliable over time.

This report provides background information on how the existing trust fund based aviation finance system operates, discusses several basic issues concerning aviation taxation, and identifies FAA programmatic spending. From that point on the report focuses on three major issues related to the trust fund. First is the question of whether the trust fund will provide sufficient revenue to meet the growing needs of the FAA's activities and programs. Second is the controversial issue of how much of the FAA's total funding should come from the Treasury's general fund account, the so-called "public interest" contribution. And third is the long standing issue of whether the existing tax and fee system is the appropriate mechanism for producing trust fund revenues, or whether an entirely new revenue collection mechanism should be adopted.

The FAA remains firmly convinced of the need to create a new aviation funding system, with corresponding FAA budgetary and administrative changes. On February 14, 2007, the FAA released a legislative proposal encompassing this view (H.R. 1356/S. 1076, introduced by request).

Consideration of reauthorization proposals by Congress is ongoing. The House reported H.R. 2881 on September 20, 2007. Full Senate consideration of reauthorization legislation has not yet been scheduled. Reconciliation of the differing views about FAA funding contained in authorizing committee reported legislation (S. 1300) and finance committee reported legislation (S. 2345) appears to be holding up further Senate action. This report will be updated as warranted by further congressional action.

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Introduction

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The taxes and fees provided for in FAA authorization legislation are deposited in the airport and airways trust fund (aviation trust fund) to pay for the majority of FAA's activities. The FAA and others have expressed concern that the current funding system is inadequate to meet future federal needs for upgrading, expanding, maintaining, and operating the existing federal air navigation system as part of the FAA's Next Generation Air Transportation System (NGATS). This view is disputed by some aviation industry groups who believe that the existing trust fund-based system is adequate for the foreseeable future. Many of these same groups would even argue that overall federal spending on certain federal aviation programs could be increased in new authorization legislation without a new funding mechanism. There is also a third view, which suggests that the current financing system needs to be reexamined because it is potentially unreliable, e.g. events such as September 11 and recessions can have a major and unpredictable impact on annual tax and fee collections. Hence, in this view, the existing system might not be able to provide the long term consistent source of annual revenues that would allow for the orderly funding of NGATS and other FAA programs.

The primary focus of this report is a discussion of aviation taxes and fees as they relate to the funding of the principal federal aviation activities overseen and operated by the FAA. These taxes and fees are frequently referred to as user fees. As will be discussed, they are not viewed as true user fees in the economic sense and may more appropriately be thought of as proxies for user fees. Further, as will be pointed out, there are a wide range of federal taxes and fees imposed on aviation system users, almost all of which are statutorily linked to federal activities related to aviation, but not all of which go to toward funding the FAA and its programs.

The Aviation Tax and Fee Structure

FAA-Related Taxes and Fees

The debate about how the FAA should be funded largely revolves around the concept of user fees. There are a number of variations as to how a user fee is defined. A useful definition of a user fee from a transportation perspective was provided in 1953 by the Department of Commerce, Office of Transportation, and is still valid for today's discussion:

> ... a user charge is defined as any charge made to beneficiaries or users of services and facilities directly related to transportation and furnished in whole or in part by the Federal

[1] This report deals only with the financial aspects of the reauthorization debate. For a full description of major reauthorization issues, see CRS Report RL33920, *Federal Aviation Administration Reauthorization: An Overview of Selected Provisions in Proposed Legislation*, by Bart Elias et al.

> Government. Such charge must be paid for use of such service or facility and shall be fixed to recover part or all of the capital, operating, and maintenance costs of such service or facility. The services shall not include cash subsidies, mortgage-aid, or tax-aid or certain other activities not confined to transportation or involving transportation only incidentally.[2]

For aviation, most of the interest in user fees has been in recovering the costs associated with industry use of the national air navigation system (air traffic control (ATC) system).

User fees can be direct (sometimes referred to as pay-for-use or pay-for-service), whereby an aircraft or operator is charged for a specific activity. Examples of direct charges include radio contacts with ATC en-route centers, contacts with airport towers, and weight-distance charges of the type levied frequently outside the United States (the weight of the aircraft multiplied by the distance flown). The other type of user fee that can be levied is an indirect fee. Examples include fuel taxes, aircraft registration fees, and gross revenue taxes. Indirect fees and charges are often viewed by economists as proxies for user fees rather than as actual user fees. They are normally viewed as imperfect in that the fee charged is often more poorly correlated to the service provided than a direct fee would be. A common example is the existing airline passenger tax, where airline passengers flying on the same aircraft are charged fees based on the often very different fares that they paid, even though all are using exactly the same amount of airway resources. For a number of reasons, indirect fees are the dominant type of fee in use in the U.S. aviation system today.

Prior to 1970, there were no federally imposed charges for use of the federally operated ATC system. This is not to say that there were no federal taxes imposed on aviation. There was a tax on gasoline, and there was a transportation passenger ticket tax imposed on airline passengers, among others. At that time, however, these taxes were deposited in the general fund of the U.S. Treasury, where they were available to pay for any government activity, and were not designated as offsets to federal aviation activities.

[2] U.S. Department of Commerce, Office of Transportation, *Charges for Private Use of Federally-Provided Transportation Services and Facilities, A Staff Study of the Principles Involved in Federal User Charges*, Washington, DC, July 1953, p. 9.

Table 1. Existing Aviation Related Federal Taxes and Fees, 2007

Tax or Fee	Tax or Fee Rate
Airport and Airway Trust Fund	
Passenger Ticket Tax	7.5% on all domestic airline tickets.
Segment Tax	$3.40 per flight segment defined as a single take-off and single landing (tax level indexed to CPI beginning in FY2003).
Waybill Tax	6.25% cargo waybill tax.
Fuel Tax[a]	19.3 cents/gallon on general aviation use of gasoline.
	21.8 cents/gallon on general aviation use of jet fuel.
	4.3 cents/gallon on commercial aviation jet fuel.
International Departure/Arrival Tax	$15.10 international departure tax (indexed to CPI)(prorated Alaska/Hawaii to mainland).
	$15.10 international arrivals tax (indexed to CPI)(prorated Alaska/Hawaii from mainland).
Rural Airports Tax	7.5% on domestic airline tickets to "qualified rural airports."
Frequent Flyer Awards Tax	7.5% on awards of free or reduced rate air transportation, e.g. frequent flyer awards based on credit card use.
Interest on Investments	Interest paid on Treasury Bonds held in the Airport and Airway Trust Fund.
Passenger Facility Charges (PFCs)	PFCs are essentially local taxes that require federal authority for collection (also sometimes referred to as head taxes). $1.00 to $4.50 per emplaned passenger at commercial service airports. Maximum of $18 may be imposed on a round trip ticket.
Overflight User Fees	Charged on flights transiting the United States and using air traffic control services. $33.72/100 miles in enroute environment and $15.94/100 miles in oceanic environment.
Transportation Security Administration (TSA) Fees	
Passenger Security Fee (collection suspended 6/1/03-9/31/03)	$2.50 per enplanement on flights originating at an airport in the United States. Maximum of $10 per round trip. Collection of this fee began February 1, 2002. (Also known as September 11th or 9/11 fee)
Aviation Security Infrastructure Fee (ASIF) (collection suspended 6/1/03-9/31/03)	Determined by the TSA. Fees may not exceed the aggregate cost paid by the airline industry for security screening in Calendar Year 2000. Adjustment of per-carrier limit began in FY2005.
Immigration and Customs Enforcement	
Immigration Fee	$7 per arriving international airline passenger.
Customs & Border Protection Service	
Inspection Fee	$5 per passenger, not collected from passengers originating in Mexico, Canada, or the Carribean.
Animal and Plant Health Inspection Service (APHIS)	
Passenger Inspection Fee	$5.00 on each arriving international passenger not collected from passengers originating in Canada.
Commercial Aircraft Inspection Fee	$70.50 per aircraft on international arrivals (raised to $70.75 for FY2008). Not collected from aircraft operating solely between Canada and the United States.

Sources: U.S. Government. Office of Management and Budget. *Budget of the United States Government*, various years. Air Transport Association.

a. Does not include .01 cent per gallon Leaking Underground Storage Tank (LUST) fee deposited in LUST trust fund.

By 1970, the concept of a user fee based system to pay for federal aviation activities had been discussed for over two decades. During that period the federal government considered a host of direct and indirect fees and taxes that might be used to pay for aviation services, but the Congresses and Presidential Administrations of the period had been unable to reach a consensus on any specific approach. It was only in the near crisis atmosphere of the late 1960s[3] that industry and government were able to coalesce around a particular mix of indirect user fees as a way to fund needed aviation system improvements.

On May 21, 1970, President Nixon signed the Airport and Airway Development and Revenue Acts of 1970 (P.L. 91-258; 1970 Act), which was the origin of the trust fund financing system still in place today. The fee system consisted of an 8% airline ticket tax, a 5% freight/cargo waybill tax, a $3 international departure tax (also applied to Alaska and Hawaii), a 7 cent per gallon tax on noncommercial (primarily general aviation (GA) aircraft) use of gasoline and jet fuel, and finally, a graduated aircraft registration fee starting at $25 per aircraft, plus an additional fee of 2 cents per pound on piston powered aircraft of 2,500 pounds or more and plus an additional fee of 3.5 cents per pound on all turbine powered aircraft above 2,500 pounds for each pound in excess of 2,500 pounds. All of the revenues collected from these sources were deposited in a newly created airport and airway trust fund (also known as the aviation trust fund). The 1970 Act also transferred revenues from an existing excise tax on tires and inner tubes into the trust fund.

Three and a half decades later, the same basic framework of taxes and fees—with the deletion of the aircraft registration fee, and the addition of a segment fee, an international arrivals tax, and a frequent flyer tax (which can be viewed as an extension of the ticket tax)—remain the principal sources of income for the trust fund. The tax and fee structure and the rates charged, however, have been modified on several occasions, most notably of late by the Taxpayers Relief Act of 1997 (P.L. 105-34) which provided the taxing authority that expired at the end of FY2007. **Table 1** details the tax and fee structure as it exists at the beginning of 2007.

Non-FAA Federal Taxes and Fees

There are other dedicated aviation related fees that are also enumerated in **Table 1**, such as Immigration, Customs, and Agricultural inspection fees. Each of these fees predate the aviation trust fund structure imposed in the 1970 Act and, while dedicated to an aviation related activity, they are deposited directly into the U.S. Treasury's general funds account.[4] More recently added are the passenger security fee (also known as the September 11th fee) and the airline security fee which are direct outgrowths of the events of September 11, 2001. These fees, imposed on airline passengers and airlines respectively, offset to some degree spending by the Transportation Security Administration (TSA) on its aviation security activities. Collection of these fees began in 2002. A few of the fees discussed here have broad application that goes well beyond aviation. The Customs & Border Protection Service, Immigration & Customs Enforcement, and the Animal and Plant Health Inspection Service (APHIS) all provide extensive services related to other modes of transportation. Some of the Immigration, Customs, and Agricultural related fees, unlike the others

[3] The late 1960s were notable for well-publicized delays in airline travel that often resulted in large numbers of aircraft being placed in holding patterns above major U.S. cities. These delays and other incidents focused public opinion on the need for the federal government to make significant improvements to the airport and airway system.

[4] There are a few additional federal activities that are viewed by some as having an aviation-related purpose that have no separate tax and fee structure associated with them and are not discussed in this report. For example, aeronautical research provided by NASA is funded entirely by U.S. Treasury General Funds.

discussed here, are statutorily linked to the cost of providing inspections services. That is, the fee is modified periodically to provide the agency performing the service with supposed full cost recovery.

Passenger Facility Charges (PFCs)

The Passenger Facility Charge (PFC), is collected from airline passengers based on their travel to and from specific airports, but it is not actually a federal tax, rather it is a local tax requiring federal approval. PFCs were first allowed in 1990 and the original rate of taxation has been modified since. Because PFCs accrue directly to the levying airport, and not to the trust fund, they are not discussed in detail in this report.[5] It should be noted, however, that PFCs will be part of the FAA reauthorization debate. Airport interests are seeking an increase in the existing $4.50 per airport departure level although a specific level for that increase has not yet been identified. Depending upon how this proposal is ultimately framed it may be opposed by the airlines who often view any PFC increase as having negative consequences for their fare setting ability.

Who Pays the Tax?

With a couple of notable exceptions the taxes and fees discussed above are collected by airlines as part of the airline ticket. The taxes, however, are statutorily imposed on the airline passenger—not on the airline itself. This does not mean that the effects of the tax are borne entirely by the passenger. Airlines must, for example, address how much of the tax can be passed on to the consumer in terms of higher fares without negatively depressing traffic.

Although fees, as discussed above, have an impact on airline travel, those fees imposed prior to September 11 probably did not create a significant barrier to travel. Since September 11, however, it is argued that the new security fees, along with other factors, such as security-related hassles and delays, may be having some impact on travel. To the extent that a traveler's costs are raised, and not all costs are directly measurable in dollar terms, there is always the possibility of the consumer seeking alternate means of making a trip or, perhaps foregoing a trip altogether. For example, there is considerable evidence that heightened security since September 11, and its associated "hassle" factor, have reduced short distance flying in markets where driving is viewed as a viable alternative. The key is what constitutes an acceptable cost (not measured strictly in monetary terms) from the consumer's standpoint.

Airlines in most cases are collection agents for these fees. In many instances an airline bills the passenger for the fee at the time a ticket is sold. At some specified interval, the airlines are required to turn the proceeds over to the U.S. Treasury for deposit in the appropriate account. During the period between ticket sale and distribution to the Treasury, airlines are typically allowed to hold these funds in appropriate financial instruments and retain any interest payments made on these instruments. By way of example, the APHIS program requires quarterly payments, but the rules are written in such a way that an airline could retain some of these fees and earn interest on them for up to four months. The ability to retain interest has always been viewed as a way to offset an airline's costs of collection. The amount of interest that an airline might receive in this manner was not inconsequential during periods of high interest rates. At the present time, however, low interest rates have greatly reduced the attractiveness of using this funding

[5] SeeCRS Report RL33891, *Airport Improvement Program: Issues for Congress*, by Robert S. Kirk.

mechanism as a way to offset the costs of collection incurred by the airline from the airline industry perspective.

Of the fees shown in **Table 1**, four are directly paid by the airlines. The first, and smallest in dollar terms, is the APHIS aircraft inspection fee on aircraft arriving from outside the United States. The second fee is a 4.4 cent per gallon tax on jet fuel used by the airline industry. Of this amount 4.3 cents is deposited in the airport and airway trust fund, with the remaining 0.1 cent placed in the non-aviation related leaking underground storage tank (LUST) trust fund. The third fee is the overflight fee, which is normally levied on non-U.S. airlines that are transiting United States airspace. This fee is designed to offset the cost of air traffic control services provided to these air carriers during transit, although the funds collected are used to fund a portion of the Essential Air Services program.

The last direct fee is the aviation security infrastructure fee (ASIF) imposed on the airlines as a result of the Aviation and Transportation Security Act (ATSA)(P.L. 107-71) enacted on November 16, 2001. The annual fee is limited to the amount that the industry spent to provide security in calendar year 2000. It is worth noting that an effect of establishing this fee was the elimination of the industry's potential future direct costs for increased security, because it transfers the security responsibility to the Transportation Security Administration (TSA).

FAA Major Program Funding

The FAA receives the majority of its funding from receipts to the aviation trust fund. It also receives an annual appropriation of Treasury general funds to pay for the remainder of its activities. The trust fund pays for all of the FAA's airport improvement program (AIP), facilities and equipment (F&E) program, and research, engineering and development (RE&D) program. It also pays for much of the FAA's operations and maintenance (O&M) program, which also receives general funds.

As can be seen in **Table 2**, annual appropriations for the AIP program roughly followed the amounts authorized in the last two FAA reauthorization acts, AIR-21 (P.L. 106-181) and Vision 100 (P.L. 108-176), but appropriations for the other three programs have not. Funding for F&E tracked the authorization through FY2004, but has since been significantly below the authorized amount. Annual RE&D appropriations have been well below their authorized levels in each year. O&M appropriations have been higher than the amounts authorized in two years, below in the other four, but in only one instance, FY2003, did the program fail to grow on a year-over-year basis.

There are many in the aviation industry, and also within the FAA, who believe that significantly greater funding will be required in the years ahead for each of the four major FAA programs. These requests come against the backdrop of three years of FAA spending in which annual appropriations for the agency increased on a fairly modest basis.

Table 2. FAA Major Program Funding: AIR-21 and Vision 100, FY2001-FY2006

($ in millions)

		FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007
AIP (TF)	authorized	3,200	3,300	3,400	3,400	3,500	3,600	3,700
	oblimit	3,193	3,475	3,378	3,380	3,472	3,515	3,515
F&E (TF)	authorized	2,657	2,914	2,981	3,183	2,993	3,053	3,110
	appropriations	2,651	3,021	2,942	2,863	2,525	2,555	2,515
RE&D (TF)	authorized	237	249	—-	346	356	352	356
	appropriations	187	245	147	119	130	137	130
O&M (TF/GF)	authorized	6,592	6,886	7,357	7,591	7,732	7,889	8,064
	appropriations	6,603	7,077	7,023	7,479	7,707	8,104	8,330
	GF share	2,198	1,104	3,248	3,010	2,828	2,619	2,703
Total (TF/GF)	oblimit & appropriations	12,634	13,818	13,490	13,843	13,858	14,311	14,490

Sources: Authorization amounts from AIR-21 and Vision 100 (AIR-21 did not include an RE&D authorization for FY2003). Appropriations information from FAA data.

Note: TF = aviation trust fund, GF = Treasury General Funds.

Airport and Airway Trust Fund Issues

The reauthorization debate is likely to focus on three major issues related to the trust fund. First is the question of whether the trust fund will provide sufficient revenue to meet the growing needs of the FAA's activities and programs. Second is the controversial issue of how much of the FAA's total funding should come from Treasury general funds, the so-called "public interest" contribution, a major element of which is FAA's computation of the cost-allocation amongst aviation user groups. And third is the long standing issue of whether the existing tax and fee system is the appropriate mechanism for producing trust fund revenues, or whether an entirely new revenue collection mechanism should be adopted.

Trust Fund Revenue Adequacy

There is considerable discussion over the question of whether the existing trust fund revenue stream will be able to provide adequate funding in the years ahead. **Table 3** shows that total trust fund income began rising after FY1999 following the last major reauthorization of trust fund directed taxes and fees by the Taxpayers Relief Act of 1997 (P.L. 105-34). It then declined somewhat in FY2000 and dropped precipitously after September 11, 2001. As a result primarily, but not exclusively, of the post-September 11 drop in airline activity, the revenue stream did not exceed the FY2001 level again until FY2005, and did not exceed the record FY1999 level until FY2006 (which it did just barely). Throughout this period FAA spending has not been reduced to accommodate the trust fund's reduced income stream. Rather, FAA spending has continued apace, mostly by spending down the uncommitted balance of the trust fund, which stood at over $7.3 billion at the end of FY2001 and which was down to around $1.7 billion by the end of FY2006.

When the FAA began discussing reauthorization in 2005, the future of the aviation trust fund was listed as a key item for consideration.[6] The FAA contends that something needs to be done to either increase the trust fund income stream and/or replace it with a new funding mechanism, all with the goal of preventing even further erosion in the uncommitted balance of the fund. For a number of reasons detailed at its reauthorization website[7], the FAA sees little prospect of a major increase in revenue from the trust fund's existing tax and fee system. Instead, the FAA seeks a reexamination of the tax and fee system with an eye toward a new system that more closely tracks actual aviation industry activity than the current system and that in the process ensures that the trust fund will receive adequate revenues to finance future FAA aviation system needs.

FAA Funding Needs

A largely unanswered, and perhaps unanswerable, question, at least for the moment, is exactly how much additional funding the FAA needs in the years ahead. Certainly, the NGATS proposal is expensive. CRS estimates that total F&E spending, including NGATS, will require between $69 billion and $76 billion by 2025.[8] But, as is pointed out in the discussion accompanying these estimates, there are a wide range of variables that could further affect these numbers. For example, these estimates cannot account for potential efficiency gains engendered by NGATS technology that might reduce the overall cost of operating the FAA. At the same time, these estimates cannot account for additional costs that might be added by missed deadlines, technology problems, and cost overruns—all of which were conditions that plagued FAA modernization efforts throughout the 1980s, the 1990s, and into the current century.

[6] http://www.faa.gov/airports_airtraffic/trust_fund/media/Trust_Fund.pdf.

[7] http://www.faa.gov/regulations_policies/reauthorization/.

[8] SeeCRS Report RL33698, *Reauthorization of the Federal Aviation Administration: Background and Issues for Congress*, by Bart Elias et al.

Table 3. Airport And Airway Trust Fund: Revenue Flow and Balances, FY1998-FY2007

($ in millions)

Fiscal Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007E
Income										
Ticket Tax	5,455	5,941	5,103	4,805	4,726	4,223	4,556	5,044		
Flight Segment Fee	547	1,339	1,655	1,556	1,532	1,783	1,800	2,042		
Waybill Tax	313	412	500	493	474	422	499	567		
Fuel Tax	659	1,009	887	769	789	711	712	977		
Rural Airports Tax	48	57	86	82	80	67	71	76		
Frequent Flyer Tax	141	149	159	150	148	147	145	159		
International Arrival/Depart. Tax	948	1,484	1,349	1,336	1,282	1,331	1,391	1,651		
Tax Refunds	—	—	—	—	—	—	—	—	—	
Interest on Balance	543	698	805	882	860	591	477	423	495	495
Offsetting Collections	42	32	144	76	178	97	36	152	109	210
Total Trust Fund (TF) Income	$8,696	$11,121	$10,688	$10,149	$10,069	$9,372	$9,687	$11,092	$11,194	$12,131
Operations TF Share Appropriations.	$1,902	$4,112	$5,898	$4,405	$5,973	$3,775	$4,469	$4,879	$5,486	$5,486
Total Trust Fund Cash Outlays	($5,914)	($8,089)	($9,198)	($9,601)	($11,909)	($9,618)	($10,415)	($11,092)	($12,148)	($12,308)
End of Year (EOY) Balance	$9,140	$12,446	$13,934	$14,482	$12,642	$12,397	$11,669	$11,596	$10,336	$10,159
Commitments	($4,801)	($5,080)	($6,860)	($7,167)	($7,855)	($8,499)	($9,222)	($9,493)	($8,563)	($8,153)
Uncommitted Balance EOY	$4,339	$7,366	$7,074	$7,315	$4,787	$3,898	$2,447	$2,103	$1,773	$2,006
General Fund Share of FAA Appropriations										
Total FAA Appropriations	$9,052	$9,808	$10,043	$12,634	$13,818	$13,490	$13,843	$13,858	$14,470	$14,423
GF Share of FAA Budget	3,351	1,474	0	2,198	1,104	3,248	3,010	2,828	2,652	2,622
GF Percent Share	37%	15%	0%	17%	8%	24%	22%	20%	18%	18%

Sources: Federal Aviation Administration. See the "Background" and "AATF" sections of http://www.faa.gov/about/office_org/headquarters_offices/aep/aatf/. Data for FY2006 income are estimates; appropriations data are enacted. Appropriations data (including trust fund and general fund share data) provided by FAA.

While much of the interest in reauthorization to date is being focused on the NGATS process, it is not the only financial issue facing the FAA. Controller workforce issues (hiring, retirements, and collective bargaining), safety inspection, aircraft certification, RE&D requirements, and possible funding increases for the AIP program, are all likely to put pressure on the FAA budget in the years ahead. It can be assumed that these costs will increase by at least the cost of inflation as they are shown in the CRS report mentioned in the previous paragraph. Historically, however, events, such as major airline crashes, terrorism, etc. have often required additional resource needs for the agency that cannot be easily forecast.

Trust Fund Revenue Estimates

The FAA position is that the trust fund will not be able to provide adequate long-term agency funding. This position is supported by Treasury estimates made in the summer of 2006, which suggest that annual revenue increases to the trust fund in the years ahead will be modest at best.[9] Treasury's summer forecast was that the annual increase in trust fund revenue for FY2007 would be $766 million, with total receipts for the year amounting to $11.6 billion. Increases in future years would be between $710 million and $816 million annually. According to Treasury projections this leaves the trust fund with total annual revenues of $14.7 billion in FY2011. According to the FAA these increases may be insufficient to fund the FAA's already identified needs for NGATS and other ongoing air navigation program upgrades, as well as for expected increases in other necessary FAA program activities.

In the President's budget submission for FY2008 it appears that Treasury has increased its year-over-year revenue estimate for FY2007 to approximately $937 million over the FY2006 level, with a further increase of $492 million in FY2008 (which is below the annual rate of increase predicted in the summer of 2006).[10] In both FY2007 and FY2008, the budget submission assumes that FAA spending will continue to exceed total income in each year.[11] The budget does not provide any estimates for the period beyond FY2008.

An estimate produced by the Congressional Budget Office (CBO) in September 2006 appears to some to be somewhat more positive about the future of the trust fund's finances long-term.[12] CBO's estimate expected that the annual trust fund revenue stream would increase at a slightly higher rate than inflation and that the trust fund, assuming FAA spending only increases at the rate of inflation, would have an uncommitted balance of $4.3 billion in 2011 and an uncommitted balance of $18.6 billion in 2016. In the CBO analysis "the trust fund can support about $19 billion in additional spending over baseline levels (the 2006 funding level growing with inflation), provided that most of that spending occurs after 2010."[13] It should be pointed out that this positive outcome is highly dependant on a stable general fund contribution (a situation that has not always been the case, as will be discussed in the next section of this report) and on

[9] U.S. Department of the Treasury. Office of Tax Analysis. *Airport and Airway Trust Fund: FY2007 Mid Session Review. Current Law Baseline.* Summer 2006.

[10] Office of Management and Budget. *The Budget for Fiscal Year 2006, Appendix.* February 5, 2007, p. 799.

[11] The budget assumes reduced future spending for certain FAA programs in FY2008 (primarily in the AIP program) leading to a situation in which the uncommitted balance in the trust fund would increase modestly to $3.1 billion.

[12] U.S. Congressional Budget Office. CBO Testimony. *Financing Investment in the Air Traffic Control System,* Statement of Donald B. Marron, Acting Director, House Committee on Transportation and Infrastructure, Subcommittee on Aviation, September 27, 2006.

[13] Ibid., p. 6.

relatively stable growth in inflation and a concomitant increase in FAA spending. Subsequent data provided by CBO that assumes a general fund contribution in line with the provisions of Vision-100, results in a significantly lower uncommitted balance in the trust fund over the same period. In this scenario, the uncommitted balance decreases slightly each year from the current level, none the less remaining slightly positive through the next decade.

A further estimate produced by the Aircraft Owners and Pilots Association (AOPA), predicts that the trust fund will have an adequate revenue stream well into the future.[14] Unlike the FAA view, AOPA and others sharing their perspective, believe that rising airline fares and airline activity, increased income from fuel taxes, and cost reductions from air traffic control (ATC) modernization, will be sufficient to result in an unexpended trust fund balance of over $4 billion by FY2011, with the possibility that the balance could be considerably higher.

There is still another view, which suggests that the trajectory of the future revenue stream into the trust fund, cannot be predicted with any accuracy, thereby making claims about the trust fund's future health, or lack thereof, mostly a matter of conjecture at this point. An analysis prepared by the Airports Council International - North America (ACI-NA) suggests that there are a wide range of possible revenue and spending scenarios for the trust fund in the years ahead; some positive, many others negative.[15] From the ACI-NA perspective it is this uncertainty that justifies a renewed look at the trust fund revenue structure. ACI-NA, however, has not aligned itself with a specific proposal on how to fund the FAA in the future.

The General Fund Share and the "Public Interest"

Defining the Public Interest

In the discussion about aviation user fees, the term public interest has had a multiplicity of meanings over the last six decades. In the current context of federal aviation policy, the public interest is usually viewed as being synonymous with the general fund contribution.

Much of the public interest debate stems from the economic concept of a public good.[16] Some elements of the aviation industry, especially general aviation, long claimed that the airways system was a pure public good and should therefore be paid for exclusively by government. A public good is normally viewed as something that cannot be produced efficiently in the marketplace. The classic example of a public good is defense, which is normally viewed as something that only government can adequately provide. Defining a public good, however, is not as simple as the defense example would make it sound. Whole sections of economics text books are dedicated to the understanding of what constitutes a public good. What these text book definitions suggest is that a product can be a public good if it meets several tests. The two most important are nonexclusivity and nonrivalry. Nonexclusivity refers to the fact that one cannot be

[14] http://www.aopa.org/whatsnew/la-userfees.html.

[15] Chambers, Charles R. Airports Council International. Giving Airports the Tools to Increase Capacity. Presentation at the 86th Transportation Research Board Annual Meeting. Washington, DC. January 22, 2007.

[16] The discussion here presents an extremely simplified view of a public good. For further information, see Walter Nicholson. *Intermediate Microeconomics and its Application*. Fort Worth, Texas: Dryden Press, 1999, p. 531; or Joseph E. Stiglitz. *Economics of the Public Sector*. New York: W.W. Norton Co., 1986, p. 599. The information in this section largely derives from these two texts.

excluded from benefitting from the good whether one pays for it directly or not. A nonrival good is one where there are no marginal costs associated with producing an additional unit of whatever the good happens to be. A good that could meet both of these tests without any caveats could be viewed as a pure public good. A good that can't meet this test for any variety of reasons, but still might be provided exclusively by government, is an imperfect public good. The majority of economists who have written on this subject appear to view air traffic control as an activity that aligns best with the definition of an imperfect public good.

Throughout the 1940s, 1950s, and 1960s, many aviation interest groups regarded provision of airways services as a public good and did not believe they should be charged for system use. As late as 1969, in hearings before the House Committee on Ways and Means, the Aircraft Owners and Pilots Association (AOPA) was suggesting in relation to the airways system that:

> Government programs adopted in the public interest and imposed by law should be paid for by the public. Therefore, such programs should be financed by general taxation—not selective taxation disguised as "user fees."
>
> As applied to airway, airport, and aviation services and facilities provided by government, these principles mean that AOPA is opposed to financing them through user charges. These facilities and services were established in the public interest. AOPA believes they are still in the public interest.[17]

AOPA's position could be said to have defined one end of the spectrum, in its opposition to user fees. An AOPA comment during the same hearing that "the air was provided by Nature at no cost to anyone" left little doubt as to their dislike of user fees.[18]

The 1970 Act would in the end reject the position held by AOPA, instead more-or-less adopting the view that the public interest was not necessarily the same as a public good. The framers of the legislation ended up agreeing with the authors of the various FAA and predecessor agency reports that the public interest equated to the use of the system by the military and other government aircraft, with some accommodation for the value of the system to the public in general, whether they flew or not.[19] It should be pointed out that in the current debate about reauthorization there are no longer any groups calling for complete federal funding (i.e., 100% of funding from the Treasury's general fund) of the system, as many did well into the 1970s.

The General Fund Share

Since the existing tax and fee structure was created in 1970 there has been general acceptance of the aforementioned concept that there is a public interest component to the operation of the national aviation system. From the perspective of federal aviation policy, the public interest generally refers specifically to that portion of the cost of the FAA's operation of the airway system that is appropriated from the Treasury's general fund. This is the amount that is supposed to equate to what the military, government, and nonuser beneficiaries (also known as societal

[17] U.S. Congress. House Committee on Ways and Means. Administration's Proposal on Aviation User Charges. Hearings. 91st Congress. 1st Session. September 16-19, 1969. U.S. Govt. Printing Office. Washington, 1969, p. 110.

[18] Ibid., p. 125.

[19] An example of the type of aviation service that provides value to the public in general would be a regional air ambulance/evacuation system.

users) of the aviation system might have contributed to the aviation trust fund through the payment of user fees, if they actually paid these fees. This has been one of the most contentious elements of the aviation funding debate and is likely to remain so in the year ahead. In sum, many aviation interest groups and congressional authorizing committees believe that the federal general fund contribution to the FAA's annual appropriation is too small to correspond to the existing and potential military and other public benefits of the airways system. Conversely, the FAA, OMB, and other government agencies, as well as congressional appropriations and budget committees, usually believe the general fund contribution is too large.

The authors of the 1970 Act envisioned that the trust fund would primarily support FAA capital programs. Although there are some who contend that the trust fund was intended "only" for capital programs, several studies have suggested that this was not the case, and that the 1970 Act allowed trust fund revenues to be spent for noncapital, mostly operations and maintenance activities.[20] Since President Nixon unsuccessfully sought to fund all FAA activities out of the trust fund in the early 1970s, a tension has existed between those who seek to maximize use of the trust fund for all aviation purposes and those who seek to have its funds directed only or primarily toward capital activities. As **Table 3** shows the general fund contribution to overall FAA appropriations has varied over the last decade ranging from a low of 0% in FY2000 to a high of 38% in FY1998 and FY1999. In the most recent five year period, however, the general fund share has averaged around 20%.

The general fund contribution permeates every aspect of the overall trust fund discussion. CBO's work, for example, indicates that a stable trust fund contribution in line with the recent annual rate goes a long ways toward insuring the health of the trust fund long-term in and of itself. Interest groups have long sought a relatively high and relatively stable annual contribution to the FAA's budget. The figure of 25% is often discussed as a target in these discussions, but these proposals are best viewed as informal. The FAA, DOT, and OMB have often sought to minimize the trust fund contribution, believing, as mentioned above, that user fees should be the primary source of funding for the FAA and that general fund contributions should be limited to the amount comparable to the public use as determined by stringent cost allocation determinations.

Cost Allocation

The concept of cost-allocation among system users and non-users is a sometimes contentious element of the discussion of federal aviation user fees, especially as it regards the general fund contribution. The 1970 Act required a new cost allocation study that was expected to be much more comprehensive than those done prior to that date. This study was supposed to settle many of the unresolved questions at that time about which group should actually pay for which portion of the system's costs. The report, completed in 1973, achieved few of these goals and instead became a target for criticism, especially by the GA community. The 1973 Report suggested that the military/public share of system costs was somewhere between 19.6% and 32.1% of total

[20] U.S. Congressional Budget Office. *The Status of the Airport and Airway Trust Fund*. Washington, CBO, 1988. pp. X, 1-7; and U.S. General Accounting Office, *Whether the Airport and Airway Trust Fund Was Created Solely to Finance Aviation "Infrastructure."* B-281779. Washington, GAO, 1999, 16 p.

system costs.[21] Further, the 1973 report created additional controversy by suggesting that no share of FAA expenditures should be allocated to nonusers of the aviation system.[22]

The principal result of the unhappiness with the 1973 Report was a call for a new one. The FAA completed a new study in 1978 using a somewhat different methodology that indicated that the nonuser (public interest) share of system costs was 26.4%, with the military/government share put at 10.1%.[23] These findings played an important role in the discussion of what the general fund contribution should be in the run up to reauthorization of the FAA that was slated for 1980, but instead took place two years later.

Since 1978 there have been several additional cost allocation studies performed either by the FAA or at the FAA's behest using outside contractors. The findings of these studies were not as controversial as those of the 1970s. In part this was because Congress never chose to specifically link tax and fee rates to the cost allocation results, even when the FAA and others suggested that it should. The cost allocation findings for all of the major studies since the 1970 Act are included in **Table 4**.

The Corporate/Business Aircraft Question

Like the public interest allocation, the GA allocation has also been controversial. In this instance, however, the concern has not so much been with the overall GA user group allocation, but rather that the definition of general aviation is so broad that it encompasses a wide range of users who operate very differently within the ATC system. Of particular concern has been that sub-class of GA that operates in the same part of the ATC system as the commercial air carriers (primarily turbine (jet) powered aircraft). Critics of the cost allocation process have often suggested that GA be broken into user sub-classes that are better matched to how they use the ATC system and in turn their proportional impact on the system. In part this is because some observers believe that the existing tax and fee system is not charging high performance GA users of the ATC system fees that are commensurate with their use of the system. GA proponents, however, have argued that they are operating in a system designed for the air carriers that they would not otherwise need, and that they are incidental system users. Therefore, they reject the idea that their activities should be taxed at a different, i.e. higher, rate.

[21] Eastman, Samuel Ewer. General Aviation and the Airport and Airway System: An Analysis of Cost Allocation and Recovery. *Transportation Research Record*. No. 840. Washington: Transportation Research Board, 1982, p. 28.

[22] Ibid., p. 27.

[23] A societal user element was part of the public interest component in the 1978 and 1986 reports, but has not been stated in any of the three cost allocation efforts completed since.

Table 4. Principal FAA Cost Allocation Reports: Allocation of Aviation Activity by User Group, by Report Year

(in percent)

	1973	1978	1986	1992	1997	2007
Air Carrier	50	50	60	62	81	73.5
General Aviation	30	24	27	26	12	15.6
Public Users	20	26	13	12	7	4.8
Overflights					1	
Flight Service Stations						6.1

Source: FAA Cost Allocation Studies for the year indicated and Federal Aviation Administration, Office of Aviation Policy and Plans, A Cost Allocation Study of FAA's FY1995 Costs, March 19, 1997, and FY2005 Cost Allocation Report, January 31, 2007.

Note: Air Taxi industry moved from GA to Air Carrier in the 1997 report. Overflights were not calculated prior to 1997 report. Flight Service Station (FSS) activity was assigned to user groups in reports prior to 2007. FSSs are a source of preflight and some inflight services for aviation system users. They are use primarily by GA.

The FY2007 Report

With its new report, the FAA is attempting to establish a firm link between the costs incurred by the ATO for supplying air traffic services, and a newly proposed user fee system intended to pay for those services (the provisions of the FAA's reauthorization proposal will be discussed later in this report). FAA believes that the argument for this link is on much firmer actuarial grounds than its previous attempts to link agency costs to taxes and fees. This is due to its relatively new cost allocation system (CAS), which for the first time is providing detailed cost information down to the so-called service delivery point (SDP).[24] Other improved data sources are also viewed as contributing to an improved cost allocation study. Finally, the FAA believes that with its new cost allocation methodology (called CAMERA) it has created a mechanism that can be used repeatedly over time, with significant confidence, to adjust the user and other fees it is proposing in response to changing industry use patterns.

The FAA believes that costs should be allocated as shown in the **Table 4** above. As can be seen, the results differ significantly from those obtained in previous years. The FAA argues that the new results accurately reflect the industry's current use structure, whereas earlier studies done using different methodologies and financial starting points are not directly comparable to the new results.

The 2007 report differs from previous reports in several aspects. The primary change is that it concerns itself primarily with allocating costs associated with its Air Traffic Organization (ATO) activities, which it does on a fully allocated basis[25]. Some previous reports used total agency obligations and other starting points thereby attempting to allocate costs amongst all FAA activities (airports, research, safety, and security, etc.). Another important change is the assignment of users into two principal groups: a high performance group (all turbine (jet)

[24] A major complaint about previous cost allocation efforts has been that the FAA could not actually provide detailed information about what it cost to operate each of its facilities in real terms. The new CAS has been created in part in response to demonstrated congressional concerns.

[25] Related FAA administrative and overhead costs appear to be included in the allocation process.

powered aircraft) and piston aircraft group (all piston powered aircraft and helicopters (regardless of power source)). By this action, the FAA is attempting to better stratify general aviation system users. The new cost allocation system suggests that high performance GA (turbine) aircraft use 9.7% of system capacity, while other GA users should be allocated 5.9%.

The FAA Funding Debate

In 2005, the FAA announced that it was beginning a detailed examination of how the agency was funded and whether there could be a more appropriate funding mechanism. A key element of that examination is the issue of whether the existing indirect system of taxation should be replaced by direct charges for specific air navigation services. It became clear in 2006 that the FAA would seek a new revenue system when FAA Administrator Marion Blakey remarked that using the existing ticket tax mechanism was a system that "might as well be tied to the price of milk."[26] Although the elements of the FAA plan were still unknown in their totality at that point, enough had been surmised that aviation interest groups began actively supporting or opposing various potential elements of a direct user fee system.

Aviation Interest Group Perspectives

While the FAA continued its studies, aviation interest groups launched their own preemptive strikes for and against a fee-for-service system of financing. The airline industry, through the Air Transport Association (ATA), struck first, making its own proposal for a new financing system in early March 2006.[27] ATA's so-called "Smartskies" proposal would be based on direct charges for departures and flight duration that would apply to all aircraft regardless of size or type of use. The exception in the ATA proposal was that piston-powered general aviation aircraft would continue to pay only a fuel tax. By its own estimates, the ATA proposal could shift an estimated $2 billion of system costs to certain GA sector users, primarily corporate aircraft, which the ATA believes currently underpay for their use of the ATC system.[28] The ATA proposal goes beyond just fee structure changes and suggests that the FAA's air traffic organization become an autonomous part of the agency, with the ability to operate without the need for direct congressional appropriations. Instead the fees collected from aviation system users, which would still be deposited in the aviation trust fund, would be immediately available to the ATO. One final feature of the proposal would give the ATO the authority to issue bonds for infrastructure improvements backed by expected future fee collections.

On the same day that the ATA made its proposal, a group of GA-related interest groups released a statement suggesting that the "airlines' plan for improving the air transportation system is for them to pay less and control more."[29] From the GA perspective, the ATA case that certain GA users underpay for their use of the ATC system is incorrect for a number of reasons. The GA contention is that the current structure of the ATC system was primarily created to support commercial airline use and that they are not putting a significant additional burden on the ATC

[26] Wald, Matthew W. "F.A.A. Seeks New Source of Revenue in User Fees." *The New York Times.* March 7, 2006, p. A18.

[27] Bond, David. "Fire when Ready." *Aviation Week & Space Technology,* March 13, 2006, p. 47.

[28] Ibid.

[29] http://web.nbaa.org/public/news/200607eaa/GAUnitedAgainstUserFees.pdf.

system as a result of their flying activities. From the GA perspective fuel taxes remain the most appropriate type of user fee, and the ATA's proposal to remove the ATO's activities from the regular congressional appropriations process is viewed as undesirable public policy.

The above discussion is a simplification of the very complex and contentious issue about who pays and who should pay for FAA aviation services, that goes back for at least six decades. It should be noted that the discussion of aviation user fees has been almost exclusively a conversation between the federal government and aviation industry. For example, the views of the largest group of current contributors to the aviation trust fund, airline passengers, are not well known. Little non-government or non-interest group-funded research on the aviation user fee system has been done and the lack of such outside research in itself might be a subject worthy of some attention as part of the reauthorization debate.

Legislative Proposals and Options

This section discusses the finance-related provisions of the legislative proposal put forth by the FAA, hereafter referred to as the FAA proposal, then looks at the comparable provisions of legislation reported by the House (H.R. 2881) and by the Senate authorizing and finance committees (S. 1300 and S. 2345). At the time of this update, the Senate has not yet scheduled floor time for consideration of its reauthorization legislation.

The FAA Proposal (H.R. 1356/S. 1076)[30]

In H.R. 1356/S. 1076, the Next Generation Air Transportation System Financing Reform Act of 2007, the FAA proposes the most significant change in aviation finance since the federal program was created by the 1970 Act.[31] The FAA proposal provides for a three year authorization period (FY2008 - FY2010) during which the FAA would transition from its existing trust fund/general fund based financing system to a system based on new direct fees and existing excise taxes, as well as general fund monies. Although the trust fund would be continued, its overall role in funding the agency is significantly reduced. The proposal uses a mix of direct fees (referred to as user fees by the FAA and throughout this section), excise taxes, and general funds, to pay for the FAA's ATO related activities. The proposal funds the FAA's safety activities primarily from general funds, but also allows the FAA to collect user fees related to its registration and certification activities for this purpose. Excise taxes would be used to support the continued aviation trust fund which is dedicated primarily toward funding AIP, but also supports part of RE&D and essential air service (EAS) programs.

The FAA proposal does not set new user fee rates for ATO services. Rather it enunciates a framework for how fees can be set and creates an Air Transportation System Advisory Board (Board) to assist the FAA Administrator in establishing appropriate fee levels and mechanisms, among other things. Ultimately, however, the Administrator would be the sole decision maker on fee setting issues.

[30] The FAA's proposed legislation and supporting documentation are available at http://www.faa.gov/regulations_policies/reauthorization/.

[31] Representative Oberstar introduced the FAA proposal (H.R. 1356), by request, on March 6, 2007. Senator Inouye introduced the FAA proposal (S. 1076) by request, on March 29, 2007.

The proposal adopts a new financial structure for the FAA that corresponds to the new program funding regime. To facilitate this structure: it would create two new accounts in the Treasury to receive the newly imposed user fees; allows for the establishment of a reserve fund; and allows the FAA to issue bonds to speed-up F&E equipment acquisition. Agency spending would still be subject to annual congressional appropriations.

The FAA proposal is controversial, and several aviation interest groups came out against it almost as soon as it was introduced.[32] The proposal, however, has supporters, especially the ATA, which views it as a positive step forward.[33] Hearings on H.R. 1356, which embodies the FAA proposal, have been scheduled in both the House and the Senate.

Proposed Tax and Fee Structure

The principal feature of the FAA proposal is the creation of a direct user fee system to pay for the majority of the agency's costs associated with its ATO activities. The proposal, however, does not recommend a specific user fee structure. Instead, it lists the criteria that must be considered in setting fee levels and leaves it to the Board and ultimately the FAA Administrator to actually set the fees. The proposal would require that the Administrator consult with affected parties prior to establishing a fee structure, but gives the affected parties no further role in the process.[34]

ATO User Fees

Specific ATO user fees could be set for enroute, oceanic, and terminal area flight activity. According to the language in the proposal, enroute and oceanic fees can be based on "distance traveled or any other method that is consistent with the treaties and international agreements to which the United States is a party." Since much of the rest of the world uses aircraft weight and the distance flown as part of its fee setting process, it would appear that a similar fee setting regime could be implemented here.[35] Overflight fees (for aircraft transiting U.S. airspace) would be eliminated and these flights would be subject to the enroute and oceanic fee system.

Fee setting for terminal area activities could be somewhat more complicated because the proposal allows for fees to be differentiated at various locations and at different times of the day. Factors that could be included in the terminal fee structure may include aircraft takeoffs/landings (at airports with over 100,000 passenger boardings per year), aircraft weight, operations at a large hub airport (1% of total U.S. enplanements), time of day or day of week at congested large hubs, and different fees for daytime and nighttime operations.

User fees would be imposed on all commercial users of ATO services irrespective of aircraft type. For the purposes of determining which tax certain aircraft might pay, the applicability of IRS regulations would delineate between commercial and noncommercial users. Although GA aircraft

[32] Wolfe, Kathryn. *"FAA's Funding Proposal Doesn't Fly With Entire Aviation Industry, Lawmakers." CQ Today - Transportation and Infrastructure.* February 16, 2007.

[33] http://www.airlines.org/news/releases/2007/statement_12-14-07.htm?PF=true.

[34] It would appear that the Board, with wide aviation industry representation, is supposed to be part of the consultation process, although this is unstated in H.R. 1356.

[35] The airline industry, and groups such as the air cargo industry, have traditionally opposed weight-based tax structures.

will operate outside of the ATO user fee system most of the time, they are subject to terminal related fees at congested large hub airports.

The proposal would require that fees be set in relation to the costs incurred for providing ATO services. In setting the fees mentioned above the FAA would be prohibited from using flight altitude as a fee setting factor. It could offer incentives, by way of reduced fees, for the purchase and use of equipment that would enhance an aircraft's safe and efficient operation in the air traffic system. In addition, it could seek sufficient user fee revenues to establish a reserve fund to be available if system revenues fail to reach projected levels.

The ATO would also receive funding from excise taxes. The proposal suggests that a 70 cent per gallon fuel tax be imposed on all GA users (kerojet or aviation gasoline). Of this 56.4 cents per gallon is dedicated to ATO activities and 13.6 cents is reserved for the aviation trust fund. These fees are to be indexed to inflation beginning in 2009 and can be modified by the Administrator in future years. The FAA believes that it is no longer necessary to differentiate the tax rate for turbine (avgas) and piston (aviation gasoline) aircraft users, as has been done in the past, because of the much higher fuel use rates of turbine aircraft.

Safety and Operations User Fees

Safety and non-ATO operations activities would be primarily funded by Treasury general funds. In addition, the FAA proposes registration fees for specified services at rates detailed in the proposed legislation. By way of example, aircraft registration would be subject to a $130 fee and issuing an airman medical certificate would cost $42. Many of the activities listed here were previously provided at nominal fee levels.

Fees are also to be imposed for FAA certification activities. Specific fees for activities such as certification of a large foreign repair station or a maintenance technical school are not enumerated in the legislation. Rather, the Administrator is to set fees at levels that correspond to the costs imposed on the FAA for providing the certification service in question.

Trust Fund Excise Taxes

The largest source of revenues for the trust fund would come from the 13.6 cent per gallon fuel tax on all aircraft irrespective of fuel type. These taxes are to be adjusted for inflation and can also be adjusted up or down if the FAA cost allocation process so dictates.

The other principal source of funding for the trust fund is by continuation of the international arrivals/departure fee which is set at $6.39 per event. This tax can also be adjusted for inflation and/or cost allocation reasons.

Although the FAA proposal is based primarily on direct user fees, there is a transition period during which the trust fund would continue to provide some funding for ATO and all other FAA activities, albeit at a diminishing level.

Air Transportation System Advisory Board (Board)

The FAA proposal would create a 13-member Board charged with advising the Administrator on user fee and other issues at his or her request. The Board's membership would include the

Administrator, a Department of Defense (DOD) representative, three members representing "the public interest," an airport member, three airline members representing different size air carriers, a cargo airline, member, a GA member, a business aviation member, and a representative of the aviation manufacturing industry. Appointment of all members would be made by the Secretary of Transportation. In addition, the proposal would prescribe the Board members' terms and provide guidance on its administrative functioning.

The Board would advise the Administrator on a wide range of FAA programs and activities. At the outset, however, it would appear that the Board's principal duty would be to help with the creation of the new user fee system. According to provisions of the proposal, "prior to establishing or modifying fees ... the Administrator shall consult with and seek the recommendations of the type and level of such fees." A procedure would be established whereby the Administrator, who has ultimate fee setting responsibility, could disagree with the Board's recommendations and establish fees by publishing the reasons for disagreement in the Federal Register.

Should the FAA proposal be enacted into law, it will be very much up to the Administrator to determine how, and how much, they might wish to use the Board's expertise. There is nothing in the legislation as proposed that automatically gives the Board any power to exercise its advisory role, especially in a public forum. This is because the Board's actions would not be subject to the public meeting or any other administrative provisions of Title 5 U.S.C. Further, it is not clear that the Board would have access to information about cost allocation and other subjects, except to the extent that the Administrator wishes to make this material available to the Board.

Budget and Structural Provisions

As suggested by the new tax and fee proposal, the FAA would be reorganized from a budgetary perspective. ATO assessed user fees would be deposited into a newly created Treasury ATO account. Similarly, registration and certification fees would be deposited in a newly created Treasury safety and operations account. The trust fund, however, would remain intact, but its role in financing overall federal aviation activities is greatly reduced.

The new user fees would require a new collection system to ensure that they are deposited in the appropriate account. The Administrator would be charged with developing this system, perhaps with the help of the Board. The FAA proposal would give the Administrator some enforcement powers to assist in the collection effort long term.

FAA spending would still require annual liquidating appropriation by Congress. The relationship between the FAA and congressional appropriations committees would apparently be unchanged. From a budgetary standpoint, however, it appears that the offsetting collections process created by the proposal would remove FAA spending from the discretionary part of the budget. At least one source has suggested that the new funding arrangement could run afoul of the newly created pay-as-you-go rules adopted by the House of Representatives.[36] In short, it is unclear at this point how the new funding arrangement proposed here would play out as part of the congressional budget and appropriations process.

[36] *Transportation Weekly.* "Administration FAA Bill Likely Violates House Pay-As-You-Go Budget Rule." February 28, 2007, p. 13.

Congressional finance committees (House Ways and Means and Senate Finance) could lose their existing jurisdiction over some aspects of the FAA tax and fee setting. These committees would likely retain their jurisdiction over the excise taxes to be deposited in the aviation trust fund, but would have no role or oversight over the newly established user fees. Authorizing committees normally have jurisdiction over offsetting collection programs of the type that are proposed for the ATO, and for safety and operations. As proposed, however, all fee setting powers would reside with the Administrator, meaning that a specific oversight role for the authorizing committees is not defined in the legislation.

Bonding Authority

The Secretary of Transportation would have the ability to issue Treasury bonds to facilitate a rapid implementation of the NGATS program. Up to $5 billion could be issued at interest rates established by the Treasury. To finance the bonding the Secretary could increase user fees by an amount needed to repay the bonds with interest. These additional revenues would not go into the new Treasury accounts mentioned earlier, but would flow directly to the Treasury. Full repayment would be required by the end of FY2017.

The concept of using bonds to speed up the acquisition of F&E capital items has been discussed for years. The dedicated revenue stream to the ATO account would make bonding possible as part of the FAA's program for the first time. It has been argued that having this authority would allow the FAA to better program its acquisition requirements over an extended period of time, as opposed to the potential uncertainty of the annual appropriations process. In addition, access to additional funds could give the agency the ability to pursue a number of technology and equipment upgrades at the same time. The main argument against bonding is that the interest payments make it a more expensive way to pay for infrastructure than through direct appropriations.

Agency Funding

The FAA proposal would provide overall authorization levels for the FY2008 - FY2010 period of nearly $28 billion. This number, however, cannot be meaningfully compared to previous legislation because it excludes much of the funding required by the prospectively user fee funded ATO, and safety and operations activities. These activities would now be linked to actual system costs which cannot be determined this far in advance. To the extent that the authorized levels can be compared they suggest a significant annual cut in airport improvement program (AIP) and essential air services (EAS) funding from the FY2007 enacted levels.

Observations

The proposed FAA legislation is seen as ambitious and far reaching, encompassing many of the goals delineated by the agency when it started its review of the aviation finance system in 2005.[37] The proposal would establish a new funding mechanism for aviation activities directly linking user taxes and other fees to the costs incurred for the operation of air traffic and other FAA services.

[37] http://www.faa.gov/regulations_policies/reauthorization/media/Financing_Principles.pdf.

The FAA proposal, however, contains many provisions that may cause congressional concern. The broad delegation of fee setting and other authority to the Administrator, in particular, is likely to be viewed by many as a significant transfer of power from the congressional to the executive branch. This could be very problematic, especially for authorizing committees who could lose some of their existing oversight jurisdiction. This problem is especially acute vis-a-vis the activities of the Board which could largely be hidden from public view by virtue of the Board's proposed exemption from U.S.C. Title 5 regulations.

The user tax proposal is complex and includes many unknowns. The FAA proposed legislation, as mentioned above, leaves the task of actually establishing user fees to the Administrator, perhaps with the advice of the Board, making it impossible for system users to have any certainty as to what specific user fee obligations they would face in the years ahead. This lack of certainty is likely to make many system users cautious of this proposal, even if they believe they might benefit from it.

This sense of caution is also likely to extend to programs funded out of the trust fund. For example, the size of the AIP appears to be closely tied to revenues expected from trust fund dedicated excise taxes. The FAA is proposing a smaller AIP for the years ahead. If Congress were to increase the AIP to just its FY2007 level for the life of the new reauthorization it is quite possible that excise taxes would have to be adjusted upward.

The FAA Administrator has stated that this is a "once in a lifetime opportunity" to create a new aviation finance system to ensure the adoption of NGATS.[38] It is not at all clear that this viewed is shared by a majority of the aviation community at this point in the reauthorization debate. In 1970, when the existing aviation funding system was created, a shared sense of crisis seems to have permeated the entire industry. That does not, however, seem to be the case today. As a result, it remains to be seen whether Congress will choose to follow the guidance put forth by the FAA or choose a different path toward reauthorizing federal aviation activities.

S. 1300

The Aviation Investment and Modernization Act of 2007 (S. 1300; S.Rept. 110-144) proposes a four-year authorization with modest overall budget increases and larger increases specifically for facilities and equipment (F&E) modernization. As reported by the Senate Committee on Commerce, Science, and Transportation, the bill largely ignores the FAA proposal and maintains the existing funding structure for the FAA, with a couple of important caveats. First, the Commerce Committee lacks jurisdiction over taxes and fees, which are in the domain of the Senate Committee on Finance. This being the case, the bill does not include tax and fee provisions, although, as will be discussed subsequently, it does include a significant revenue-raising element. In addition, the Commerce Committee has proposed an oversight Board and provided for bonding authority. In each instance, S. 1300 differs from provisions in the FAA proposal.

[38] http://www.faa.gov/news/testimony/news_story.cfm?newsId=8184.

Modernization Surcharge

The most contentious element of S. 1300 is a proposal to levy a $25 surcharge on flights[39] operating in the national airspace system. The surcharge is designed to pay for a significant portion of FAA costs associated with the NGATS modernization program. Revenues collected by the surcharge are to be treated as "offsetting collections" for congressional budgetary purposes, and are to be deposited in a new Treasury-created air traffic modernization fund. As an offsetting collection the surcharge is under the jurisdiction of the authorizing committee, in this case Senate Commerce. Spending of these funds is subject to authorization and to subsequent annual appropriation.

Although the bill provides for broad industry collection of the surcharge, it exempts a large segment of annual flight activity from the fee. The major exemptions are for all piston powered aircraft, and for all turboprop and turbojet aircraft operating outside of controlled airspace. Other exemptions are provided for certain intrastate flights (Alaska and Hawaii) where neither a terminal radar approach control (TRACON) or other FAA ATC facility is involved in servicing the flight. Other exemptions apply to military and public aircraft (U.S. and foreign), air ambulance aircraft, agricultural aircraft, and Canada-to-Canada flights.

The surcharge is to be payable to the Administrator of the FAA. The Administrator is also charged with implementing the surcharge collection process. Limited guidance is provided in the bill as to how the collection process might work, leaving it largely to the Administrator and Treasury to establish a workable process. The bill provides for penalties for non-payment of the surcharge.

As reported, the provision would provide a portion of the annual F&E budget beginning in FY2009 at a level of $412 million. Funding for the subsequent two years of the authorization period is provided at $423 million and $436 million, respectively.

A related provision in the bill requires that all aircraft filing flight plans with the FAA, including those exempt from the surcharge, include information as to whether or not a flight is being operated for commercial purposes (for compensation or for hire). Collecting this information is apparently directed toward filling what many industry observers see as a large gap in existing industry data (i.e., determining what portion of GA flights is for commercial rather than personal purposes).

Surcharge Issues

The surcharge is viewed by the GA community as a user fee, and is opposed for the same reasons that GA opposes the user fee portions of the FAA proposal (i.e., GA believes that it creates marginal demands on the ATC system and that its contribution to funding the FAA is best handled by the already existing fuel tax system). Conversely, the airline industry generally supports the surcharge proposal and views it as a positive move toward getting all system users, and especially corporate aviation, to pay for their fair share of ATC system costs.

Within the Senate Commerce Committee, support for the surcharge proposal was closely split. An attempt to strike the surcharge from the reported version of the bill failed on a vote of 12 to 11. Senator Ted Stevens, having voted initially to abstain on the amendment, later changed his vote in

[39] The bill defines a "flight" as a takeoff and landing by an aircraft.

order to provide a majority for moving the surcharge provision for future consideration on the Floor.[40]

In addition to the philosophical questions about the desirability of user fees, the question can also be raised about whether a $25 surcharge would be sufficient in and of itself to provide the amount of designated modernization funding authorized in S. 1300. The answer, based on a simple analysis of industry data, is that this might not be the case.[41] As a result, supplemental revenues for the modernization fund may be considered by the Senate Committee on Finance. There has already been an open discussion in industry circles about the need to consider possible fuel tax and/or other fee increases in order to meet both modernization needs and additional funding needs for other FAA activities.

Leveraged Financing for Next Generation Air Traffic Control System (Bonding Authority)

S. 1300, like the FAA proposal, would provide the FAA with up to $5 billion in bonding authority to facilitate expedited spending for NGATS-related capital projects. Other administrative aspects of the bonding proposal differ, however. For example, funds would be available for the period FY2009 through FY2025, instead of FY2009 through FY2017. Bonds could be used to pay for NGATS projects listed as part of the FAA's Capital Improvement Program (CIP) at the discretion of the Secretary of Transportation, with the approval of the Office of Management and Budget (OMB). Interest rates would be set by the Treasury. Repayment would be made from the surcharges deposited in the modernization fund, on which repayment would have priority over other types of modernization spending. Bonding, for capital improvements, as opposed to using appropriated funds, remains a controversial concept for the same reasons enunciated in the earlier discussion of the FAA proposal.

Air Traffic Control Modernization Oversight Board (Oversight Board)

The Oversight Board that would be created by this bill, unlike the Board proposed by the FAA, has real power and, some might argue, some unusual powers as well. S. 1300 creates a seven-member Oversight Board appointed by the President and confirmed by the Senate. Membership consists of the Administrator of the FAA, a representative of DOD, a representative of the "public interest," the chief executive officer (CEO) of an airport, the CEO of an airline, a representative from one of the FAA's labor organizations, and a representative of the GA segment of the industry.

The Oversight Board is assigned a number of functions, some advisory in nature and some that give the Oversight Board approval authority over FAA actions. As stated in the bill, these functions are as follows:

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[40] "Senate Committee Approves FAA Reauthorization," *Transportation Weekly*, Legislative Services Group, Vol. 8, Issue 22, May 23, 2007, p. 6.

[41] According to the FAA, there were more than 18 million total flights in the U.S. in 2005. If each of these flights were to be taxed, which would not be the case since a large segment of these flights would be exempted from the surcharge, $450 million might be raised. In addition to paying for the modernization fund contribution to F&E, the surcharge would also be used to pay for up to $5 billion in bonds, plus interest, issued in accordance with another provision of the bill.

- Review and advise on FAA modernization, budget, and cost accounting activities.
- Review the FAA strategic plan. Provide recommendations on non-safety elements and advice on safety elements.
- Review ATC efficiency and make recommendations based on its performance.
- Approve all capital expenditures of more than $100 million related to the ATC system modernization.
- Approve the FAA's F&E budget prior to its submission to OMB.
- Approve the CIP prior to its submission to Congress.
- Annually approve the Operational Evolution Plan (OEP).
- Approve the Administrator's choice of a chief operating officer (COO) for the Air Traffic Organization (ATO).
- Approve the selection of the Head of the Joint Planning Development Office (JPDO).

The bill requires that Oversight Board members have certain types of expertise in aviation and organizational subject areas. They also must not have a pecuniary or financial interest (defined by the provision), and not be a member of a group that lobbies on aviation-related legislation. From an administrative perspective the bill allows the Oversight Board to choose its own chairman and vice chairman, makes a simple majority of members a quorum, and allows a majority vote of members present to be sufficient for Oversight Board action. Also, Oversight Board members are exempt from personal liability laws as concerns their official activities.

Discussion

The proposed makeup of the Oversight Board and its role in the NGATS implementation process are likely to raise several questions during further congressional consideration of this proposal. One very notable provision here is that the bill gives equal status vis-a-vis Oversight Board activity to the FAA Administrator and to the representative of FAA's labor unions. This arrangement certainly raises questions about executive branch authority. Given the proposed structure of the Oversight Board, and its ability to choose its own chairman, it is not out of the realm of possibility that the FAA labor representative could have certain powers that are normally associated with the executive branch, especially as regards budget issues.

Another unusual provision is the requirement that the Administrator seek Oversight Board approval before submitting the F&E portion of the annual FAA budget to OMB. This provision can be viewed as an extra step that could potentially slow down the annual agency budget approval process. Hence, the Oversight Board sign-off is likely to require certain accommodations in terms of deadlines, etc.

Questions can be raised about the desirability/likelihood of certain of the conditions to be met by potential Oversight Board members. For example, it seems unlikely that the CEO of an airline would not have a disqualifying financial interest in his/her airline. The same type of question could certainly be raised for the airport CEO member and potentially for the GA member. Further, the member representing the public interest is to have a "fiduciary responsibility" to represent the public, although how this charge is defined is not detailed in the proposed legislation.

The bill allows the Administrator to withhold certain information and documents from the Oversight Board if they reveal proprietary or commercial information. The members of the Oversight Board, having gone through the congressional confirmation process, would normally be viewed as officers of the United States in the same manner as other FAA employees. Certain FAA, and other designated federal employees, routinely deal with this type of information in the normal performance of their duties. It therefore seems unusual that such an exclusion of information, especially if it provided substantive information relevant to capital improvement projects, could be denied to the Oversight Board.

S. 2345

On November 13, 2007, the Senate Committee on Finance reported S. 2345, the American Infrastructure Investment and Improvement Act of 2007, incorporating the committee's recommendations for what is likely to be the revenue title of the Senate FAA reauthorization bill. Its proposal makes some changes to elements of the existing tax and fee structure, but does not create new user fees. As can be seen in **Table 5**, the committee has increased the general aviation jet fuel tax, increased the international departure/arrival tax, and created a new tax system for a particular segment of the aviation industry—fractionally owned aircraft. At the moment, passengers on fractionally owned aircraft are treated by the tax code in the same manner as airline passengers, subject to the airline ticket tax, the segment fee, and international departure/arrival tax. The committee bill would instead treat this industry segment as if it were part of the general aviation industry for the purposes of the aviation jet fuel tax, but would also impose a flat fee departure tax on the aircraft rather than on the passenger. All of the additional revenues collected by the changes in taxation would be deposited in a newly created account within the Treasury and reserved for NGATS-related activities.

Table 5. Proposed Aviation Tax and Fee Changes

Tax or Fee	Existing Tax or Fee Rate (2007)	H.R. 2881	S. 1300—Commerce	S. 2345—Senate Finance
General Aviation Gasoline[a]	19.3 cents/gallon	24.1 cents/gallon	No change	No change
General Aviation Jet Fuel (kerosene)[a]	21.8 cents/gallon	35.9 cents/gallon	No change	35.9 cents/gallon Applies to fractional ownership aircraft
Commercial Jet Fuel (Kerosene)[a]	4.3 cents/gallon	No change	No change	No change
International Departure/ Arrival Tax	$15.10 international departure tax (indexed to CPI) (prorated Alaska/Hawaii to mainland)	No change	No change	$16.65 (indexed to CPI)
Surcharge	No provision	No provision	$25 per departure for non-exempt aircraft	No provision
Fractional Aircraft Ownership per Departure Tax	No provision	No provision	No change	$58

a. Does not include 0.1 cents/gallon for the Leaking Underground Storage Tank (LUST) trust fund.

The Finance Committee bill does not deal exclusively with airline financial issues. Provisions in the bill seek to remedy an expected FY2009 shortfall in the highway trust fund and create a new bonding authority program for intercity passenger rail service. It remains to be seen whether the Senate will consider these provisions as part of the FAA reauthorization bill or consider them separately.

Discussion

There is a difference of opinion as to the need for a surcharge between Members of the Finance Committee and the Commerce Committee that will need to be resolved before work on the FAA reauthorization bill is completed in the Senate. The two bills can be viewed as competing proposals on how additional financing of the FAA should be accomplished. The leadership of Commerce's Aviation Subcommittee strongly favors the surcharge approach to increasing FAA modernization financing, and is opposed to the idea of stripping this provision out of the final bill, which is the position favored by several Members of the Finance Committee.[42] In effect, the Finance Committee has largely taken the GA industry position against user fees. The full Senate, therefore, will decide the ultimate fate of the surcharge proposal.

H.R. 2881

The FAA Reauthorization Act of 2007 (H.R. 2881) as passed by the House on September 20, 2007, seeks higher spending authorizations for F&E compared to S. 1300. Like the Senate Commerce and Finance Committee bills, the House legislation rejects the FAA's financing proposals outright. H.R. 2881 provides for some modest increases in federal aviation fuel taxes, as shown in **Table 5,** but makes no other significant changes in the aviation trust fund tax and fee structure.

As introduced by the Committee on Transportation and Infrastructure, the legislation lacked a revenue title. The committee did, however, make a recommendation to the Ways and Means Committee that aviation jet fuel taxes be increased from 21.8 cents per gallon to 30.7 cents per gallon, and that aviation gasoline taxes be increased from 19.3 cents per gallon to 24.1 cents per gallon. The Ways and Means Committee went along with the recommendation to raise the gasoline tax to 24.1 cents per gallon, but choose to raise the jet fuel tax to 35.9 cents per gallon.

H.R. 2881 also includes a provision calling for the adjustment of existing overflight fees (flights that do not take off or land in the U.S.) (these fees are currently used primarily to fund a portion of the EAS program). The FAA is to adjust these fees by expedited rulemaking to ensure that the fees are reasonably related to the cost of providing air traffic services for overflights. The bill, however, specifically excludes altitude as a factor that can be used in the adjustment of the overflight fees.

Registration, Certification, and Related Fees

H.R. 2881 includes fees for aircraft registration, airman certificates, and other types of FAA-provided documentation at the same levels proposed by the Administration. It also provides that

[42] *National Journal's Congress Daily AM.* Senate Standoff Prompts Move to Extend Aviation Taxes. September 26, 2007.

these fees may be adjusted over time if the FAA's cost accounting system indicates that the cost of providing these services to the aviation sector are higher/lower than the fee levels established in the bill. H.R. 2881 does not, however, follow the lead of the Administration bill and impose a new fee structure for FAA's new large aircraft certification programs and for other activities such as certification of foreign repair stations.

Discussion

Unlike the FAA proposal and S. 1300, H.R. 2881 is notable primarily for what it does not do. The House has decided not to make major aviation tax and fee changes, choosing instead to make relatively small changes to the existing aviation tax and fee system. The modest increases in fuel taxes supported by documents accompanying the bill indicate that the House feels that the existing tax system needs only minor tweaking in order to support more robust FAA spending in the years ahead. This view is largely shared by the GA industry, but not by other sectors of the industry, especially the airlines and airports.

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