

**THE FEDERAL AVIATION  
ADMINISTRATION REAUTHORIZATION  
ACT OF 2009**

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(111-8)

**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
AVIATION  
OF THE  
COMMITTEE ON  
TRANSPORTATION AND  
INFRASTRUCTURE  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED ELEVENTH CONGRESS  
FIRST SESSION

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FEBRUARY 11, 2009

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Printed for the use of the  
Committee on Transportation and Infrastructure



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## CONTENTS

Summary of Subject Matter .....	Page vii
---------------------------------	-------------

### TESTIMONY

Bolen, Ed, President and CEO, National Business Aviation Association .....	32
Brantley, Tom, President, Professional Aviation Safety Specialists, AFL-CIO ..	56
Cohen, Roger, President, Regional Airline Association .....	32
Dillingham, Dr. Gerald, Director, Physical Infrastructure Issues, U.S. Govern- ment Accountability Office .....	7
Elwood, James P., A.A.E., Airport Director, Aspen/Pitkin County Airport .....	32
Forrey, Patrick, President, National Air Traffic Controllers Association .....	56
Friend, Patricia, International President, Association of Flight Attendants, CWA .....	56
Fuller, Craig, President, Aircraft Owners and Pilots Association .....	32
Gless, Robert, Assistant Director, Air Transport Division, Transport Workers' Association of America, AFL-CIO .....	56
Hanni, Kate, President, Flyersrights.org .....	56
Jones, Clayton M., Chairman, President and CEO, Rockwell Collins .....	32
LoBue, Hon. Nancy, Acting Assistant Administrator, Aviation Policy, Plan- ning and Environment, Federal Aviation Administration .....	7
May, James C., President and CEO, Air Transport Association .....	32
Prater, Captain John, President, Air Line Pilots Association, International .....	56
Principato, Gregory, President, Airports Council International-North America .....	32
Roach, Jr., Robert, General Vice President, International Association of Ma- chinists and Aerospace Workers .....	56
Scovel, III, Hon. Calvin L., Inspector General, U.S. Department of Transpor- tation .....	7
Thompson, Hon. Mike, a Representative in Congress from the State of Cali- fornia .....	5

### PREPARED STATEMENTS SUBMITTED BY MEMBERS OF CONGRESS

Altmire, Hon. Jason, of Pennsylvania .....	74
Carnahan, Hon. Russ, of Missouri .....	77
Cohen, Hon. Steve, of Tennessee .....	78
Costello, Hon. Jerry F., of Illinois .....	80
Johnson, Hon. Eddie Bernice, of Texas .....	90
Mica, Hon. John L., of Florida .....	94
Mitchell, Hon. Harry E., of Arizona .....	102
Oberstar, Hon. James L., of Minnesota .....	103
Petri, Hon. Thomas E., of Wisconsin .....	108
Rahall, Hon. Nick J., of West Virginia .....	115
Thompson, Hon. Mike, of California .....	121

### PREPARED STATEMENTS SUBMITTED BY WITNESSES

Bolen, Ed .....	123
Brantley, Tom .....	130
Cohen, Roger .....	142
Dillingham, Dr. Gerald .....	147
Elwood, James P. ....	180
Forrey, Patrick .....	197
Friend, Patricia .....	209
Fuller, Craig .....	236
Gless, Robert .....	243
Hanni, Kate .....	250
Jones, Clayton M. ....	265

# VI

	Page
LoBue, Hon. Nancy, delivered by Lynne Osmus, Acting Administrator, Federal Aviation Administration .....	271
May, James C. ....	293
Prater, Captain John .....	311
Principato, Gregory .....	325
Roach, Jr., Robert .....	345
Scovel, III, Hon. Calvin L. ....	353

## SUBMISSIONS FOR THE RECORD

Schauer, Hon. Mark H., a Representative in Congress from the State of Michigan, letter to Rep. Costello .....	118
Dillingham, Dr. Gerald, Director, Physical Infrastructure Issues, U.S. Government Accountability Office, responses to questions from the Subcommittee ..	164
LoBue, Hon. Nancy, Acting Assistant Administrator, Aviation Policy, Planning and Environment, Federal Aviation Administration, responses to questions from the Subcommittee .....	278
Scovel, III, Hon. Calvin L., Inspector General, U.S. Department of Transportation, responses to questions from the Subcommittee .....	386

## ADDITIONS TO THE RECORD

Letters to the Secretary of Transportation in support of the pending Star alliance application .....	398
Aeronautical Repair Station Association, Marshall S. Filler, Managing Director and General Counsel, written statement .....	456
Airport Minority Advisory Council:	
Written statement .....	462
Testimony of Anthony W. Brown, Chairman of the Government Affairs Committee, before the Subcommittee on Information Policy, Census, and National Archives of the Committee on Oversight and Government Reform, U.S. House of Representatives, September 24, 2008 .....	473
Testimony of Don T. O'Bannon, Esq., Chairman, before the Committee on Small Business and Entrepreneurship, U.S. Senate, September 11, 2008 .....	479
Gene Roth, Executive Director, before the Committee on Transportation and Infrastructure, U.S. House of Representatives, January 22, 2009 .....	483
"Race, Sex, and Business Enterprise: Evidence from the City of Austin," Final Report Prepared for the City of Austin, Texas by the National Economic Research Associates, Inc., May 15, 2008 .....	488
Disparity Study for the Commonwealth of Kentucky, Final Draft Report .....	506
"The Utilization of Minority Business Enterprises by the State of Maryland," Prepared for the State of Maryland Department of Transportation by the National Economic Research Associates, Inc., January 8, 2001 .....	533
"Race, Sex, and Business Enterprise: Evidence from Memphis, Tennessee, Prepared for the Memphis-Shelby County Airport Authority by the National Economic Research Associates, Inc., December 18, 2008 .....	548
"Race, Sex, and Business Enterprise: Evidence from the State of Minnesota," Prepared for the Minnesota Department of Transportation by the National Economic Research Associates, Inc. and Colette Holt & Associates, September 27, 2005 .....	568
The Boeing Company, Kevin Brown, Vice President, Air Traffic Management, written statement .....	573
Continental Airlines, Inc., written statement .....	578
Gebhardt & Associates, LLP, Joseph D. Gebhardt, letter to the Subcommittee .....	584
Helicopter Association International, Matthew Zuccaro, President, letter to the Subcommittee .....	586
National Air Transportation Association, written statement .....	588
The National Association of Counties, written statement .....	594
National Pest Management Association, Gene Harrington, Director, Government Affairs, written statement .....	597



**U.S. House of Representatives**  
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February 10, 2009

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**SUMMARY OF SUBJECT MATTER**

**TO:** Members of the Subcommittee on Aviation

**FROM:** Subcommittee on Aviation Majority Staff

**SUBJECT:** Federal Aviation Administration ("FAA") Reauthorization Act of 2009

**PURPOSE OF HEARING**

The Subcommittee will meet on Wednesday, February 11, 2009, at 2 p.m. in room 2167 Rayburn House Office Building to receive testimony regarding the FAA reauthorization.

**Background**

Funding authorization for aviation programs as set forth in *Vision 100 -- Century of Aviation Reauthorization Act* ("Vision 100") (P.L. 108-176) and authorization for taxes and fees that provide revenue for the Airport and Airway Trust Fund ("Trust Fund") expired at the end of fiscal year ("FY") 2007. Revenue collections and FAA programs have been extended several times. Authorization has now been extended until March 31, 2009, by the *Federal Aviation Administration Extension Act, Part II* (P.L. 110-330).

**I. Funding and Financing**

The *Airport and Airway Revenue Act* of 1970 (P.L. 91-258) established the Trust Fund to help fund the development of a nationwide airport and airway system, as well as FAA investments in air traffic control ("ATC") facilities. The Trust Fund supplies all of the funding for the Airport Improvement Program ("AIP"), which provides grants for construction and safety projects at airports; the Facilities and Equipment ("F&E") program, which funds technological improvements to the ATC system; and a Research, Engineering, and Development ("RE&D") program.<sup>1</sup>

The Trust Fund also partially pays for FAA salaries, expenses, and operations. The Trust Fund contribution to FAA operations varies from year to year depending on Trust Fund receipts

<sup>1</sup> The House Committee on Science and Technology (the "House Science Committee") has jurisdiction over the RE&D program.

and the amount invested in capital and research programs.<sup>2</sup> The Trust Fund, in turn, is supported by the following taxes on aviation users (as well as interest earned on the cash balance), grouped below per Internal Revenue Service/Treasury Line Items for FY 2008:<sup>3</sup>

**Transportation of Persons:** \$8.440 billion, accounting for 70.4 percent of Trust Fund Tax Revenue

- **Passenger ticket tax – 7.5 percent**
  - *Description:* A percentage of the fare that the passenger pays on a domestic flight.
- **Passenger flight segment tax – \$3.50 (increased to \$3.60 in 2009)**
  - *Description:* An additional tax paid by the passenger based on the number of segments in that passenger's trip. A segment is a take-off and a landing. For example, a person who flew from point A to point B would pay one segment tax while a person who flew from A to B with a stop at C would pay 2 segment taxes. Note that this tax does not apply to passengers departing from a rural airport, defined as an airport that has less than 100,000 passengers per year.
- **Rural airport tax – 7.5 percent**
  - *Description:* A ticket tax on passengers whose flights begin/end at rural airports. This tax is assessed in lieu of the general passenger ticket tax. When the rural airport tax applies, there is no segment fee assessed.
- **Frequent flyer award tax – 7.5 percent**
  - *Description:* A percentage tax on amounts paid by companies under frequent flyer marketing arrangements with airlines (e.g., credit card).

**Transportation of Property:** \$521 million, accounting for 4.3 percent of Trust Fund Tax Revenue

- **Freight waybill tax – 6.25 percent**
  - *Description:* A percentage of the amount that an air carrier charges a shipper for the carriage of domestic freight by air.

**Use of International Air Facilities:** \$2.462 billion, accounting for 20.5 percent of Trust Fund Tax Revenue

- **International departure and arrival taxes – \$15.40 per passenger (increased to \$16.10 in 2009)**
  - *Description:* A tax imposed on passengers on international flights departing or arriving in the United States.
- **Alaska/Hawaii Facilities Tax – \$7.70 per passenger (increased to \$8.00 in 2009)**
  - *Description:* A tax imposed on passengers on domestic flights to or from Alaska or Hawaii.

**Aviation Fuel Taxes:** \$568.5 million, accounting for 4.7 percent of Trust Fund Tax Revenue

- 4.3 cents per gallon on commercial aviation jet fuel;
- 19.3 cents per gallon on general aviation gasoline; and
- 21.8 cents per gallon on general aviation jet fuel.

<sup>2</sup> Under Vision 100, the Trust Fund share of operations is calculated by subtracting the amount appropriated for capital and research programs (AIP, F&E and RE&D) from projected Trust Fund tax receipts and interest for that fiscal year.

<sup>3</sup> The House Committee on Ways and Means (the "Ways & Means Committee") has jurisdiction over Trust Fund taxes.

Accordingly, in FY 2008, the Trust Fund supported 73 percent of the FAA's operations budget and 100 percent of the AIP, F&E, and RE&D programs. The \$2.343 billion remainder of the FAA operations budget is provided from the General Fund ("GF") of the Treasury. The GF contribution to the FAA's total budget has varied over time,<sup>4</sup> and has ranged between 16-21 percent over the last four years.

Consideration of FAA reauthorization in the 110th Congress began with the introduction of the Bush Administration's proposal, entitled the *Next Generation Air Transportation System Financing Reform Act of 2007* (H.R. 1356/S. 1076, introduced by request), which recommended a new system for financing aviation costs through direct user fees and increased fuel taxes. Neither the House nor the Senate adopted the Bush Administration's proposal.

On June 27, 2007, the *FAA Reauthorization Act of 2007* (H.R. 2881) was introduced, and the House Committee on Transportation and Infrastructure ("T&I Committee") held a markup session the next day reporting the bill favorably with amendments. Funding authorization levels for FAA RE&D, contained in the *Federal Aviation Research and Development Reauthorization Act of 2007* (H.R. 2698), were reported from the House Science Committee and incorporated into H.R. 2881.

The House Ways and Means Committee reported H.R. 3539, the *Airport and Airway Trust Fund Financing Act of 2007*, on September 18, 2007. Title X of H.R. 2881, adopted from H.R. 3539, follows the general intentions communicated by the T&I Committee, which sought an increase in general aviation fuel taxes. Specifically, the Ways and Means Committee increased the general aviation jet fuel taxes from 21.8 cents per gallon to 35.9 cents per gallon (roughly a 65 percent increase), and aviation gasoline taxes from 19.3 cents per gallon to 24.1 cents per gallon (about a 25 percent increase).

The *FAA Reauthorization Act of 2009* (H.R. 915) is essentially the reintroduction of H.R. 2881 for the 111<sup>th</sup> Congress without a tax title. H.R. 915 provides historic funding levels for the FAA's programs between FY 2009 and FY 2012, including \$16.2 billion for the AIP; \$13.4 billion for F&E, \$38.9 billion for operations, and \$1.35 billion for RE&D.

The table below summarizes the FAA's FY 2008 enacted levels of funding for FAA programs, and funding levels provided in H.R. 915:<sup>5</sup>

FAA Program (in millions)	FY 2008 Enacted	FY 2009 H.R. 915	FY 2010 H.R. 915	FY 2011 H.R. 915	FY 2012 H.R. 915
Operations	\$8,740.0	\$9,013.5	\$9,551.3	\$9,956.3	\$10,370.2
F&E	\$2,513.6	\$3,246.0	\$3,259.0	\$3,353.0	\$3,506.0
AIP	\$3,514.5	\$3,900.0	\$4,000.0	\$4,100.0	\$4,200.0
RE&D	\$146.8	\$323.3	\$327.9	\$339.3	\$360.0
Total	\$14,914.9	\$16,482.8	\$17,138.2	\$17,748.6	\$18,436.2

<sup>4</sup> The GF contribution has varied from year to year, but declined on average since the creation of the Trust Fund: The GF contribution has averaged approximately 38 percent since 1971; approximately 28 percent over the last 25 years; approximately 24 percent over the last 20 years; and approximately 16 percent over the last 10 years.

<sup>5</sup> The Operations line in this table combines funding levels from Section 103 – Operations and Section 219 – Airspace Redesign.

## II. Airports

Programs providing federal aid to airports began in 1946 and have been modified several times. The current AIP program began in 1982 and provides federal grants to airports for airport development and planning. AIP funding is usually limited to construction or improvements related to aircraft operations, typically projects such as runways, taxiways, aprons, noise abatement, land purchase, and safety, emergency or snow removal equipment.

There are approximately 19,815 airports in the United States. Of those, 14,625 are private use, and 5,190 are public use. Approximately 3,411 of the public use airports are included in the National Plan of Integrated Airport Systems ("NPIAS") 2009-2013. Listing in the NPIAS makes airports eligible for AIP grants.

The FAA estimates that \$49.7 billion of AIP-eligible infrastructure development will be needed between 2009 and 2013 based on the latest NPIAS report dated September 30, 2008. An airport association's most recent Capital Needs Survey estimates that airport capital development costs for AIP-eligible and other necessary projects will total approximately \$94.4 billion during the same time frame.

Each reauthorization act sets forth the method by which AIP funds are distributed among the various airports in the nation. Under current law, AIP money is divided into two broad categories: entitlement funds (also called apportionment funds) and discretionary funds. H.R. 915 provides \$16.2 billion for the AIP program. In addition, H.R. 915 makes several modifications to the current AIP distribution formula that provide significant increases in AIP funding for smaller airports, which are particularly reliant on AIP for capital financing, as well as more AIP discretionary funding.

Passenger and cargo entitlement funds are distributed to primary, commercial service airports (airports that board at least 10,000 passengers), and cargo service airports in accordance with a formula that takes account of the number of passengers and amount of cargo that go through each airport. The *Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century* ("AIR 21") (P.L. 106-181) ensured that beginning in FY 2001, primary, commercial service airports must receive at least \$650,000 (\$1 million if AIP is at least \$3.2 billion) per year. Larger airports can receive a passenger entitlement as high as \$26 million per year.

Currently, states are entitled to 20 percent of AIP funds for their general aviation airports and commercial service non-primary airports, which are distributed to states through the state apportionment program<sup>6</sup> and directly to non-primary airports in those states through the non-primary entitlement program ("NPE").<sup>7</sup> H.R. 915 separates the AIP state apportionment from the NPE program (which is kept intact as a separate program with its current \$150,000 annual grant cap) and sets the state apportionment at 10 percent of total AIP funding. The bill also provides for

<sup>6</sup> The formula for the distribution of this money is based on the area and population of the state. In most states, the FAA, working with the state aviation authority, decides which general aviation airports receive AIP funding. Ten states (out of a total of 10 authorized slots) have authority to allocate the money themselves through the "Block Grant" program. Alaskan airports receive their own separate entitlement, in addition to the amount apportioned to Alaska as a state.

<sup>7</sup> These entitlements are based on one-fifth of each airport's expected 5-year costs for airport improvements, as listed in the NPIAS, capped at \$150,000 annually.



a minimum state apportionment funding level of \$300 million per year. This modification will result in larger funding levels for the AIP state apportionment program.

The FAA has discretion over the allocation of any AIP money remaining after all entitlements are funded. Under current law, discretionary AIP must receive a minimum of \$148 million plus a calculated amount based on Letters of Intent ("LOI")<sup>8</sup> prior to January 1, 1996. H.R. 915 increases the minimum AIP discretionary funding level to \$520 million. This increase is necessary to cover LOI commitments (approximately \$280 million per year) and high priority safety and capacity projects (exclusive of the noise and environmental set-aside projects), which include statutorily mandated runway safety area improvement projects.

In addition, current law requires that a certain percentage of AIP discretionary funds go to designated set-asides that limit this discretion. Specifically, the law requires that 35 percent be allocated to environmental and noise abatement projects and 4 percent to current or former military airports designated by the FAA. An additional set-aside for reliever airports equal to 0.66 percent of the discretionary fund is distributed when AIP is at or above \$3.2 billion. H.R. 915 amends the discretionary environmental set-aside from 35 percent of annual AIP discretionary to a flat \$300 million a year, an increase of \$15 million over previous appropriations, and allows these AIP funds to be used for projects needed to comply with the Clean Water Act.

However, AIP meets only a portion of airport infrastructure needs. To provide additional resources for airport improvements, the *Omnibus Budget Reconciliation Act of 1990* (P.L. 101-508) permitted an airport to assess a fee on passengers. This airport fee is known as the Passenger Facility Charge ("PFC"). PFC eligibility is similar to AIP eligibility but with fewer limitations. PFCs are more likely to be used for "landside" projects (such as, terminals, airport access (roads and rail), and gates). The PFC is added to the ticket price, collected by the airlines, and then turned over to the airport imposing the fee. PFC funds are not deposited in the Federal Treasury. Rather, these fees are imposed and used locally. The FAA approves PFC applications from public agencies controlling commercial airports, and PFC authority is only in effect as long as is necessary to fund projects in approved applications for the airport.

Over the life of the PFC program, \$64.9 billion in revenue has been approved for collection (\$61.7 billion excluding Denver International Airport), including: \$11.7 billion for airside projects (18 percent); \$23.4 billion for landside projects (36 percent); \$2.6 billion for noise mitigation projects (4 percent); \$3.9 billion for access projects (i.e. roads, rail, land) (6 percent); and \$20.2 billion to pay interest on debt (31 percent). For Denver Airport, \$3.2 billion (5 percent of total PFC revenue) has been raised.

AIR 21 increased the cap on the PFC from \$3 to \$4.50 per passenger per flight segment, and no passenger can be required to pay more than \$18 in PFCs per round-trip. The FAA has approved PFC collections at 378 airports, including 97 of the top 100 airports. Of those, 305 airports are collecting at the maximum \$4.50 PFC. In 2008, the FAA estimates that actual PFC collections totaled approximately \$2.76 billion. H.R. 915 increases the PFC cap from the current maximum of \$4.50 to \$7.00. The FAA estimates that if every airport currently charging the maximum \$4.50 PFC

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<sup>8</sup> The FAA's LOI program helps fund large-scale capacity projects at primary or reliever airports. In an LOI, the FAA commits to obligate discretionary and entitlement funds from future budget authority in an amount no greater than the Federal Government share of allowable costs for that project.

(plus two airports that are charging \$4.00) increased to \$7.00 it would generate an additional \$1.089 billion in local airport revenues annually.

Airports that have high passenger volumes are in a position to make more money through a PFC rather than accepting AIP funding. Therefore, current law requires that if a medium- or large-hub airport charges a PFC of \$3 or less, it must forego up to 50 percent of its primary AIP entitlement. If such an airport charges a fee greater than \$3, it must forego 75 percent of its primary AIP entitlement. The foregone entitlements are turned back into the AIP program and divided between discretionary AIP (12.5 percent) and the Small Airport Fund (87.5 percent), which is distributed primarily to non-hub and general aviation airports. H.R. 915 requires a large hub airport that charges a PFC greater than \$4.50 to turn back 100 percent of its AIP primary entitlement funding. This modification will result in more funding for both smaller airports and discretionary AIP.

AIP FUNDING CATEGORY (\$ in millions)	FY 2008 Enacted	FY 2009 H.R. 915	FY 2010 H.R. 915	FY 2011 H.R. 915	FY 2012 H.R. 915
<b>APPORTIONMENTS</b>					
Primary Airports	\$840	\$652	\$652	\$652	\$652
Cargo Airports	\$119	\$132	\$136	\$139	\$143
Alaska Supplemental	\$21	\$21	\$21	\$21	\$21
Non-primary (General Aviation) Airports	\$409	\$409	\$409	\$409	\$409
State Apportionment	\$269	\$379	\$389	\$399	\$409
<b>SMALL AIRPORT FUND</b>					
Small Hubs	\$69	\$86	\$86	\$86	\$86
Non-Hub Commercial Service	\$276	\$342	\$342	\$342	\$342
Non-primary	\$138	\$171	\$171	\$171	\$171
<b>DISCRETIONARY FUND</b>					
Capacity/Safety/Security/Noise	\$356	\$580	\$642	\$704	\$765
Pure Discretionary	\$119	\$193	\$214	\$235	\$255
<b>SET ASIDES</b>					
Environmental and Noise	\$275	\$300	\$300	\$300	\$300
Military Airport Program	\$31	\$45	\$48	\$52	\$55
Reliever	\$5	\$7	\$8	\$9	\$9

### III. ATC Modernization and the Next Generation Air Transportation System

The FAA's R&E program includes development, installation, and transitional maintenance of navigational and communication equipment to aid aircraft travel. This program supplies equipment for more than 3,500 facilities, including ATC towers, flight service stations in Alaska, and radar facilities. The R&E program is also the FAA's primary vehicle for modernizing the National Airspace System ("NAS") with new surveillance, automation, and communications systems.

Vision 100 created the Joint Planning and Development Office (“JPDO”) within the FAA to leverage the expertise and resources of the Department of Transportation (“DOT”), Department of Defense, Department of Commerce, and Department of Homeland Security, as well as the National Aeronautics and Space Administration and the White House Office of Science and Technology Policy, for the purpose of completely transforming the NAS by the year 2025 and developing the Next Generation Air Transportation System (“NextGen”). These ATC system upgrades are intended to accommodate and encourage substantial growth in domestic and international transportation and improvement in environmental performance while encouraging continuing future technology enhancements.

H.R. 915 provides \$13.4 billion for the FAA’s F&E account. These funding levels will accelerate the implementation of NextGen; enable the FAA to replace and repair existing facilities and equipment; and provide for the implementation of high-priority safety-related systems, including systems to prevent runway incursions as well as mitigate weather and aircraft wake vortex hazards.

To increase the authority and visibility of the JPDO, H.R. 915 elevates the Director of the JPDO to the status of Associate Administrator for NextGen within the FAA, to be appointed by, and reporting directly to, the FAA Administrator (“Administrator”). H.R. 915 also makes the Associate Administrator a voting member of the Joint Resources Council, the FAA’s decision-making body for major acquisitions. Greater authority will enable the JPDO to prioritize NextGen-related capital investment at the FAA.

To increase accountability and coordination of NextGen planning and implementation, H.R. 915 requires the JPDO to develop a work plan that details, on a year-by-year basis, specific NextGen-related deliverables and milestones required by the FAA and its partner agencies. The bill also requires the Secretary of Transportation (“Secretary”) to report annually on the progress of the work plan – including the success or failure of meeting each specific milestone in the work plan -- and to explain why any milestones were not met, the ramifications, and any required corrective actions.

#### IV. Safety

The FAA’s Office of Aviation Safety (“AVS”) has the responsibility to promote aviation safety by regulating and overseeing the civil aviation industry. To fulfill this mission, AVS establishes aviation safety standards; monitors safety performance; conducts aviation safety education and research; issues and maintains aviation certificates and licenses; and manages the FAA rulemaking program.

AVS consists of eight distinct organizational elements employing over 7,000 personnel. Five of these organizations – the Office of Accident Investigation, the Office of Rulemaking, the Air Traffic Safety Oversight Service, the Office of Aviation Safety Analytical Services, and the Office of Quality, Integration, and Executive Services – are primarily managed by FAA headquarters in Washington, D.C. The other three organizations – Flight Standards Service, Aircraft Certification Service, and the Office of Aerospace Medicine – also have extensive field structures (including some overseas offices).

The FAA leverages its resources through the designee system. The designee program authorizes private persons and organizations to perform many activities acting on behalf of the

FAA. According to the FAA, the use of designees allows it to concentrate on the most critical safety areas, while designees conduct more routine functions. AVS currently uses more than 11,000 designees, plus another 28,000 people involved in programs such as Flight Check Pilots and Mechanics with Inspection Authority.

Much of the AVS workload is demand driven. These workload drivers can be grouped into four general areas: (1) growth in aviation activity, both commercial and general aviation, by existing operators; (2) the introduction of new operators, aircraft, equipment, and technology; (3) the introduction of new practices; and (4) the globalization of the aviation industry and the increasing need for international standardization of regulations and safety criteria.

H.R. 915 includes several safety provisions, such as authorizing additional funds for runway incursion reduction programs and the acquisition and installation of runway status lights. This bill increases the number of aviation safety inspectors and also requires safety inspections of foreign repair stations at least twice a year. Moreover, the legislation requires the FAA to commence a rulemaking to ensure that covered maintenance work (substantial, regularly scheduled, and required inspection items) on air carrier aircraft is performed by part 145 repair stations or part 121 air carriers. With regard to the designee program, GAO is directed to follow-up on FAA's response to recommendations made in GAO's October 2004 report on designee programs, including an assessment of improvements made and further actions needed to meet performance standards. There are also provisions dedicated to studying fatigue, as well as directing the FAA to initiate action to ensure crewmember safety by applying occupational health standards on-board aircraft.

In addition, language from the House-passed H.R. 6493, the Aviation Safety Enhancement Act of 2008, which addresses several issues raised by FAA whistleblowers and others at the April 3, 2008, hearing on *Critical Lapses in FAA Safety Oversight of Airlines: Abuses of Regulatory "Partnership Programs,"* is included in H.R. 915. This provision creates an independent Aviation Safety Whistleblower Investigation Office within the FAA, charged with receiving safety complaints and information submitted by both FAA employees and employees of certificated entities, investigating them, and then recommending appropriate corrective actions to the FAA. It directs the FAA to modify its customer service initiative to remove air carriers or other entities regulated by the FAA as "customers," to clarify that in regulating safety the only customers of the FAA are individuals traveling on aircraft. In addition, a two-year "post-service" cooling off period for FAA inspectors is established, and FAA is required to rotate principal maintenance inspectors between airline oversight offices every five years. Monthly reviews of the Air Transportation Oversight System database are required to ensure that trends in regulatory compliance are identified and appropriate corrective actions taken.

## V. Small Communities

In 1978, the *Airline Deregulation Act* ("ADA") (P.L. 95-504) phased out economic regulation of the airline industry. It permitted airlines to decide which routes to fly and, in most instances, to terminate service at communities without seeking government approval. The rationale was that reliance on free market forces would be the best way to ensure an efficient air transportation system.

However, it was recognized that market forces alone would not ensure air service to many small communities which certificated air carriers had been required to serve because these communities do not produce enough passenger traffic to support profitable air service.

Accordingly, the ADA included a provision, known as the Essential Air Service ("EAS") program, to guarantee a minimum level of air service to small communities, which had been receiving service from certificated carriers. The EAS program provides subsidies to air carriers for providing service between selected small communities and hub airports.

The EAS budget has ranged from about \$100 million early in the program to \$26 million as recently as FY 1997. Beginning in FY 1998, Congress set up a permanent funding mechanism to guarantee at least \$50 million for EAS each year, derived from over-flight fees or the FAA's budget. Funding requirements for the EAS program increased significantly after the September 11, 2001, terrorist attacks, which caused carriers' revenues to decrease and costs to increase.

The carriers' increased costs, in turn, caused existing EAS contract costs to increase. In addition to existing contracts requiring more of a subsidy upon renewal, the number of subsidized EAS communities increased from 75 to 115 (not counting Alaska) as formerly profitable routes became unprofitable, and carriers filed notice to suspend service, thus triggering first-time subsidies. The number of subsidized communities increased each year before reaching 154 subsidized communities (including Alaska) in 2006. About 150 communities currently benefit from the EAS subsidies, at an estimated cost of approximately \$150 million in FY 2009.

As part of its annual budget recommendations over the last few years the Bush Administration proposed limiting EAS funding to \$50 million and requiring local cost-sharing as a condition for a community's continued participation in the program. Nevertheless, the program grew as Congress provided additional funding for EAS, appropriating \$110 million in both FY 2006 and FY 2007 and \$125 million in FY 2008 (including \$50 million from overflight fees, \$60 million appropriated from the Trust Fund, and \$15 million from spectrum auction proceeds).

H.R. 915 increases the total amount authorized for EAS each year from \$127 million to \$200 million. In addition, the bill requires that 50 percent of over-flight fees collected in excess of \$50 million be dedicated to EAS. To improve the quality of air service received by EAS communities, the bill authorizes the Secretary to incorporate financial incentives into EAS contracts based on specified performance goals, such as better on time performance, reducing the number of cancellations, establishing reasonable fares (including joint fares beyond the hub airport), creating convenient connections to hub airports, and increasing market efforts. To encourage increased air carrier participation, the bill authorizes the Secretary to enter into long-term EAS contracts that would provide more stability for participating air carriers. In addition, H.R. 915 reduces the local share of AIP project costs from 10 percent to 5 percent for certain economically depressed communities that receive subsidized air service under the EAS program.

H.R. 915 also includes several provisions to mitigate the effects of sharp increases in aviation fuel costs. It would require the Secretary, not later than 60 days after enactment of the Act, to increase the existing \$200 per passenger subsidy cap<sup>9</sup> by an amount necessary to account for the increase in the cost of aviation fuel in the 24 months preceding the date of enactment of the Act. In addition, it authorizes the Secretary, subject to the availability of funds, to provide an across-the-board increase in EAS subsidy payments on an emergency basis to compensate EAS carriers for

<sup>9</sup> The FY 1994 Transportation Appropriations Act (P.L. 103-122) established criteria limiting eligibility for the program. These criteria provided that a community is ineligible to receive subsidized essential air service if it is within 70 miles of a medium or large hub, or if its subsidy exceeds \$200 per passenger (unless it is more than 210 miles from a medium or large hub).

increased aviation fuel costs. Finally, it requires faster adjustments to subsidy rates to reflect changing costs. Specifically, it requires that an incumbent carrier that files a notice to withdraw, but is held in beyond the 90-day notice period, be provided increased compensation beginning after the 90-day notice period, rather than after 180 days, as in current law.

Regarding communities that have exceeded the maximum Federal subsidy per passenger, H.R. 915 makes two process changes. First, it would require the Secretary to: (1) notify each such community at least 45 days before issuing any final decision to end payment of the community's subsidy; and (2) establish procedures by which each community notified of an impending loss of subsidy may work directly with an air carrier to develop a proposal that would allow the community to stay within the maximum Federal subsidy per passenger. Second, it clarifies the procedure by which a community that has lost its EAS subsidy as a result of exceeding the maximum Federal subsidy per passenger may submit to the Secretary a proposal for restoring EAS compensation.

H.R. 915 would also repeal the EAS Local Participation Program, under which not more than then EAS communities located in proximity to hub airports could be required to assume 10 percent of their EAS subsidy costs for a four-year period. This program has never been implemented due to prohibitions included in annual appropriations acts.

In addition to EAS, the Small Community Air Service Development Program ("SCASD") program was established by AIR 21, initially as a pilot program, to make grants to small communities to help them enhance their air service. Under SCASD, the DOT is authorized to award grants to up to 40 communities each year that are served by small hub or nonhub airports and have demonstrated air service deficiencies. The SCASD program gives communities a great deal of flexibility in the use of grant funds in the hope that they will develop creative solutions to their air service problems. Grant sponsors have used a number of strategies, most commonly including subsidies and revenue guarantees to the airlines, marketing to the public and to the airlines, hiring personnel and consultants, and establishing travel banks in which a community guarantees to buy a certain number of tickets.

Demand for SCASD has far exceeded the funding available. When this program received its initial funding of \$20 million in FY 2002, DOT received 179 applications totaling more than \$142.5 million from communities in 47 states. The program continued to receive approximately \$20 million in each of FYs 2003 through 2005, and \$10 million in each of FYs 2006 and 2007. The number of applications has declined each year to 170 in 2003, 108 in 2004, 84 in 2005, and 75 in 2006; but total funding requested still exceeds amounts available for the program. H.R. 915 extends the program through FY 2011, at the current authorized funding level of \$35 million per year. In addition, H.R. 915 requires that 50 percent of overflight fees collected in excess of \$50 million be dedicated to SCASD.

## **VI. Consumer Protections**

In 2007, with record numbers of passengers flying, flight arrival delays increased with the growing traffic. The introduction of extreme weather situations to the already crowded NAS system led to several highly publicized events where passengers were stranded on aircraft for hours without adequate food, water, and amenities. As a result, there were strong calls for increased oversight of airline customer service. In late 2007, the DOT Inspector General ("DOT IG") was asked to examine the airlines' customer service commitments, contracts of carriage and policies dealing with

extended ground delays aboard aircraft, as well as requested recommendations for what airlines, airports and the Federal Government can do to prevent such situations in the future.

H.R. 915 includes several provisions to ensure passenger needs are met on flights including a mandate that air carriers and airports submit emergency contingency plans and detail in their plans how they will allow passengers to deplane following excessive delays. These plans must be approved by DOT; and DOT can assess a civil penalty against an air carrier or airport that fails to adhere to an approved contingency plan. DOT is also required to publicize and maintain a hotline for consumer complaints, establish an Advisory Committee for Aviation Consumer Protection, expand consumer complaints investigated, and require air carriers to report diverted and canceled flight information monthly. H.R. 915 also requires DOT to ensure that denied boarding compensation is adequate every two years and make appropriate adjustments. The DOT IG is asked to report on the causes of air carrier flight delays and cancellations. This legislation also prohibits the use of voice communication using a mobile phone on scheduled flights.

## VII. Environmental Provisions

As demand for aviation services continues to grow, so too does aviation's possible impact on the environment. The FAA forecasts that airlines are expected to carry more than 1 billion passengers in the next 7-12 years, increasing from approximately 769 million in 2007. At the same time, fuel costs are significant, causing air carriers to actively search for increased fuel efficiencies, which would also have positive impacts on the environment. Currently, aviation accounts for about 3 percent of the world's greenhouse gas emissions.<sup>10</sup> According to the FAA, carbon dioxide ("CO<sub>2</sub>") emissions dropped in the United States by 4 percent between 2000 and 2006, at the same time, commercial aviation moved 12 percent more passengers and 22 percent more freight. Environmental issues – unless forcefully addressed – could limit the ability to provide growth of capacity and fully utilize the capabilities of the NextGen program. Alongside the potential for growth, the industry has shown a history of self-help. According to the Air Transport Association ("ATA"), the airlines have achieved a 35 percent increase in fuel efficiency since 2001. Though jet fuel represents about thirteen percent of petroleum use, it represents only 3 percent of total U.S. energy consumption.

The legislation includes several provisions related to the environment, noise mitigation and land use initiatives. H.R. 915 allows airport operators to reinvest the proceeds from the sale of land that an airport acquired for a noise compatibility purpose, but no longer needs for that purpose – giving priority, in descending order, to the reinvestment in another noise compatibility project; environmentally-related project; another otherwise-eligible AIP project; transfer to another public airport for a noise compatibility project; and finally, payment to the Trust Fund. H.R. 915 also includes the Continuous Lower Energy, Emissions, and Noise ("CLEEN") Engine and Airframe Technology partnership to develop, mature and certify CLEEN engine and airframe technology for aircraft over the next 10 years. Under the program, FAA and industry would cost share maturation of promising technologies to reduce aircraft environmental impacts and energy usage. Other environmental provisions include: an environmental mitigation pilot program; the phasing out of noisy stage II aircraft; an aircraft departure queue management pilot program; broadened AIP eligibility to include several energy saving terminal projects; and requirements for the FAA to build sustainable air traffic control facilities.

<sup>10</sup> Intergovernmental Panel on Climate Change ("IPCC"), *Aviation and the Global Atmosphere* (1999).

## VIII. Labor

The *FAA Reauthorization Act of 1996* (P.L. 104-264) amended chapter 401 of 49 U.S.C. by adding section 40122, which set the parameters for negotiations between the FAA and the exclusive bargaining representatives of employees of the FAA, certified under section 7111 of title 5. Section 40122(1)(b) provides that if the FAA Administrator does not reach an agreement with the exclusive bargaining representatives, the services of the Federal Mediation and Conciliation Service ("FMCS") shall be used to attempt to reach such agreement. If the FMCS is not able to reach an agreement, the Administrator's proposed change to the personnel management system is transmitted to Congress, along with the objections and reasons for the objections of the exclusive bargaining representatives, and takes effect within 60-days, unless Congress acts to disapprove the Administrator's proposed change.

In the fall of 2004, the FAA began formal contract negotiations with the National Air Traffic Controllers Association ("NATCA"). Soon after beginning negotiations, the FAA requested help from the FMCS. On April 5, 2006, the FAA announced formally that it had reached an impasse in its negotiations with NATCA regarding its agency-wide contract covering the air traffic controller workforce. In accordance with 49 U.S.C. section 40122(a)(2), the Administrator indicated that the FAA would send its last, best offer to Congress. On June 5, 2006, the FAA imposed a new labor contract on NATCA.

These terms resulted in about 95 percent of the controllers having pay in excess of the maximum for their band. FAA's proposal was that these controllers would have their pay frozen for five years and would not receive government-wide cost of living increases in their base pay, but did provide for future locality increases and performance pay awards. FAA maintained that the new contract would save the government approximately \$1.9 billion over five years through various measures, including the creation of a separate, lower pay scale for new employees.<sup>11</sup> FAA's imposition of wages, hours, and other terms and conditions of employment has had an impact on the controller workforce, including morale problems and an acceleration of retirements. According to NATCA, the shortfall in the number of experienced controllers has led to: more controller fatigue because controllers are working longer days for sustained periods; an alleged increase in the number of operational errors; and increased delays because there are not enough controllers available to safely manage demand.<sup>12</sup>

H.R. 915 amends section 40122 to modify the dispute resolution process for proposed changes to the FAA personnel management system, and replaces it with a new dispute resolution process. Under the process, if the FAA and one of its bargaining units do not reach agreement, the services of the FMCS be used or an alternative mutually agreed upon dispute resolution procedure. If mediation is unsuccessful, bargaining impasses shall be submitted to binding interest arbitration before a three-person board appointed under authority of the Federal Service Impasses Panel. The arbitration board would have 90 days from the date of appointment to render a decision. The parties would be bound by the decision issued by the arbitration board. If an agreement is reached voluntarily or at the conclusion of arbitration, the final agreement (other than those matters decided

<sup>11</sup> FAA (April 5, 2006). *FAA Contract Negotiations with NATCA Reach Impasse*. Press Release. Retrieved on 2009-1-27. [http://www.faa.gov/news/press\\_releases/news\\_story.cfm?newsId=7008](http://www.faa.gov/news/press_releases/news_story.cfm?newsId=7008).

<sup>12</sup> NATCA, *The FAA's Imposed Work Rules: The Effect on Air Traffic Controller Attrition, System Safety and Delays*, (March 2008), at 3.



by the arbitration board), would be subject to employee ratification and FAA head review under title 5 U.S.C. Chapter 71.

H.R. 915 also applies the new dispute resolution process to the ongoing dispute between NATCA and the FAA. Specifically, the changes implemented by the FAA on and after July 10, 2005, would be null and void and the parties will be governed by their last mutual agreement. In addition, FAA and NATCA are required to resume negotiations until a new contract is adopted. If an agreement is not reached within 45 days after negotiations resume, then the dispute would be governed by the new dispute resolution process. The provision would allow affected employees to receive “back pay” of any additional salary increase since the last agreed upon contract, and it authorizes \$20 million, subject to appropriation, for this purpose.

This legislation also amends the Railway Labor Act (“RLA”) to clarify that employees of an “express carrier” shall only be covered by the RLA if they are employed in a position that is eligible for certification under FAA’s rules, such as mechanics or pilots, and they are actually performing that type of work for the express carrier. All other express carrier employees would be governed by the National Labor Relations Act (“NLRA”). Because of historical anomalies involving different companies in the express package industry, drivers and package handlers working for one major company in the industry (Federal Express) do not have the same rights to organize and bargain collectively as employees performing the exact same jobs at other companies. This legislation gives all truck delivery employees who work for express carriers providing integrated air and truck delivery systems equal treatment under the law and the right to organize locally under the NLRA.

H.R. 915 also requires an assessment of training programs for controllers and air traffic technicians and requires that FAA include employee unions (such as NATCA and Professional Aviation Safety Specialists) as stakeholders in the development and planning for NextGen. To deal with aging air traffic control facilities, H.R. 915 requires the establishment of a Taskforce on Air Traffic Control Facility Conditions to determine whether employees are exposed to dangerous levels of mold, asbestos, poor air quality, radiation and other building and facility-related hazards, and its effect on employee health and safety; issue a report; and then the Administrator must report to Congress on its timeline and plans for implementation of the recommendations.

H.R. 915 also requires the Secretary to establish within the FAA a working group to develop criteria and make recommendations for the realignment and consolidation of services and facilities, comprised of at a minimum: the FAA; air carriers; the general aviation community; employees of the FAA field facilities; and the airport community. A report with justifications for each consolidation or realignment is required, public hearings can be held in affected communities should they be requested, and any interested person can file an objection. Not later than 60 days after the end of the public comment period, the Administrator shall submit final recommendations and public comments to the committees of jurisdiction. The Administrator cannot realign any facility until the final report is submitted to the committees of jurisdiction.

## IX. Aviation Insurance

Aircraft insurance is essential to any airline operation. However, commercial insurance companies often will not insure flights to high-risk areas, such as countries at war or on the verge of war. Chapter 443 of title 49 of the U.S. Code authorizes the Secretary to provide insurance or reinsurance to air carriers if certain conditions specified in it are met. Prior to the September 11,

XX

2001, terrorist attacks, the use of this authority typically involved the Secretary providing war risk insurance for flights operated to foreign locations that were considered high risk and which commercial insurance companies would not insure. Current law requires the FAA, for insurance that was in effect on November 25, 2002, to provide U.S. airlines' aviation insurance until March 31, 2009, from the first dollar of loss at capped premium rates. H.R. 915 extends this requirement until September 30, 2012, after which the requirement becomes discretionary until September 30, 2019. After December 31, 2019, such insurance must be provided instead by an airline industry-sponsored risk-sharing arrangement approved by the Secretary. In addition, H.R. 915 extends through December 31, 2012, air carrier liability limits for third party damages resulting from acts of terrorism.

WITNESSES

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MEMBER PANEL

**The Honorable Mike Thompson**  
Congressman  
California, District 1

PANEL I

**The Honorable Nancy LoBue**  
Acting Assistant Administrator  
Aviation Policy, Planning, and Environment  
Federal Aviation Administration

**Dr. Gerald Dillingham**  
Director, Physical Infrastructure Issues  
U.S. Government Accountability Office

**The Honorable Calvin L. Scovel, III**  
Inspector General  
U.S. Department of Transportation

PANEL II

**Mr. Gregory Principato**  
President  
Airports Council International-North America (ACI)

**Mr. James P. Elwood, A.A.E.**  
Airport Director  
Aspen/Pitkin County Airport

xxi

**Mr. James C. May**  
President and CEO  
Air Transport Association

**Mr. Ed Bolen**  
President and CEO  
National Business Aviation Association

**Mr. Roger Cohen**  
President  
Regional Airline Association

**Mr. Craig Fuller**  
President  
*Aircraft Owners and Pilots Association*

**Mr. Clayton M. Jones**  
Chairman, President and CEO  
Rockwell Collins  
*and on behalf of*  
*General Aviation Manufacturers Association (GAMA)*  
*Aerospace Industries Association (AIA)*  
*Aeronautical Repair Station Association (ARSA)*

**PANEL III**

**Mr. Patrick Forrey**  
President  
National Air Traffic Controllers Association

**Mr. Tom Brantley**  
President  
Professional Airways Systems Specialists (AFL-CIO)

**Captain John Prater**  
President  
Air Line Pilots Association, International

**Ms. Patricia Friend**  
International President  
Association of Flight Attendants-CWA

**Mr. Robert Roach, Jr.**  
General Vice President  
International Association of Machinists & Aerospace Workers

**Mr. Robert Gless**  
Assistant Director, Air Transport Division  
Transport Workers Union of America, AFL-CIO

**Ms. Kate Hanni**  
President  
FlyersRights.org (CAPBOR)

## HEARING ON THE FAA REAUTHORIZATION ACT OF 2009

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Wednesday, February 11, 2009

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,  
SUBCOMMITTEE ON AVIATION,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 2:00 p.m., in Room 2167, Rayburn House Office Building, the Honorable Jerry F. Costello [Chairman of the Subcommittee] presiding.

Mr. COSTELLO. The Subcommittee will come to order.

The Chair will ask all Members, staff and everyone in the room to turn electronic devices either off or on vibrate.

The Subcommittee is meeting today to hear testimony on the FAA Reauthorization Act of 2009.

The Chair intends to give an opening statement, to call on Mr. Petri to give an opening statement or brief remarks, and then we will immediately go to our panel of first witnesses.

Mr. MICA. I had a little commentary if you would yield.

Mr. COSTELLO. Mr. Mica has asked if he can make a few comments. So I will revise my remarks and say that we will recognize him for comments as well.

Let me advise everyone, we have a total of 18 witnesses that we will hear from today. So I would inform our witnesses that their statements will be entered into the record, and we would ask them to summarize their statements as they are called upon.

I want to welcome everyone to the Subcommittee hearing today on the FAA Reauthorization Act of 2009.

Earlier this week, Chairman Oberstar and I introduced H.R. 915, the FAA Reauthorization Act of 2009. H.R. 915 is almost identical to the H.R. 2881 legislation that was produced after many hearings, in-depth analysis and a continued dialogue with the FAA, our colleagues and other stakeholders, and then passed, of course, the Full Committee and the full House of Representatives in September of 2007.

We have made a few modifications in the new introduced bill:

One, we have deleted provisions in our original bill that were already enacted through the legislative or regulatory process.

We included H.R. 5788, the HANG UP Act legislation introduced by Mr. DeFazio to prohibit the use of cell phones on commercial flight. H.R. 5788 was reported favorably from this Committee last September.

And, we included the Aviation Safety Enhancement Act which was passed by the House on July 22, 2008.

It is our intention to move forward on reauthorizing the FAA as quickly as possible, given that we are already two years behind schedule because of the inaction by the United States Senate. As witnesses will testify this afternoon, short-term funding extensions and continuing resolutions are delaying key NextGen and airport development capital projects. We need to get the FAA authorized as soon as possible in this session of Congress.

The total number of passengers carried in the U.S. airspace is approaching 800 million a year, and the FAA forecasts that airlines are expected to carry more than 1 billion passengers in the next 7 to 12 years.

To deal with this growth, strengthening our economy and create jobs, the FAA Reauthorization Act of 2009 provides historic funding levels for the FAA's capital programs. This includes \$16.2 billion for the Airport Improvement Program, nearly \$13.4 billion for the FAA Facility and Equipment Account and \$1.35 billion for research and engineering and development. The bill also provides \$38.9 billion for the FAA operations over the next 4 years.

The historic funding levels authorized for the FAA's F&E account will accelerate the implementation of NextGen, enable the FAA to replace and repair existing facilities and equipment and provide for the implementation of high priority safety-related systems.

To increase the authority and visibility of the FAA's Joint Planning and Development Office, H.R. 915 elevates the Director of the JPDO to the status of Associate Administrator for NextGen within the FAA, to be appointed by and reporting directly to the FAA Administrator.

To increase accountability and coordination of NextGen planning and implementation, H.R. 915 requires that JPDO develop a work plan that details, on a year to year basis, specific NextGen-related deliverables and milestones required by the FAA and its partner agencies.

To help airports meet increasing capital needs, we have included an increase of the cap from \$4.50 to \$7.00 on the PFC charges. That is exactly identical to what we did in H.R. 2881. So the increase for the PFCs would be \$4.50 to \$7.00.

According to the FAA, if every airport currently collecting a \$4.00 or \$4.50 PFC and if you raise that to \$7.00, it would generate approximately \$1.1 billion in additional revenue for airport development each year.

H.R. 915 also provides significant increases for AIP funding for smaller airports that rely on AIP for capital financing. Further, the bill increases funding for improvements in the Essential Air Service Program and authorizes a Small Community Air Service Development Program through 2012 at the current authorized funding level of \$35 million per year.

The traveling public saw firsthand serious problems that our current system has with congestion and delays which, at times, led to a breakdown in customer service. We have enacted in this legislation a similar Passenger Bill of Rights or consumer protection provisions in H.R. 915. In addition to a number of things that we provide under that section of the legislation, it also provides for civil penalties for violations by the airlines.

We have included in H.R. 915 the CLEEN Engine and Airframe Technology Partnership and Green Tower program which was modeled after what is currently being done at O'Hare International Airport.

We have the safest air transportation system in the world, but we must not become complacent. In order to keep proper oversight over the FAA and the safety program, H.R. 915 directs the FAA to increase the number of aviation safety inspectors, initiate studies on fatigue and requires the FAA to inspect Part 145 certificated foreign repair stations at least twice a year.

There are a number of other issues that we have addressed in the bill that were the same as in H.R. 2881 including labor provisions that affect labor negotiations with NATCA and the FAA. The language is identical in this bill as the last bill as well as the FedEx provision that was debated and included in H.R. 2881.

Before I conclude my remarks—my statement is more detailed, I will submit it for the record in the interest of time—let me congratulate the men and women of JetBlue Airways. Today is their ninth anniversary of flight, and I want to make note of that and congratulate them.

With that, again, I welcome all of our witnesses here today. I look forward to hearing your testimony.

Before I recognize Mr. Petri for his opening statement, I ask unanimous consent to allow for two weeks for Members to revise and extend their remarks and to permit the submission of additional statements and materials by Members and witnesses. Without objection, so ordered.

The Chair now recognizes Mr. Petri.

Mr. PETRI. Thank you very much, Mr. Chairman.

I will put my full statement in the record. I know we have a full agenda and would like to get right to the witnesses.

But let me just say that I regret that we are moving quite this quickly here. It is important we get a new reauthorization in place, but it is also important that we do it in an orderly fashion, and acting before the Administration has a chance to submit its bill or its ideas or comments may actually prolong the process toward final passage rather than speed it up.

Our new Administration does take a little while to get in order, but I think they are owed a certain amount of deference and respect from this Congress, and I regret that we are, in effect, acting before we get their input.

With that, I would yield to the Ranking Minority Member of the Full Committee, Mr. Mica.

Mr. MICA. Thank you.

Just for the record, I will submit a statement and make some brief comments.

Well, first of all, I want to thank Mr. Costello and Mr. Petri for moving forward.

Chairman Oberstar is helping. He would be here. We just left trying to get some money for the Committee through House Administration, together. I don't know what we are going to get. We may have to eliminate staff and Members, but we should do okay other than that.

Ray LaHood—I know we have all met with the new Secretary—asked me what some of the priorities are. And I said, we have to get an FAA bill, and we have to also get an FAA Administrator.

It is absolutely incomprehensible that we haven't had an FAA reauthorization since, what, September of 2007. And now I hear the Senate is looking at an extension that might go into the fall. That is totally unacceptable. So I pledged with Mr. Oberstar to work to pass comprehensive FAA reauthorization which should have been done in the last two years.

Trying to deal with an agency, and I chaired Aviation for six years. We did some very good things. It is difficult enough when you have an administrator or chief executive at an agency in place. It is difficult, if not impossible, when you don't have one or you have one acting who is being held hostage for political reasons, which is totally unacceptable.

This bill could and should be conferenced, and we could do it in two hours. There is no reason that it shouldn't have been done.

First, we know one of the big elephants in the room is the NATCA provisions, and I think we have to be fair to the men and women who serve us as air traffic controllers.

I am glad this is tossed to the new Administration and to the new greater majority. I just would counsel them against unleashing a dam, and again I think that they are entitled to some compensation and additional compensation, particularly new entrants. And I did everything I could to bring parties together for the last two years to resolve that issue, but that has to be resolved. That is the two-ton elephant in the room.

I have no problem with the provisions for compulsory arbitration, and I would hope to the good Lord that we never again bring to Congress the personnel and salary issues of any of our agencies at that level and then put every Member of Congress in the middle of a ping-pong contest to resolve it. It is horrible, and I think we have a solution. We need to adopt that.

That is a big, serious issue that you have to resolve, and I will be glad to sit down at anytime and get that behind us.

The financing issue is another big elephant, and that does need to be resolved. I think Mr. Oberstar and I came to some conclusions, and I hope we don't have to revisit that too much.

Finally, there are, and I have been quoted in the press saying there are, some half-baked proposals in here that need to come out. Everybody knows what they are. I don't want to go over all of them.

They will hurt our airliners, the airline industry which is already on its third. I was going to say its second time on its knees. It is the third. But we don't want them down and out for the count.

We have to have some reasonable provisions, whether it is the foreign repair stations, the insect notification—I see, thankfully, Mr. DeFazio is gone—the OSHA standards and some of the other issues. You know what I am talking about.

Finally, we have to do something, Mr. Chairman and Mr. Ranking Member and Mr. Oberstar, as soon as we get an FAA Administrator in place, about getting airspace redesign in the New York City area. They tell me now that 83 percent of our chronically delayed flights emanate from the Northeast Corridor and the New



York City area, and I have done hearings and meetings from Philadelphia to Connecticut. That has to be resolved.

It has to be resolved. So whether it is in FAA reauthorization along with NextGen, which is also important, it must be resolved.

So those are my comments, and I yield back the balance of my time.

Mr. COSTELLO. You have no time left, Mr. Mica.

[Laughter.]

Mr. COSTELLO. Let me say, just comment quickly because we are down to five minutes to get to the floor, and we do have three votes. We will come back immediately.

Let me comment on a few of Mr. Mica's comments. I think we are in agreement on several things. One is the reauthorization bill that passed the House in September, 2007. Unfortunately, we had no control over its destiny because the Senate didn't act as they didn't act on a lot of bills.

On getting a new Administrator in place, we had a meeting yesterday with Secretary LaHood. I have met with him three times in the last weeks and stressing the importance of several things. The Administration has only been in office 21 days, and they have already made an offer, and they are negotiating with the person they want to see become the Administrator. So I think they are moving with due speed and due diligence.

Last but not least, my friend, Mr. Mica, says there are some half-baked ideas in here. That may or may not be true. It depends on who the cook is and who is doing the baking. But those are things that we will have an opportunity to discuss and talk about during the markup when we bring this legislation to the Committee for a markup.

With that, I thank Members.

There are three votes on the floor. We will come back immediately right after the third vote.

I would ask Mr. Miller and others to get our first panel of witnesses up to the witness table, and we will begin immediately upon return, and the Subcommittee will stand in recess.

[Recess.]

Mr. COSTELLO. The Subcommittee will come to order.

We will hear from our first witness, Congressman Mike Thompson, a Congressman representing the First District of California, who has been a very strong advocate for a Passenger Bill of Rights.

Congressman Thompson.

**TESTIMONY OF THE HONORABLE MIKE THOMPSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. THOMPSON. Thank you, Mr. Chairman and Ranking Member Petri and other Members of the Committee. Thanks for the opportunity to provide testimony at your hearing today on the FAA Reauthorization Act.

I am here again today regarding the airline passenger rights almost 2 years after my first appearance at this Subcommittee on this very same topic and more than 10 years since Congress first examined the problem of extended delays after hundreds of passengers were stuck in planes on snow-congested Detroit tarmacs in

January of 1999, and I believe it is time for Congress to act to protect the flying public.

Americans should not be held without food, water and other necessities when they set foot on an airplane. Since 1999 and despite countless industry promises, little or no progress has been made toward ensuring that airline passengers have some basic rights during excessive ground delays.

It took nearly a year for then Secretary of Transportation Mary Peters' Tarmac Delay Task Force to issue a report this past November on how airlines, if so inclined and only when practical, might improve onboard conditions for stranded passengers. None of the improvements recommended in that report were mandated and yet again relied entirely upon voluntary action by the airlines.

Secretary Peters' report did nothing to help solve the problems of excessive delays. As the New York Times editorial staff opined after its released, this report was tantamount to telling passengers, "Suck it up and sit there on America's unfriendly tarmacs for as long as it might take."

The lack of voluntary action by airlines for the past 10 years only underscores the absolute necessity of including the same passenger rights provisions passed as part of the FAA Reauthorization Bill during the 110th Congress in this version that you are considering today.

These provisions would finally require air carriers and airports to submit an emergency contingency plan in the event of excessive delays to the Secretary of Transportation for approval. These plans must detail how the air carrier will provide food, drinkable water, working restroom facilities, adequate cabin ventilation and access to medical treatment.

I recently introduced legislation. It is H.R. 624, the Passenger Bill of Rights for 2009 which includes the passenger rights provisions that you are considering here today as part of this reauthorization measure but with one important difference. Instead of requiring deplanement after "excessive delays," my bill calls for deplanement after three hours. By not defining what excessive delays actually means in the current legislation, Congress is yet again leaving it to the airlines to self-regulate, an approach that has failed miserably over the past 10 years.

I urge the Committee during the markup of this legislation to adopt the language included in my bill which sets for the three-hour standard along with important exceptions to be used at the discretion of the pilots.

Mr. Chairman, after 10 years, it has finally come time to pass these basic passenger protections. Thank you for your past assistance. You have been on great on this and on this issue and continued support by including these provisions in the FAA Reauthorization Act of 2009 Act.

Furthermore, if history repeats itself and this bill is passed by the House but becomes excessively delayed on the Senate tarmac, I respectfully request that you support my efforts to take these passenger rights provisions as a standalone bill to the House floor for immediate consideration.

Again, I appreciate the work of the Subcommittee and your support on this issue over the course of the last couple of years. I hope

that this year we can finally bring this issue to resolve, and thank you for allowing me to testify today.

Mr. COSTELLO. We thank you for testifying here today, taking time out of your schedule. We know how strongly you feel about the issue, and I think we are all in agreement that if we leave up to the airlines as we have in the past to self-regulate, it won't happen.

So we look forward to working with you between now and the markup and continuing working with you on this and other important issues.

Mr. THOMPSON. Thank you, Mr. Chairman.

Mr. COSTELLO. The Chair will ask the second panel of witnesses to come forward please. Actually, it is the first public panel. It is the Honorable Nancy LoBue, Acting Assistant Administrator, Aviation Policy, Planning and Environment with the FAA; Dr. Gerald Dillingham, Director of Physical Infrastructure Issues, U.S. Government Accountability Office; The Honorable Calvin Scovel, III, the Inspector General of the U.S. Department of Transportation.

I would remind all of our witnesses that your entire statement will appear in the record. We would ask you to summarize your statement in five minutes or less.

And with that, Ms. LoBue, you are recognized.

**TESTIMONY OF THE HONORABLE NANCY LOBUE, ACTING ASSISTANT ADMINISTRATOR, AVIATION POLICY, PLANNING AND ENVIRONMENT, FEDERAL AVIATION ADMINISTRATION; DR. GERALD DILLINGHAM, DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; AND THE HONORABLE CALVIN L. SCOVEL, III, INSPECTOR GENERAL, U.S. DEPARTMENT OF TRANSPORTATION**

Ms. LOBUE. Thank you, Chairman Costello, Congressman Petri and Members of the Subcommittee.

As the Chair said, my name is Nancy LoBue, and I am the FAA's Acting Assistant Administrator for Aviation Policy, Planning and Environment.

Unfortunately, our Acting Administrator was ill today and unable to appear with you, so I am appearing in her place.

I would like to thank you for inviting us here today to be part of your discussion about the reauthorization of the FAA. We look forward to working with this Committee and the new Congress on achieving a robust multi-year bill that will help ensure the safety of the flying public and the efficiency of the National Airspace System.

There is a consensus in the aviation community, including the FAA, that multiple short-term extensions, as we have had in the last 18 months, are burdensome and disruptive and do not permit the careful planning and efficient execution that is necessary for successful infrastructure and technology programs.

We appreciate the hard work and efforts that this Committee has put into H.R. 915. As the new Administration settles in and continues to get its policy team in place, the bill will be an immediate focus as we work to develop an administrative position. In the

meantime, please accept my gratitude on behalf of the Administration for your efforts in moving FAA's reauthorization forward.

Secretary LaHood has made his safety goals for all of DOT and especially FAA quite clear. At the FAA, our highest priority is always safety. We are currently in the safest period in commercial aviation history, and every day, every hour we are doing everything we can to make sure that that continues.

For example, the FAA is making it a priority to reduce the number of runway incursions, and we are seeing results. There were no serious runway incursions in the first quarter of fiscal 2009. Not a single Category A or B event during 12.8 million aircraft operations.

We have also accelerated our runway status lights program, and the systems are scheduled to be installed at 22 of the Nation's busiest airports by 2011.

The Secretary has indicated several times that one of his immediate goals is to fill the position of the FAA Administrator. He has expressed that the new Administrator will be one who can advance NextGen and be someone with the people skills to resolve outstanding labor issues, something which I know many of the Members of this Committee are also committed to.

We are also pleased that just two weeks the GAO removed the FAA's Air Traffic Control Modernization Program from the high risk list for the first time in 14 years. GAO noted that management focus and willingness to attack and rectify our shortcomings and our plan for continued improvements were the reasons that it felt comfortable removing FAA modernization from their high risk list.

Finally, no organization is successful without its most valuable asset, its workforce. Controller hiring is up. We have exceeded our hiring goals for fiscal year 2008, and we are on track to meet our end of year hiring goal in fiscal 2009.

The new controllers are completing their training faster. In fact, we anticipate 1,000 new hires will complete training to reach full certification this year compared to 762 last year.

Controller retirements have also leveled out and are trending below what we had projected for this year.

As you can see, we are still actively moving forward on all key areas. The FAA is a growing, learning organization dedicated to the safety of the traveling public and the efficient operation of the National Airspace System.

We look forward to supporting President Obama and Secretary LaHood's agenda for aviation, the new FAA Administrator, and to working with this Committee and the rest of Congress on FAA Reauthorization. In the meantime, we remain focused on our duties to ensure aviation safety and efficiency.

Mr. Chairman, Congressman Petri and Members of the Subcommittee, this concludes my prepared remarks. I would be happy to answer any questions that you might have.

Thank you.

Mr. COSTELLO. Thank you for your testimony, and the Chair now recognizes Dr. Dillingham who has testified before this Subcommittee many times.

Mr. DILLINGHAM. Good afternoon, Mr. Chairman, Mr. Petri. Thank you for the opportunity to again appear before this Subcommittee.

My testimony this afternoon identifies some key reauthorization issues that will need to be addressed to maintain the safety and efficiency of the current National Airspace System and to move expeditiously towards NextGen. I will also offer some general observations on the reauthorization.

First, with regard to the current system, the first issue is safety. FAA must enhance its ability to monitor and manage risk by collecting complete and accurate safety data from all segments of the industry.

Such data include information that is currently provided through FAA's voluntary reporting program as well as operational data from industry sectors such as air ambulances, cargo aviation and general aviation. This information is not generally collected or tracked on a system-wide level.

The ability to collect and analyze these types of data is particularly important as the Agency transitions to a data-driven, risk-based safety management system approach for aviation.

Another reauthorization issue is related to the existing ATC facilities and systems. Some of these facilities and systems will continue to form the core of the National Airspace System for a number of years and, in some cases, will become a part of NextGen. Continued reliance on these facilities and systems will require the Agency to identify the necessary resources and skilled personnel to implement both a robust facility renovation plan and a system maintenance strategy.

As you know, H.R. 915 contains a provision for FAA to develop a Facility Reconfiguration Plan. Until FAA develops such a plan which considers both safety and cost effectiveness, the facility configurations needed for NextGen cannot be implemented. In addition, potential savings that could help offset NextGen costs cannot be identified.

Another reauthorization issue is critical workforce concerns. Specifically, FAA will have to continue to hire and train thousands of air traffic controllers and other technical professionals. It will also need to work to improve relations with its labor unions.

Turning to NextGen, to its credit, FAA has taken important steps such as forming partnerships with industry and planning for a mid-term implementation to accelerate the availability of NextGen capabilities by 2018.

FAA will also need to work with stakeholders to explore a range of potential incentives for aircraft operators to purchase NextGen avionics and for suppliers to develop those avionics.

Additionally, FAA will need to acquire staff with technical skills, such as systems engineers, and contract management expertise to implement of NextGen. FAA estimates it will need to hire about 350 additional staff over the next 2 years to obtain these needed skills.

Mr. Chairman, it is worth noting that our work has shown that even with the full implementation of NextGen there will still be a need to build infrastructure projects such as runways and taxiways to accommodate anticipated future travel demands.

Building runways is often a long-term effort that involves a resolution of some difficult environmental concerns. Adequate funding is critical for aviation research and development initiatives aimed at addressing environmental concerns. The CLEEN initiative and other environmental provisions that are contained in H.R. 915 would begin to provide such funding.

Mr. Chairman, the last issue I would like to highlight is the importance of enacting a multi-year reauthorization.

Additional short-term funding extensions and continuing resolutions could hamper the planning and development of airport infrastructure projects, particularly those that are funded through the AIP program, and in fact increase the cost of those projects. It could also delay critical NextGen decision points and, maybe most importantly, it could postpone the achievement of the mid-term NextGen goals for operational capabilities and improvements for the National Airspace System.

Thank you, Mr. Chairman.

Mr. COSTELLO. Thank you, Dr. Dillingham.

General Scovel.

Mr. SCOVEL. Chairman Costello, Ranking Member Petri, Members of the Subcommittee, we appreciate the opportunity to discuss the key issues for reauthorizing FAA.

We understand that the Committee's reauthorization bill, H.R. 915, was introduced in the House on Monday.

The aviation landscape has changed significantly since Congress last debated proposals for reauthorizing and financing FAA. U.S. airlines have been buffeted by the softening economy and volatile fuel costs. As a result, they have reduced capacity and grounded hundreds of aircraft although load factors remain high.

The decline in traffic has also impacted the Aviation Trust Fund, the largest source of revenue for FAA's \$15 billion annual budget. Trust Fund revenues declined by more than 11 percent during the first quarter of 2009. Given the drop in traffic and the resulting decline in passenger taxes, Trust Fund tax revenues will likely decrease significantly during the balance of fiscal 2009 and perhaps in fiscal 2010 as well.

Notwithstanding the uncertainties facing the industry and FAA, this situation provides FAA with opportunities to strategically position itself for an industry rebound.

We see four overarching areas for FAA's efforts:

First, maintain public confidence in FAA's ability to provide oversight of a dynamic industry.

The Southwest Airlines incident last spring disclosed multiple weaknesses in FAA's oversight of that carrier's maintenance program. One of the troubling findings was that FAA missed numerous inspections of the carrier's maintenance program, allowing safety directive compliance issues to go undetected for years. Our ongoing review has found similar missed inspections at seven other major carriers.

FAA must bolster the integrity of its oversight by establishing mechanisms at the national level to provide effective oversight of field efforts.

FAA must also follow through on longstanding commitments to improve oversight of external repair facilities. FAA's risk-based

oversight system does not yet include critical repairs performed by non-certificated repair facilities. It also does not require that air carriers report all repair stations performing repairs to critical components.

FAA must advance risk-based oversight of outsourced maintenance providers by implementing a system for determining how much and where aircraft maintenance is performed.

Runway incidents also continue to be a substantial threat to safety. Many see new technology as the solution, but our work on three major technologies for improving runway safety has raised concerns about what can be effectively deployed within the next several years. FAA and industry must implement airport-specific infrastructure and procedural changes and reinvigorate national FAA programs to improve runway safety in the near term.

Second, set expectations and budget priorities for NextGen, a high-risk effort involving billion-dollar investments.

After more than 4 years of planning, FAA must now shift NextGen to implementation. FAA has focused its attention on mid-term objectives, but fundamental issues must be addressed. These include:

First, completing a gap analysis of today's system and NextGen and refining the NextGen mid-term architecture.

Second, establishing priorities with stakeholders and reflecting them in budget requests and plans, so decision makers can determine what to invest in first.

Third, managing NextGen initiatives as portfolios and establishing clear lines of responsibility, authority and accountability. This is needed because new systems must be combined with procedural and airspace changes to deliver benefits.

Finally, identifying the number and types of facilities that will be needed to support NextGen. FAA must address the technology and security prerequisites and cost drivers associated with facility consolidation for decision makers to know what can be reasonably accomplished.

Third, bolster key safety workforces. FAA continues to face significant attrition in two critical safety workforces: air traffic controllers and aviation safety inspectors.

Through 2017, FAA will hire and train nearly 17,000 new controllers to replace those who were hired after the 1981 strike and are now retiring. A major challenge will be training and certifying the huge surge of new controllers at their assigned locations, a process that currently takes up to 3 years.

Controllers in training now represent 26 percent of the workforce, up from 15 percent in 2004. However, many key facilities, such as the Southern California TRACON, which expects to have nearly 100 controllers in training this year or over 40 percent of its workforce, already exceed the national level.

FAA must also ensure that it has a sufficient number of properly placed safety inspectors. It is not reasonable to expect FAA to have an inspector workforce large enough to oversee all aspects of a dynamic aviation industry. Therefore, it is critical that FAA ensure its inspectors are placed where they are most needed. Delivery of FAA's new staffing model this year remains an important watch item.

Finally, finance and establish controls over future airport development. Airline service reductions and capacity cuts have significantly impacted airports, especially in small communities, some of which have lost commercial service entirely. At large airports, declining revenues have led to concerns that some infrastructure projects will be delayed.

The economic stimulus packages proposed in the House and Senate contain significant funding amounts for the AIP that will help to revitalize airport development this year and next. However, such a large, rapid infusion of new funds could create significant oversight challenges for FAA, including pressure to begin projects quickly.

FAA must prepare for the potential risks and take steps to mitigate them. My staff is working with FAA and the Department to identify risks, oversight challenges, and best practices associated with the stimulus funding for the AIP.

That concludes my statement, Mr. Chairman. I would be happy to answer any questions you or Members of the Subcommittee may have.

Mr. COSTELLO. Thank you, General Scovel.

Let me just make a few comments.

Ms. LoBue, as I said earlier in the opening statements, we had a good meeting with the Secretary, Secretary LaHood, yesterday. We understand that the process is moving forward on a fast track as far as a new Administrator is concerned. And we, of course, hope that that happens sooner, rather than later, so that we can begin the process of doing things that need to be done over at the FAA.

Secondly, Dr. Dillingham, I couldn't agree with you more. The labor issue needs to get behind us. We expressed that to the Secretary and have expressed that to others as well. It is having an effect on morale throughout the Agency, and it is having an effect on the implementation of NextGen. So we appreciate your making note of that in your testimony.

At this time, the Chair recognizes the Ranking Member, Mr. Petri.

Mr. PETRI. Thank you very much, Mr. Chairman.

I have a number of questions which I will submit for written response in light of the lengthy panel agenda we have today and the need to get the testimony of all the witnesses and would yield my time to the two Members who have requested an opportunity to ask questions on this side, Mr. LoBiondo and Mr. Coble, starting with Mr. Coble.

Mr. COBLE. I thank the gentleman, Mr. Chairman and Mr. Ranking Member. I will be very brief in view of the time frame.

Ms. LoBue, what impact have the short-term extensions had on the FAA's ability to issue grants to airports.

Ms. LOBUE. We have had some problems with having short-term extensions, meaning that those kinds of grants and those projects with letters of intent that over a long period are disrupted with the kind of on and off nature of having extensions. You have to treat an extension as if it is the only time period that you are allowed to do the work. So that can be disruptive in the AIP program, very much so.



Mr. COBLE. Well, how will the proposed stimulus package complicate or improve the situation or will it have either effect on it?

Ms. LOBUE. My understanding of the stimulus package is that FAA stands ready to implement the funding numbers, the type of numbers that have been talked about in both the House and the Senate over a two-year period of time. Such a more extended period of time gives us a better chance for implementation than when we have had six-month extensions or three-month extensions.

So I think we actually feel the stimulus, in the way it is set up, although there are some issues with workforce implementation, we do believe we will be able to follow through on what Congress has talked about putting in place.

Mr. COBLE. Thank you, ma'am.

Dr. Dillingham, let me put the same question to you. What impact, in your opinion, has the short-term extensions had on the FAA's ability to issue grants to airports?

Mr. DILLINGHAM. Mr. Coble, in the same vein as Ms. LoBue talked about, when grants are issued in sort of spurts, the airports can only commit a certain amount to construction, and one of the things that happens is that the construction crews will pack up and go to another job. When the money becomes available again, they come back. But what that does is extends the time as well as extends the cost of a project when they come back in place again.

So when you don't have a situation where you know that the money is coming and the amount that is coming, it makes it very difficult especially for medium-size airports. Big airports and little airports, it is less of a problem. But the medium airports, that affects them more.

Mr. COBLE. I thank you, sir.

And, finally, Mr. Scovel, with the recent disclosure of a security breach of one of the FAA's servers, do you have concern about the FAA's ability to protect critical systems from cyber attacks?

Mr. SCOVEL. Thank you, Mr. Coble.

Yes, we do, but I would like to note first that FAA has taken steps to improve its cyber protection program in recent years, and my office has been working with FAA and the Department along those lines.

Some of the concerns that I have with FAA are unique to FAA, and some extend to all agencies across Government; I will cite three specifically.

The first has to do with technology changes. FAA has moved increasingly, as have many agencies, to an internet protocol-based technology in modernizing its systems. This is in marked contrast to previous practice some time ago when agencies would develop proprietary software and operate it in a closed network environment, which greatly limited the opportunity, of course, for hackers to gain access. With an internet-based system, hackers' access is a much greater risk.

The second point I would raise is system interconnectivity. Unlike most Government systems, FAA systems are highly connected to each other. They must be in order to operate the NAS. But security, as we all know, is only as strong as the weakest link. So, if a hacker is able to gain access to even one system, then potentially other systems are at risk as well.

Finally, outsourcing. FAA, like other agencies, has turned increasingly to outsourcing. It has forfeited some aspect of direct control over information security, and that remains a concern for us.

We have two ongoing audits within the FAA on this, both performed in response to requests from this Committee. One has to do with web application security in air traffic control systems, and the second involves information security and privacy protection of medical records of hundreds of thousands of airmen. Both of those topics have been of concern to the Committee, and we are responding to the Committee's requests.

Mr. COBLE. Thank you all.

I thank the gentleman from Wisconsin. I will let him reclaim.

Mr. PETRI. Thank you.

I would yield to Mr. LoBiondo. I know you are trying to juggle a couple of balls and we want to let you.

Mr. LOBIONDO. Thank you very much, Mr. Petri.

Mr. Chairman, thank you for holding this hearing.

To our panel, thank you for being here.

Ms. LoBue, just a matter of point of reference, I represent the FAA Technical Facility in Egg Harbor Township. And, of course, I, along with many others, am very concerned with the news that we got yesterday about the personnel records of some 45,000 FAA employees including probably more 1,500 that are in my district. We understand that the hackers were able to access employee names, addresses and social security numbers along with some other information.

Of course, I think I probably share everyone's disappointment that in the wake of the breaches of information that occurred with the VA where we thought, Members of Congress believed, that agencies were going to take steps to do something, that this actually occurred. For whatever reason, it didn't, and I am sure you will have more information on that in the future.

What I would like to know is that does the FAA intend to help protect the employees from identity fraud? Do you have any measures that you are planning on doing?

Ms. LOBUE. The answer to that is yes. Frankly, as one of the employees whose personal information is at risk—I am one of those 45,000 people—I am very concerned about this event.

FAA has taken both some short-term and some long-term measures for the immediate future to make sure this doesn't happen again while we buttress, and obviously we will be working with the OIG on how we can buttress, our systems.

There is some discussion as to how much we can do to protect the employees, and we will be coming out with information on that pretty quickly, but we are committed to do something, yes.

Mr. LOBIONDO. Have you had any discussions if you are prepared to offer employees free credit monitoring like the VA did?

Ms. LOBUE. That is my understanding, yes.

Mr. LOBIONDO. That you will be doing that?

Ms. LOBUE. Yes.

Mr. LOBIONDO. And you will be briefing us or at least the Chairman on what steps actually will be involved to help protect those employees and what you will do to keep this from happening in the future?

Ms. LOBUE. Yes, sir. We will come up. Like I said, we are doing some short-term and some long-term things. I think we are still getting all of our plan together. We would be more than willing to come up and brief the Committee in detail.

Mr. LOBIONDO. Would you expect that you would be prepared to share with us what your plans would be for the employees and for future protections and what time period?

Ms. LOBUE. That would be part of the briefing, yes, sir.

Mr. LOBIONDO. I mean are we talking about six months, a month?

Ms. LOBUE. Until we will be ready? No. I think we could come up within the next week or two.

Mr. LOBIONDO. In the next week or two.

Ms. LOBUE. Yes.

Mr. LOBIONDO. Mr. Chairman, hopefully, you will follow up with them and let us know.

Mr. COSTELLO. We will indeed, and we would ask you to contact the staff when you are ready to come up and to brief us.

Mr. LOBIONDO. Thank you very much, Mr. Chairman.

Thank you, Ms. LoBue.

Mr. COSTELLO. I thank the gentleman from New Jersey and now recognize the gentleman from Oregon, Mr. DeFazio.

Mr. DEFazio. Thank you, Mr. Chairman. Mr. Chairman, I just have one question, and it would be directed to Ms. LoBue.

As you may know, Dr. Dillingham I think was questioned and said that FAA management's and the unions' poor relationship could slow the implementation of NextGen. So the core of that poor relationship has to do with the imposition of what I consider to be an unfair contract. Can you tell me what is going on at the FAA in terms of reopening negotiations for the contract?

Ms. LOBUE. The Secretary has indicated that his priority is getting on board an Administrator who will be willing to work through the workplace issues and the union issues and get that behind us. As I understand it, he has had conversations with the Committee to indicate that that is going to be in the pretty immediate future, and that is one of his highest priorities.

Mr. DEFazio. Okay. So we would revisit the imposed contract and work conditions is the position as you understand it.

Ms. LOBUE. My understanding is this is one of the highest priorities of the Secretary.

Mr. DEFazio. Okay. Okay. All right. Thank you.

Thank you, Mr. Chairman.

Mr. COSTELLO. I thank the gentleman from Oregon and now recognize the gentleman from Iowa, Mr. Boswell.

Mr. BOSWELL. Thank you, Mr. Chairman.

Ms. LoBue, Dr. Dillingham has made a statement in his written statement that the strained relationship between the FAA management and unions could slow the implementation of NextGen. What is your response to that?

Ms. LOBUE. I think we believe that the new Administration has made it very clear that they intend to work through the workforce issues. While we have had some input from controllers involved in the past, I think we all recognize that the workforce is a critical

piece of getting NextGen on board, and the new Administration has that as one of its highest priorities.

Mr. BOSWELL. Dr. Dillingham, any comment on that?

Mr. DILLINGHAM. Yes, Mr. Boswell. I think there are many elements to sort of working out the relationship, the labor-management relationship, but one of the things that we sort of want to highlight is the fact that not only NATCA but the other union Members need to be active participants in the development, the design of NextGen.

I mean there are other labor-management issues, but what we have seen in the past is unless the stakeholders are intimately involved it tends to make things cost more and take longer to get them done. So, hopefully, that will be a part of bringing things together is bringing the stakeholders on board.

Mr. BOSWELL. I think that is historical.

Ms. LoBue, just to continue a little bit, what steps are you taking to ensure that you have the staff you need to meet the needs of the NextGen?

Ms. LOBUE. This Committee has been very generous in helping us hire inspectors. So, as I said, safety is always first and foremost.

I think from the point of getting NextGen in place, we have just issued at the end of January our NextGen implementation plan which focuses more on the mid-term. I think we have come forward previously with a fairly concerted effort on what the next five years looks like.

Mr. BOSWELL. So you think you have the contract management expertise? You think you have the systems engineering you need and staff with the technical skills?

Ms. LOBUE. I think we are concerned about staff with technical skills. We see a shortage coming just as do all technical-oriented businesses. That said, I think GAO recognizing and taking us off the high risk list shows that we have really put a premium on putting in place systems that will manage contracts in a better and more effective, cost-effective manner.

So, yes, sir.

Mr. BOSWELL. Dr. Dillingham, your comment?

Mr. DILLINGHAM. Mr. Boswell, FAA does recognize that it has a need. Some of the things that it needs for NextGen are different than what it needed for the previous ATC modernization program. What we are concerned about is the need for those highly skilled technical people that are going to be desired across the whole spectrum of the economy.

On the plus side, because of the nature of the economy, it might be easier for FAA to attract those kinds of people, but what we are talking about is the timing. These people will have to be brought into FAA, integrated into FAA, familiarized with NextGen. And so, we are talking about something that could throw the schedule off if we don't move immediately to address this issue.

Mr. BOSWELL. General Scovel, would you comment, please?

Maybe, do you think we are doing enough? Is FAA doing enough to address the attrition of air traffic controllers to start?

Mr. SCOVEL. FAA has done what I can only say is a remarkable job in hiring replacements for air traffic controllers who have decided to leave the workforce.

The attrition over the last 3 to 4 years has amounted to almost 5,000 controllers, and 2,657 have been retirements. FAA's projections have been a little bit low, by about 16 percent, in determining what that attrition rate would be.

Mr. BOSWELL. What percent did you say?

Mr. SCOVEL. Sixteen percent low over the years. However, FAA has managed to increase hiring efforts and, in fact, now has some 270 more controllers onboard than it did in 2004.

Mr. BOSWELL. Is that adequate?

Mr. SCOVEL. We do have concerns, not over the total size of the workforce, sir, but mostly over the skill level, the training level of the controllers who are currently Members of the workforce.

The number of certified professional controllers, those who are fully capable of operating on their own in their facilities, has diminished as the controllers in training numbers have greatly increased. At some facilities, controllers in training amount to upwards of 40 percent of the workforce at that facility, and that can be a problem in terms of training those new controller because each new controller requires a certified professional controller to walk them through the steps.

Mr. BOSWELL. Thank you.

Thank you, Mr. Chairman. My time is up, but I think we are going to have to give some more continued attention to this.

Mr. COSTELLO. Well, let me just follow up and make a comment to your question to General Scovel. I was, not too long ago, in the air traffic control tower in Orlando, and at the time there were 10 controllers on duty. Only one had one year of experience. The rest of them had been on the job less than one year.

So when I think of what happened with U.S. Airways in the Hudson River, I think about the experience that was involved with everyone from the flight attendants to the pilots to the air traffic controller to the responders and the level of experience that they had.

One has to wonder that with an air traffic control force where we are losing the most experienced controllers at the rapid pace that we are losing them, it does make one concerned about a lack of experience in a very critical position.

The Chair now recognizes the gentlelady from Hawaii, Ms. Hirono.

Ms. HIRONO. Thank you, Mr. Chairman.

I have some questions for Ms. LoBue, and I note that your testimony focused on safety and efficiency of aviation as prime concerns. So I have two questions relating to safety.

I have learned recently that thousands of corporate aircraft as well as the craft used by the Secretaries of Transportation and Homeland Security, senior military leaders and the FAA personnel have technology on this aircraft that enable pilots to see under conditions of unstoppable blinding smoke in the cockpit. I was surprised to learn, however, that there is no FAA requirement that passenger airliners or military aircraft have equivalent systems to ensure that pilots can see in the cockpit under these kinds of conditions.

The technology in question costs approximately \$25,000 to \$30,000 per aircraft which equates to a penny or so per ticket over the life of the system.

As I understand it, the FAA's minimum safety standard is that any failure of systems or components that result in catastrophic consequences must be extremely improbable, and there is a definition for extreme improbability.

But according to information that I have and if you Google, for example, smoke in cockpits, you will see dozens and dozens of incidents where smoke was in the cockpit, resulted in emergency landings of aircraft. There have also been numerous catastrophic fatal airliner incidents in which smoke in the cockpit has been a cause or a factor of that incident.

When we are talking about emergency situations dealing with airlines, seconds count. As was the case in the U.S. Airways Flight 1549, seconds count.

So I would like to know why the FAA should not mandate emergency vision technology to enable pilots to see their controls and to land safely during in-flight emergencies with unstoppable blinding smoke in the cockpit, especially as these systems and this technology is utilized on the planes that are used by the Secretaries of Transportation and Homeland Security, senior military leaders and thousands of corporate aircraft.

Ms. LOBUE. Thank you. I am not personally able to answer this question for you, but I would offer that we will get the people that know at FAA to come up and brief you very quickly.

Ms. HIRONO. Well, I know that smoke in the cockpit is something that occurs, as I mentioned, relatively frequently and that this is an issue that has been around for decades.

I am a new Member to the Committee, so I have recently been apprised of this, and I would really urge FAA too. Because you are focusing on safety and nothing could be more important than the safety of aviation passengers, that since the technology is there, it is utilized, it doesn't cost very much, I would encourage FAA to make that requirement.

The second question I have is in the 1990s the FAA contracted operations of a number of Level I airport towers operating under visual flight rules—these are Class D airports—to private operators, and one such tower is in the Kona International Airport which is in my district on the Island of Hawaii. This airport is currently classified as a Class D airspace and therefore does not have approach control run by the FAA. However, we know that over the past 15 years Kona Airport is one of the busier airports and it more than qualifies for Class C status. They have over 1.3 million passengers compared with the minimum of 250,000 for a Class C airspace. And Class C airspace requires FAA approach control.

I have been told by some flight professionals, pilots, air traffic controllers, and they have expressed concerns of safety issues at the Kona Airport.

The contract, private contract is about to expire, and I think that this is a really good time for the FAA to review the safety needs at this airport with the idea that it should. The question as to whether or not this airport should return to FAA control is, one,

definitely timely and I think really important for the safety of the passengers going to that airport.

I would ask you to look into it and if you could respond to me, but if you can't right now, then later.

Ms. LOBUE. So, yes, I would absolutely commit to you that we will look into that and get back to you very quickly.

Ms. HIRONO. Thank you.

I yield back the rest of my time.

Mr. COSTELLO. The Chair thanks the gentlelady and now recognizes the gentleman from New York, Mr. McMahon.

Mr. MCMAHON. Thank you, Chairman Costello and Ranking Member Petri for organizing this important meeting on the FAA Reauthorization Act of 2009.

As aviation is a critical mode of transportation for our Nation and for our world, to all the witnesses from the FAA, the airlines and, most importantly, to the hardworking air traffic controllers, pilots, flight attendants, ground crews and countless other airline and airport employees, I thank you for keeping air travel the safest form of travel in the United States.

As the Chairman mentioned, all we have to do is look at the heroic crew from the U.S. Airways Flight 1549 which happened right in the Harbor of New York from which I come. You may have noticed that on the accent. How important it is to have experienced and dedicated people flying our planes in our air transport system.

Mr. Chairman, I am excited about joining this Subcommittee, and I look forward to a rigorous discussion of this reauthorization bill. I know that this Committee and our great Subcommittee staff have put together a good package over the last few years, and I am looking forward to working with you to address a number of concerns.

Of course, I support the creation of the NextGen air transportation system, and I encourage the use of the most cutting-edge satellite and GPS technology available for our network.

As you know, my district includes Staten Island and the western portion of Brooklyn, New York, the gateway to New York Harbor. The New York area airports provide a critical link to our national aviation network, but they also are some of the busiest airports in the Nation, and we must work to build a system capacity in a way that makes sense to New York and our Country as a whole.

That is why I applaud the efforts of my colleagues last year to oppose the Bush Administration's plan to auction off the air slots through congestion pricing at JFK and LaGuardia and, eventually, Newark. That plan was unworkable, and I am glad that it will not be included in this year's bill.

Also, Newark Airport is just over the Goethals Bridge from Staten Island. Airplane and helicopter noise continues to be a big problem for my district. I hope we can work to include in this bill ways to study the noise around New York airports.

Finally, all of us have heard countless horror stories about air delays and being stuck on the tarmac, and we need to make sure that the traveling public is treated with respect by adopting a strong passengers' bill of rights.

With that said and your permission, Mr. Chairman, I just have two questions to Ms. LoBue.

Our air traffic controllers are often the eyes and ears of our airplanes and are the backbone of our safety network. It has already been brought up by the Chairman how their training is so important.

What type of outreach is going on with the FAA to reach out to the air traffic controllers about the airspace redesign and staffing issues across the Country as their experience is so important and how are they being included in this process?

Ms. LOBUE. My understanding is that there was some outreach during the development of the New York airspace redesign to the controller workforce. We can get you specifics on that and have someone come up and brief you on all the outreach that was done.

Mr. MCMAHON. Thank you.

Mr. Chairman, I yield the remainder of my time. Thank you.

Mr. COSTELLO. The Chair thanks the gentleman and now recognizes the gentlelady from the District of Columbia, Ms. Norton.

Ms. NORTON. Thank you very much, Mr. Chairman, and thank you for kicking off this very important series of hearings.

I want to identify myself with the remarks of the Chairman and others concerning the necessity to acquire an Administrator who knows how to settle disputes with the labor force, which is stunting all we have to do in this Agency.

First, let me ask Ms. LoBue if you would spell out in greater detail the relationship between the upcoming stimulus and the Airport Improvement Program, or perhaps Mr. Dillingham. We understand from your testimony that it gets you somewhat beyond the six-month extensions, but would you put on the record how the use of these funds will move your own mandate for an improvement program?

Ms. LOBUE. So let me be clear, there is a core set of programs that needs to be reauthorized and that this Committee's bill would work toward.

For the stimulus program, we have a series of projects in the pipeline that we believe would create jobs fairly immediately, and those particular items would be the project types that would be done under the stimulus package. And the stimulus, since it is—

Ms. NORTON. What types of items, for example?

Ms. LOBUE. It can be resurfacing runways. It can be putting in landing lights.

We have a system of safety projects, that under the system called the NPIAS, we put them in priority order. Those that would rise to the next highest are the types of items that we would choose that are traditional items done under the Airport Improvement Program. It would just advance them from 2010 to 2009, from 2011 to 2010.

Ms. NORTON. Well, every Committee feels an urgent need to make sure that these funds are used, used quickly, efficiently. When can you get to the Chairman of this Subcommittee and the Chairman of the Full Committee a list of what those projects will be and their readiness for implementation?

Ms. LOBUE. I would have to go back and check that, and we will get back to you with information.



Ms. NORTON. I think you should get back to the Chairman of this Subcommittee within 10 days on that information. This is a lot of money, \$3 billion.

Ms. LOBUE. My understanding is we have the list. I am just not familiar enough with it myself, personally.

Ms. NORTON. Yes. All right. If you would just submit that to the Subcommittee Chairman within 10 days, so that we can be aware of it, I think it would be helpful to us all.

I have a question that is very troubling. In this region, we appear to be going backwards on matters of security. The only public service helicopter located in this region, we have been informed is in danger of closing. That, of course, puts into jeopardy security in this high-profile, highly-targeted region.

It is used, of course, by public entities: the Metropolitan Police Air Support Unit, the U.S. Park Police, et cetera. Moreover, it is this heliport, the one at South Capitol Street, is a part of the Department of Defense Nightingale Program. It is the point of departure of a number of Federal officials including the Supreme Court. And, on 9/11, this heliport in fact became the air control command tower when the airport here was evacuated.

There seemed to have been some understanding of the importance of this helicopter because despite what was done with general aviation, which is essentially closing it down and then opening it in a way so that virtually nobody can use it, for two years after 9/11, the heliport continued to serve public service clients and corporate clients as well as news-gathering helicopters. An agreement was reached, as you might expect, with the Secret Service and actually adopted by TSA.

For reasons that I would like you to explain, since October, 2003, the commercial operators whose funding is necessary to keep the heliport open and why they have informed us that they are on the brink of closing, they have been restricted from using the heliport.

Now understand who pilots the commercial helicopters. These are all people who are or have been military or police helicopter pilots. That is what they have to be in order to come into this airport.

Now they are to the point where they cannot generate enough revenue to keep the heliport open without going back to what they had two years after 9/11. Could you explain to this Subcommittee why, with all of these safeguards, without explanation, this vital security defense service was abruptly cut off and what you intend to do about it?

Ms. LOBUE. I am not personally familiar with this issue. So I will have to get someone who is come up and brief you. We commit to do that within the next week.

Mr. COSTELLO. Ms. Norton, Ms. LoBue is here because Ms. Osmus, who was scheduled to be here, is ill today. So she is sitting in.

Let me suggest on that issue—and we recently discussed this issue—we need the Department over, someone who knows and can answer the question. We will set up a meeting with you and with the appropriate people within the Agency to discuss the matter.

Ms. NORTON. I so appreciate that, Mr. Chairman. It is a matter of some urgency, I believe.

At the same time, Mr. Chairman, may I ask?

Mr. COSTELLO. If it is quick. We are already a few minutes over time.

Ms. NORTON. Just let me ask. I am not asking a question. I am asking you if you would provide a similar briefing from whoever are the responsible officials—I appreciate that we made this witness a sitting duck for the entire Department—to explain whether they have reviewed the virtual exclusion of general aviation from the airport of the Nation's Capital even though just a few days after 9/11 it was up and running in the city of skyscrapers, New York City, and only because this Committee threatened contempt did we get it opened at all, and then we have such onerous requirements, people with shotguns onboard and the like.

That it continues to be virtual exclusion, I would like to ask for an explanation and review of that policy as well.

Mr. COSTELLO. We will be in touch with your staff, and we will set up a meeting.

Chairman Oberstar had a meeting yesterday with the Subcommittee Chairs and Secretary LaHood, and I think another meeting is going to happen sometime in the not too distant future. But we will set that meeting.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. COSTELLO. The Chair thanks the gentlelady and now recognizes the gentleman from Tennessee, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

Let me ask first, and I just haven't had time to look, and I don't know who the appropriate person to answer this question might be. Is there anything in the bill or is there anything that we already have in the way of help to help airports clear away fowl from the area so they don't cause disturbances with airplanes as we saw in New York?

Is there any program that we have? Noisemakers? Whatever?

Yes, ma'am.

Ms. LOBUE. The FAA does, through its airport organization, have guidance and programs for wildlife and bird hazard mitigation and works actively with most of the airports throughout the United States.

It does remain a big concern, sir. You are correct.

Mr. COHEN. Well, obviously, it does.

Was the problem in New York that these birds were just lucky or unlucky? They didn't get observed by your deterrent effects or your monitoring system and then they ran into the plane or vice-versa or what?

Ms. LOBUE. My understanding is the monitoring systems are mostly down at a lower level and these were at a higher level. I am not familiar enough.

Obviously, they are still going through all the facts, and the NTSB has not come out with all of its reports yet. But, that said, we do work the issue particularly through the airports, at the lowest altitude levels.

Mr. COHEN. What gets geese to go the other way except for the weather?

Ms. LOBUE. I can get you more information on the program. They have deterrents whether it is through actively working to replace water hazards or other things like that.

New York is complicated in that the airport is right on the water, and there is a wildlife refuge there. So they actually have a considerable problem that they do try and mitigate.

Mr. COHEN. But it is on your radar, so to speak?

Ms. LOBUE. Absolutely.

Mr. COHEN. Thank you.

Let me ask all three of you : Could you safely say that you are all in favor of the passage of this bill?

I see one nod.

Mr. DILLINGHAM. Mr. Cohen, we are definitely in favor of the passage of the bill. We have worked with the Committee to help provide some of the background information that is behind the bill. So we are definitely in favor of it.

Mr. COHEN. Let me ask you this: There is a provision in here that deals with labor laws and deals with Federal Express which is the number one carrier of cargo in this Country, and it would require them to be under the National Labor Relations Act rather than the Railway Labor Act. The courts have ruled that is appropriate legislatively and also in courts, judicially, that that is the proper place for labor disputes to be determined for the good of the Country because if there is a strike there in some remote section of the Federal Express system and FedEx is halted in this particularly recessionary time, if not at all times, commerce comes to a halt.

Are you all familiar with that provision? Are any of you familiar with it?

Nobody is familiar with it?

Well, and you endorse the bill.

My question to you is this: In my opinion, and I come from Memphis. That is maybe considered provincial. But Federal Express covers the entire United States, the entire globe, and this issue has the potential to stop this bill.

I am in favor of the bill as you are and think it is real important, as does my airport authority, that we have the Next Generation, that we have runway improvements, that we have all the provisions in the bill to help move us forward.

But this one labor provision is not germane and that the three of you all aren't even familiar with. And yet you are experts on the field—the pros from Dover, as they would say in MASH—and aren't even familiar with it could hold up this bill.

And I think that is a serious problem and especially in the Senate because they have, effectively, hijacked the stimulus bill with three individuals, and I suspect that the same thing could happen over there on this bill. I would hate to see us not get this bill passed because of a provision that is very important to the future of this Country's economy and that is not necessarily germane to runways, extensions and NextGen and other safety features.

So, with that as a statement, if anybody wants to comment, I would appreciate it. Mr. Scovel, do you have a thought?

Mr. SCOVEL. I do not, sir. The topic is really beyond the purview of my office, and we are happy to leave it within the sound judgment of the Congress.

Mr. COSTELLO. I think the gentleman from Tennessee has sufficiently made his point on the issue. I don't think you are going to

get a comment out of any one of the witnesses here, but your point is well taken and noted.

Mr. COHEN. Thank you, Mr. Chairman. I appreciate your recognizing me because I have a meeting in the Tennessee delegation, and I absolutely, positively wanted to be here for this particular moment. Thank you.

Mr. COSTELLO. The Chair thanks the gentleman and now recognizes the gentleman from Arkansas, Mr. Boswell.

Mr. BOOZMAN. You have forgotten my name.

Mr. COSTELLO. Or Mr. Boozman. I just had a conversation with Mr. Boswell. Mr. Boozman.

And let me remind Members that we have 14 more witnesses to hear from. So I would ask Members to stay within the five-minute time limit.

The Chair now recognizes the gentleman from Arkansas.

Mr. BOOZMAN. Thank you, Mr. Chairman. I will cooperate even though you forgot my name.

Thank you all for being here, and we appreciate the testimony.

Dr. Dillingham, EAS is an important entity in many of our districts throughout the Country, many Members of Congress. Can you give us some options and alternatives that perhaps Congress might explore to enhance or supplement EAS?

Mr. DILLINGHAM. Thank you, Mr. Boozman.

We currently have a study underway for this Subcommittee that looks at those exact questions. What we can say at this early stage is that clearly looking at the criteria and requirements associated with EAS is well overdue. Since the program was started some 30 years ago, there have not been major changes or adjustments in the program in spite of changes in population, demography, in spite of changes in the aviation industry.

I think part of what we are going to try and report out is not only how to enhance EAS but also options that will provide the sort of connectivity for small and rural communities to that national transportation network. And it may be rail, and it may be bus or other surface things, but we propose to report those options to the Committee as soon as we are finished analyzing the data.

Mr. BOOZMAN. Thank you very much, sir.

I yield back.

Mr. COSTELLO. The Chair thanks the gentleman and now recognizes the gentlelady from California, Ms. Richardson.

Ms. RICHARDSON. Yes, thank you, Mr. Chairman, for having this meeting and welcome back to all of you of seeing you on our new year and new session.

I have two very quick questions. One, I want to build upon the Chairman regarding air traffic controllers.

I notice, Ms. LoBue, that in your very extensive testimony it is only until the last paragraph do you talk about air traffic controllers.

And, Mr. Dillingham, in your presentation, you talk about that you agree that they are somewhat on track.

However, all you got to do is come to my State, and I am sure you have read the headlines of both of my Senators. We are extremely concerned of what is happening with air traffic controllers. So I would like to know where are we here because your docu-

mentation says we are on track, things are going fine, yet in our communities, as the Chairman has shared as well, we have a lot of inexperienced people in there where it is a disaster waiting to happen?

Essentially, the recommendation I believe from Mr. Dillingham's report is not only hiring, but what are you doing to resolve the labor conflict which I think has been going on for several years and what is the Secretary's commitment to resolving that conflict?

Because we are projecting what is going to happen of hiring people of seven years, but I believe if we continue to disrespect working people and not resolve the contract issues, you may find that the pattern is not at the same. So what are we going to do to address that?

Ms. LOBUE. If I could.

Ms. RICHARDSON. Please.

Ms. LOBUE. The Secretary, the new Secretary, Mr. LaHood, has committed that with his first hire, a new FAA Administrator, one of the things he is going to have him tackle is the workforce issues. He is looking for a person that will be willing to, and able to, work with labor and get some of these issues behind us. I think we have that commitment from the Secretary, and I believe the Chairman has mentioned that we should look forward to that in the very near future.

That will be one of the items tackled by this Administration pretty quickly.

As to the concern about the proportion of trainees versus experienced controllers, that is something obviously that we have concerns about. We do have a lot of controllers who we are hiring. We are following the plan, but there are in fact places that we understand the ratio of trainees is higher than we would like. We are actively keeping an eye on those, and we have processes in place to get those controllers checked out and to work through some of the experience issues on a more effective and faster way.

So I can tell you that we understand the problem and we are working it, although we do understand there will be some transition issues as we move forward.

Ms. RICHARDSON. Okay. In the sense of time that the Chairman has said, could you please forward to the Committee a report, I would say, on your major airports? I know LAX has to be top on the list.

Not what we are preparing and we are working on but what specifically is happening because it is of great concern. Both of the Senators in my State have expressed the concern, and it is just not to our satisfaction at this point.

I would also urge the Secretary, and I hope to meet with him soon, and I am sure our Chairman will share the thoughts of this Committee. But resolving that labor agreement has to be a top priority, not the last paragraph in your report because I believe it hinges upon many of the other problems that we have.

Finally, I wanted to talk about noise mitigation. In addition to LAX, I have the Long Beach Airport in my district.

Mr. Dillingham, you talked about that local government decisions that allow communities to expand near airports may, however, erode some of the gains in these reductions of noise. The FAA has

issued guidance that discourages incompatible land uses such as residences, schools, hospitals and in areas with significant noise, aviation noise.

In my area, we just, when I was on the council there, approved a major project of over 2,000 homes to go right up under the airport, the plane of landing. And so, my question is what would you advise to Members on Committees?

This isn't saying don't build any more. But for those of us who are there, how can we take advantage of other pilot programs or how could you recommend better addressing it for the neighborhoods that are clearly along those paths?

Mr. DILLINGHAM. Ms. Richardson, as you have said, land use is strictly a local jurisdiction matter, and what FAA has done is there is a Part 150 program that allows for noise mitigation to try and mitigate some of the noise where you have this close-up usage of land.

Also, we are currently doing work for this Committee, and LAX is a big part of it. We are doing a study looking to see what airports have been doing to mitigate all kinds of environmental issues, noise and emissions. We are hoping to bring to the Committee some answers and options that we have learned from a national study of airports, and hopefully that will be of some help in the LAX area.

Ms. RICHARDSON. If you would consider my area as evaluating as you move forward, I would appreciate it.

Mr. DILLINGHAM. Yes, ma'am.

Ms. RICHARDSON. Thank you, Mr. Chairman. I have extended my time.

Mr. COSTELLO. The Chair thanks the gentlelady and now recognizes the gentleman from Michigan, Dr. Ehlers.

Mr. EHLERS. Thank you, Mr. Chairman, but I just arrived due to a delay, and I don't feel qualified to ask a question of this August panel.

Mr. COSTELLO. Would you like to yield your time to Mr. Dent?

Mr. EHLERS. I would be happy to yield my time to Mr. Dent.

Mr. DENT. Thank you, Mr. Ehlers, for yielding.

My question to you is this: What benefits have been achieved by moving the Joint Planning and Development Office within the bureaucracy of the Air Traffic Organization, Ms. LoBue?

Ms. LOBUE. That move was made to better work what we generally call "stovepipes" and work some of the horizontal integration in the Agency. So the point was to have those things that the JPDO had done work on that would qualify in the short and the mid-term be put into implementation and worked immediately. Those things in the longer term, JPDO is still actively working and has the outreach and has the responsibility to coordinate with all the other agencies.

Mr. DENT. Thank you.

Now what is the biggest safety priority for the Agency?

Ms. LOBUE. I don't know that I am qualified to offer a single safety priority. We have many.

Mr. DENT. Okay. With the downturn in the economy too, it seems to me that Federal jobs may look better than ever for many people.

Should this help the FAA's recruitment of highly qualified people with systems engineering and contract management expertise?

Ms. LOBUE. I think we believe that it will. I think we remain concerned that across all technical industries, that there is a shortage. But I think the economic downturn should help us, yes.

Mr. DENT. I guess my final question I have for you then is why does the FAA not keep any safety data on air ambulances, cargo aircraft and general aviation?

Ms. LOBUE. I am not qualified to answer that, sir, but I can get someone who is to come up and brief you.

Mr. DENT. I appreciate that.

I will yield back my time to Mr. Ehlers.

Mr. EHLERS. No one seems to be seeking time on our side, so I will yield back, Mr. Chairman.

Mr. COSTELLO. The Chair thanks the gentleman and now recognizes the gentleman from Missouri, Mr. Carnahan.

Mr. CARNAHAN. Thank you, Mr. Chairman.

I want to first thank the panel and direct my question to Inspector General Scovel.

In a report that came out last April for DOT, you stated that fewer veteran controllers were transferring from lower level, less complicated facilities to higher level, busier locations. The impact has been to put less experienced controllers into situations they may not be as ready for as some of their counterparts. Is that still the case nearly a year later and are there any updated data that we could see regarding that?

Mr. SCOVEL. Thank you, Mr. Carnahan.

We finished our report on air traffic controller facility level training as of the end of fiscal year 2008. So my data are current as of September 30, 2008.

At that point, we had determined that fewer veteran controllers than FAA had hoped were indeed taking up the Agency on its offer to move them, with a bonus, to facilities where veterans were needed.

As a result, controllers in training were found in increasing numbers at a number of facilities across the Country. This is a concern both for the Agency and for my office because, of course, controllers in training require much closer supervision and are not qualified to operate at all positions across the facility.

Mr. CARNAHAN. What role has the Agency's contract had on this drop in incentives for the more experienced controllers to move up the ranks to these busier facilities?

Mr. SCOVEL. I am not aware that our audit covered that particular question. When you talk about the contract, you are talking about the labor contract between the Agency and NATCA, sir?

Mr. CARNAHAN. Yes.

Mr. SCOVEL. Right. We did not address that.

What we attempted to address, at least in part, was whether the absence of a full contract might be leading to more retirements on the part of veteran controllers.

Mr. CARNAHAN. And what were your findings in that regard?

Mr. SCOVEL. We found certainly that the absence of a full contract was a significant morale issue. However, we could not identify the absence of a contract as, in most cases, the sole driving factor

leading an individual to decide to retire. There were just too many factors, both personal and professional, that were leading veteran controllers to retire.

Perhaps in some cases the absence of a contract was one of those factors, but it was expressed more generally in terms of the morale of the workforce.

Mr. CARNAHAN. Thank you.

I yield back.

Mr. COSTELLO. The Chair thanks the gentleman and now recognizes the gentleman from Kansas, Mr. Moran.

Mr. MORAN. Mr. Chairman, thank you very much. I appreciate the opportunity to hear these witnesses read their testimony in this case and hear the next panel.

The economic downturn, Ms. LoBue, what is the current state of the Aviation Trust Fund and its effect upon the FAA's budget?

Ms. LOBUE. Right now, the Trust Fund for the end of 2009, and this goes back to the mid-term projections we did last July, we project that Trust Fund receipts will be \$12.2 billion at the end of 2009 and \$13.1 billion in 2010. This says basically that for the cash balance, there is not a problem right now.

We are concerned about the low uncommitted balance which shows a mismatch of receipts and spending because, as we have all seen, traffic continues to trend downward as much as perhaps 10 percent. So that is an issue that we will have to look at.

Mr. MORAN. When you say the cash balances are not a problem right now, how would you define right now? What time frame?

Are there expectations? What does your crystal ball foretell?

Ms. LOBUE. At the end of 2009, we are expecting a \$9.1 billion cash balance.

Obviously, all of these numbers will be updated as the new Administration comes forward with its budget request. I believe that is at the end of February. So they would have, I think, in that budget request much more articulation of how they see the problem.

Mr. MORAN. Is there an understanding at the FAA what the Administration's plans are to fill the long vacant position of Administrator?

Ms. LOBUE. The Secretary has met both with the FAA executives and has had a couple of town hall meetings open to all FAA staff and reiterated several times that one of his highest priorities is getting an Administrator who will both be able to tackle NextGen and be able to work through the workforce issues that we have seen.

I understand from the Chairman that in fact they have identified someone and are hoping to get that person on soon.

Mr. MORAN. That is encouraging. It has been discouraging for the amount of time that the position has been vacant, and I would just publicly encourage the Secretary, the Administration to actively engage in finding a leader at the Federal Aviation Administration.

I thank the Chairman and yield back my time.

Mr. COSTELLO. I thank the gentleman and just would comment that in a recent meeting with the Secretary and others the Administration has identified someone that they are speaking to right



now. The Administration has only been in office 21 days. So it seems to me like it is pretty fast action and that they are moving forward.

We hope that the person is appointed and moves through the process quickly. We think it is important for NextGen and a number of the other programs.

Mr. MORAN. If the Chairman would yield, I did not mean to infer that 21 days was necessarily a long period of time, but it has been a long time since we have had the position occupied. Thank you.

Mr. COSTELLO. The Chair now recognizes the gentleman from Illinois, Mr. Lipinski.

Mr. LIPINSKI. Thank you, Mr. Chairman. I know we have a long hearing today, so I will work on keeping this short.

I want to thank Chairman Costello and Ranking Member Petri for their work in putting together this bill last year and also working with Chairman Oberstar and Ranking Member Mica.

There are a couple of things that I had worked with the Chairmen and Ranking Members, getting the provision legislation to continue and enhance R&D for avgas alternatives, which I think is important, as well as the provision that would establish a new FAA center of excellence focused on alternative jet fuel research.

So I thank the Chairman for including this in the bill that we have before us now and that we are moving very quickly on this. I think it is very important that we move quickly, and hopefully the Senate will move this time on the FAA reauthorization.

So, in order to keep this short for the rest of the witnesses, I just wanted to ask one question right now of Ms. LoBue about Chicago Midway International Airport which is in my district. It has been important to me, and I have been working to increase the safety and efficiency of the airport and working with the FAA on this.

I am not sure what you can provide for me right, but I certainly would like to get further elaboration on what measures the FAA is taking right now to ensure the safety and efficiency at Midway Airport remain a priority because this is very important to, of course, everyone who uses the airport and certainly the people who live in the vicinity of the airport.

Ms. LOBUE. Are you talking about while this privatization effort is going on?

Mr. LIPINSKI. Yes.

Ms. LOBUE. So, as we speak, nothing has changed.

We have an applicant under the privatization pilot program. FAA has not yet approved that. We are still awaiting some of the financial documents and some of the exact safety assurances and workings that you are talking about. So, when we get that from the city, we will proceed as soon as we can.

Mr. LIPINSKI. As we go through this, whether or not the airport is leased, is there anything specific, anything more that the FAA is looking at right now?

I know that in the last few years there have been additions at the end of the runways for arrestor beds and was wondering where we are look at moving forward with anymore safety improvements at Midway Airport?

Ms. LOBUE. I would have to have someone get back to you with the specifics for Midway and what they are doing there. I am not familiar myself, but we can do that.

Mr. LIPINSKI. I appreciate that and appreciate working with the FAA and working with the new Administrator on making sure that all of our airports, but certainly, also importantly, Midway Airport and O'Hare Airport continue to be vital if we improve the safety and work on improving the efficiency of those airports.

So, with that, I will yield back.

Mr. COSTELLO. The Chair thanks the gentleman and now recognizes the distinguished Chairman of the Full Committee, Chairman Oberstar.

Mr. OBERSTAR. Well, thank you very much, Chairman. I thank you and Mr. Petri for moving ahead quickly on this reauthorization. It is the highest priority for us after the stimulus.

The stimulus may need a lot more work than the aviation bill. I don't know.

Ms. LoBue, runway status lights program, I am not familiar with that. What do you mean by runway status lights?

Ms. LOBUE. As part of our Runway Safety Call to Action program, we have put in place runway status lights. I believe it is eligible for AIP funding, and it is one of a number of efforts to improve visibility and make sure that—

Mr. OBERSTAR. What do you mean by status lights? That is one I want to understand, what you mean by status lights.

Ms. LOBUE. It goes to the status of whether the particular runway is occupied, not open, closed. That is what it refers to, the status of the runway itself.

For instance, we had the instance where a crew pulled onto an unused runway, and that was inappropriate. Now that would be marked specifically, so that they could see from these lights that that was not an appropriate place to go.

Mr. DILLINGHAM. Mr. Chairman?

Mr. OBERSTAR. Is this a program or initiative you are instituting at all airports, only the major airports or more critical airports or what?

Ms. LOBUE. I would have to get back to you on more of the specifics of the program. My understanding is that there is a program to put them in. I believe by 2011, the top 22 airports will all have them.

Mr. OBERSTAR. Dr. Dillingham, you were going to comment?

Mr. DILLINGHAM. I was just going to say that basically they work like stop lights, so that the pilot can tell it is red, sort of red and green. If it is red, it is a visible sign that you shouldn't go onto that runway. So that is, essentially, runway status lights.

And FAA has a program, as Ms. LoBue said, that they have already started. I think they have been installed in something greater than 20 airports at this point, and I think the idea is that eventually all of the airports will have that kind of safety or at least certainly the major airports, the OEP airports and the other.

Mr. OBERSTAR. We certainly need that. That is the first time I have heard of this initiative, not that I have been following with as much diligence as I used to do.

But I know that further on in Ms. LoBue's testimony she discusses increased runway safety training and awareness of pilots and air traffic controllers and vehicles.

I see an increasing number of vehicular traffic on the air side of airports, and it really troubles me that we have so much movement in that space. I am really concerned we are going to have an on-the-ground incident. I know we do have some lesser ones, but a major incursion that would result in aircraft damage, injury or even fatality.

So describe this training and the frequency of which it is occurring and the intensity and the type of training.

Ms. LOBUE. FAA has had a pretty intensive program to try and tackle runway incursions over the last year and a half. Former Administrator Marion Blakey did a Runway Call to Action in which we talked with both the major carriers and ALPA, as well as the major airports on what were the types of things we could do to bring the number of runway incursions down because I think we also believe that that is one of the most important areas that we look at in safety.

As of late in 2008, we instituted a Runway Safety Council which is co-chaired by ALPA to continue to look at the types of training, et cetera, that we can do.

I would have to get someone to come and give you a briefing with more specificity on exactly all the training we have been doing. But in fact we went out with guidance to the airlines on runway safety training, and particularly on the runway safety lights, all the major carriers have done training of their workforces over the last year.

Mr. OBERSTAR. Thank you. I will take you up on that offer and won't delay any further with questions.

This is a vitally important hearing, all the witnesses and all the organizations in one shot at this. We did this bill last year or two years ago actually, a year and a half ago. We are now polishing for readiness for markup to the House floor and on a tough time line to get this bill through the House.

Hopefully, the other body gets the message and gets off their delaying tactics that they have done for the last few years and move a bill through because the authorization runs out at the end of next month.

And we are dead serious about getting this bill through. So anybody who has any questions, issues, raise now or forever keep your peace.

Thank you, Mr. Chairman.

Mr. COSTELLO. Thank you, Chairman Oberstar. Well said.

We thank all three of you for being here today and offering your testimony and answering our questions.

The Chair now would ask the next panel of witnesses to come forward. I will make the introductions while you are finding your chair: Mr. Greg Principato, who is the Airports Council International-North America President; Mr. James Elwood, Airport Director of Aspen/Pitkin County Airport; Mr. James May, the President and CEO of the Air Transport Association; Mr. Ed Bolen, the President and CEO, National Business Aviation Association; Mr. Roger Cohen, President of the Regional Airline Association; Mr. Craig Fuller, President, Aircraft Owners and Pilots Association;

Mr. Clayton Jones who is Chairman, President and CEO of Rockwell Collins.

We would ask all of you to be seated.

As you heard me announce at the beginning of the hearing, we have all of your statements. They will be submitted in their entirety in the record. We would ask that you summarize your testimony in five minutes or less which will give Members the opportunity to ask questions.

And we will lead off with Mr. Principato.

**TESTIMONY OF GREGORY PRINCIPATO, PRESIDENT, AIRPORTS COUNCIL INTERNATIONAL-NORTH AMERICA; JAMES P. ELWOOD, A.A.E., AIRPORT DIRECTOR, ASPEN/PITKIN COUNTY AIRPORT; JAMES C. MAY, PRESIDENT AND CEO, AIR TRANSPORT ASSOCIATION; ED BOLEN, PRESIDENT AND CEO, NATIONAL BUSINESS AVIATION ASSOCIATION; ROGER COHEN, PRESIDENT, REGIONAL AIRLINE ASSOCIATION; CRAIG FULLER, PRESIDENT, AIRCRAFT OWNERS AND PILOTS ASSOCIATION; AND CLAYTON M. JONES, CHAIRMAN, PRESIDENT AND CEO, ROCKWELL COLLINS**

Mr. PRINCIPATO. Thank you for allowing Airports Council International-North America the opportunity to participate in this important hearing, Mr. Chairman.

Let me start by thanking you and the Subcommittee for your support of airports in H.R. 915. Your assistance in providing tools to improve our infrastructure while creating thousands of jobs highlights the important role of airports in our Nation's transportation network.

We also appreciate your continued recognition of the success of the Airport Improvement Program in the FAA Reauthorization Act of 2009. Whether one plane or a hundred use an airport in a given day, we need to maintain our infrastructure to provide safe and secure facilities for the traveling public.

Under this Committee's leadership, airports were given a financial tool that has proved to be a model for Federal-local partnerships and a lifeline for airport finance, the Passenger Facility Charge. By granting airports the ability to generate local funding through the PFC user fee, all who use the system have a voice in infrastructure development in consultation with the FAA. This financing tool has allowed local communities to determine needs and map out a plan for improvements and development at the airport in coordination with the airport users.

ACI-North America strongly supports an increase in the ceiling of this local user fee to at least \$7.50 with future indexes to match construction cost inflation.

The purchasing power of the PFC has been greatly diminished by skyrocketing construction costs. The current maximum PFC of \$4.50 is worth only \$2.46 today. Fully adjusting the PFC to account for construction cost inflation would place the fee this year at \$8.33.

Without your continued support of increasing the PFC, airports will not have the ability to keep up with the inflationary cost of construction and provide facilities that meet passenger demand.

History has shown that airports carefully evaluate the need for infrastructure projects. History has also shown that if you wait until your infrastructure is inadequate, you have waited too long. Traffic may be down now, but we did not have the infrastructure to meet demand just last summer.

Can anyone remember the last time we had enough infrastructure to serve our passengers?

How can we expect to prevent passenger delays and inconvenience when passenger traffic returns?

ACI-North America, in its just completed capital needs survey, found that airports, both commercial and general aviation, have \$94.4 billion in total projects over the next 5 years that are considered essential by the airport and airport users to meet forecasted passenger and cargo growth. Not surprisingly, over half of these projects are at large hub airports that continue to experience congestion and flight delays.

And, yes, our survey found that many airports of all sizes have delayed or cancelled the construction of billions of dollars of projects. Even so, the needs are great and costs are rising.

We expect the PFC to play a more prominent role in airport finance as trust fund revenue declines from reduced traffic and from the new a la carte ticket pricing system embraced by most U.S. airlines since these airline fees are not subject to the ticket tax.

It is ironic that the airlines continue to not only wrongly label the PFC user fee a tax but fail to mention that they have received \$87 million in fiscal year 2007 to collect and remit it.

It is amusing, frankly, that airlines claim the increase in the PFC user fee proposed by this Subcommittee last Congress will ultimately reduce passenger traffic when the a la carte pricing imposes fees that greatly exceed the PFC for services from checking a bag to making a seat reservation to using a pillow.

Thank you also for your support as airports work to reduce our environmental footprint, reduce emissions and improve energy efficiency. The environmental provisions support by ACI in this bill are highlighted in my written testimony.

Additionally, we commend the Committee for proposing critical funding for important air service programs including SCASD and EAS. We are especially grateful for your efforts to authorize a significant increase in SCASD as the program has helped small communities enhance their air service on a self-sufficient long-term basis.

In addition, my written testimony addresses the role airports would like to play in this Committee's continued work on NextGen, an issue on which I have personally worked for 16 years now.

One final note, we remain very concerned about proposals to mandate specific airport rescue and firefighting standards. In December, we conducted a survey of our Members on how much it would cost to comply with the proposed NFPA standards. We found the capital cost for compliance would average \$6.5 million and annual operating costs would add \$2.5 million, forcing many smaller airports to consider closing down.

The FAA Aviation Rulemaking Advisory Committee, which included airports, firefighters and other stakeholders, prepared a report on the proposed ARFF requirements and has recommended a

rulemaking on many of these critical issues. We support initiating the rulemaking process to carefully evaluate the costs and benefits of any change in the regulation.

And with that, I will conclude and thank you for inviting me here, and I look forward to working with you on getting this bill passed.

Mr. COSTELLO. The Chair thanks the gentleman for your testimony and now recognizes Mr. Elwood.

Mr. ELWOOD. Chairman Costello, Ranking Member Petri, Members of the Aviation Subcommittee, thank you for inviting me to participate in this hearing on FAA reauthorization.

My message today is very simple. Airports deeply appreciate the good work that this Committee did on an FAA reauthorization in the last Congress. We are particularly grateful that the previous bill and the legislation introduced earlier this week would raise the PFC cap to \$7.00.

We hope this Committee will guide the multi-year FAA bill through Congress early this year that raises the PFC cap, increases AIP funding and helps small communities.

The past year has been a difficult one for the aviation industry. Oil prices skyrocketed to nearly \$150 per barrel, and airlines responded by reducing capacity throughout the system. The declining economy has also been taking its toll.

Despite this temporary downturn, our aviation system is expected to rebound again as it did after 9/11. Enplanements are expected to increase from 765 million in 2007 to more than 1 billion in the next 10 years.

In November, we saw new runways open here in Washington as well as Chicago and Seattle. Airports don't build those improvements and increase capacity overnight. As a matter of fact, Seattle started planning that capacity increase approximately 20 years ago.

While airports prepare for the future, they are squeezed by increasing construction costs. Costs have increased approximately 27 percent in the last 5 years, eroding the value of PFCs and AIP.

Airports are grateful that the new reauthorization bill calls for raising the PFC cap to \$7.00 and urge this Committee to consider raising it to \$7.50. That would be almost enough to offset the impact of the construction cost inflation in 2008.

To prevent erosion, we also ask you to index the PFCs to the construction cost index.

AIP is another important source of funding for airports of all sizes. Airports are also pleased that the new bill would increase AIP funding by \$100 million per year.

And regarding small airports that rely so heavily on Small Community Air Service and Essential Air Service programs, we appreciate your continued support of these critical programs and your proposals to reform EAS.

Mr. Chairman, safety is always the most important consideration of airports across this Country. The proposal by the International Association of Fire Fighters is very onerous and is difficult for airports to manage.

At my small airport, we have 26 employees who do virtually everything on the airport, from maintenance at facilities to customer

service, the entire gamut. Of those 26 employees, 8 of those are firefighters. The proposal to increase us to NFPA standards would require us to hire an additional 19 employees to accomplish that task.

When I speak to my colleagues around the Country about what this proposal might do to impact their operation, it is substantial. And it is a real risk that we will lose commercial air service at some airports in this country because they simply cannot pass along the additional costs that these proposals might incur onto the airlines. It would make their routes unprofitable, and they would leave our communities.

So I hope that the Members of this Committee will work with us to find an acceptable solution as we move forward.

In closing, I would like to thank the Committee again, Chairman Costello, Ranking Member Petri and Members of the Aviation Subcommittee for inviting me to testify. I look forward to working with you on this FAA reauthorization and a quick passage through both sides of the Capitol and on to the President.

Mr. COSTELLO. We thank you for your testimony, and the Chair now recognizes Mr. May.

Mr. MAY. Thank you, Mr. Chairman. We appreciate the opportunity to appear today, and also it is a pleasure to be here with my esteemed colleagues.

Unlike last time around, we are really on the same page on a number of issues. We know that continuing to play the blame game is not going to get us very far, and we have listened to our new President and agree that it is time for change.

All of us—commercial, business, general aviation—are 100 percent committed to working with you, the Administration and, most importantly I think, each other to reach our mutual goal which is reauthorization of FAA's program and funding to ensure ATC modernization will be done early, will be done right and in a way that transforms air travel in this Country and keeps the U.S. competitive on the world stage.

If we do it right, modernization will allow planes to fly more direct, efficient routes, significantly reducing fuel burn and CO2 emissions, reduce congestion, open up access, improve safety and security through precise tracking on the runway as well as in the air, reduce flight delays and inconvenience to passengers and ensure the United States remains a global leader in safety, security and environment.

We realize it is necessary to put, however, the FAA reauthorization in context. U.S. and world economies are in crisis. Credit has evaporated. People are spending less. Consumer confidence is at a record low point. That means travel is down and down significantly.

President Obama and others are championing and \$790 stimulus package, a dramatic, unprecedented pressure on the overall Federal budget. Massive infrastructure enhancements from highways to the internet are in play.

This Committee knows that modernization of the Nation's air transportation network cannot wait. It is the only certain way to achieve the environmental, commercial, customer service improve-

ments and a competitive boost to our overall economy that we want and the Nation demands.

The Committee also knows the current plan for NextGen deployment is woefully underfunded in our view and far, far too slow. In this regard, I feel compelled to share with the Committee our disappointment, quite frankly, with the missed opportunity in the stimulus package to jumpstart NextGen, turn it into NowGen, saving or creating 77,000 jobs, reducing greenhouse gas emissions, reducing passengers' delays, and it would have been a step that truly would have been transformational to our economy.

So what is different today from the last time we were here?

First, as I mentioned earlier, the stakeholders are the same, on the same page as to what needs to be done with NextGen or NowGen which is accelerate development of RNP, RNAV, ADS-B and data communication, offer aircraft equipage incentives—and we appreciate the endorsement from GAO on that point, focus FAA and operator efforts on areas of the Country where we get the most bang for the buck.

Second, preliminary data and common sense tells us that trust fund revenues are not going to be what we expected. I brought a chart along that is on the screen. They are going to be between a billion and a billion and a half less this year and going forward.

Why? Because there is reduced capacity, fewer flights, lower fares, far less revenue coming in and over half a million, as an example, fewer flights this January than January a year ago.

With substantial ongoing program commitments and less revenue coming in, some predict the trust fund balance will zero out by 2010. In addition, general fund contributions have dropped from an average of 38 percent to 16 percent over the last 25 years.

So what is the same for decades and must change?

Commercial airlines and their customers—this will come as no surprise to this Committee—contribute 90 percent of the trust fund revenue and impose less than 70 percent of the costs. We paid \$11 billion in 2008 to the trust fund. There has to be a way to true up revenues with costs imposed.

In addition, airlines and customers through PFCs, AIP rates and charges combined, all three, spend nearly \$13 billion annually underwriting airport expenses. That means that airlines and customers spend over \$20 billion on an annualized basis underwriting the trust fund and airports.

I am not questioning the value of public need for our partners, the airports. But in this economic environment, the airports' continued push for higher PFC and AIP funds should be subjected to a reality check. Instead of asking for more money, airports should be doing what all Americans are doing today which is cutting costs, delaying investments and holding the line.

This is a spending issue, not a funding issue.

To recap, we have an economic crisis, significantly declining trust fund revenues and so forth.

Let's accept the President's challenge to look at things differently, look at innovative funding sources, bonding authority, look at a national infrastructure bank, eliminate AMTs which is what my friend, Mr. Principato, wants.



And, finally, I think we want to make it known that we are happy to work together with this Committee to find new constructive solutions, but continuing to look to the airlines for more money is not an appropriate answer.

Thank you.

Mr. COSTELLO. The Chair thanks you, Mr. May.

Before recognizing Mr. Bolen, let me, on behalf of the Members of the Subcommittee, wish you a happy birthday and thank you for spending a good part of your birthday with us.

The Chair now recognizes Mr. Bolen.

Mr. BOLEN. Well, thank you, Mr. Chairman. There is no place I would rather spend my birthday than right here with this Subcommittee.

[Laughter.]

Mr. BOLEN. Mr. Chairman, it is an honor to be back representing the National Business Aviation Association.

As everyone on this Committee well knows, business aviation is an FAA-defined term. It is the use of any general aviation aircraft for a business purpose.

And business aviation is clearly an important part of the general aviation community. Business aviation is also an important engine for our Nation's economy and a vital link in our air transportation system.

Business aviation is about jobs. Over 1.2 million jobs in the United States, good manufacturing jobs, service jobs, jobs that we can keep in the United States in the 21st Century.

Business aviation is also about a lifeline to our Nation's small towns and rural communities. As this Committee knows, there have been a number of communities that have lost commercial airline service over the past year and a half. For those communities, business aviation has never been more important.

Business aviation is about making our companies more productive, more nimble, helping them communicate and survive in a very harsh economic environment. As this Committee knows, business aviation operators are primarily small and mid-size companies. They need the benefits of business aviation to survive.

It has already been discussed today that our economy is suffering. And when our economy suffers, business aviation suffers.

Like commercial airlines, business aviation follows market cycles. So when the economy expands, our operations expand. When it contracts, we contract as well. Clearly, this recession is forcing a very painful contraction.

Flight operations are down over 30 percent. General aviation manufacturing jobs are being lost. Pilot jobs are being lost. Service jobs are being lost. Fuelers are losing. Our general aviation airports are hurting as well. It is a very difficult time.

Having said that, we continue to believe in the future. We know aviation will recover, our economy will return, and our air transportation system will be critically challenged as it moves forward. That is why we have always supported moving forward with NextGen.

General aviation is not only supporting NextGen with rhetoric. We are supporting it with dollars.

We commend this Subcommittee for the tremendous work it has done over a two-year process, immersing itself into the FAA funding issue, identifying the needs and the challenges and coming forward with a plan that we believe makes NextGen a reality.

We also support the approach that the Senate brought forward to the Senate floor last spring. This is a process that builds on the general aviation fuel taxes and allows us to adjust those taxes to support NextGen. We continue to support this approach. We will not back away from it.

We look forward to working with you on making NextGen a reality.

Thank you, Mr. Chairman.

Mr. COSTELLO. We thank you.

The Chair now recognizes Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman and Members of the Subcommittee.

I am President of the Regional Airline Association. RAA represents the interests of more than 30 regional airlines and nearly 300 industry suppliers, and we want to thank you for this opportunity today.

America's regional airlines have become a fundamental cornerstone of our air transportation industry and a critical part of the Nation's economy. Today, we carry 160 million passengers a year. That is more than one out of every five on a commercial airliner. We fly 40 percent of the Nation's passenger fleet and 50 percent—50 percent—one half of the scheduled flights.

But most notably, regional airlines serve more than 600 airports across the U.S. And in 476 of these communities, that is 75 percent, regional airlines provide the only scheduled service.

As you all know, it was a very different aviation and economic landscape when we had the honor of testifying before you back in the Spring of 2007, but the principles that we outlined to you on behalf of our RAA's board of directors remain valid and may be even more critical today.

First, most importantly, do no harm. Preserve the network of air service to small and medium-size communities. Today, most passengers are normally just one stop away from any point in the U.S. and many points across the globe.

Two, transition quickly and efficiently to a modernized satellite-based national airspace system.

Three, that funding for the system should reflect a more balanced splitting of the check, if you will, amongst all the users of the system.

Four, restore the balance of the 1990 ANCA law under which airport fees would be spent primarily on expanding and improving the Nation's airways and airport infrastructure, runways and taxiways.

And, five, and something near and dear to us at RAA, is fulfill the promise made by Congress under the 1978 deregulation act that Essential Air Service communities would not fall off the airline map without adequate protections. On that point, we want to specifically thank you for proposing to raise the cap for EAS funding to \$200 million, for addressing other EAS reforms. And on that point and your bill in great measure addresses these principles and

it is why we supported and helped advance the measure to the Senate floor in the previous Congress.

But that was then, and this is now, and we are in a different place. Last year's speculative, driven run-up in fuel costs and the tanking of the world economy have created a much tougher challenge.

Just look at the numbers. Between December, 2006 and December, 2007, regional airlines gained a net gain of 77 new nonstop markets. But last year, regional airlines had to cut back, and there was a net loss of 243 nonstop regional markets. That was compared to a net loss of about 100 main line routes.

In other words, communities served exclusively by regionals suffered flight cutbacks last year at more than twice the rate of the main line served airports.

Even more troubling, some 31 airports lost all their scheduled service last year, potentially worsening the burden of an already overstressed and underfunded Essential Air Service program.

But like those infomercial business gurus and my old high school football coach used to say, sometimes problems are just opportunities in disguise.

These, hopefully, temporary setbacks, temporary cutbacks in flights have perhaps provided some breathing room, maybe a timeout from the headlines about flight delays so that we can make the kind of real progress towards NextGen that this Congress, the FAA and so many people in this room have been working towards for decades.

Our Member regional airlines have much riding and already much invested in this effort. The hub and spoke networks that have provided the benefits of safe, seamless service to passengers from small and medium-size communities, regional airlines have become, through this network, the main providers at many of the Nation's business airports. We operate more than one half of the flights at O'Hare and Philadelphia, Dulles, Houston, Detroit, Minneapolis-St. Paul and about a third at places like Denver and JFK, LaGuardia and even Boston's Logan.

This is why regional airlines have committed substantial resources to be the leaders in the transition to NextGen.

Four RAA members are pioneers in installing electronic flight bags on their aircraft to help prevent the kind of runway incursions that you all were discussing earlier today at the busiest airports: SkyWest at LAX, Shuttle America and Piedmont at Philadelphia and New York and CommutAir in my home town of Cleveland.

Another NextGen pioneer was Horizon Air, second airline in the Country approved for RNP approaches.

DataCom, WASS, RNP, RNAV, ADS-B, EFB, the whole alphabet of modernizations, regional airlines have become essential parts of NextGen.

Mr. COSTELLO. Mr. Cohen, we would ask you to wrap it up.

Mr. COHEN. Mr. Chairman, in conclusion, while flights and delays are down, flight cutbacks far more than to our liking and the reduction in delays much less than we prefer, the need for action is greater now than it was even two years ago. Towards that end, we look forward to working with you. Our member airlines

look forward to working with you, all of Congress, your staff, the Administration, FAA to make it happen.

Mr. COSTELLO. We thank you for your testimony, and now the Chair recognizes Mr. Fuller.

Mr. FULLER. Thank you, Mr. Chairman and Ranking Member Petri, Members of the Committee.

My name is Craig Fuller. I am the President of the Aircraft Owners and Pilots Association. I have held that position now for just about six weeks.

I have been a pilot, an active pilot for just about 42 years. I have flown in the system from California to the East Coast.

As some of you know, I came here in 1981 with a new administration. What is not so well known is I came here in a Cessna Cutlass and I now fly a Bonanza aircraft about 200, 220 hours a year.

I have been a member of AOPA since 1973. So the issues that you have dealt with are also very familiar to me.

I want to start by taking note of something Jim May said because I do think it is important and impressive, that we are here today with you in agreement on the FAA reauthorization. There are members, important organizations in the aviation community that are also in agreement that could not be here today.

But I think it is worth noting that we are unified, all believing from our unique perspectives that the FAA reauthorization needs to go forward. It needs to go forward for a four-year period to give certainty not only to the Agency but to give certainty to all of us who fly in the system, who invest in the system, from the airports to people throughout the aviation community. That four-year period is in fact vital.

I also would mention I think the question was asked about delaying this or extending this for temporary periods of time. A four-year authorization really allows the Agency to spend money wisely. You get a better bargain today than you are going to get a year from now, two years from now, three years from now. So this four-year extension serves the interest of the aviation community very well.

The bottom line for us—I know you are tight on time. The bottom line for us is we support the measure. We support the use of aviation fuel taxes as a means of providing support from our segment of the aviation community, and we do think that increase is something that our members will live with.

We now have 416,000 members as of the end of January. It is a privilege for me to represent them here today. I look forward to representing them again here in the future.

I look forward to your questions. Thank you.

Mr. PETRI. [Presiding.] Thank you.

Mr. Jones.

Mr. JONES. Thank you, Ranking Member Petri and Chairman Costello as he comes in the room. I want to thank you for inviting me to testify today not only on behalf of the 20,000 employees of Rockwell Collins but also the member companies of ARSA, AIA and GAMA.

As this Committee well knows, the civil aviation industry plays a critical role in the health of the domestic economy, employing

nearly 11 million workers in all 50 States and contributing more than \$1.2 trillion annually to the U.S. economy.

Despite these laudable figures, these are challenging times, you have heard from the panel today. In order to adjust to the financial realities of today, companies have been forced to ground or liquidate business and commercial aircraft they can no longer afford.

This sharp reduction in utilization coupled with a rapidly increasing inventory of used aircraft is further depressing already slumping demand for new planes. Subsequently, as aircraft order backlogs shrink, manufacturers of both general aviation and commercial aircraft and their suppliers have been forced to take painful steps and lay off thousands of hardworking employees from coast to coast.

Now while this Committee is well aware of the benefits this industry providers, I respectfully request that you remind your colleagues of these benefits and ensure they avoid any legislation that would further damage this vital industry such as preventing corporate ownership of aircraft.

Additionally, Mr. Chairman, smoldering beneath today's immediate economic crisis is a much longer-term challenge that everyone in this room is aware of, a challenge that has the potential to inflict significant future economic damage to the United States. Today, we are operating on an aviation infrastructure based on radars and controlled processes designed in the 1940s. We must advance from this 20th Century to a 21st Century system, taking advantage of the advances in information management, satellite-based flight tracking and navigation to yield the safety, efficiency and environmental sustainability benefits that we know NextGen will offer.

Now, to be clear, NextGen is not a mere modernization program but rather a transformation program, one capable of accommodating the future growth while avoiding billions of dollars of lost productivity and unnecessary environmental impact.

Regarding environmental impact, the civil aviation industry understand the importance of this issue and its potential impact on our future growth. While we have made great strides in minimizing the impact through our products and technology developments and operational practices, much more work remains to be done, and I think NextGen offers the promise of getting us closer to carbon neutrality.

Now in order to accommodate projects that serve the public good like NextGen and that achieve the related congestion and environmental benefits, appropriations from the general fund should return to the levels of the 1990s when funding averaged 29 percent per year. In hopes of returning to this sensible level of government funding, I believe it is reasonable and appropriate for Congress to increase the general fund share of FAA operations to 25 percent per year through the life of this pending legislation.

With such an increase, Congress can then take the next bold step in aerospace modernization and authorize and appropriate \$3 billion general fund dollars over the next 4 years to fund the equipage of Automatic Dependent Surveillance Broadcast or ADS-B. This funding would allow the vast majority of commercial and general aviation fleets to be equipped with this important technology at a

far earlier date than would be achieved in the current time frame of 2020 by FAA rule.

Finally, Mr. Chairman, I would like to stress the aviation industry's commitment to safety and security, particularly at our manufacturing and repair stations around the world. As you know, aviation is a global industry, and, as such, it requires an international network of safe and secure stations to repair and maintain aircraft.

Although Section 304 of H.R. 2881 was, no doubt, designed to improve safety oversight of foreign repair stations, I believe it could ultimately undermine the very safety systems we are trying to improve.

Mr. Chairman, thank you for inviting me to testify before your Committee.

I look forward to passage of a long-term reauthorization bill that will provide critical direction from Congress along with a new FAA Administrator to focus attention on managing these challenges.

But, to be clear, that responsibility is not on the shoulders of just one person and, clearly, Congress in the House and the Senate, but it also falls on the shoulders of industry. Consequently, I call on my industry partners to focus on the broader aspects of this legislation and recommit to work together for its safe passage.

Thank you, Mr. Chairman. I would be glad to answer your questions.

Mr. COSTELLO. [Presiding.] Thank you, Mr. Jones.

Mr. May, as we have discussed in the past, both in this hearing room and privately, to a great degree, the success of NextGen, though there is a lot of things that have to happen to make it successful but one is equipage, that the airplanes have to be equipped with the necessary equipment. Where is ATA and the airlines in working with the FAA regarding equipage of aircraft?

Mr. MAY. Mr. Chairman, we are aggressively supporting accelerated equipage of aircraft. We have about half of our fleet that is RNAV equipped, not quite as much for RNP. We have some GPS in the aircraft. But we think that if there is a nexus between the ground operations for NextGen, which we would prefer to call NowGen, and the fleet it is going to rest on the equipage.

So they have to finish getting the standards out, and then they have to do something that we are not satisfied they have done just yet, and that is give us the business case—and I am sure Mr. Jones would underscore this—for spending the kind of dollars that are necessary.

We have to know that there will be reduced separation. We know that we have to be able to use that equipment, and FAA will permit closely spaced parallel operations, things of that sort to make the business case for us to spend that money.

Ideally, I think the best way to do it is what we suggested be included in the stimulus package, which Mr. Jones just referred to and we all signed up to, which is a \$4 billion investment in equipage across not just the civil fleet but GA, private aviation, the military and others so that we know we have the tools to be able to deploy this technology as aggressively as possible.

Mr. COSTELLO. The issue that Mr. Jones mentioned and you mentioned in your testimony, the general fund contribution to the

trust fund as during the nineties was in the high 28, 29 percent range. It is down to 16 percent now.

Mr. MAY. That is correct.

Mr. COSTELLO. You have heard me say many times that we need a robust number from the general fund. Do you have a number in mind? In looking at, you put a chart up here earlier, what should the contribution from the general fund to the trust fund be?

Mr. MAY. Mr. Jones used the number, 25 percent. I certainly wouldn't disagree with that.

We recognize that the trust fund has a significantly declining balance. We recognize that the general fund is paying in less and less every year, and that contributes to the contretemps that we have had over user funding of the trust fund.

I think the more general fund opportunities that we can address in the ATTF the better off we will all be. If it could be 30 percent, I would be all in favor of it.

Mr. COSTELLO. We look forward to receiving the budget from the new Administration and have been encouraging them to look very hard at increasing the number over what it is now.

Mr. MAY. As do we.

Mr. COSTELLO. The Chair now recognizes the Ranking Member, Mr. Petri.

Mr. PETRI. Thank you very much, Mr. Chairman.

Obviously, with the growing economic insecurity around the world, there is ever to do everything we can to protect jobs and bring jobs back home to America and all that.

In that connection, I wonder if Mr. Jones could address some provisions of this bill that probably are well intended, but then there is this law of unintended consequences. We try to bring jobs or do work here in the United States, other companies try to do the same, and the net result can be that we all lose or we shoot ourselves in the foot.

We have had an agreement with the E.U. for many years of reciprocal basis. Has that tended to work toward our advantage? Is more work done here in the United States than in the E.U.?

If they were to retaliate if we were to take the initiative in slowing that down or putting up barriers to that, would we gain jobs or lose jobs? How would that really work?

Mr. JONES. Well, let me try to address that, Mr. Petri, because you raise a very good point that I referred to in my testimony.

Today, there are about 1,200 repair stations in the United States that repair not only United States built aircraft but also E.U. aircraft that come in our space. So those are 1,200 repair stations that have a lot of good, high quality jobs that are serving those aircraft. There are about 425 in Europe.

And so, as you can see by just that ratio, if this legislation should precipitate trade barriers and a trade war and a retaliation by the Europeans, we stand to lose a far greater volume of work given the footprint that we have in the United States than we might gain if we were to gain extra work that we do in Europe.

I think the other thing to point out relative to this legislation is that we are not opposed to inspections and to safety. That is not the issue at all. The issue is are the dollars spent and the amount

of labor and manpower that FAA has to do these inspections available and will they be deployed in the right way?

We may find that some repair stations only need the once a year inspection that is mandated today. Others may need more than that. And so, the risk-based approach that I believe FAA has strongly endorsed is one that we would endorse as well as a better bang for the buck to create the safety that we are both in favor of.

Mr. PETRI. Thank you, Mr. Chairman.

I have another question for most of the panelists that I will submit for them to respond in writing, which really would be how you are doing and what steps you are taking to prepare for NextGen and the importance of us getting our act together to maximize the investment that you and your members or your associates are doing in this whole area.

Mr. COSTELLO. Thank you.

The Chair now recognizes the gentleman from Iowa, Mr. Boswell.

Mr. BOSWELL. Thank you, Mr. Chairman.

It seemed like I maybe expected a little discussion about who is paying for what. But, Mr. Bolen, would you respond? The airlines claim that business aviation is not paying its fair share in the trust fund. How do you respond?

Mr. BOLEN. Well, the FAA's own numbers indicate that business aviation, which is part of the general aviation community, the entire general aviation community is currently paying about 8.5 percent of the revenues going into the trust fund.

If general aviation were grounded tomorrow, I believe that the system may be 7 to 9 percent less expensive than it is today. That is based on a 1997 cost allocation study done by the FAA. So I think we are in the ballpark.

I also would say that Mr. May referenced the FAA's cost allocation study, and, as this Subcommittee knows, questions have been raised about the methodology and some of the applications that were used in that. Cost allocation is certainly not an exact science, but reputable groups have raised concerns, and I think those should be explored.

Mr. BOSWELL. Mr. Jones, do you think your proposal for us to raise to the level, historic level on the general fund, do you think you set your figure high enough?

Mr. JONES. I am not exactly sure, sir. I think there are a lot of other inputs into the budget that probably I am not an expert to talk to, but 25 is a heck of a lot higher than 16, and it is a great place to start.

I would supplement my comments and support what Mr. May said in that if you are looking at infrastructure and targeted incentives to try to create economic activity, I think that this proposal to put this increased funding, not only from the general fund but targeted toward the acceleration of NextGen which we are all in raging agreement on, is the right thing to do.

I think it is intolerable to think that we will not have ADS-B built out to another 11 years from now, 2020, and we will be sitting here for many years, begrudging that fact. We have a moment with billions of dollars going into stimulus activity, and this would be targeted at a specific need.



This would be temporary because, once equipped, that would go away. And, obviously, it is timely because we are ready to move.

We believe that the ADS-B regulations will be ready at the end of this year at the latest, 2010, and with your encouragement I am sure the FAA could get them out.

Then the industry would be ready to produce equipment within six to twelve months after that. So we have engineers and workers that would be ready to move on this if Congress can support that.

Mr. BOSWELL. I am not so sure Congress can't support it. But I would guess this, Mr. Chairman, it is going to take all of these folks as well as us to try to make this point, understanding what the situation is and the economic side of it.

I personally think, Mr. Chairman, and I would guess we are probably in agreement, that the whole Country benefits if we could get that done. It is an investment with a known return.

Mr. COSTELLO. Yes, sir.

Mr. BOSWELL. And I believe that as well. So let's see what we can do.

By the way, Mr. Jones, I have used some of your equipment probably more than anybody else in the room. I don't know. I am looking around. Maybe not, but likely. Possibly.

But I am curious. How did you arrive in Washington today? How did you get here?

Mr. JONES. Sir, I took a business aircraft into Washington, and I am pleased to say I have access to one because I couldn't be here had I not and acquit my other responsibilities.

To give you just my own personal example of how that happens, I was in Florida this morning speaking at an investor conference with a number of our share owners which obviously are very important to our company, I am here this afternoon, and I am flying from here to Philadelphia for a board of directors meeting tonight. That would not have been possible had I not had access to a business aircraft.

One other mention because this is a very topical issue right now, sir, as you know, in advance of this I had my flight department do a survey of how much I, as a CEO, use our aircraft. In total aircraft time flown, I use our aircraft 17 percent of the time, 17.

That means 83 percent of the time that that aircraft is flown, it is program managers, it is sales representatives, it is engineers going to our other locations around the United States providing us the business advantage we need that that aircraft affords us, especially—as you well know, sir, coming out of Cedar Rapids, Iowa—with the relatively limited connections we have and the time it takes to hub and spoke through the system.

Now we use both, but having this as a capital tool for business is critical to our success. I would submit, sir, you, above all people, know how successful this company has been over the last few years.

Mr. BOSWELL. We want you to continue to have success.

Mr. Chairman, I guess we will have another round, and I have other questions.

Those of us who believe in general aviation as well as believe in the airlines—don't misunderstand me—took a pretty bad rap with the automobile companies and that little testimony they had. The

public out there needs to hear what Mr. Jones has said and what it means to the whole economy of what has been contributed by using these aircraft in a proper way.

Thank you for your comment. I appreciate it.

Mr. JONES. Thank you, sir.

Mr. COSTELLO. I thank the gentleman.

I think maybe it is worth noting for Mr. Jones that you have arrived here today in a business aircraft, but Rockwell Collins is not asking for billions of dollars for a bailout either, are you?

Mr. JONES. No, sir, and don't intend to either, sir.

[Laughter.]

Mr. COSTELLO. The Chair now recognizes the distinguished Chairman of the Full Committee.

Mr. Moran, do you have questions?

Mr. MORAN. I do.

Mr. OBERSTAR. No. Go to Mr. Moran, please. Please go to Mr. Moran.

Mr. MORAN. Mr. Chairman, thank you very much.

Mr. Elwood indicated about the value, as my colleague from Iowa is indicating about the value of general aviation.

I come from a State in which we see it in both aspects. We are certainly a manufacturing State, and so jobs created is significant to us. But Kansas is a very rural State, and our ability to connect with the rest of the world is very much determined upon either commercial air service or upon general aviation.

As we have seen, there has been this concern about the use of general aviation aircraft, and I would like to at least state for the record that many communities would not have a small business component, manufacturers and others who service the rest of the world. Businesses would make decisions about where they locate, in the absence of general aviation or regional service, in places that we all care about.

And so, the state of the general aviation economy certainly matters to us in the most obvious way. It is jobs at home. But as a person who represents a very rural State, in the absence of our ability to connect, we would not have small business operating in our States. They would locate in larger communities where there is full commercial service.

I wanted to explore the state of this economy.

Mr. Jones, you outlined the difficulties that the aviation industry and its subcontractors are experiencing.

We are debating a stimulus package and in many ways I think most of us wanted to focus that effort on construction, shovel-ready projects, things that put people to work. But in the general aviation industry and its subcontractors, are there specific things that we could do that would stimulate or at least reduce the burden of the economy upon general aviation?

I am thinking about you mentioned some regulatory changes, and I am also wondering about tax changes. We have used the tax code in the past in order to try to generate additional opportunities for people to purchase, repair and maintain aircraft.

Any observations?

Mr. JONES. Well, a couple I would have, sir.

First, let me thank the Congress for what it did in including accelerated depreciation in the recent legislation. That does have a stimulative effect for all companies that are in the capital goods segment. I think that is a known and proven stimulus that you all passed after the 9/11 downturn and that we saw had a direct effect on stimulating aircraft purchases. I think that is one thing.

Obviously, the other one I would say is including something to do with aviation in the stimulus. The one that I mentioned would put avionics manufacturers—obviously, I have a parochial interest in that—to work immediately equipping these aircraft, and it would help the airline industry too, as Mr. May said.

The stumbling block to NextGen, make no mistake about it, is going to be aircraft equipage.

And I think Mr. May said exactly the right thing. It is a cost-benefit analysis that has to be shown if we require them to spend the amount of money they will need. That is very precious in terms of cash for them on these equipments.

So this stimulus would get us over that hump and then allow us to see the benefits of reducing secondary radars and accelerating the other aspects of NextGen.

So I think those are the kinds of things that would stimulate this industry and keep these very well-paid, knowledge workers in place until the rest of the economy recovers.

Mr. MORAN. Thank you, sir.

Mr. Fuller, I look forward to working with you in your new capacity. I appreciate our relationship in your previous.

The FAA reauthorization bill requires the establishment of a number of registrations, certifications and related fees for services and activities provided by the FAA. Do you have a response as to whether they are satisfactory? Are they something that is livable or are we, once again, regulating and increasing the cost of business in an unsatisfactory manner?

Mr. FULLER. Thank you for the question.

We have seen the list. I am mindful of Mr. Oberstar's comment of speak now or forever hold your peace. I would say that it is a manageable list and there is nothing there that should prevent this legislation from going forward.

I do have my medical requirement up this year. I do pay a physician for it, and I pay the cost of that medical, and one of those fees has gone from zero dollars to \$42 which is a fee associated with that medical certificate.

There are 600,000 pilots in the Country. All of us have to get medicals on an annual or twice, some every three years. That is generating an awful lot of revenue for filing medicals.

I might say if there is any one of those on that list that we may take exception to, it would be going from zero dollars to \$42 in a fee associated with that medical.

Mr. MORAN. Thank you very much.

In the eight seconds I have left, I wanted to give Mr. Elwood or Mr. Cohen an opportunity to express any concerns that we ought to be aware of in regard to Essential Air Service.

Again, I represent a State in which EAS is a significant component. Both of you have mentioned it. Anything that you would like to highlight?

Mr. COHEN. Mr. Chairman and Mr. Moran, just to thank this Committee for its leadership primarily in recognizing that the communities, the airlines, the passengers, that there is really reform that is needed to be done as the previous panel even recognized. We really look forward to working with this Committee to get that right now. You have done the most important thing, show that you really have a commitment to fixing this program.

Mr. MORAN. Mr. Chairman, thank you.

Mr. COSTELLO. The Chair thanks you and recognizes the gentleman from Missouri, Mr. Graves.

Mr. GRAVES. Thank you, Mr. Chairman.

Mr. Chairman, I want to associate myself with the remarks of the gentleman from Iowa, Mr. Boswell. I was very concerned, being a commercial pilot myself, when we had the outrage that we had about individuals flying into D.C. in their private aircraft.

It concerns me a great deal when you have companies. I, obviously, don't represent Cessna. It is in Kansas. When they are laying off thousands of employees, that is huge to the aviation industry, and it affects everybody out there.

It may not be my district where those thousands of employees are laid off, but I have companies in my district that supply Cessna and they supply Beech and they supply Raytheon. They supply everybody.

And so, I very much appreciated the comments. I am glad you asked how Mr. Jones arrived because I was curious myself and, again, just very upset and wanted to express that because I think it is very misguided when we hear some of the comments that were made by folks, just literally demagoguing the issue of aviation which is so vitally important to our Nation and particularly our smaller communities.

So, thank you.

Mr. COSTELLO. The Chair thanks the gentleman and now recognizes the distinguished Chairman of the Full Committee, Chairman Oberstar.

Mr. OBERSTAR. Thank you very much, Mr. Chairman. I will necessarily be brief because I am going to have to go the meeting of the Democratic Caucus to hear the report of the committee of conference, the House Members of the committee of conference on the stimulus initiative, and see what they have created for us.

Mr. PETRI. And if it is enough.

Mr. OBERSTAR. We will see. Our Committee has a very distinct interest in this stimulus initiative.

Mr. Cohen, the Regional Airline Association has been a major partner in the Essential Air Service program which was crafted in this Committee room in 1978. My amendment was offered when I was sitting right down there in that second row. There were fewer Members on this Committee at the time.

And I remember in concluding my argument in favor of the Essential Air Service as part of the deregulation act, that: Mr. Chairman, if this amendment isn't adopted, then there are communities in my district that are so remote that the only way to get there without air service is to be born there.

[Laughter.]

Mr. OBERSTAR. It was a much bigger laugh at that time because it was a much more serious issue.

So this laughter subsided. The motion was put. The amendment passed.

And then we have seen a whittling away of the funding and of the authority and of the application of EAS.

So, in this legislation, we have included provisions that I think will substantially improve Essential Air Service particularly in this era of increasingly consolidation of airline operations and fewer airlines, fewer competitors.

So we have increased to \$200 million the amount authorized for EAS each year. I gather you are in accord with that?

Mr. COHEN. Absolutely. I thank the Committee and your leadership on this, Mr. Chairman.

Mr. OBERSTAR. And we authorize the Secretary to include financial incentives based on performance goals.

Now the reason I have crafted that language is that we hear complaints from communities that are at the end of the spokes in the hub and spoke system, that they are getting short shrift. They are not getting the frequencies they want. They are not getting the service they want. They are getting a higher number of service cuts, delays or cancellations of flights. And, at the same time, the airline is getting the EAS subsidy.

So we want better on-time performance. We want to reduce the number of cancellations. We want reasonable fares including joint fares from beyond the hub airport. Convenient connections, example: I have heard in a recent town meeting with airport authority directors and business persons of smaller businesses, not Rockwell Collins that have their own aircraft but who charter or who have maybe a KingAir, that, sure, they get up at 4:00 in the morning, drive an hour to the airport. They fly out of northern Minnesota, and then they wait at Minneapolis-St. Paul for four hours for the next connection. They don't mind getting up at 4:00 in the morning if their 6:30 flight can connect with something in Minneapolis that is going to get them to their destination.

These are business people. They don't have a lot of leisure time. They live way in remote Minnesota, but they are conducting a very viable business. Now some of these folks can't even time share on an aircraft.

So I think that we ought to have some accountability. We are going to have the Government Accountability Office oversee the implementation of this EAS.

Mr. Cohen, what do you think about that?

Mr. COHEN. Mr. Chairman, I think the problems you describe really are the result of a lot of years of kind of squeezing this program down.

And so, what has happened is that several of our EAS member airlines have gone out of business doing this. Getting some of the rules that have been put in place there have made it impossible for carriers to invest, to try and bring on the aircraft that are needed, to bring on the training, to invest in commitment to get people flying on those aircraft again, to get them back into the system. And it has been this kind of drip, drip, drip over those 30 years.

I had the pleasure of sitting in this very room as public relations representative for TWA covering those hearings, and I remember your leadership on this very critical issue and that promise that was made. Over these 30 years, that promise has been whittled away at.

We really look forward to working with the Members of this Committee to be able to try and move this into that 21st Century, move EAS into the 21st Century because things have changed. Demographics have changed. Transportation modes have changed.

We would caution the Committee because some of the carriers that are trying to provide this EAS service offer the kind of seamless one carrier service that most of regional carriers do. They may not have inter line relationships with major airlines, may not have independent ticketing and so forth. So to require those kinds of connections by statute may be difficult, and might actually make EAS service less convenient and less attractive for airlines and communities alike.

But I cite one of the great success stories. I have a clip here from the recent Lebanon, New Hampshire newspaper which cited Cape Air.

Mr. OBERSTAR. Yes, I am familiar with Cape Air.

Mr. COHEN. One of our great members who started service, and they are raving about the kind of service that Cape Air has provided, and I think it is that kind of community, Congressional and airline partnership that can provide those kinds of success stories that we see.

And I think we want to thank your leadership on it. We look forward to working with you on some of these specifics.

Mr. OBERSTAR. My hope is to stimulate more of the type of Cape Air service through this EAS program.

Mr. MAY, don't think I have forgotten about you. Welcome to the Committee again.

Mr. MAY. Thank you, Mr. Chairman. I have never felt unwanted.

Mr. OBERSTAR. There is a new provision in this legislation dealing with anti-trust immunity for international airline alliances.

Mr. MAY. H.R. 831.

Mr. OBERSTAR. I would like your comments.

Mr. MAY. With all of the respect that is due the Chairman of the Full Committee—

Mr. OBERSTAR. You needn't preface. Just say what you think.

Mr. MAY.—we will oppose that provision.

We have no problem at all with the GAO study. There was one done a couple of years ago that showed that actually these alliances were positive for consumers in a number of different respects and to have them renew that study and update it I think would be perfectly appropriate.

But we think to effectively change the rules in the middle of the game for alliances that have been long out there and effective and working well, in addition to having them then expire at the end of three years, would be counterproductive, and so we would not support that legislation.

Mr. OBERSTAR. Yes, alliances are one thing, but anti-trust immunity goes over the edge on this issue. It protects the partners against uncompetitive pricing, against, in effect, price-fixing.

I think alliances are one, but the anti-trust immunities we wouldn't do that for General Motors and Ford and Chrysler, and we shouldn't be doing this for airlines, frankly.

I think the alliance relationship has provided seamless service. There is still a question in mind whether outright competition wouldn't bring better fares and greater savings to air travelers.

But the immunized alliances are going to result in three mega global carriers who will not compete with each other, who will not provide service to communities at the end of the spokes in the hub and spoke system, which will diminish short-haul service in the domestic United States. And I think it is inimical to the future of aviation in the U.S. and in international aviation trade.

You may disagree with that, and your carrier partners in the ATA I am sure vigorously disagree with it, but I have to be an advocate for the public interest.

Mr. MAY. We fully appreciate the intensity of your positions, Mr. Chairman.

Mr. OBERSTAR. Thank you, Mr. May.

I will welcome Mr. Fuller in his first testimony before this Committee as head of AOPA. Phil Boyer is, I am sure, relishing his freedom.

Mr. FULLER. He is indeed, Mr. Chairman. Thank you.

Mr. OBERSTAR. We hope in time you will become as lovable a personality at this table as he was.

[Laughter.]

Mr. FULLER. It was all part of the transition, I think. I am sure he is watching this on the internet.

Mr. OBERSTAR. No doubt.

And, to ACI and AAAE, thank you very much for your continued partnership in the great good of aviation.

Thank you, Mr. Chair.

Mr. COSTELLO. Thank you.

The Chair now recognizes the gentleman from Illinois, Mr. Lipinski.

Mr. LIPINSKI. Thank you, Mr. Chairman.

A couple of issues that I wanted to raise here today.

First one, Mr. Principato, I fly every week just about, and I get my can of diet whatever they have, and every time I am on the plane I always think what a great place to do recycling. You have 100, 200 cans maybe on each flight, and I know at most airports this is just thrown in with the rest of the waste.

I am aware of Oakland Airport I think has a recycling program there, and I am just wondering how much effort, how widespread, how many airports actually do this. How much effort would that take?

My understanding is that it really produces great savings to have such a recycling program at the airport for the airlines coming in there. And so, why is this not more widely done?

Mr. PRINCIPATO. Congressman, thank you for the question.

I think that it is being done at a growing number of airports. I know Seattle is another one. You are going to have the director of the Seattle Airport here in two weeks to speak about wildlife management, but you might file that in the back of your mind. They

have an excellent recycling initiative with their airlines up there, and a growing number of airports are doing that.

We have actually just completed both a survey of our airports, so we can give you hard data on that. Our staff would be happy to get together with yours on the number and percentage of airports that are doing recycling and a number of other environmental initiatives that they are doing.

Our board just last week passed a whole set of environmental goals that ACI-North America airports will strive to achieve over these next couple of years, with this and a number of other issues being in there.

I don't have the specific numbers on the top of my head about the percentage of airports that are doing it, but it is larger—larger than you think, I think—and growing number.

We would be happy to get together with you and your staff and brief you on our survey, brief you on the goals that our board passed just this past Friday, and we are also putting together a little publication highlighting what a number of airports around the U.S. and Canada are doing on environmental issues.

Mr. LIPINSKI. Well, what are the main reasons that airports do not have a recycling program?

Mr. PRINCIPATO. I think it is probably better to look at the reasons why growing numbers of them are because of the point you are talking about, cost efficiency and all of that.

Mr. LIPINSKI. I am interested more just in why they don't have them, why they would not have them and what can be done to encourage or help.

Mr. PRINCIPATO. Again, I think the industry is responding to the points that you have made. There are a growing number of airports that are doing it. Obviously, 20 years ago, none of us recycled anything, and we are all sort of moving in that direction.

I think you will be very pleased with the results of our survey, like I said, that we will brief you on, the goals that our board passed just this past Friday and the other work that the airport community is doing on the environmental side.

Mr. LIPINSKI. Thank you.

I had another question, another issue that I wanted to address to Mr. May, something I am sure that you hear a lot about. It is, first of all, the fees for baggage on planes. It is one thing that these fees were put in when gas prices or aviation fuel prices went up and peaked at about \$4.00 a gallon and now down to about \$1.54 a gallon, but we still have the baggage fees.

Now I don't want to get into a debate over the fees themselves. I am more interested in issues that since we do pay for our bags now on planes, there continue to be issues with and problems with baggage. I think especially when passengers are paying for the baggage service, that they even should have a higher or they even have a higher expectation for their bags being taken care of and getting there in a timely manner.

There was a story in the Chicago Tribune the other day about someone whose luggage actually got lit on fire, their clothes burned, which, accidents happen, but the problem was it took a long time before they ever got any restitution for that.



I myself, had an experience last month. I was coming back, or two months ago, I was taking a flight back. It was late at night, and I am at O'Hare Airport, and it took over an hour for the bags to get there.

Finally, after 45 minutes, someone decided that they would actually go and check on what was going on after no one else would. And they said that they took the bags off the plane and they were left somewhere, just sitting there.

So we have these issues, and I hear other issues.

Shouldn't there be an expectation, especially paying for bags, that their bags are going to arrive in a timely manner?

It just seems like especially if these fees are going to continue to be charged, even though I am not sure why they still are, but I just wanted to know what your response would be, Mr. May.

Mr. MAY. My response, Mr. Lipinski, is that I hear this issue as frequently as you might imagine I do.

The good news is that in the latest report by the Department of Transportation, the number of mishandled bags has in fact dropped and it has been consistently dropping for the past couple of months. So we are getting better at it, but two bags or one bag or fifteen is not an acceptable number.

Our carriers recognize that the construct that you have posed here, that it is one thing if you lose my bag and I have just checked it and I haven't paid anything, but if I am being charged for, then you lose it, that is a whole other metric.

And so, I think what we are suggesting to you is we recognize the problem. We are working on it as we are on all of our customer service issues, and it is one that I will make sure I raise back with my folks at the earliest opportunity.

Mr. LIPINSKI. One quick addition, do airlines, if there is a problem, is there a general policy to refund the money that was paid if there is a problem?

Mr. MAY. Each carrier has in fact a policy. There is a DOT policy that governs as well. I don't happen to have the details in the front of my memory bank, but I would be more than happy to communicate back to your office and provide those to you.

Mr. LIPINSKI. Thank you.

Mr. COSTELLO. The Chair thanks the gentleman and now will recognize two Members for questions, and then we will go to the next panel. Mr. Graves from Missouri.

Mr. GRAVES. Thank you, Mr. Chairman. I wanted to follow up on my statement earlier, and I didn't want to step on the Chairman, because he had to go to the meeting. But given the state of the economy and what I mentioned earlier about the problems we are seeing, and obviously the attitude toward general aviation, and thank goodness, the provision was pulled that any company that receives Federal dollars would have to sell their private aircraft, which is something that concerned me.

I guess this question would be for Mr. Bolen, possibly for Mr. Fuller. But I know for Mr. Bolen, because you represent the Business Aviation Association. Can you expand a little bit on what kind of impact that would have on an entire industry? And I know there are companies out there selling aircraft just because of the perception that is going on, which concerns me.

Mr. BOLEN. Well, Congressman, you talked about the attitude that was at the heart of the aircraft divestiture issue. I believe that is an attitude that is based on a caricature of business aviation that is totally unrepresentative of the community. The reality is that it is not only unrepresentative, it is also very dangerous for our community.

Business aviation is about jobs, manufacturing and service. It is about a lifeline to small communities, and you have talked about that yourself. And it is about allowing companies to be productive. I think that the reality is that there may be times when business aviation isn't appropriate for all missions. But let's be clear about something: business aviation is prudent and cost-effective in a huge number of situations. It is prudent and it is cost-effective when the community you are trying to reach has no commercial airline service.

It is prudent and cost-effective when you are trying to visit multiple sites in a single day. And it is prudent and cost-effective when you have products that cannot be carried aboard the commercial airlines or shipped. And it is prudent when you have a team of people who have to quickly get somewhere and they need to discuss proprietary information en route. Or if there is a team that needs to work together to plan a presentation to be given there.

Those are times when business aviation makes sense. It makes up 99 percent of the operations. It is critical to our Nation's air transportation system. It is critical to our Nation's job space. And I appreciate very much the work of so many Members on this Committee who have taken the time to speak out about the importance of business aviation, not just for their districts, but for the Nation. And thanks to the hard work of people like you and others on this Committee, we were able to turn that around. We ask that you continue to speak out on that.

Mr. GRAVES. Mr. Fuller?

Mr. FULLER. I would just add that we looked on election day last year at the question in a survey that suggested that almost two-thirds of the people responded that general aviation as defined as non-military, non-scheduled carrier was an important part of the Nation's transportation system. I think one of the reasons that I looked with some horror at the singling out of certain individuals or certain practices by companies was, I think the vast majority of the American people, in community after community, recognized that aviation does play an important role. I know we are committed to sharing that story more broadly. But I actually think there is a base there that supports not only what we believe but what you have fought for, and that we are going to continue to carry that message out there.

Mr. GRAVES. Thank you, Mr. Chair.

Mr. Costello. Finally, the Chair recognizes Mr. Boswell from Iowa.

Mr. BOSWELL. Thank you, Mr. Chairman. I will be brief, I know the day is long, but something I think it is okay to bring up, and you can stop me if you wish. And I am sure you will, if you choose to.

I am concerned about some other matters. We were the birthplace, after 9/11, of what became TSA. I could tell several stories,

make a comparison of my life, when people get authority sometimes they handle it extremely well, and sometimes they don't.

Well, it seems that right now, they are thinking about coming out with a notice of proposed rulemaking which would involve general aviation aircraft weighing more than 12,500 pounds. And I get to thinking about the cost, and the involvement to do that, and what it would do to airports like in my district and across the Country that I have used.

And then I think about the efforts, and I want to ask you, Mr. Fuller, to say something about this, if you don't mind. I think of the effort the general aviation, private pilots and general aviation pilots that do things, as Mr. Jones did today and so on, we have put genuine effort into making sure that we hold up our end of that security and that safety. And the record is good.

And I think we need to discuss this very openly. We have an economy that is really in pain. We have budget problems. Yes, we have safety problems, but I think we are dealing with it pretty well. I think we need to discuss, I don't know, maybe it is not fair to you, Mr. Fuller, having you comment as you are six weeks into the job. But this weighs kind of heavy. Would you want to comment on that? Maybe some of the rest of you would, too, because I think it affects everybody.

Mr. FULLER. Mr. Boswell, I'd be delighted to comment. First of all, I think everybody up here, and I know AOPA, absolutely stands for making sure that our general aviation fleet and our airports are secure. We have had an airport watch program that has worked extraordinarily well. We don't see threats of the kind that are being imagined that produced this regulation.

The 12,500 pound number goes to a certification guideline, not to some kind of careful study of what constitutes hazardous, dangerous weapons of destruction. The KingAir 90 is under that limit. I have flown that airplane. The KingAir 200 is over that limit. I have flown that airplane. We have an aircraft in our fleet that takes off at 13,870 pounds, carries 4,000 pounds of fuel. There are two of us up front, there are four or five people in the back. We know exactly who is in that aircraft. It is inconceivable to me that the people who fly that type of aircraft over the limit are really going to have to be subjected to a security system and a security program similar to what large, commercial aircraft would have to use.

We have all testified, some of us have testified around the Country in opposition to this. We do fear that TSA feels strongly they want to go forward. We would hope that they would get into a negotiated regulatory procedure so that we could have a rational discussion about what constitutes a legitimate threat and what simply constitutes a further burden on an already over-burdened private aircraft industry. Thank you for raising the question.

Mr. BOSWELL. I think, Mr. Elwood, for example, your airport you described so well, you know what is going on at that airport. Your workers know what is going on at that ramp. This watch program we have going on, I am quite sure you have implemented, it is working, I am sure it is.

Mr. ELWOOD. You have obviously brought common sense to this situation, which is refreshing. I think that there is a misconception

at times that general aviation is a lot like picking up a taxi out in front of this Capitol and that people don't understand how the background is done. They know who is getting on that airplane, they know the role that person is going to play on that aircraft, and that the risk is really what needs to be focused on.

And blanket solutions rarely work in aviation, as you all know. Every airport has unique circumstances, as well as unique security challenges. So from the airport side, we look forward to trying to work with the TSA to get a better understanding about what the real risks are and where are the resources that actually do help protect the citizens of the United States and are showing benefit. It is not an easy answer; but it is the reality.

Mr. BOSWELL. Mr. Chairman, I would guess everybody could comment on this on the panel. But I am going to ask that we put this on our plate of things to do, not that you need other things to do. But I think we have to put it on there, and I am going to ask that we put it on our plate.

Thank you, and I yield back.

Mr. COSTELLO. I thank you, Mr. Boswell. Points well taken and points that I agree with. As you know, we have limited jurisdiction with TSA, we have oversight responsibility. But it is certainly something that we should weigh in on. And I thank you.

Gentlemen, we thank you for your testimony and spending most of the day with us. We hopefully will see some of you again in the not too distant future in some upcoming hearings.

But again, thank you.

We would ask the next panel to come forward, the witnesses, please. I will introduce them as they are coming forward.

Mr. Patrick Forrey, who is the President of the National Air Traffic Controllers Association; Mr. Tom Brantley, who is President of the Professional Aviation Safety Specialists; Captain John Prater, who is President of the Air Line Pilots Association, International; Ms. Patricia Friend; Mr. Robert Roach; Mr. Robert Gless and Ms. Kate Hanni. Would you all please come forward?

The Chair welcomes the final panel before us this afternoon, early evening. We will begin by recognizing Mr. Forrey with NATCA.

**TESTIMONY OF PATRICK FORREY, PRESIDENT, NATIONAL AIR TRAFFIC CONTROLLERS ASSOCIATION; TOM BRANTLEY, PRESIDENT, PROFESSIONAL AVIATION SAFETY SPECIALISTS, AFL-CIO; CAPTAIN JOHN PRATER, PRESIDENT, AIR LINE PILOTS ASSOCIATION, INTERNATIONAL; PATRICIA FRIEND, INTERNATIONAL PRESIDENT, ASSOCIATION OF FLIGHT ATTENDANTS, CWA; ROBERT ROACH, JR., GENERAL VICE PRESIDENT, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS; ROBERT GLESS, ASSISTANT DIRECTOR, AIR TRANSPORT DIVISION, TRANSPORT WORKERS' ASSOCIATION OF AMERICA, AFL-CIO; KATE HANNI, PRESIDENT, FLYERSRIGHTS.ORG**

Mr. FORREY. Chairman Costello and Ranking Member Petri, Members of the Committee, thank you for the opportunity to testify again.

My name is Patrick Forrey, I am the President of the National Air Traffic Controllers Association. NATCA represents over 16,000 air traffic controllers and other aviation safety professionals.

FAA reauthorization is NATCA's highest legislative priority. I would like to commend the Subcommittee for its demonstrated understanding of the important issues facing the Nation's aviation infrastructure.

I would like to take a few moments to highlight some of the aspects of the bill. NATCA fully supports and endorses the Federal Aviation Administration Personal Management System as written in the Reauthorization Act of 2009. As this Committee is well aware, the air traffic controller work force that I represent has been working under imposed work and pay rules since September of 2006. This action not only violated the FAA's legal right and obligation to bargain in good faith, but it also violated fundamental principles of fairness. In effect, the FAA stripped this Union of its collective bargaining rights.

The effects of the imposed work rules have been devastating, not only to the working lives of controllers, but to the safety and integrity of the National Airspace System. As a direct result of the imposed work rules and pay system, air traffic controllers began a mass exodus from the FAA. The vast majority of those that left did so not because they reached their mandatory retirement age, but simply because they had had enough.

Since the imposed work and pay rules were unilaterally implemented nearly 28 months ago, we have lost upwards of almost 5,000 controllers, equating to over 46,000 years of experience. The FAA is hiring to make up for these devastating losses, but they cannot keep up.

The air traffic control system is clogged with trainees. Approximately 25 percent of the controller workforce is still in training, and that number will grow. At some facilities, the ratio exceeds 50 percent of the workforce.

They are being placed in high level terminal facilities which do not have the curricula to train those with no previous ATC experience, and in some cases they are waiting as much as 18 months for their first day of on the job training.

For fiscal years 2006, 2007 and 2008, the agency has only been able to completely certify 718 trainees out of the 4,480 hired and still employed in those three years. Mr. Chairman, that is only 16 percent. And I want to be clear, the trainees and new hires themselves are not the problem. They are dedicated professionals who represent the future of the air traffic control system, and if given the proper tools and training, they will excel in this safety profession.

The problem is the agency's inability to provide them with the comprehensive training they need. They are being denied the opportunity to learn from experienced controllers, quickly rushed through and flushed out of training, and forced to shoulder far too much air traffic control burden at this early stage of their careers.

This staffing shortage has left the remaining workforce strained to the breaking point. Fatigue has become a serious concern. Controllers are being required to work excessive quantities of overtime, and are therefore unable to fully recover between shifts. On shifts

themselves, controllers are often finding they are understaffed and forced to work combined positions without radar assistance and with less opportunity to recover after major pushes. In short, the imposed work rules have meant fewer eyes watching the skies and those that are remaining are less experienced and fatigued.

FAA reauthorization addresses this problem by requiring the FAA to return to the bargaining table in order to reach a mutually agreeable collective bargaining agreement with NATCA. This would effectively stem the flow of experienced controllers from the workforce and make it easier to retain new hires. Additionally, this section amends Title 49 to ensure that this will not happen again in the future.

This bill also addresses issues of realignment at FAA facilities and services. NATCA is extremely concerned with the reckless realignment initiatives the FAA has unilaterally initiated over the course of the last year. The FAA recently split tower radar functions at Orlando into two separate facilities, and is planning to do the same in Memphis in June, followed by other facilities. This is another example of FAA's go-it-alone way of doing business, rather than truly providing an operational benefit. These deconsolidations are designed only to conceal the staffing crisis at each of these facilities.

FAA reauthorization must ensure that all FAA realignment issues are considered in a collaborative environment and provide a specific operational benefit. We support the establishment of a work group of stakeholders to review all realignment initiatives prior to the FAA beginning the realignment process.

As we have said all along, if you make us part of the process, we will be part of the solution. NATCA also supports the authorization of a scientific study on air traffic control staffing to be conducted by an independent third party. Rather than consider the safety needs of the NAS, the FAA based their current staffing standards on budget alone.

The justification provided on the FAA's controller workforce plan is nothing more than smoke and mirrors. The current standards were designed to deliberately conceal current staffing crises. For example, according to the FAA's current standards, the New York TRACON is over-staffed. Yet the FAA is offering controllers a \$100,000 incentive to transfer there. Why would that be? Because their staffing ranges are meaningless and do nothing to reflect the actual needs of the facility.

The staffing study proposed by the FAA reauthorization would allow the FAA, Congress and NATCA to truly assess the current risks to the system and set benchmarks for resolving the staffing crisis.

And lastly, I would like to address the related issues of modernization and maintenance. NATCA fully supports the funding levels set aside for the modernization of the air traffic control system, but we remain concerned about the direction of NextGen. Thus far, the FAA's plans for NextGen remain poorly defined and carefully guarded. We believe that the success of this or any modernization effort is dependent on transparency and collaboration with all stakeholders. It is our hope that after the imposed work rules are removed and NATCA and the FAA reach a mutually

agreeable contract, we can return to an era of cooperation and collaboration that will best serve the needs of the NAS.

We also want to be sure that funding for NextGen does not come at the expense of NowGen. Under the previous Administration, FAA facilities were allowed to fall into disrepair while the FAA pursued ill-defined modernization goals. This level of deterioration is unacceptable. The FAA must maintain and repair existing AT facilities in a manner that ensures the safety and security of personnel working there and allows aviation safety professionals the tools they need to do their job.

Mr. Chairman, thank you for the time.

Mr. COSTELLO. The Chair thanks you, Mr. Forrey, and now recognizes Mr. Brantley.

Mr. BRANTLEY. Thank you.

Chairman Costello, Congressman Petri, and Members of the Subcommittee, thank you for inviting PASS to testify today. As you know, PASS represents approximately 11,000 FAA employees in the United States and overseas, and we appreciate the opportunity to present our views on FAA reauthorization.

Ensuring a fair contract negotiations process at the FAA is of utmost importance to PASS. By taking advantage of the ambiguities in current law governing those negotiations, the FAA has consistently refused to bargain in good faith with PASS and other FAA unions.

The hostile environment this creates threatens the productivity of FAA employees and the efficiency of the aviation system. And while we are all familiar with the FAA's unilateral imposition of changes to working conditions to air traffic controllers, I would like to share with you a few of the things that we have faced over the years.

Contract negotiations for four out of the five units of employees that PASS represents have been at impasse for six years. In our largest bargaining unit, the technical operations unit, the agency showed no interest in reaching a mutual agreement. As a result, when the agency's final proposal was presented to our members for a vote, it was rejected by 98 percent of those members.

It is clear that a change is needed in order to ensure FAA employees their right to collective bargaining. PASS appreciates the language that was included in the FAA reauthorization bill introduced this week. PASS is in full support of the language clarifying that the Federal Service Impasses Panel has jurisdiction over bargaining impasses arising at the FAA and that binding arbitration before a neutral third party is the method used for resolving bargaining disputes.

Understaffing is also a major concern for PASS, especially in our technical and safety inspector bargaining units. Inadequate technical staffing has resulted in a move toward a "fix-on-fail" approach where preventive maintenance and certification of NAS systems and equipment are significantly reduced. PASS is especially concerned with changes the FAA has made to its time-tested certification process in which a certificated FAA technician checks or tests these systems and equipment on a periodic basis in order to ensure that they are safe for use. Not only has the FAA moved away from a proactive maintenance philosophy with its new con-

cept, but it has also changed its policy to now prohibit certification of all systems that it does not own.

As the FAA works to modernize the NAS, the systems and equipment must be properly certified by FAA technicians in order to ensure safety and reliability. As such, PASS proposes that language be added to the FAA reauthorization legislation making it clear that the FAA will make no distinction between public or privately-owned equipment, systems or services used in the NAS when determining certification requirements.

With regard to the inspector workforce, PASS appreciates the efforts of this Committee to address the inspector staffing situation by including language in the reauthorization bill authorizing funding to increase inspector staffing.

With the many challenges facing the aviation industry today, including outsourced maintenance work in this Country and abroad, it is imperative that there are enough inspectors in place to monitor the safety of the system. In particular, PASS appreciates the language that was included mandating that all certificated foreign repair stations be inspected at least twice a year by an FAA inspector.

Furthermore, in light of last year's Southwest incident and questions regarding the FAA's aviation safety oversight program, PASS supports the inclusion of language aimed at strengthening and improving FAA oversight of the system, including improvements to the customer service initiative and the voluntary disclosure reporting program.

PASS is looking forward to working with this Committee to ensure the safe and efficient modernization of this Country's aviation system. PASS and the employees we represent are hopeful that this Committee will enact legislation that will allow positive labor management relations and ensure that safety of the aviation system is always the top priority.

Thank you, and I would be happy to answer any questions you may have.

Mr. COSTELLO. We thank you, Mr. Brantley.

The Chair now recognizes Captain Prater.

Mr. PRATER. Good afternoon, Chairman Costello, Ranking Member Petri, and Members of the Subcommittee.

When passed, the FAA Reauthorization Act of 2009 should make significant strides in advancing aviation safety and herald a new era for U.S. air transportation. I will outline six priority safety and policy areas for the 53,000 members of the Air Line Pilots Association, International. Several are covered in the last Congress's reauthorization bill. However, a number of critical concerns have not yet been addressed.

First, no industry was hit harder by the 9/11 attacks than the U.S. airlines. To keep our companies in business, our pilots took enormous concessions. As a result, our members often fly right up to the regulatory limits for flight and duty time. Sixteen-hour domestic duty days and longer in international flying are a fact of life for pilots. Irregular shifts, multiple time zones, all-night operations and disrupted circadian rhythms all contribute to pilot fatigue. The eight-hour rest period in the current regulations includes travel to



and from the hotel, and pilots often cannot get time or relax enough to receive more than five or six hours of sleep.

ALPA advocates a complete overhaul of the regulations based on modern science. The rules must apply to all sizes of both passenger and cargo operations. They must encompass adequate rest periods, reasonable duty periods, and provisions for crossing multiple time zones and flying on the backside of the clock.

ALPA strongly supports bill language that directs the FAA to commission a National Academy of Sciences study to collect new data on pilot fatigue and then to use it to update the regulations.

Second, fostering a safe air transportation system also requires a foundation of voluntary non-punitive safety reporting programs. These programs must be based on the unshakable sense of trust among the participants. Most reports are sole-sourced, meaning only the person reporting knew that a mistake occurred. Without full confidence that reporting an error will be used solely to advance safety, employees will have little incentive to come forward and valuable safety information will be lost.

Moreover, safety management systems will be stymied without them. Programs have been suspended because of mis-used reports. We ask Congress to protect voluntarily supplied safety information against mis-use for discipline, FAA sanctions, or litigation.

Third, few would deny the need to modernize the Nation's air space. It is a priority for ALPA. Infrastructure, equipment, and facilities are severely outdated. Modernization is a complex, expensive and long-term endeavor that must be done right the first time. Long-term stable funding is essential. Airlines currently pay the majority of costs for operating the national air space system. All users will benefit from a safe, modern system. All should bear a fair share of the cost.

A related air space management concern for pilots is unmanned aerial systems, or UAVs. Regulations must ensure safety before these aircraft can share air spaces with airliners. ALPA pilots hail the provisions in the bill to enhance runway safety, research wake turbulence, icing and other weather impacts on airline operations, and continue to operate Midway Island Airfield as a trans-Pacific emergency landing option. The Wake Island Airfield must also be included.

We commend your efforts to establish oversight requirements for the airlines using non-certificated maintenance facilities. We also note two areas that warrant additional support: research to reduce encounters with volcanic ash and to reduce encounters with wildlife hazards.

Fourth, many cargo aircraft operate without flight deck doors, a critical layer of safety for pilots who, along with their cargo, often fly animal handlers and couriers who are vetted using only limited ground procedures. All FAR Part 121 operations must be afforded one standard of safety and security. We call on Congress to ensure that cargo aircraft are equipped with reinforced flight deck doors or an equivalent level of protection.

Fifth, ALPA also strongly backs language in the bill affirming that U.S. citizens must control key operational aspects of U.S. airlines. This bill does that by identifying fleet composition, route selection, pricing and labor relations among the operational elements

that the Department of Transportation must ensure U.S. citizens control.

Finally, while safety decisions must never be based on economics, our industry's financial health is extremely important to pilots. Large price spikes and jet fuel scarcity pose the greatest threat to industry stability. ALPA urges Congress to swiftly adopt a national energy policy that will increase a stable jet fuel supply, reduce rampant oil investor speculation, and hold the line on new fuel use taxes, charges and fees.

This FAA reauthorization bill holds promise for powerful change. As the professionals who make the airline industry work every day and every night of the year, we are the ones who know what works and what doesn't. When in doubt, ask us.

Thank you for doing that by having us here today.

Mr. COSTELLO. Thank you, Captain Prater.

And now the Chair recognizes Ms. Friend.

Ms. FRIEND. Thank you, Chairman Costello and Ranking Member Petri for giving AFA-CWA, the world's largest flight attendant union, the opportunity to testify today.

My written testimony details a number of critical issues for the Nation's flight attendants, from our lack of basic OSHA protections to the growing and serious problem of flight attendant fatigue, problems with cabin air quality, and lack of access to a HIMS program for flight attendants. These are all serious problems that the FAA has neglected and refuses, in most cases, to even recognize.

We appreciate that the leadership of this Committee has worked closely with us to address these issues and to force the FAA to do its job to protect the safety and health of those that call the aircraft cabin their workplace and those who daily travel with us.

We also are in full support of the provision the in-flight use of cell phones, but we would like to suggest, in order to ensure the peace and quiet in the cabin that we know Congressman DeFazio is seeking, that the Committee should also, as communication technology advances rapidly, consider a prohibition on the use of voice-over internet protocol in the cabin as well.

We look forward to continue working with you as this bill moves through the legislative process. However, we are concerned that the growing safety and security risks posed by the exploding number of carry-on bags being brought on board the aircraft is not currently addressed in the bill. Since the mid-1990s we have tried to force the FAA to adopt and enforce a uniform policy for carry-on bags, but again the FAA refuses to recognize the problem and has failed to protect flight attendants and passengers.

With airline management imposing checked-bag fees, we have seen a dramatic increase in the size and number of bags being brought into the aircraft cabin. One major carrier recently measured a 25 percent drop in checked luggage following the imposition of checked baggage fees. Those bags end up in the aircraft cabin. This poses a serious risk to the safety of passengers and flight attendants, and poses a security concern in the aircraft cabin. We would like to work with the Committee to include language in the final bill that would create a concise, uniform and enforceable standard to limit the size and number of bags being brought into the aircraft cabin.

This FAA reauthorization process is also a sound platform to begin a comprehensive discussion on developing a national aviation policy for our Country. This legislation addresses some immediate and long-term needs, and that is appropriate. But the larger conversation must take place on how we want to build a 21st century aviation policy for our Country. It is a conversation we believe is long overdue.

This FAA reauthorization is one of the most comprehensive and worker-friendly reauthorization bills in memory, and again I applaud the Committee's work. For instance, I am pleased to see increased funding for EAS. Service to small and even mid-sized communities are the first casualties when airlines cut capacity, leaving a trail of wasted infrastructure investments and unemployment for aviation workers. I applaud the Committee for making a bold policy statement that service to all communities is important. This is the type of discussion and policy-making that needs to occur on a broader stage.

Chairman Oberstar's recently introduced legislation, H.R. 831, is one of those important steps that, along with this FAA reauthorization, will help in ensuring a vital domestic U.S. aviation system. This, along with provisions in the reauthorization that address the issue of foreign ownership and control of our domestic airlines, are important in protecting U.S. workers and consumers.

Today's hearing serves two purposes in my view, Mr. Chairman. First, AFA-CWA endorses this bill and urges you to include a one-size-fits-all carry-on baggage policy in the bill. Second, this legislation and this hearing have provided a long overdue platform for formulating a national, indeed a rational, aviation policy for our Country. In this season of change, this is our opportunity to construct a 21st century aviation policy that works for passengers, communities and the union women and men who each and every day transport a number of passengers equal to the size of the city of Chicago.

It is time that millions of aviation workers are part of the debate on what our aviation policy will be, and I look forward to working with you to make that happen.

I thank you for your time, and I look forward to your questions.

Mr. COSTELLO. We thank you for your testimony, Ms. Friend.

The Chair now recognizes Mr. Roach.

Mr. ROACH. Thank you, Mr. Chairman and Members of this Subcommittee, for the opportunity to speak to you today.

My name is Robert Roach, Jr., General Vice President, Transportation, for the International Association of Aerospace Workers, the IAM. I am appearing at the request of International President R. Thomas Buffenbarger.

The machinists' union is the largest airline union in North America. We represent more than 100,000 U.S. airline workers in almost every classification, including flight attendants, ramp service workers, mechanics, and passenger service employees. On behalf of those workers who ensure that the United States has a safe, secure, reliable air transportation system, I am presenting to you today some of their concerns they hope to be addressed in the FAA reauthorization bill.

From the outset, we are looking for a level playing field to continue to have a safe, secure transportation system. It is in the Nation's interest. As a matter of fact, it is a matter of national security that the United States have a safe, secure system. Many of our jobs have been forced overseas to foreign repair stations.

We are asking today that the FAA reauthorization bill create a level playing field which would incentivize some of these domestic carriers to bring some of that work back home. Foreign repair stations have little or no oversight. Restrictions and testing and background checks are not required in these overseas inspection stations. Overseas FAA inspections are not announced, and more importantly those that are announced very rarely take place. The public deserves one level of safety, regardless of where the aircraft are maintained.

On the issue of express carriers, UPS and FedEx are treated differently. The laws are applied inconsistently. Employees who work for UPS are governed by the National Labor Relations Act. Employees working for FedEx, for some reason unknown to us, are covered by the Railway Labor Act, which makes it very difficult to organize those employees who, in many cases, want to be represented. The express language in the Railway Labor Act needs to be modified to provide consistency throughout the industry.

Flight attendant safety. The recent successful evacuations of Continental Flight 1404 in Denver, and US Airways Flight 1549 in the Hudson River demonstrate flight attendant skill and heroism. Rest periods should be exclusive of any job responsibilities or hotel transfer time. IAM contract times exceed FAA mandates, but not every flight attendant has union protection. Flight attendants should be covered by OSHA. We need to protect the people who protect us in flight.

Fixed-based operators. There is a great debate in Congress and throughout our Country about the Employee Free-Choice Act. Conversely, we have a group of people who voted by secret ballot, in some cases 40 or 50 years ago, to be represented by a labor organization, and now, as a reinterpretation of law, not a change of law, these people are told that they are no longer represented by labor organizations. These people fix and maintain aircraft in our Country. These people fuel aircraft in our Country. And as a result, there is an instability in the fixed-based operations of people who once enjoyed a decent job, who now have transit people making minimum wage working on \$40 million or \$50 million aircraft. The misapplication of the Railway Labor Act has many workers without a union or a contract.

Since 9/11, airline workers have sacrificed their wages, pensions and work rules and more than 200,000 jobs in order to rescue the industry. Industry conditions have imposed wage burdens on workers and carriers to reduce costs. Such extraordinary focus on the bottom line demands greater, not less, government oversight and proper FAA funding is a must. We were inspired by President Obama's speech the other night about taking education, bringing education, educating people to attach them to the skills that we will need for the future.

The IAM is presently involved in a mentorship program with Aviation High School. We have met the young men and women

who graduate from Aviation High School, and then we place them in skilled jobs, Pratt & Whitney. We were in discussions with Governor Sebelius of Kansas to bring some of these young men and women before the economy went bad.

We believe that some of the billions of dollars that are going to be spent to create jobs, to educate people, should be spent on programs such as apprenticeship programs so that people graduating from high school with skills can be mentored and placed in skilled jobs in our Country.

We look forward to working with the Department of Transportation, and whoever the FAA administrator is, that they should have the flexibility to work with us to create better programs so that we can have better jobs, better skills, and our work will not have to go overseas because we will have the workforce in America to do those jobs.

Thank you, Mr. Chairman, for the opportunity to speak, and we look forward to working with you and this body, and the opportunity to speak with you.

Thank you.

Mr. COSTELLO. We thank you, Mr. Roach.

The Chair now recognizes Mr. Gless.

Mr. GLESS. Thank you.

Mr. Chairman, the Transport Workers of America, on behalf of its 200,000 active and retired members in the transportation industry, including the airline mechanics at American Airlines, American Eagle, and the flight attendants of Southwest Airlines, appreciate the opportunity to appear before the Committee.

In particular, I would like to thank the Committee for its diligence in passing H.R. 2881, the FAA reauthorization bill in the 110th Congress, and we look forward in this 111th Congress to the successful passage in the House and Senate of a reauthorization bill that discontinues the double-standard that is applied to aircraft maintenance.

In addition, we hope to see the FAA put in place critical and timely provisions for flight attendants that will enable them to perform their duty safely. Briefly, since Mr. Roach and Ms. Friend have spoken specifically on flight attendant issues, we support occupational safety and health standards for flight attendants. We think they are long overdue. Completing the study on flight attendant fatigue is another endeavor that will ensure that flight attendants will be able to perform their duties to the best of their ability.

Specifically today, I would like to speak on the issue of aircraft maintenance. The TWU represents roughly 15,000 workers who fall within the category of interest. There are four recommendations regarding aircraft maintenance that we see as necessary to ensure safe and secure air travel for the American public.

One is to require that all maintenance on aircraft used in domestic U.S. service be done in FAA-certified repair facilities. Two is to require as a condition of FAA certification is that all repair stations meet the same standards. This would include, but not be limited to, drug and alcohol testing, background security checks, and Part 65 aircraft mechanic certification.

Three is to reconfigure the FAA inspection and oversight to place the greatest scrutiny on those repair stations whose audits determine to propose the greatest risks to safety and security.

And four, requires conditions of FAA certification that all repair stations be subject to unannounced FAA inspections. The FAA should be prohibited from certifying any repair station in a country that does not allow unannounced inspections and should immediately revoke any existing certifications in such a country.

There is no doubt that maintenance work that is done in-house by the U.S. carriers themselves is probably the safest, most secure type of maintenance. This is because the work is done under the direct control of the carrier supervisors and there is an additional layer of supervision and inspectors dedicated to completing the tasks. They ironically receive the highest scrutiny and FAA oversight of all.

As reported in the FAA's recent report, the Air Carriers Outsourcing of Aircraft Maintenance, issued on September 30, 2008, out of the nine carriers that were reviewed, 71 percent of their heavy airframe maintenance check was outsourced to repair stations. Since 2003, the trend of sending this work out of house has more than doubled, from 34 percent in 2003 to 71 percent in 2007.

In 1989, the TWU testified against the FAA rule change. Unfortunately, we were right in predicting that the elimination of limits on movement of maintenance would result in the outsourcing of tens of thousands of jobs to overseas facilities. Just days ago, Congress passed an economic stimulus package that would put some people back to work. My suggestion to keep the airline industry afloat is to keep it safe and secure by encouraging more air carriers to ensure safety by establishing the same rules and scrutiny on foreign maintenance bases as are here in the States, which will keep the U.S. air carrier mechanics working.

Thank you for the opportunity to testify before you today. We look forward to answering any questions that you may have to my testimony.

Thank you.

Mr. COSTELLO. Thank you, Mr. Gless.

The Chair now recognizes Ms. Hanni.

Ms. HANNI. Chairman Costello and Ranking Member Petri, thank you for inviting Flyersrights.org to testify in connection with the FAA Reauthorization Act of 2009. We were pleased with the last Congress's legislation, and we were disappointed that it did not get enacted, but we see that as an opportunity for this Congress to enact even stronger legislation in regard to airline passengers' rights.

We applaud the provisions recently introduced in H.R. 915 by Chairman Oberstar and Chairman Costello, but we also ask you to consider language suggestions to the Subcommittee staff. Specifically, we hope you would consider Congressman Mike Thompson's H.R. 624, the Passengers Rights Act of 2009. It has 24 co-sponsors already and mandates effective minimum standards for water, food, working toilets, tolerable temperatures, and an option to deplane after three hours if it can be done safely.

An identical bipartisan bill has been introduced in the Senate, and our Members are working to garner additional support for these bills in both chambers.

You will hear from the airline lobbyists that we are doing a better job reducing our handling of long tarmac delays. Let us handle it, they say, using the same arguments they advanced in convincing Congress in 1999 to stop working on passenger rights legislation and accepting voluntary airline customer service commitments instead. However, the DOT's Inspector General testified here in 2001 and 2006 that airline efforts slacked off after the threat of legislation abated and that those commitments to customer service plans aren't enforceable.

The airlines will also say the Tarmac Delay Task Force Report and DOT-pending regulations eliminate the need for Federal passenger rights provisions to be included in your FAA Reauthorization Act legislation. Well, we asked the task force to establish minimum standards for passenger health and safety issues and for a maximum period for tarmac strandings.

I even asked that they clearly define what is a long delay or what is an excessive delay, and we could not get a definition. Instead, the airlines on the task force accepted no standards with everything still being left to their unregulated discretion and with no penalties for negligence.

Similarly, in DOT's current draft of its weak, toothless, Enhancing Airline Passenger Protections regulation, the airlines are permitted to create their own contingency plans with no DOT review for adequacy, no minimum standards, and no practical way for passengers to enforce whatever the carriers propose to offer.

The airlines' lobbying and litigation activity over the past year make it clear that they don't want any Government body or individual passenger to be able to enforce any standards of airline behavior during long tarmac delays, and not the States. The airlines successfully defeated the State of New York's attempt to establish minimum standards for air passenger health and welfare, imposing fines for violations. The court's ruling was that only the Federal Government may regulate the airline in this preempted area. And then they turn around and say, not Federal regulation.

The airlines are opposed to DOT's requiring them in its pending rulemaking to list their 1999 commitment and their tarmac stranding policies in their contracts of carriage for fear that some passengers will try to litigate those promises in state courts. Thus, only Congress can assure minimum protections for passengers.

Mr. Chairman, time limits restrict me from explaining how we know from our 24/7 hotline calls and investigations into airline statistics show that airline and Federal agency treatment of stranded airline passengers is getting worse and not better. In the audience today is Wayne Burnett. He is a GE jet engine engineer. He had a blood clot and pulmonary embolism after a three and a half hour stranding event on the tarmac. It nearly killed him. His life will never be the same.

The bottom line here, Mr. Chairman, is that unless Congress mandates in your FAA reauthorization legislation minimum standards for adequate food, water, working toilets and a passenger option to deplane after three plus hours of a tarmac delay, if it can

be done safely, tomorrow's passengers will continue to be as exposed to airline negligence during tarmac strandings as they are today.

Again, thank you for the opportunity to testify. I would be pleased to answer your questions.

Mr. COSTELLO. We thank you for your testimony, and as I stated earlier, there is no question that if we leave it up to the airlines to regulate themselves, it will not happen, and that is why it is necessary for us to put this in legislation and to pursue it. So we thank you for your testimony and thank you for your advocacy on behalf of passengers.

Mr. Forrey, we don't want to get into the NATCA contract issue. We all know that. We have discussed it. I think everyone on this Committee is aware, and I think can say in a bipartisan way that we believe that what has taken place is unfair. The question is, what is the remedy, and we have proposed the remedy in our legislation and we have stressed, I personally have stressed it to the new Secretary and others, what needs to be done. So I am not going to get into that now.

But what I do want to get into is to talk a little bit about testimony that we heard from both Dr. Dillingham, and we have heard from others in the past, about morale and what it is doing to the agency, the concern about the morale having an effect on NextGen and the lack of involvement in all of the stakeholders, including the controllers, Mr. Brantley's people that he represents, and Mr. Prater as well.

We heard in the past Administration testimony here in this room about how NATCA in particular has been invited to the table to participate. My question to you is, with NextGen in particular, because everyone is concerned about NextGen and modernizing the ATC system, have you been at the table? And have your people, have you been invited to come in, give your views, and help try and design the system?

Mr. FORREY. Mr. Chairman, I am aware of all those comments made by the previous Administration and the FAA. They are just patently false. The FAA has not invited us to participate in any technological improvements or modernization of the system. In fact, they don't want our opinion on anything. They view us with disrespect, or they have in the past, and continue to do so today. I think and hope that that will change with the new Administrator and this new Administration. We look forward to that.

A collaboration is the only way this agency is going to move forward. It is the only way we are going to be able to train people. It is the only way we are going to be able to keep the experienced controllers from leaving the system. They are just treated terribly.

Mr. COSTELLO. Well, it was refreshing for me to hear from the new Secretary about how he wanted to be inclusive and wanted to have the opinions in not only designing NextGen, but in other aspects of the operation of the agency, all the stakeholders, including specifically PASS, NATCA, ALPA, and the flight attendants as well. So hopefully that dialogue will take place in the future, once they are organized and get moving. I made the point earlier that I think we are into 22 days of this Administration, so it is going to take some time to get the appropriate people in place.



At this time, the Chair would recognize the Ranking Member, Mr. Petri.

Mr. PETRI. Thank you very much, Mr. Chairman.

Thank you all for your testimony, and putting in a little overtime here in this hearing room today.

I really wanted to take the short time I have to first of all make a comment, and that is, as you know, we have had several years without a fatal accident in commercial aviation in the United States, an absolutely remarkable record. That record was in very great jeopardy quite recently with Flight 1549, and at least three of you have members who were involved: an air traffic controller who helped to alert people around the area, of course the flight crew, stewardesses who managed to prevent as best they could a potentially catastrophic situation, turning into an orderly evacuation, and especially your I think member, Captain Sully Sullenberger, and the tremendous job he did in acting very quickly, as it turned out, under great pressure.

This is a testimony to the professionalism and effectiveness of experienced crews. We keep trying to make the system better, but we can all be very proud of the performance of the people involved in saving all the lives, even someone who was in a wheelchair, with very few serious injuries and almost everyone walked away and everyone lived. So it is a testimony. I just wanted to say that.

The other thing, I did have a question for Mr. Forrey, the bill, H.R. 915, has what is called a binding arbitration provision, but when the arbitrator comes out with an award, as I understand it, and I would like you to comment on this, it is binding on the taxpayer, but not on the union as there is a possibility of a vote to reject the binding arbitration agreement. How is that necessarily going to move things forward?

Mr. FORREY. Well, the binding arbitration process is very similar to what is used in the Postal Service today. Essentially, anything that is determined by the arbitration panel is not ratifiable. In other words, it has to be accepted by the parties. The rest of the agreement that was agreed to voluntarily would be ratified. So anything that was determined by the arbitration panel is set in stone.

I believe there are also circumstances where there certainly couldn't be an award or a settlement, so to speak, without the government's approval. Obviously, if Congress isn't going to fund it, they are not going to fund it, and that is all there is to it. I mean, you guys make the laws, right?

So that is kind of where it goes. It is a very good process. It is very productive. It cuts out the strife. Everyone gets to have their day in court and present their evidence in support of what they want to do. An independent panel will determine what makes the best sense.

So we believe that is the only way to go. It is similar to what is done with the Federal services in past panels. It is just that they don't deal with funding, basically, or with pay in the other Federal parts of the Federal sector, like the FAA does.

So we think it works very well. It has worked very well for the Post Office for several years now, and it should create a more productive environment.

Mr. PETRI. Thank you very much.

I wonder, too, just one thing very briefly, if you could comment, if you were here during the Inspector General's testimony. There seemed to be some, at least certainly an increase in recruitment that they have hit their targets or exceeded them. There is still concern about inexperience or opportunities for proper training, but there were predictions a year or so ago about how we were going to have trouble recruiting or keeping the air traffic control force, especially in the absence of a contract settlement. That does not, in fact, seem to have happened. Would you like to address that?

Mr. FORREY. Well, I think it comes down to a question of what you are recruiting, how qualified they are, and how successful they will be in the training.

Mr. PETRI. These are your members. I understand that. I completely understand that. What we want them to do is be put into an environment where they are going to have the best opportunities to succeed, and that it not being done.

Mr. FORREY. You have to understand, air traffic control is an inherent ability, not something you learn. If you don't have the inherent ability to multi-task, three-dimensional imaging and all that kind of stuff that us weirdos have, you probably won't succeed in the job.

So first of all, you have to get the right pool of people in there. Certainly, we hope that is what the FAA is doing. We don't have any say in that.

Secondly, you have to provide an environment where they can learn their craft and their profession, and they are being placed in the facilities that don't have the curricula for training them, for people that don't have experience. They are putting too many in places at once where they can't get proper and on-time training.

The experience-level of the controllers that are supposed to do the training are leaving, so there are fewer of them around to show them how to do the job. And as Chairman Costello said, he was in Orlando tower the other month, and there were ten people in that tower and only one of them had a year or more of experience.

Now, if we had a situation that happened with US Air 1549, would that controller have had the experience and been subjected to that kind of a condition in his or her working environment for less than a year, to be able to handle the situation like that controller did, or those controllers did?

One was in the tower at LaGuardia, Bill McLaughlin, and Patrick Harkin in New York TRACON. Both had years of experience and they didn't miss a beat, just like the crew didn't miss a beat, neither the cabin crew nor the flight crew. People were called in to help as quickly as they could, and no one got hurt in that thing.

So that is what we are hoping, to stop the flow of these experienced controllers from leaving the system, to provide these new folks coming in a decent training program that they can be successful and be the next generation of this system. We are concerned about that. You can hire all you want, but they only certified 700 of them in the last three years. That is a problem for us. We lost 5,000 and certified 700. You do the math.

Mr. COSTELLO. The Chair thanks the gentleman, and now recognizes the gentleman from Iowa, Mr. Boswell.

Mr. BOSWELL. Thank you, Mr. Chairman.

I don't think I have questions. I would like to make a couple of comments, if I could.

Mr. Forrey, in all my years of being around flying, I still am impressed when I go to a tower or control room. Pass word back to your people that we love them, we respect them, and we are going to continue to work our best to get the numbers you need.

I could go right down the line. I could brag on all of you, and I do. I think I will pick on the lady in front.

Unsung heroes. We fly a lot. Thank you. Those flight attendants are really great, and they don't get much help from we passengers sometimes. We get cranky and so on.

The mechanics, Mr. Roach, you make a good point. Unbelievably costly airplanes, and then we want to shortchange the people that keep them flying. It is ridiculous.

Mr. Gless, thank you.

Don't give up, Ms. Hanni. We are going to win this sooner or later.

I guess I will stop with you, Captain Prater. I was thinking back to the days of my own flying, when I was learning. As you know, and the rest of you who fly, we practice and practice and practice with that engine out. When I was instructing, we wouldn't solo somebody until they could prove to us they understood what they are supposed to do.

Nevertheless, I think that the Hudson River landing tells a story to the world, really, that you guys are professional. You are really, really professional. Calm and cool, you have to be, and people of few words. Just do what you have to do.

I think of all the possibilities that could have gone wrong, one wing being a little low or something, just the wrong time, and what could have happened. I think that there was a guiding hand possibly, but there was a heck of a hand on the yoke. Our compliments to those of you that give us the confidence to get in the back of some of those monsters, and not being able to see what is going on. That is kind of one of the harder things for pilots, to get in the backseat and sit there knowing you can't do a darn thing if something goes wrong. Then there are the flight attendants to take care of us.

Mr. Chairman, this is a great panel. I wish the whole Country could have heard what they had to say and what they do for us. It means a lot.

Thank you very much.

Mr. COSTELLO. The Chair thanks you, and recognizes the gentleman from Illinois, Mr. Lipinski.

Mr. LIPINSKI. Thank you, Mr. Chairman.

I guess I am to a large extent what stands between all of us being able to finish this hearing today, but I just want to echo my colleague Mr. Boswell's comments here, that we unfortunately with all the problems going on in our Country right now, we would like to focus on things that don't work and haven't worked. All of you are part of making this system work.

Every time I get on a plane, I still think about the fact that all of these things have to work—the pilot, the flight attendants, those that work on the plane, air traffic controllers—everybody has to do things right so that everything works. I also every time I get on

a plane think about how things can be better. So I thank Ms. Hanni for her work.

I just want to ask one question of Ms. Friend. In your written testimony, you express strong support for placing limits on the size of a carry-on bag that may be brought onto planes. So I just wanted to ask you, with the decision of many carriers to charge for bags, I just want to ask you how that has impacted the number of bags, the size of bags that passengers carry on, and what effects that this had on flight attendants.

Ms. FRIEND. Well, as you can imagine, people are reluctant to pay anything more than they have to. So a lot of the baggage that used to be checked is now ending up in the cabin of the aircraft, more and larger pieces of luggage. We do know that, as I testified earlier, at least one major carrier, two months after implementing the checked baggage fee, they revealed that the amount of their checked baggage was down by 25 percent. From our viewpoint, that 25 percent reduction is now in the cabin.

We see a number of problems with that, obviously. There isn't room for it. It causes problems in evacuation. Some of those passengers who were in the Hudson River felt compelled to try to take their carry-on baggage with them as they were leaving, which they will inevitably do.

We believe that additional carry-on baggage coming through the security checkpoints adds an additional burden to the screeners. It just magnifies their workload and makes it more difficult for them to identify dangerous items.

So we are once again, as we have for as long as I can remember, urging the enactment of a uniform carry-on baggage limitation, size and number, that can be enforced.

Mr. LIPINSKI. Thank you. They still have those metal things that are sitting there before you get on the plane that say your bag must fit in here. I kind of wonder why those are still sitting there. I don't think I have ever seen one of those really used.

Ms. FRIEND. They are actually a handy receptacle for anything, you know, that you can't find a trash can for. That is about what they are good for.

[Laughter.]

Mr. LIPINSKI. Thank you very much. I thank all of the panelists for your testimony. Hopefully, there are a lot of people watching this and understand the job that you do, the people that you represent.

Thank you, Mr. Chairman.

Mr. COSTELLO. Thank you.

The Chair thanks all of you for your testimony and for your patience today. We think that we have a good bill that we have introduced. We have every intention of moving the bill as quickly as possible. We will schedule a markup as soon as we possibly can, and we will get it to the floor quickly.

As I said earlier, with the Ranking Member of the Full Committee who is here, most of the items in the bill are issues that we had previously agreed on. Mr. Mica, Chairman Oberstar and Mr. Petri and I went through item by item in the bill. So I would guess that about 90 percent is agreed upon. The labor issues are not agreed upon, not surprisingly, but there were a couple of other

issues, too, that were put into this bill that we believe are non-controversial.

So we fully intend to move this as quickly as possible. We want to move it prior to the expiration of the extension, which of course is the end of March. So we will be doing our work to attempt to get that done.

We appreciate your input. As I said in my opening statement, the bill that was introduced and passed out of the Committee in the House in 2007 had input from all of you, and from a lot of other stakeholders as well. This bill does as well, and we appreciate your testimony, your input, and we look forward to having you back before the Subcommittee in the future to talk about other issues.

We would encourage you to talk to our colleagues in the House and the other body as we move the bill forward, so that we can get the bill passed out of the House and then you can go over to the other side of the building and work hard to try and convince our friends in the other body to pass a reauthorization bill.

It is important. It is not only important for NextGen. It is not only important for a lot of the reasons that you heard today, but I think it is important to the flying public and all of the stakeholders involved in aviation.

So again, we thank you for your patience and we thank you for your testimony.

With that, the Subcommittee stands adjourned.

[Whereupon, at 6:48 p.m. the Subcommittee was adjourned.]

**Hearing on "FAA Reauthorization Act of 2009"**  
**Wednesday, February 11**

A handwritten signature in black ink, appearing to read "John Altman", is positioned to the right of the hearing title.

Thank you, Chairman Costello, for convening today's hearing and for your ongoing leadership to reauthorize the FAA. The FAA Reauthorization Act contains many long overdue improvements to our aviation infrastructure. These improvements will be crucial as we work to help alleviate congestion at our airports, modernize our facilities, and ensure passengers can travel the skies safely.

Since the House passed the FAA Reauthorization Act in September 2007, however, there has been an alarming increase in the number of fatal helicopter medical transport incidents. Over the last year, the National Transportation Safety Board has investigated 9 fatal EMS accidents with a total of 35 fatalities. News reports and personal accounts have told heartbreaking personal stories about critically ill or injured patients not getting medical care in time or receiving inadequate treatment in flight.

In fact, the NTSB held four days of hearings last week to review the safety record of helicopter medical services. One issue the NTSB hearings examined was the lack of regulatory clarity between federal and state oversight of helicopter medical services.

In the past few years, the appropriate boundary between state and federal oversight of helicopter medical services has been undermined. Although there is general agreement that the federal government regulates the aviation aspects of helicopter medical services and the states regulate the medical aspects, there is a lack of clarity between these two spheres. To address this situation, I introduced the Helicopter Medical Services Patient Safety, Protection and Coordination Act.

My bill would clarify the ability of states to govern helicopter medical services within their boundaries – just as they currently do for ground ambulances – to protect patient safety while continuing to recognize the important federal role over aviation safety.

Air ambulances are not and should not simply be air taxis. Patients who are critically ill or injured – and thus require helicopter medical services – must be transported in a safe manner and receive high quality critical care during flight.

I believe the number of crashes and near fatal incidents warrants the subcommittee's attention, and encourage my colleagues to take a close look at not only how we can improve aviation safety but also how my bill would improve patient safety aboard air ambulances. Thank you again, Mr. Chairman, for your leadership on FAA Reauthorization. I look forward to working with you and the rest of the subcommittee on this issue.

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**OPENING STATEMENT OF  
THE HONORABLE RUSS CARNAHAN (MO-03)  
AVIATION SUBCOMMITTEE  
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE**

**Hearing on  
FAA Reauthorization**

**Wednesday, February 11, 2009, 2:00  
2167 Rayburn House Office Building**

Chairman Costello and Ranking Member Petri, thank you for holding this important hearing on the Federal Aviation Administration Act. I want to commend Chairmen Oberstar and Costello for setting an ambitious schedule to move this much overdue legislation through Congress.

With airlines expected to carry more than one billion travelers in the next seven to twelve years, it is critical that we pass this legislation to help our aviation system accommodate this growth. We cannot continue to pass short term funding extensions and continuing resolutions that have resulted in delays to critical capital projects. Swift passage of this legislation is needed to sustain FAA programs, in particular the Next Generation Air Transportation System.

I am especially pleased with the attention the legislation places on maintaining a high level of safety for the traveling public. Specifically, I was very happy to see the legislation addresses lapses in FAA safety oversight that were brought to the attention of the Committee last year. To address these lapses this legislation creates an independent Aviation Safety Whistleblower Investigation Office within the FAA to investigate complaints received from both FAA employees and employees of certified entities. Once the Aviation Safety Whistleblower Investigation Office has completed its investigation they must recommend appropriate corrective action to the FAA.

Additionally, I am pleased the legislation invests over \$16 billion in the Airport Improvements Program. By increasing the Passenger Facility Charge from \$4.50 to \$7.00 an estimated \$1 billion additional revenue for airport development could be generated per year. This additional revenue would help smaller airports, like Lambert St. Louis Airport just outside the district I represent, with capital financing that are critical to their re-birth.

In closing, I want to thank our witnesses for joining us today and I look forward to hearing their testimony. Finally, I look forward to working with Chairmen Oberstar and Costello to produce a bill that best serves the needs of our aviation system in the 21<sup>st</sup> century.



**OPENING STATEMENT OF REP. STEVE COHEN**Transportation and Infrastructure Subcommittee on Aviation"Federal Aviation Administration Reauthorization Act of 2009"

February 11, 2009



Today we will receive testimony on H.R. 915, the Federal Aviation Administration (FAA) Reauthorization Act of 2009. This legislation provides funding for the FAA's programs between FY2009 and FY2012, including \$16.2 billion for the Airport Improvement Program (AIP), \$38.9 billion for operations and \$1.35 billion for Research, Engineering and Development (RE&D).

The bill includes \$13.4 billion for FAA F&E to accelerate the implementation of the Next Generation Air Transportation System ("NextGen"), which is greatly needed in the district I represent among many others. This provision would enable FAA to make needed repairs and replacement of existing facilities and equipment and provide for the implementation of high-priority safety-related systems.

The bill also directs the FAA to increase the number of aviation safety inspectors. The bill provides \$46 million over four years for runway incursion reduction programs; \$325 million over four years for runway status light acquisition and installation; and requires FAA to submit strategic runway safety plan to Congress.

I must say that I am extremely disappointed that this legislation includes language that would abolish 80 years of legislative history by having workers unionize under the National Labor Relations Act as opposed to the Railway Labor Act, adversely affecting FedEx Express, the largest employer in Memphis.

Headquartered in Tennessee's Ninth Congressional District, which I represent, FedEx Express is the world's largest express transportation company, providing fast and

reliable delivery to every U.S. address and to more than 220 countries and territories, with more than 143,000 employees worldwide.

This provision abandons Congress's balanced approach in labor organization matters. It radically ignores the longstanding Congressional principle of neutral representational choice by targeting one employer.

All airline employees are covered by the Railway Labor Act (RLA). While FedEx Express pick up and delivery van drivers are an integral part of the air carrier's operations, they are an extension, not an independent branch, of the air carrier's operations.

I am very interested in seeing the Federal Aviation Administration Reauthorization Act enacted into law in the 111<sup>th</sup> Congress. It is in the best interests of the many constituents we represent that the greater part of its provisions become law.

I was also pleased that the bill includes provisions to delay any realignment of Air Traffic Control facilities until the realignment process can be reviewed and evaluated by affected parties and stakeholders within the airline industry. This realignment plan has been met with both bipartisan and bicameral skepticism. Any project of this magnitude should move forward in a process that maximizes fairness, inclusiveness and transparency.

I look forward to hearing from our witnesses today as we examine this critical piece of legislation.

STATEMENT OF  
THE HONORABLE JERRY F. COSTELLO  
SUBCOMMITTEE ON AVIATION  
THE FEDERAL AVIATION ADMINISTRATION REAUTHORIZATION ACT OF 2009  
FEBRUARY 11, 2009

- I want to welcome everyone to this Subcommittee hearing on *the Federal Aviation Administration ("FAA") Reauthorization Act of 2009*.
  
- Earlier this week, Chairman Oberstar and I introduced H.R. 915, the *FAA Reauthorization Act of 2009*. H.R. 915 is the reintroduction of H.R. 2881, legislation that was produced after the culmination of many hearings, in-depth analysis, and a continued dialogue with the FAA, our colleagues and stakeholders; and then approved by the House in September 2007.
  
- We have made a few modifications:
  - Deleted provisions in our original bill that were already enacted through the legislative or regulatory process.

- Included H.R. 5788, the HANG UP Act, legislation introduced by Chairman DeFazio to prohibit the use of cell phones on commercial flight. H.R. 5788 was reported favorably from this Committee last September.
  - Included the Aviation Safety Enhancement Act which was passed by the House on July 22, 2008 but no further action was taken by the Senate.
- It is my intention to move forward on reauthorizing the FAA as quickly as possible, given we are already two years behind schedule. As witnesses will testify this afternoon, short-term funding extensions and continuing resolutions are delaying key Next Gen and airport development capital projects. We need to get the FAA reauthorized.
- The total number of passengers carried in U.S. airspace is approaching 800 million a year, and the FAA forecasts that

airlines are expected to carry more than 1 billion passengers in the next 7-12 years. To deal with this growth, strengthen our economy and create jobs, the *FAA Reauthorization Act of 2009* provides historic funding levels for the FAA's capital programs. This includes \$16.2 billion for the Airport Improvement Program ("AIP"), nearly \$13.4 billion for FAA Facilities & Equipment ("F&E"), and \$1.35 billion for Research, Engineering, and Development ("RE&D"). The bill also provides \$38.9 billion for FAA Operations over the next four years.

- The historic funding levels authorized for the FAA's F&E account will accelerate the implementation of NextGen; enable the FAA to replace and repair existing facilities and equipment; and provide for the implementation of high-priority safety-related systems.

- To increase the authority and visibility of the FAA's Joint Planning and Development Office ("JPDO"), H.R. 915 elevates the Director of the JPDO to the status of Associate Administrator for NextGen within the FAA, to be appointed by, and reporting directly to, the FAA Administrator. To increase accountability and coordination of NextGen planning and implementation, H.R. 915 requires the JPDO to develop a work plan that details, on a year-by-year basis, specific NextGen-related deliverables and milestones required by the FAA and its partner agencies.
  
- To help airports meet increasing capital needs, the *FAA Reauthorization Act of 2009* would increase the passenger facility charge ("PFC") cap from \$4.50 to \$7.00. According to the FAA, if every airport currently collecting a \$4.00 or \$4.50 PFC raised its PFC to \$7.00, it would generate approximately \$1.1 billion in additional revenue for airport development each year.

- H.R. 915 also provides significant increases in AIP funding for smaller airports that are particularly reliant on AIP for capital financing. Further, the bill increases funding for and improves the Essential Air Service (“EAS”) program and reauthorizes the Small Community Air Service Development program through 2012, at the current authorized funding level of \$35 million per year.
  
- In 2007, the traveling public saw firsthand the serious problems our current system has with congestion and delays, which at times led to a breakdown in customer service.
  
- To address delays and customer service, H.R. 915 mandates that air carriers and airports create emergency contingency plans that are approved and enforced by DOT. This legislation also requires the DOT to publicize and maintain a hotline for



consumer complaints; expand consumer complaints investigated; require air carriers to report diverted and canceled flight information monthly; and create an Aviation Consumer Protection Advisory Committee. H.R. 915 also requires DOT to conduct schedule reduction meetings if aircraft operations exceed hourly rates and are adversely affecting national or regional airspace.

- Here at home and across the globe, more is being done to reduce energy consumption and emissions. Airlines, airports, manufacturers and the Air Force are at the forefront of developing better planes, technology and operating procedures to conserve fuel and reduce emissions. H.R. 915 includes the CLEEN Engine and Airframe Technology Partnership and the Green Towers Program, which was modeled after what is currently being done at O'Hare International Airport. H.R. 915 also creates an environmental mitigation pilot program to fund six

projects to take promising environmental research into airports to demonstrate the technology's ability to reduce aviation's impact on noise, air and water quality.

- The United States has the safest air transportation system in the world; however, I have said time and again, we must not become complacent about our past success. To keep proper oversight on safety at FAA, H.R. 915 directs the FAA to increase the number of aviation safety inspectors, initiates studies on fatigue, and requires the FAA to inspect part 145 certified foreign repair stations at least twice a year.
  
- In response to the Committee's April 3, 2008, hearing on lapses in FAA safety oversight, H.R. 915 creates an independent Aviation Safety Whistleblower Investigation Office within the FAA; mandates a two-year "post-service" cooling off period after

FAA inspectors leave the FAA; and requires that principal supervisory inspectors be rotated between airline oversight offices every five years. The Air Transportation Oversight System database is reviewed monthly to ensure trends in regulatory compliance are identified and appropriate corrective actions taken.

- In addition to greater safety oversight, H.R. 915 also includes labor provisions that will help improve morale at the FAA and provide fair bargaining rights to employees of the FAA and at all express carriers. The first provision requires that if the FAA and one of its bargaining units do not reach agreement during contract negotiations, the Federal Mediation and Conciliation Services are used or another agreed to alternative dispute resolution process; this process applies to the ongoing dispute

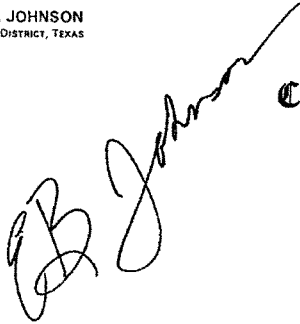
between the National Air Traffic Controllers Association and the FAA.

- The second provision seeks to provide consistency throughout the express carrier industry -- workers who are directly involved with the aircraft operation portion of those companies, like pilots and mechanics, would continue to be under the jurisdiction of the Railway Labor Act, while the remaining workforce would be covered under the National Labor Relations Act. This is consistent with how UPS is structured today.
  
- Before I conclude, I would like to give a special acknowledgement to the men and women of JetBlue Airways. Today is the ninth anniversary of JetBlue's first commercial flight. Jet Blue has had more profits than losses, transported more than 45 million customers and has won numerous awards, all while expanding to

be the eighth largest carrier in the U.S. and nineteenth largest in the world.

- With that, I want to again welcome our witnesses today and I look forward to their testimony.
  
- **Before I recognize Mr. Petri for his opening statement, I ask unanimous consent to allow 2 weeks for all Members to revise and extend their remarks and to permit the submission of additional statements and materials by Members and witnesses. Without objection, so ordered.**

E. B. JOHNSON  
30TH DISTRICT, TEXAS



**Congress of the United States  
House of Representatives  
Washington, DC 20515-4330**

Opening Statement for the Honorable Eddie Bernice Johnson  
Transportation & Infrastructure Committee  
Subcommittee on Aviation  
Wednesday, February 11, 2009 – 2167 RHOB @ 2:00pm

**Thank you Mr. Chairman.**

**I want to thank you and Ranking Member Petri for your efforts in making the FAA Reauthorization a priority early on in the 111<sup>th</sup> Congress. It is my hope that our counterparts in the other body will move forward with a similar sense of urgency.**

**The thoughtful solutions and historic funding levels outlined in H.R. 915 will ultimately provide a meaningful step in modernizing our air traffic control system, reduce congestion in our skies, and provide a needed boost to our nation's airports.**

**While I do not intend to prolong the discussion on the legislation before us, I would like to extend my appreciation to the Chair for addressing areas of great interest to airports in my district and the North Texas region.**

**I thank the Chairman for his attention regarding the adjustment of the PFC cap outlined in Section 111 of the bill, and Section 113 regarding intermodal ground access projects.**

**Mr. Chairman, the City of Dallas has expressed strong support for these measures and again, I want to thank the subcommittee for its consideration.**

**Lastly, I thank the Chairman for his attention to the Airport Disadvantaged Business Enterprise Program in the bill.**

**In addition to combating discrimination, the airport DBE program produces important and meaningful economic benefits to airports and their local communities.**

**I fully support provisions instituting formalized and uniform training for certifying officials. Consistency in the application of DBE rules and in the application review process will go a long way to instilling confidence and fairness in the DBE program, and increasing DBE firm involvement. As we move forward it is my hope we are able to review the personal net worth cap and its implications on DBEs as well.**



**Thank you Mr. Chairman. I look forward to working with you in advancing this important piece of legislation to the floor and yield back the balance of my time.**

**Statement of the Honorable John L. Mica**  
**Ranking Republican Member**  
Committee on Transportation and Infrastructure  
Subcommittee on Aviation Hearing On:  
**FAA Reauthorization**  
February 11, 2009, 2 p.m.

I thank the Chairman for calling this hearing, and I share in his sentiments about the importance of getting a Federal Aviation Administration (FAA) Reauthorization bill passed.

It is notable that the Democrats have controlled Congress for a little over two years, and for the majority of that time, the FAA has operated without a confirmed Administrator and without a reauthorization.

We understood the importance of steady leadership at the FAA and that is why, with bipartisan support, we put a five year term on the FAA Administrator's position. Sadly, the Democrats have chosen politics over the importance of steady leadership, and have left the FAA without a confirmed agency chief. The FAA has been a rudderless ship, desperate for leadership and direction.

The series of short-term extensions that the Democrats have pursued in the absence of a full FAA reauthorization has also made it difficult for the FAA and airports to execute long-term runway, taxiway, and other critical airport capacity and safety projects. Senate Democrats have dragged their feet in consideration of a long-term bill and, as a result, passengers and the aviation community have suffered.

Due to the uncertainty of a steady funding source, airports are hesitant to begin large infrastructure projects. The short-term extensions only delay much needed airport improvements.

Despite the turmoil in the global economy and numerous assurances of renewed bipartisanship, the Democratic leaders have chosen to introduce a partisan regurgitation of last Congress's failed, controversy-laden bill.

I am disappointed that the Chairman has rejected the opportunity to improve a 15-month-old bill with the Committee's new members and the new administration.

There was not even an attempt to take into consideration the drastically changed circumstances since 2007. Not only are we in a global recession, but the airline industry is in crisis and hundreds of thousands of airline employees have lost their jobs. If you have heard the expression, "this is no way to run a railroad," I think many in the aviation community would secretly agree that this is no way to run a legislative process.

If the Speaker was serious about getting good legislation signed into law, we could sit down and craft something together that would ensure the safety of the nation's aviation system and properly fund the FAA, one of the most important Federal agencies, and set the goal posts for air traffic control modernization.

Instead, Democrats have decided to "go-it-alone", writing a bill for introduction containing irresponsible provisions for which I have many substantive concerns.

It is no secret that in my opinion, the worst example of these provisions is the pay reach back earmark for the air traffic controllers. I fervently believe that air traffic controllers perform their critical safety function admirably everyday. We are living in a time where the airline industry is cutting jobs by the tens of thousands and the federal budget is being pushed to its very limits. This very costly provision must be reexamined.

Even President Obama has frozen salaries for all White House staff making over \$150,000. Yet, the Democrats are eager to ensure that air traffic controllers, who on average make over \$166,000 in wages and benefits, can continue to receive the unrealistic pay increases they were guaranteed by the Clinton Administration.

At a time when Americans are being asked to tighten their belts Democrats are looking to give a union of employees a pay RAISE at an FAA-estimated cost to the taxpayers of at least \$1.9 billion over the next five years. According to the FAA, the cost of reinstating the earlier contract with back pay would be \$1.2 billion over the next two years alone.

Air traffic controllers perform a vital function for the nation's airspace and are handsomely compensated for the good job they do.

But to ask for such an egregious earmarked pay raise when so many Americans are feeling the pinch at home is horribly irresponsible and ignores current economic and financial realities.

I fully support efforts to create binding arbitration for all FAA employees, but cannot support the terrible precedent of giving one group of employees an outlandish earmark during such troubled economic times.

The base bill introduced Monday also includes a number of unworkable and unnecessarily burdensome requirements that were included in a partisan Managers Amendment during the last Congress.

Provisions including Insecticide Notification, overseas repair stations, OSHA Standards for crews on board aircraft, and Aircraft Rescue and Fire Fighting standards for Airports must be further vetted to ensure their practical application.

While these provisions are intended to address safety issues and while I might agree with the sentiment of the provisions, the language was written without regard to the huge cost and personnel burdens on a struggling airline industry and airport community. One provision even has the potential to threaten the United States' hard-won bilateral aviation agreements with foreign countries.

The Committee ought to have hearings to discuss these issues thoroughly before mandating compliance without fully exploring the practical application of the mandates and their unintended consequences.

Finally, I am greatly disappointed with the Democrats' break with the long tradition of bipartisanship on the Transportation and Infrastructure Committee. This is the first partisan FAA bill introduced in decades. As has been the history of this committee, bipartisan legislative efforts typically have a better outcome, and the FAA reauthorization is just too important to leave to chance.



A full reauthorization will allow the FAA to prepare the system for economy-boosting increases in traffic and to better protect passenger safety. I renew my call for collaboration at the committee leadership level—the flying public deserves better than to have Congress playing politics with their safety.



Statement of Rep. Harry Mitchell  
House Transportation and Infrastructure Committee  
Subcommittee on Aviation  
2/11/09

--Thank you, Mr. Chairman.

--Before we begin, I just want to say that, with our thoughts so heavily focused on the economy this week, I think we should remember how critical our nation's aviation system is for commerce and economic growth. Airports mean business, and business means jobs.

--Phoenix Sky Harbor Airport, for example, generates an estimated \$20 billion impact on Arizona's economy.

--In Mesa, Arizona, we are currently developing a second commercial airport: Phoenix-Mesa Gateway. With close access to area freeways, a key east valley location next to Pinal County, the fastest growing county in Arizona, Gateway has earned widespread support across the Valley.

--Gateway has great potential to reduce the increased congestion we expect in the coming years.

--But make no mistake, Gateway isn't just about reducing congestion, it is about growing our economy.

--While still in its initial stages, Gateway is already producing 4,500 jobs, and it has already generated an estimated \$500 million in local impact.

--These are exactly the kind of investments we need to stimulate our economy.

--I yield back.

OPENING STATEMENT OF  
THE HONORABLE JAMES L. OBERSTAR  
SUBCOMMITTEE ON AVIATION  
THE FEDERAL AVIATION ADMINISTRATION REAUTHORIZATION ACT OF 2009  
FEBRUARY 11, 2009

I want to thank Chairman Costello for calling today's hearing on H.R. 915, *Federal Aviation Administration Reauthorization Act of 2009*. H.R. 915 is essentially the reintroduction of the House-approved H.R. 2881, the *FAA Reauthorization Act of 2007*. We have made a handful of changes to the bill, which have been outlined by Chairman Costello. I cannot stress enough, the importance of moving this legislation quickly; airport development capital projects and key Next Generation Air Transportation System ("NextGen") programs need the stability that a four-year bill provides.

The FAA forecasts that airlines are expected to carry more than 1 billion passengers in the next 7-12 years, increasing from approximately 769 million in 2007. To increase the capacity to meet these needs, The *FAA Reauthorization Act of 2009* provides historic funding levels of funding (over \$70 billion) for FAA's programs, including \$16.2 billion for the Airport Improvement Program ("AIP"), nearly \$13.4 billion for FAA Facilities & Equipment ("F&E"), \$1.35 billion for Research, Engineering, and Development ("RE&D"), and \$38.9 billion for FAA Operations over the next four years.

Modernizing our air transportation system is a national priority. The historic funding levels authorized for the FAA's F&E account will accelerate the implementation of air traffic control modernization and NextGen. In addition, H.R. 915 applies a comprehensive approach to NextGen including more funding, authority, accountability and oversight.

Ensuring our airports have the appropriate tools at their disposal to increase capacity is also a priority. H.R. 915 allows the passenger facility charge (“PFC”) cap to increase from \$4.50 to \$7.00. According to the FAA, this would generate approximately \$1.1 billion a year in additional airport development if every airport currently collecting a \$4.00 or \$4.50 PFC raised its PFC to \$7.00. Smaller airports will also see significant increases in AIP funding in *the FAA Reauthorization Act of 2009*.

To improve the quality of air service received by Essential Air Service (“EAS”) program communities, H.R. 915 increases annual funding for the program and authorizes the Secretary to incorporate financial incentives into EAS contracts based on specified performance goals such as establishing reasonable fares (including joint fares beyond the hub airport), creating convenient connections to hub airports, and increasing markets efforts. This legislation also allows the use of long-term contracting to increase stability, authorizes the Secretary to provide emergency increases in subsidy payments to compensate EAS carriers for increased aviation fuel costs, and requires faster adjustments to subsidy rates to reflect changing costs. The bill also extends the Small Community Air Service Development program through 2012, at the current authorized funding level of \$35 million per year.

Modernizing the air traffic control system, increasing capacity, and ensuring small communities maintain access to service are all important issues but none of these could exist without a “safe” system. To this end, H.R. 915 includes language from the House-passed H.R. 6493, creating an independent Aviation Safety Whistleblower Investigation Office within the FAA, but independent of the Aviation Safety Organization. The bill also requires that the FAA rotate principal supervisory inspectors between airline oversight offices every five years and establishes a two-year “post-service” cooling off period for FAA inspectors and supervisors before they are

allowed to go to work for the airlines they have been overseeing. H.R. 915 directs the FAA to modify its customer service initiative to clearly state that in regulating safety the only “customers” of the FAA is the American traveling public.

There is overwhelming evidence in the recommendations, findings, and statements of the DOT IG, the Office of Special Counsel, and the very brave FAA whistleblowers that brought these critical safety lapses to our attention that change is sorely needed at the FAA to improve safety. We must prod the FAA to again make safety the first priority and to keep the American public safely flying. The language in H.R. 915 is meant to serve notice upon the FAA that we will not continue to tolerate the lax environment that has been allowed to develop over the last few years.

H.R. 915 also increases the number of safety inspectors and closes the loophole on non-certificated maintenance providers to ensure that covered maintenance work on air carrier aircraft is performed by individuals working for, or under the direct supervision of, a part 145 repair station or a part 121 air carrier. This legislation also creates an Air Traffic Control Facility Conditions Taskforce to assess deteriorating facility conditions, mandates that Occupational Safety and Health Standards be applied to flight attendants on board aircraft, and adds needed funding for runway status lights and the runway incursion reduction program.

I strongly believe that air traffic controllers were treated unfairly in 2006, when FAA broke off contract negotiations, refused to submit the remaining issues to arbitration, and imposed FAA’s own terms on pay and benefits. Many of our colleagues on both sides of the aisle felt that FAA’s unilateral imposition of pay terms was unfair and that the issues should be submitted to arbitration. It is clear that

FAA's unilateral imposition of contract terms had a harmful impact on the controller workforce, including major morale problems and an acceleration of retirements.

I believe that it is highly important that there be a fair resolution of the controllers' concerns. The best technology in the world will not improve our air traffic control system if the workforce operating this technology is distracted by resentments over unfair treatment. We do not want a repeat of the disaster of 1981, when rigid Administration policies led to morale problems which festered for years, culminating in a strike and the firing of most of the controller workforce. H.R. 915, patterned after the Postal Service dispute resolution process, requires that when disputes culminate into an impasse between the FAA and its bargaining entities that independent, binding, third-party arbitration is put into place to resolve disputes.

H.R. 915 also amends the Railway Labor Act ("RLA") to clarify that employees of an "express carrier" shall only be covered by the RLA if they are employed in a position that is eligible for certification under FAA's rules, such as mechanics or pilots, and they are actually performing that type of work for the express carrier. All other express carrier employees would be governed by the National Labor Relations Act.

As demand for aviation services continues to grow, so too does aviation's possible impact on the environment. As I have stated before, the environment is the third leg of a three-part capacity enhancement initiative – the other two are air traffic control modernization and increased physical capacity at airports. The FAA forecasts that airlines are expected to carry more and more people and at the same time, fuel costs are significant, causing air carriers to actively search for increased fuel efficiencies, which would also have positive impacts on the environment.

H.R. 915 allows airports operators to reinvest the proceeds from the sale of land for noise compatibility purpose and reinvest those funds in another noise or environmentally-related project. Our legislation also creates the Continuous Lower Energy, Emissions, and Noise (“CLEEN”) Engine and Airframe Technology partnership to develop, mature and certify CLEEN engine and airframe technology for aircraft over the next 10 years. Under the program, FAA and industry would cost share maturation of promising technologies to reduce aircraft environmental impacts and energy usage.

Other environmental provisions include: an environmental mitigation pilot program; the phasing out of noisy stage II aircraft; an aircraft departure queue management pilot program; broadened AIP eligibility to include several energy saving terminal projects; and requirements for the FAA to build sustainable air traffic control facilities.

I want to thank Chairman Costello for his work on this bill in the 110<sup>th</sup> Congress and for holding this hearing. I look forward to working with him and my other colleagues as we move forward with this legislation in the 111<sup>th</sup> Congress.

Thank you again, Mr. Chairman, for holding this hearing. I look forward to hearing from our witnesses.

STATEMENT OF  
REP. THOMAS E. PETRI, Ranking Member  
SUBCOMMITTEE ON AVIATION  
HEARING ON  
**H.R. 915: "FAA Reauthorization Act of 2009"**  
February 11, 2009, 2:00pm, 2167 RHOB

Good afternoon. I'd like to thank all of our witnesses for participating in today's hearing to discuss the "FAA Reauthorization Act of 2009" which was introduced on Monday by Chairman Oberstar and Chairman Costello.

Unfortunately, despite many attempts to participate in the process, the Democrats redrafted and introduced the bill without Republican input or consultation.

This is particularly disappointing given the drastically changed circumstances from 2007. Not only has the economic landscape changed, but so has the political one.



Many of the most controversial and objectionable provisions in H.R. 2881 could now be done administratively by President Obama.

In fact, I believe had the Democrats chosen to sit down and work through the issues with us, we could have easily produced a bipartisan bill.

By choosing to not even reach out to Ranking Member Mica and me, the Democrats have sadly broken with the long tradition of bipartisanship that has been the trademark of the Committee on Transportation and Infrastructure.

I remain hopeful that as the bill moves through the Committee and to the Floor that the Democrats will work with the Republicans to both improve the bill and gain bipartisan support. It is an important bill that deserves both our attention and our cooperation. Among the provisions that I believe we should focus on are:

- Funding the small community air service programs and the essential air service program;
- Funding important runway safety improvements and;
- Increasing Airport Improvement Program (AIP) grant investments;
- Providing for greater safety and air traffic modernization oversight which is vital to the future of our aviation industry.

Passenger traffic has seen a decrease in recent months due to the downturn in the economy. But traffic will rebound and continue to grow over the next several decades.

The modernization of our nation's Air Traffic Control system will be of the utmost importance in order to prepare the system for renewed growth.

According to a recent FAA report on the “Economic Impact of Civil Aviation on the US Economy”, the aviation industry accounts for around 11 million jobs and is responsible for roughly \$1.2 trillion in economic activity. Congress must do its part to prepare this industry for future growth.

As we look to the future of the NAS we must focus on how decisions that will shape tomorrow are made. According to a report released by the Joint Economic Committee, delayed and cancelled flights cost the US economy over \$40 billion annually. By elevating the authority of the Joint Planning and Development (JPDO) director and increasing reporting requirements, this bill seeks to raise the accountability to ensure that NextGen modernization efforts stay on track, helping to avoid congestion and delays.

While H.R. 915 positively addresses several important issues, I must admit that I am disappointed in the lack of bipartisanship involvement in drafting the bill. The reauthorization of the Federal Aviation Administration (FAA) has historically been a bipartisan effort. The very nature of air transportation and the shared goal of safe, efficient and accessible air travel have traditionally resulted in an inclusive and bipartisan process and work product. Instead, the bill as introduced contains several very controversial provisions that could threaten its passage.

The first of these is a provision that voids the current contract with the National Association of Air Traffic Controllers (NATCA). This sets a terrible precedent of Congress micromanaging federal employee relations and, according to FAA estimates, will cost taxpayers an astonishing \$7.5 billion over the next ten years. This

dramatic cost increase could result in dangerous cuts to other FAA personnel budgets, safety initiatives and air traffic control modernization funding initiatives. I cannot support this approach and hope we can work together to craft a consensus provision.

The second controversial provision would change the labor laws that apply to express carriers. This provision is flawed from both a policy and procedural perspective.

[From a policy perspective and despite claims to the contrary, this is not a Federal Express versus UPS issue. Federal Express and UPS are not currently treated differently. Both have employees covered by both the Railway Labor Act (RLA) and the National Labor Relations Act (NLRA). It is simply incorrect to imply that the two companies are treated differently for labor relations purposes.]

Congress recognizes that the national scope of the transportation industry, labor disputes requires special consideration. This is particularly true in light of the fact that with a national and now global aviation industry, a strike by a local unit within a national organization could have far-reaching and very disruptive and detrimental impacts to the U.S. economy.

This provision virtually eliminates Congress's balanced approach in labor organization matters and seems to target one company. I remain strongly opposed to this section of the bill and urge my colleagues to consider its detrimental effects on the U.S. economy.

Again I'd like to thank all our witnesses for appearing today to discuss the important issues that Congress faces in consideration of the FAA Reauthorization. It is my hope that moving forward, we can work together to craft consensus legislation that can be enacted in a timely fashion.

With that, I yield back the balance of my time.



**Remarks of US Rep. Nick Rahall  
Hearing on, "Federal Aviation Administration Reauthorization  
Act of 2009  
Committee on Transportation and Infrastructure  
Subcommittee on Aviation  
2167 Rayburn House Office Building  
February 11, 2009**

**Mr. Chairman, thank you for giving me the opportunity to briefly address this Committee on the reauthorization of the Federal Aviation Administration. I would also like to thank all of the witnesses for testifying here today. Your work is greatly appreciated.**

**As all of you know, aviation is a critical tool to help deliver goods and products quickly and efficiently. Simply put, aviation is a crucial component to the health and success of our nation's commerce.**

**While moving goods and people is a major aspect of aviation, we must not overlook the role aviation and airports play in the wellbeing of our communities. In many cases, they act as the economic engine that powers our local economies.**

**Airports employ a whole host folks—from the mechanics and managers that ensure flights are safe and on time, to the cooks and custodians who make sure weary travelers can find a clean place to sit down and grab a bite to eat.**

In addition, airports attract businesses from other places and allow local businesses to remain local. For all these reasons, and more, businesses are drawn to those communities that can boast of a strong local airport.

To stay competitive in an ever-changing global marketplace, airports are constantly faced with pressures to modernize their operations. Often, local communities take it upon themselves to come up with the necessary funds and make improvements themselves. That is a noble, and often difficult, goal.

Mr. Chairman, we must take it upon ourselves to do more to ensure that local airports, like the ones in my State of West Virginia, can continue to operate and provide much needed air service and jobs.

We must renew our commitment to providing sufficient funding to the Essential Air Service program. EAS is crucial to the survival of many rural airports. Airports that have, unfortunately, seen their air service dwindle over the years.

EAS money can be the difference between a community having access to aviation or not. EAS money can be used for any number of projects, such as tower or terminal improvements or runway expansion. The EAS program has kept many airports operational and, in most cases, made lasting improvements to the services offered.



**In closing, I just want to reiterate my strong belief that the EAS program provides rural areas with a vital link to our national air transportation system and promotes business development in our local communities.**

**Mr. Chairman, thank you again for holding this hearing and for allowing me the opportunity to address the Committee.**

MARK H. SCHAUER  
7TH DISTRICT, MICHIGAN

1408 LONGWORTH HOUSE OFFICE BUILDING  
(202) 225-6276

Congress of the United States  
House of Representatives  
Washington, DC 20515-2207

February 26, 2009

Hon. Jerry. F. Costello  
Chairman, Aviation Subcommittee  
2408 Rayburn House Office Building  
Washington, DC 20515

Dear Mr. Chairman:

I am excited to join the Aviation Subcommittee as we undertake the important issues facing American aviation. I look forward to working with you.

I am writing to draw the subcommittee's attention to an issue that has been presented to me by one of my constituents, a former Flight Service Specialist ("FSS") with the FAA. As you know, the FSS function was outsourced in 2005 under the Bush Administration, with Lockheed Martin winning the contract. As you are also aware, there were many issues faced by the outsourced FSS employees. In particular, I remain concerned with the severe reduction in pensions faced by the former FSS employees as a result of the outsourcing. In addition to the pension problem, other issues have arisen which may implicate aviation safety.

In particular, I am alarmed at a recent personnel decision made by the contractor. On the morning President Obama was inaugurated, Lockheed Martin fired 25 employees, 14 of whom were in the Lansing, Michigan facility adjacent to (and serving) my district. [see LM letter dated 1/20/09, attached]. Since then, Lockheed Martin has asked for additional voluntary transfers out of the facility. While I understand that adjustments in employee levels may be needed from time to time, it is difficult to understand why more than half of the nationwide firings occurred at the Lansing facility. It is my sincere hope that these dismissals were not animated by my constituent's advocacy for his former FSS co-workers.

From my review of the October 2007 hearing, I know that the subcommittee considered the importance of staffing levels and FSS local area knowledge. [see testimony of Mr. Scovel, Mr. Washington, and Mr. Staples, pp 4-15] In light of that testimony, and considering the drastic cutbacks at the Lansing facility, I am concerned whether the contractor can provide these vital services to pilots at the current staffing levels. I am also interested in Lockheed Martin's ultimate goal regarding staffing levels in the future. I value the expertise of those who were fired, and hope that they are not being replaced

with new employees, or by utilizing staffing from the Northern Virginia facility for flight operations in the Midwest.

As we enter our period of FAA reauthorization, I hope the subcommittee will keep these important issues in mind.

Mr. Chairman, thank you for weighing these issues pursuant to the subcommittee's oversight function. Should you require any additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, reading "Mark Schauer". The signature is written in a cursive, flowing style with a large initial "M".

Mark H. Schauer  
Member of Congress

Lockheed Martin Information Technology  
Flight Services Program  
FCH/Princeton ARSS  
1919-12th Street South  
Princeton, MN 55371

**FILE**

**LOCKHEED MARTIN**  
*"We never forget who we're working for."*

January 20, 2009

TO: All Personnel  
FROM: Operations Manager  
SUBJECT: Reduction in Force Information

I have been informed that the required reductions in force are taking place today. The total number of employees affected is 25. The following is a break-down of the numbers:

BNA 3

COU 4

IKK 4

LAN 14

My understanding is that Human Resources will have a representative at each of these facilities today. If you have any additional questions, please see me at your earliest convenience. Thank you.

  
Joe

**Testimony by Rep. Mike Thompson (CA-01)**

February 11, 2009  
Hearing on FAA Reauthorization Act of 2009

Subcommittee on Aviation  
Committee on Transportation and Infrastructure  
U.S. House of Representatives  
2167 Rayburn House Office Building, Washington, DC 20515

Chairman Costello, Ranking Member Petri and Members of the Aviation subcommittee, thank you for the opportunity to provide testimony at your hearing today on the FAA Reauthorization Act of 2009.

I come before you again regarding airline passenger rights, almost two years after my first appearance at this subcommittee on this topic, and more than ten years since Congress first examined the problem of extended tarmac delays after hundreds of passengers were stuck in planes on snowy Detroit taxiways in January 1999. It is time for Congress to act to protect the flying public.

Americans should not be forced to sacrifice their basic rights to food, water and other necessities when they set foot on an airplane. Since 1999 and despite countless industry promises, little or no progress has been made toward ensuring that airline passengers have some basic rights during excessive ground delays. It took nearly a year for then-Secretary of Transportation Mary Peters' "Tarmac Delay Task Force" to issue a report this past November on how airlines, if so inclined and only "when practical," might improve onboard conditions for stranded passengers. None of the improvements recommended in the report were mandated, and yet again relied entirely upon voluntary action by the airlines. Secretary Peters' report did nothing to help solve the problems of excessive delays. As the *New York Times* editorial staff opined after its release, this report was tantamount to telling passengers to "suck it up and sit there on America's unfriendly tarmacs for as long as it takes."

The lack of voluntary action by airlines for the past ten years only underscores the absolute necessity of including the same passenger rights provisions passed as part of the FAA Reauthorization during the 110<sup>th</sup> Congress in the version you consider today. These provisions would finally require air carriers and airports to submit an emergency contingency plan in the event of excessive delays to the Secretary of Transportation for approval. These plans must detail of how the air carrier will provide food, drinkable water, working restroom facilities, adequate cabin ventilation, and access to medical treatment.

I recently introduced legislation, H.R. 624, the Passenger Bill of Rights for 2009, which includes the same passenger rights provisions you consider here today as part of the FAA Reauthorization of 2009 but with one critical difference: instead of requiring deplanement after “excessive delays”, my bill calls for deplanement after three hours. By not defining what “excessive delays” actually means in the current draft, Congress is yet again leaving it to the airlines to self-regulate, an approach that has failed miserably over the past ten years. I urge the Committee during the mark-up of this legislation to adopt the language included in my bill, H.R. 624, which sets forth the three hour standard along with important exceptions to be used at the discretion of the pilots.

Mr. Chairman, after ten years, it has finally come time to pass these basic passenger protections. Thank you for your past assistance on this issue and continued support by including these provisions in the FAA Reauthorization Act of 2009. Furthermore, if history repeats itself and this bill is passed by the House but becomes “excessively delayed” on the Senate “tarmac,” I respectfully request that you support my efforts to take these passenger rights provisions as a stand-alone bill to the House floor for immediate consideration.

123

**STATEMENT OF ED BOLEN**

**PRESIDENT AND CEO**

**NATIONAL BUSINESS AVIATION  
ASSOCIATION**

**BEFORE THE**

**SUBCOMMITTEE ON AVIATION**

**COMMITTEE ON  
TRANSPORTATION AND INFRASTRUCTURE**

**U.S. HOUSE OF REPRESENTATIVES**

**FEBRUARY 11, 2009**

**STATEMENT OF ED BOLEN  
PRESIDENT AND CEO  
NATIONAL BUSINESS AVIATION ASSOCIATION**

Mr. Chairman and members of the Subcommittee, my name is Ed Bolen, and I am the President and CEO of the National Business Aviation Association. I am grateful for the opportunity to appear before you today. NBAA commends the Subcommittee for holding this important hearing to discuss the future of our national air transportation system and consider legislation for reauthorization of FAA. We strongly support your work to improve our nation's aviation system, which will also significantly contribute to economic growth and job creation. In these challenging economic times, the importance of a robust transportation system cannot be overemphasized.

NBAA was founded 62 years ago to represent companies that utilize general aviation aircraft as a tool for meeting some of their transportation challenges. NBAA and our Members are committed to working with Congress to transform and modernize the nation's aviation system. Likewise, we are committed to modernization policies that support the continued growth of each aviation segment, including general aviation, which plays a critical role in driving economic growth, jobs and investment across the U.S. We strongly support the shared goal of keeping our national aviation system the largest, safest and most efficient in the world.

General aviation is an essential economic generator, contributing more than \$150 billion to annual U.S. economic output, and directly or indirectly employing more than one million people. Most general aviation aircraft operating around the world are manufactured and/or completed in the U.S., and our industry is continuing to build a strong American manufacturing and employment base that contributes positively to our national balance of trade. Congress recognized just how fundamental general aviation is to our nation's transportation system, rural economies, manufacturing capability, and balance of trade when it passed the General Aviation Revitalization Act a little more than a decade ago.

**FACTS ABOUT BUSINESS AVIATION**

Business aviation, as many members of the Subcommittee know, is an FAA-defined term. According to the FAA, business aviation is the use of any general aviation aircraft – piston or turbine – for a business purpose.



From creating growth opportunities and global connectivity for America's small towns and rural areas to supporting the nation's productivity, business aviation is an important economic engine, creating jobs and investment, while contributing to the world's leading aviation system. Simply put, business aviation is a vital part of the nation's economy and transportation system.

The U.S. aviation system is fully integrated. Each player is critical to the success, strength and growth of our economy. The system is made up of three segments:

- Scheduled operations, including passenger airlines;
- Military, and;
- General Aviation.

General aviation (GA) includes diverse operations, with business uses that range from agriculture, to law enforcement, to fire and rescue services, to varied government, educational, nonprofit and business organizations. Servicing and supporting these organizations are FBO's, maintenance technicians, suppliers and service providers.

The business aviation fleet is dominated by pistons and turboprops, with over 80 percent of the 15,000 registered business aircraft in the U.S. having cabins about the size of an SUV, and flying on average less than 1,000 miles. The vast majority of these GA operators use small aircraft that seat no more than eight people.

#### A Vital Lifeline for Main Street

In small towns and rural areas across America, business aviation is an essential tool that enables businesses to thrive, grow and create jobs in their hometowns. That's because in many instances, there are no other transportation options that meet their needs.

Many small and mid-size businesses are located in areas without scheduled airline service. Businesses of all sizes require in-person travel for operations as sales, technical support and other types of customer service. Such trips may call for multiple stops in a short period of time or travel to remote locations. Often the distances are too long to drive or airline service is not available.

Eighty-six percent of business aviation flights carry marketing and sales personnel, technical experts, other company representatives and customers – not top company executives.

Businesses utilizing GA aircraft serve as job bases in many parts of the country. The names of these businesses may not be familiar to most people, but their ability to use an airplane means they can preserve jobs in the areas where they are located. Let me illustrate this point with two examples:

- First, consider MacNeil Automotive, which produces rubber floor mats for cars from a factory in Illinois. The company relies on its two business aircraft – a Beech Bonanza G36 and a Cessna Citation to transport measuring instruments that are too delicate to be shipped to auto manufacturers, and won't fit in an airliner's overhead compartment. They literally cannot conduct business without their airplanes.
- Similarly, Luck Stone - a family-owned supplier of stone construction products for homes in Manakin, Virginia - must have its King Air turboprop to efficiently manage its 16 sites located across the Southeastern US.

#### A Lifeline in Disaster and Emergency

The business aviation community is not only an economic lifeline for thousands of our nation's communities, but in times of crisis, it serves as an irreplaceable lifeline.

For example, in the days and weeks following Hurricane Katrina, hundreds of thousands of pounds of supplies were transported into small airports throughout the Gulf Coast region aboard business aircraft. These aircraft also were used to transport victims out of harm's way.

More recently, general aviation has snapped into action when there's a need to confront floods in the Midwest, fires in the West, or a whole host of other natural disasters. The business aviation community – working mostly on a volunteer basis – has been quick to help assess damage, rescue those affected by these disasters, and carry in lifesaving support and supplies to the affected regions.

The people who rely on a general aviation aircraft for business are also dedicated to helping provide lifesaving flights to the communities in which they live and work. Operations like the Corporate Angel Network arrange free air transportation for cancer patients traveling to treatment using the empty seats aboard business airplanes. They have arranged more than 20,000 lifesaving flights since their founding in 1981. Angel Flight America's seven member organizations and 7,200 volunteer pilots arranged more than 18,000 flights in 2005 alone to carry patients to medical facilities.

Veterans Airlift Command uses business airplanes and unused hours of fractional aircraft ownership programs to provide free flights for medical and other purposes for wounded service members, veterans and their families.

Veterans Airlift finds volunteers in the business aviation community to fly missions on request and contribute the full cost of their aircraft and fuel for the missions flown.

### **ECONOMIC CHALLENGES FACING GENERAL AVIATION**

Unfortunately, the people and businesses in general aviation, like other industries, are weathering one of the worst economic storms anyone has ever seen. The impact of the flagging economy on the companies and communities that rely on general aviation is visible in all parts of the country.

#### **General Aviation Manufacturing Has Been Hit Hard by the Economy**

Some business airplane manufacturers including Adam Aircraft, Grob and Eclipse Aviation have been forced to declare bankruptcy. Other manufacturing companies have slowed production schedules and laid off thousands of employees.

#### **Used General Aviation Aircraft Inventories are on the Rise**

According to a J.P. Morgan analysis, inventories for used business jets rose continually from February through November 2008 to the highest level since the analysts began collecting such data in December 1995. Used airplanes can compete with newly manufactured airplanes and depress the market for airplane manufacturers.

#### **General Aviation Flight Activity is in Decline**

A J.P. Morgan analysis reported a 19.3 percent year-over-year decline in business jet flight hours. We have experienced 12 straight months of negative growth.

#### **Small Airports are Operating "in the Red"**

There are more than 5,000 airports located in communities of all sizes across the country, many of which are seeing their revenues plummet as general aviation flight hours decrease. For example, a leading aviation industry trade publication recently reported that a decline of nearly 20 percent in aircraft fuel sales helped drag the Salina Airport Authority's 2008 budget into the red.

**FAA REAUTHORIZATION**

Clearly, much has changed for the industry I represent in the two years since I testified before this Subcommittee on FAA reauthorization.

However, in spite of all the challenges faced by the business aviation community, one thing has remained constant – our continued support for comprehensive FAA reauthorization legislation and modernization of the nation's air traffic control system.

We commend the Subcommittee for conducting a thorough examination of all of the issues during the 110<sup>th</sup> Congress, which ultimately resulted in the passage of H.R. 2881, the FAA Reauthorization Act of 2007.

This legislation provided funding for enhanced investment in FAA programs to modernize and expand the nation's air transportation system. NBAA supported the goals of expanding system capacity through air traffic modernization and airport development, providing additional investment in safety programs and further developing key environmental initiatives.

H.R. 2881, as well as the compromise legislation that went to the Senate floor last year, proposed expediting the transformation of the aviation system by building on the existing funding mechanisms to support modernization.

Accelerating the transition to the Next Generation Air Transportation system will advance important national objectives including: further reducing the industry's environmental footprint, reducing long-term costs at the FAA, enhancing safety, expanding system capacity and reducing congestion.

General Aviation has been at forefront of the modernization effort. We were early adopters of GPS navigation systems. GA also supported development of the ADS-B test program in Alaska – a test program that is now the cornerstone technology of the modernization effort.

Throughout the 110<sup>th</sup> Congress, a lengthy--often spirited--debate occurred in both the House and the Senate. Although a bill was not ultimately completed for reasons having nothing to do with FAA funding, we look forward to working with Members on both sides of the Capitol to finalize a bill as soon as possible.

Despite the current economic challenges facing the industry, we remain committed to aviation modernization through the following objectives:

- **Modernize the aviation system to one based on satellite technology.**  
NBAA supports transitioning to a future aviation system that is satellite-based rather than today's ground-based navigation system.
- **Support aviation modernization through the proven, efficient fuel tax.**  
The general aviation community has always financially contributed to the air transportation system through the payment of fuel taxes. These taxes are paid "at the pump," so there are no administrative costs for compliance. Fuel taxes should remain *the* mechanism for general aviation to help fund the FAA and help pay for system modernization. This is the approach which was taken in H.R. 2881, which raised GA jet fuel tax by 65%, to 36 cents per gallon to help pay for modernization costs. We continue to support this approach to expediting the NexGen transformation.
- **Reject operational user fees.**  
The General Aviation community is unified in its opposition to user fees, which are costly and require a large bureaucracy to administer. They are confusing and time-consuming to process, ripe for dispute and economically detrimental to the general aviation community.

In conclusion, aviation plays a critical role in driving economic growth and investment across the country. Our air transportation system is critical to the nation's economy.

We are committed to working with the Congress to complete an FAA Reauthorization bill that achieves our shared goal of keeping the U.S. aviation system the safest, largest and most efficient in the world. NBAA and our Member Companies across the nation look forward to working with this Subcommittee to accomplish this vital national objective.



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## PROFESSIONAL AVIATION SAFETY SPECIALISTS

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**STATEMENT OF TOM BRANTLEY  
PRESIDENT  
PROFESSIONAL AVIATION SAFETY SPECIALISTS, AFL-CIO  
BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION AND  
INFRASTRUCTURE – SUBCOMMITTEE ON AVIATION  
ON THE  
FAA REAUTHORIZATION ACT OF 2009**

**FEBRUARY 11, 2009**

PASS (AFL-CIO)



Chairman Costello, Congressman Petri and members of the subcommittee, thank you for inviting PASS to testify today on the reauthorization of the Federal Aviation Administration (FAA). The Professional Aviation Safety Specialists, AFL-CIO (PASS) represents approximately 11,000 FAA and Department of Defense employees in five separate bargaining units throughout the United States and in several foreign countries. PASS members include Technical Operations employees (systems specialists, electronics technicians and computer specialists) who install, maintain, repair and certify the radar, navigation, communication and environmental systems making up the air traffic control system; Flight Standards and manufacturing aviation safety inspectors responsible for inspecting and certifying every aspect of the commercial and general aviation industries; flight inspection pilots, mission specialists and procedures development specialists in Aviation System Standards; and administrative employees in the FAA's Civil Aviation Registry.

Congress has an opportunity to enact meaningful FAA reauthorization legislation to modernize and improve the efficiency of the FAA and protect and enhance the safety of this country's aviation system. PASS appreciates the opportunity to present our views on issues vital to aviation safety, including technician and inspector staffing, FAA modernization, and aviation safety oversight. In addition, PASS is hopeful that FAA reauthorization legislation will assist in improving labor-management relations at the FAA by repairing the contract negotiations impasse process within the agency, which will help improve productivity and ensure that the FAA has the very best men and women working together to protect the safety of the aviation system.

### **Contract Negotiations**

Over the past several years, labor-management relations within the FAA have been in a state of serious disrepair. By taking advantage of the ambiguities in current law covering FAA labor negotiations, the FAA has consistently refused to bargain in good faith with PASS and other FAA unions. This has resulted in low employee morale, difficult working conditions and overwhelming tension between labor and management—all of which threatens the productivity of FAA employees and the efficiency of the aviation system. Ensuring a fair contract negotiations process at the FAA is of utmost importance to PASS.

The history leading to the current state of contract negotiations between the FAA and its unions starts with the FY 1996 Department of Transportation Appropriations Act, which exempted the FAA from most of the federal personnel system under Title 5 of the U.S. Code and ordered the agency to develop its own personnel system. The FAA Reauthorization Act of 1996 established a new process for resolving certain bargaining impasses that were related to the new personnel system, but provisions of the legislation did not clearly define the types of disputes covered under the new process. The FAA interpreted the provision to mean that it had authority to impose contract terms unilaterally without the agreement of employees' representatives or ratification by the employees themselves. According to this interpretation, if the FAA declares that contract negotiations are at impasse, the administrator can send the matter to Congress. If Congress does not act on the contract within 60 days, the FAA's contract offer will be automatically imposed on employees. Under these conditions, FAA employees have been stripped of the right to participate in fair contract negotiations and, since the FAA can impose its will simply by waiting 60 days, real collective bargaining is nonexistent.

The status of contract negotiations between PASS and the FAA are reflective of the serious problems with the agency's interpretation of the process. Contract negotiations are at impasse with four of PASS's five bargaining units, representing 3,500 employees in the Flight Standards, Aviation System Standards, Aviation Registry and Manufacturing Inspector District Office bargaining units. Negotiations over new contracts for these employees have been at impasse for *over six years*. In PASS's fifth and largest bargaining unit, Technical Operations, the FAA showed little interest in reaching a mutual agreement with PASS. As a result, when the agency's final proposal was submitted for a vote, it was rejected by 98 percent of the employees. It is unclear when the negotiations process will begin again due to pending legal proceedings initiated and unnecessarily prolonged by the FAA.

It is obvious that major changes are needed in the contracts negotiations process at the FAA. It is clear that this committee agrees as language was included in the version of FAA reauthorization legislation passed by the House in 2007 (H.R. 2881) to rectify the problems with the bargaining process. The legislation clarifies that the Federal Service Impasses Panel (FSIP) has jurisdiction over the FAA and that binding arbitration before an impartial board of experienced arbitrators is the preferred method of resolving bargaining impasses such as those currently facing PASS and other FAA unions. PASS appreciates the efforts of this committee to ensure a fair collective bargaining process at the FAA and hopes that identical language will be included in this year's version of the bill.

## **ATO Technical Operations Workforce**

### ***Staffing and Training***

The largest PASS bargaining unit is the Air Traffic Organization (ATO) Technical Operations unit, consisting of technical employees who install, maintain, repair and certify the radar, navigation and communication systems making up the air traffic control system. Insufficient technical staffing continues to be a major problem at numerous facilities throughout the country, and an increasing attrition rate in these safety-sensitive positions is worsening the critical staffing crisis. The FAA has fallen below 6,100 technicians, which was the figure previously agreed upon by PASS and the FAA as being the *minimum* number of technicians needed to maintain the system safely. In fact, some facilities are staffed at less than half of what the facility's workload generates. As a result of the understaffing, the FAA is employing a new maintenance philosophy where periodic maintenance and certification of National Airspace System (NAS) systems and equipment are significantly reduced. In other words, instead of hiring additional employees, the FAA is changing its maintenance approach, claiming a move toward efficiency. PASS believes this change will place aviation safety at risk and is merely an attempt to mitigate the impacts of inadequate staffing.

The chronic understaffing of the FAA's technical workforce makes daily operations difficult at facilities nationwide and results in more unplanned outages and a dramatic increase in restoration times. In testimony, the Government Accountability Office (GAO) focused on the duration of unscheduled outages, citing an increase from an average of 21 hours in 2001 to about 40 hours in 2006 as a potential sign that "maintenance and troubleshooting activities are requiring more



effort and longer periods of time.”<sup>1</sup> Furthermore, the understaffing is exacerbated by the agency’s inability to accurately determine the right number of employees and job skills needed to safely and efficiently maintain the NAS. Currently, the FAA does not have a staffing standard or model that can accurately determine the number of trained FAA technicians needed to meet the agency’s mission “to provide the safest, most efficient aerospace system in the world.” In today’s changing aviation environment, it is critical that there is a staffing standard in place for the FAA technical workforce and that the FAA is required to abide by that standard and ensure that it has an adequate number of professionally trained technical employees.

It is clear that the state of technician staffing needs immediate attention in terms of the number of employees and the level of training. PASS supports language included in the 2007 House-passed FAA reauthorization bill that would require the comptroller general to study the training of technicians and the National Academy of Sciences to issue a report on the staffing methods used by the FAA to ensure adequate technician staffing. In order to ensure the proper representation of the technician workforce, PASS believes language must be included in this year’s bill and suggests adding language directing the Academy to consult with the exclusive bargaining representative of these employees.

#### ***Involvement in FAA Modernization***

The FAA has introduced a plan to modernize the NAS through development and deployment of the Next Generation Air Transportation System (NextGen). Although the FAA estimates a target date of 2025 to realize the full benefits of NextGen, it is starting to execute ideas and plans related to NextGen. As the FAA continues on this path, it is critical that the men and women responsible for maintaining, certifying and protecting this country’s aviation system be meaningfully involved at every point in the process.

Prior to 2003, PASS worked closely with the FAA in its efforts to modernize the NAS. Involving the employees who use and operate the systems in the development of those systems greatly improves the final product and inevitably saves the agency money. Yet, in approximately 2003, the FAA began to systematically eliminate PASS’s participation.

At a 2007 hearing before the House Subcommittee on Space and Aeronautics, the GAO emphasized the important role stakeholders, such as FAA technicians, should play in “planning for and deploying the new technology” that will be “important to the success of NextGen.”<sup>2</sup> The GAO continued by stating that input from current technicians “who will maintain NextGen equipment is important when considering human factors and safety issues. Our work on past air traffic control modernization projects has shown that a lack of stakeholder or expert involvement early and throughout a project can lead to costly increases and delays.”<sup>3</sup> Yet, the FAA has favored an approach in which it ignores these recommendations and develops these systems in a

<sup>1</sup> Government Accountability Office, *Next Generation Air Transportation System: Progress and Challenges in Planning and Implementing the Transformation of the National Airspace System*, GAO-07-649T (Washington, D.C.: March 22, 2007), pp. 10–11.

<sup>2</sup> Government Accountability Office, *Joint Planning and Development Office: Progress and Key Issues in Planning the Transition to the Next Generation Air Transportation System*, GAO-07-693T (Washington, D.C.: March 29, 2007), p. 19.

<sup>3</sup> *Id.*

vacuum in which no critical views are permitted. Along with the incredible technical expertise that PASS members offer the FAA, they also provide an independent view of the FAA's program management.

FAA technicians have the expertise and field experience needed to identify problems before the systems are deployed, and the FAA needs this expertise in order to field systems that are cost effective and safely meet the operational requirements of the NAS. PASS appreciates the efforts of this committee to address this issue by including language in the 2007 House-passed FAA reauthorization bill requiring the FAA to collaborate with its unions in the planning, development and deployment of air traffic control modernization projects. PASS proposes that language be included in this year's version of the FAA reauthorization bill in order to ensure the safe and efficient modernization of the NAS.

### ***Certification***

Certification is the process in which a certificated FAA technician checks and tests systems or pieces of equipment on a periodic basis in order to ensure that the systems or equipment can be safely returned to service and not negatively impact any aspect of the NAS. According to a 1991 memo from the FAA's general law branch, certification is an "inherently governmental function which cannot be performed by a contractor."<sup>4</sup> The FAA's certification process has been successful for decades and is a key element in maintaining the safest and most efficient air transportation in the world.

Regardless of the success of this system, the FAA is increasingly moving toward what it terms "Reliability Centered Maintenance (RCM)." While the FAA refers to it as an "event-based" concept, it can best be described as a "fix-on-fail" concept. Under the agency's plan, specific guidelines to determine if certification is required will be replaced with guidelines to determine if it will be "cost effective" to certify the system. NAS systems will only have certification parameters checked when commissioning a new system, following some aircraft accidents and before restoration of a failed system to service.

The RCM concept is a move away from a proactive maintenance philosophy toward a reactive one, and the effects of this approach will be far-reaching if fully implemented. To reduce periodic maintenance and certification so severely will dramatically affect the aviation industry and the safety of the NAS. Among the major consequences are more unplanned outages and longer recovery time when equipment fails. Rather than conduct preventative maintenance checks of the equipment, the FAA will wait until the equipment fails. Planned system down time will be replaced by unplanned system down time, which can be longer and more disruptive. If certification parameters are only checked after a hard failure, most intermittent or soft problems will not be found. For example, a degraded radio coverage area, necessary only when pilots need to fly around storms, will not be identified until the pilot loses communications during a storm. Clearly, this poses a serious threat to the safety of the flying public and the sanctity of the NAS.

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<sup>4</sup> Manager, General Law Branch, AGC-110, memorandum to Manager, Maintenance Engineering Division, ASM-100, "Contractor Certification of Navigational Systems in National Airspace System (NAS)," June 18, 1991.

While these efforts severely weaken an important part of the FAA's ability to ensure the safety and integrity of the NAS, the agency's most recent act seeks to all but eliminate certification. For decades, the criteria in place for determining which NAS systems and services require certification stated, "FAA NAS systems, subsystems, and services directly affecting the flying public shall be certified."<sup>5</sup> However, in an update to the order, effective October 1, 2007, the agency "clarified" the text to read, "*FAA owned* NAS systems, subsystems, and services directly affecting the flying public shall be certified" (emphasis added).<sup>6</sup> In other words, the FAA has not only re-interpreted the criteria to allow certain systems and services to be deployed without requiring certification but actually *prohibits* full and appropriate certification of all systems it does not own. Without certification performed by FAA employees, the agency will have to rely on an outside vendor to report problems or difficulties—there will be no internal FAA quality checks as there are today.

PASS believes this drastic change to the certification program is an extremely risky endeavor with the potential to threaten the safety of NAS modernization. For instance, Automatic Dependent Surveillance–Broadcast (ADS-B) is a digital alternative to radar that allows aircraft to transmit their exact position, direction of flight and speed to ground stations and other aircraft. The system has been deemed "the future of air traffic control"<sup>7</sup> by the FAA and is expected to be the basis of NextGen. However, since the FAA will not own the ADS-B hardware, software or infrastructure, the system will not be properly certified by FAA employees. Instead, the FAA will entrust responsibility for the safe operation of ADS-B entirely to private contractors. The Department of Transportation Inspector General (IG) has expressed concern that as a result the FAA "could find itself in a situation where it knows very little about the system that is expected to be the foundation of NextGen" and encouraged the agency to "take steps to ensure it effectively addresses this risk."<sup>8</sup> It must be emphasized that this interpretation of the agency's certification criteria would apply not only to ADS-B but also to any system that is not owned by the FAA—any future contract awarded by the FAA would be barred from the FAA certification program.

While the FAA transitions to NextGen, it is critical that new and current systems are properly maintained and certified. Toward this effort, the FAA must ensure that products and systems obtained through a third party are held to the same certification standards as FAA systems and equipment. As such, PASS proposes that language be added to the FAA reauthorization legislation making it clear that the FAA will make no distinction between public or privately owned equipment, systems or services used in the NAS when determining certification requirements.

<sup>5</sup> FAA Order 6000.15E – *General Maintenance Handbook for National Airspace System (NAS) Facilities*.

<sup>6</sup> FAA Order 6000.15E – *General Maintenance Handbook for National Airspace System (NAS) Facilities*, draft dated February 13, 2007, effective October 1, 2007.

<sup>7</sup> Federal Aviation Administration, "Fact Sheet: Automatic Dependent Surveillance–Broadcast (ADS-B)," June 21, 2007.

<sup>8</sup> Department of Transportation Inspector General, *Challenges Facing the Implementation of FAA's Automatic Dependent Surveillance–Broadcast Program*, CC-2007-100 (Washington, D.C.: October 17, 2007), pp. 2–3.

### ***Consolidation and Realignment of FAA Facilities***

The 2007 House-passed FAA reauthorization bill includes language that would establish a process and include employee input when deciding whether to consolidate or realign facilities, including regional offices. PASS has serious reservations regarding the FAA's consolidation and realignment of facilities and believes that it is imperative that all stakeholders are consulted in order to ensure the safety of the system. The GAO has expressed concern with the FAA's process, stating that "any such consolidations must be handled through a process that solicits and considers stakeholder input throughout, and fully considers the safety implications of any proposed facility closures or consolidations."<sup>9</sup>

While the FAA emphasizes the money-saving aspects of consolidation, all aspects of the process and impacts of any actions must be considered prior to making a decision. For instance, in some cases, the consolidation of a facility does not necessarily mean the consolidation or relocation of the associated work. In these instances, consolidation may mean only increasing the distance between employees and the work as equipment and systems are maintained by employees located at other facilities. Furthermore, the understaffing of the technician workforce makes this situation even more dangerous and a lack of proper staffing at consolidated facilities would place even more stress on the aviation system.

Clearly, FAA technicians represented by PASS would have a unique view into the impact of any closures or consolidations. In order to preserve a primary focus on safety, it is imperative that stakeholders are involved in every aspect of the consolidation process. PASS appreciates the efforts of this committee to support a process where any decisions on closing or consolidating FAA facilities are made only through consultation with stakeholders, including PASS, and with safety of the aviation system as the primary goal. It is critical that language be included in this year's version of the FAA reauthorization bill in order to protect the overall safety of the system.

### **Aviation System Standards (AVN) Workforce**

The 2007 House-passed FAA reauthorization bill contains language that would require the IG to review third-party approach procedures development. Flight procedures and flight inspection employees in Aviation System Standards (AVN) are charged with developing, evaluating, certifying by flight inspection and maintaining the 16,000 instrument flight landing and takeoff procedures for every major and municipal instrument-capable airport across the country. The development, flight inspection and maintenance of flight procedures involves strict compliance with a complex series of computations, measurements and modeling standards.

Current administration directives provide for third-party development of special-use operational and approach procedures. In addition to third-parties, this work, as well as public-use procedures work, is currently performed by a highly trained and specialized FAA workforce, but the agency is moving toward contracting out this inherently governmental work. With a limited oversight workforce as well as the disorganized state of flight procedures development directives, it would

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<sup>9</sup> Government Accountability Office, *Next Generation Air Transportation System: Progress and Challenges in Planning and Implementing the Transformation of the National Airspace System*, GAO-07-649T (Washington, D.C.: March 22, 2007), p. 12.

be impossible for the FAA to ensure that it can effectively regulate, supervise or review the work of third parties, or even guarantee the safety of the procedures and processes used by independent entities.

PASS appreciates the efforts of this committee to ensure the review of third-party approach procedures development and hopes comparable language is included in this year's version of the FAA reauthorization bill. In addition, PASS proposes specifically ensuring the review of public-use procedures processes. As opposed to special-use procedures, which do not have to be fully integrated into the NAS, public-use procedures are completely integrated into the system and protected by controlled airspace. PASS believes this safety-critical work to be inherently governmental and is concerned that the FAA has not established sufficient mechanisms and staffing to provide safety oversight of any third party involved in developing any public-use procedure. Furthermore, PASS believes the FAA should not be able to establish additional agreements with or delegate authority to a third party for the development of public-use flight procedures before the IG has submitted assessments and the agency has complied with the IG's recommendations.

## **Aviation Safety Inspector Workforce**

### ***Staffing***

PASS represents approximately 2,900 Flight Standards field aviation safety inspectors and 150 Manufacturing Inspection District Office (MIDO) aviation safety inspectors who are responsible for certification, education, oversight, surveillance and enforcement of the entire aviation system. PASS is extremely concerned about staffing of the FAA inspector workforce. Inspector staffing levels are not adequate to meet growing industry demands and ensure the safety of the aviation system, and nearly half of FAA inspectors are eligible to retire over the next several years. Insufficient inspector staffing combined with the evolving aviation industry places an incredible workload on the inspector workforce, which has already resulted in missed or cancelled inspections due to lack of staffing. With the increased outsourcing of maintenance work in this country and abroad, growing number of aging aircraft, the emergence of new trends in aviation (such as very light jets, unmanned aircraft and regional carriers), the increasing number of aviation manufacturers and the expansion of the FAA's designee programs—all of which require additional inspector oversight—it is imperative that there are enough inspectors in place to monitor the safety of the system.

PASS appreciates the efforts of this committee to address the inspector staffing situation by including language in the 2007 House-passed FAA reauthorization bill directing the FAA to increase the number of inspectors and authorizing specific funding to increase safety-critical staffing. Furthermore, PASS is encouraged to note language that specifically instructs the agency to include PASS in the development of the inspector staffing model. Without a doubt, the state of the inspector workforce must be closely monitored as the aviation industry continues to evolve. As such, PASS believes that similar language must be included in this year's version of the FAA reauthorization bill.

### *Aviation Safety Oversight*

Following last year's Southwest incident, the results of an audit released by the IG and information revealed during hearings before Congress, the House of Representatives passed legislation (H.R. 6493) focused on improving and increasing FAA safety oversight. PASS believes similar language should be included in this year's FAA reauthorization bill in order to ensure proper and safe oversight of the aviation industry. Specifically, PASS believes the following elements should be included in the legislation:

**Modification of Customer Service Initiative (CSI):** The advertised intent of the CSI was to allow certificate holders to request reconsideration of a decision made by an aviation safety inspector. Within this document as well as other statements of policy, the FAA refers to air carriers or other entities regulated by the agency as "customers." In PASS's view, the FAA should be focused on protecting aviation safety and treating the flying public as the most important customer. Therefore, PASS suggests including language in the FAA reauthorization bill modifying the CSI program in order to make clear that the flying public are the customers. In addition, PASS requests that language be added to establish a workgroup, which includes the exclusive collective bargaining representative of aviation safety inspectors, to review the CSI and make any necessary changes in order to ensure that it is being used appropriately.

**Post-Employment Restrictions for Flight Standards Inspectors:** PASS fully supports the establishment of a two-year cooling-off period for FAA inspectors or persons responsible for FAA inspectors before that individual can act as an agent or representative before the FAA of a certificate holder that they oversaw during their service with the FAA. In other lines of business, it has been proven that this type of respite is useful in preventing the formation of questionable relationships that favor one party over another. With regard to the FAA, these types of relationships can have a critical impact on the safety of the aviation system. As such, PASS believes including this directive in the FAA reauthorization bill would greatly benefit the oversight process.

**Assignment of Principal Supervisory Inspectors:** Principal supervisory inspectors directly interact with the air carrier and have the ability to assign work to aviation safety inspectors and the ultimate authority to make safety-critical decisions. It has been shown that the development of overly "cozy" relationships between the FAA and airlines can result in a breakdown of safety oversight. In fact, in its report, the IG specifically stated that supervisory inspectors should be rotated to ensure reliable air carrier oversight.<sup>10</sup> PASS believes language should be included in the FAA reauthorization legislation that would require the FAA to rotate supervisory principal inspectors between FAA airline oversight offices every five years.

**Headquarters Review of Air Transportation Oversight System (ATOS):** ATOS was developed in 1998 as a "system safety" approach to oversight of the air carrier industry aimed at ensuring airlines comply with FAA safety requirements to control risk and prevent accidents. While prioritizing workload based on levels of risk and attempting to manage that workload through automated tasks are valid concepts, there are several problems with ATOS that prevent

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<sup>10</sup> Department of Transportation Inspector General, *Review of FAA's Safety Oversight of Airlines and Use of Regulatory Partnership Programs*, AV-2008-057 (Washington, D.C.: June 30, 2008), p. 5.

the agency from benefiting from the system. PASS believes that implementing monthly reviews of the database by a team of employees who use the database will enhance the quality of statistical information generated and the overall use of the system. PASS supports the inclusion of such language in the FAA reauthorization bill as well as language ensuring that the exclusive bargaining representative of aviation safety inspectors is a member of any such review team.

**Improved Voluntary Disclosure Reporting System:** The Voluntary Disclosure Reporting Program (VDRP) allows certificate holders operating under Title 14 of the Code of Federal Regulations to disclose voluntarily to the FAA apparent violations of certain regulations. According to the FAA, this policy is intended to encourage compliance with FAA regulations; however, in order for the VDRP to operate successfully, several steps must be rigorously enforced by the FAA. The Southwest incident and other examinations into the process have revealed serious flaws within the system. In order to improve the VDRP system, PASS believes language should be included in the FAA reauthorization bill requiring a supervisor to review and approve all voluntary self-disclosures received by air carriers following the initial inspector paper review. In addition, PASS suggests Certificate Management Offices be required to report quarterly findings to their respective regional division managers. PASS also believes language should be included to clarify that during the verification and evaluation of the report, it is confirmed that the violation has not been previously reported by an inspector or self-disclosed by the carrier.

**National Review Team:** PASS supports the inclusion of language in the FAA reauthorization bill establishing a National Review Team that will report directly to the associate administrator and will be comprised of current or former principal inspectors who will perform periodic and unannounced audits of air carrier operations, maintenance practices and procedures to evaluate air carrier oversight. In addition, PASS recommends that all principal inspectors are identified as prospective members of the National Review Team.

#### *Oversight of Foreign Repair Stations*

FAA aviation safety inspectors responsible for overseeing the certification of and the work performed at foreign repair stations have serious concerns regarding the oversight of these facilities. Whereas much of this work was once done at the air carrier's facility, according to the IG, major air carriers outsourced an average of 64 percent of their maintenance expenses in 2007, compared to 37 percent in 1996.<sup>11</sup> For the most recent report, the IG reviewed nine major air carriers. These carriers sent 71 percent of their heavy airframe maintenance checks—including performing complete teardowns of aircraft—to repair stations in 2007, up from 34 percent in 2003. Foreign repair stations performed 27 percent of outsourced heavy maintenance checks for these nine air carriers in 2007, up from 21 percent in 2003.<sup>12</sup>

Many inspectors say that they are not confident with the level of oversight of foreign repair stations and that serious safety issues are not being addressed. The regulations governing foreign repair stations have also been called into question. For example, as opposed to domestic airline

<sup>11</sup> Department of Transportation Inspector General, *Air Carriers' Outsourcing of Aircraft Maintenance*, AV-2008-090 (Washington, D.C.: September 30, 2008), p. 1.

<sup>12</sup> *Id.*

or repair station employees, workers at contract foreign repair stations are not required to pass drug and alcohol tests. There also continues to be major concerns regarding security at these facilities, with many of the repair stations lacking any security standards. If a foreign repair station wants to work on U.S.-registered aircraft or any aircraft that operate in this country, those repair stations should be required to meet the same safety standards as domestic repair stations.

Another concern is that the FAA continues to expand the use of bilateral agreements with foreign countries to oversee repair of U.S. carriers. The Bilateral Aviation Safety Agreement (BASA) with Maintenance Implementation Procedures (MIPs) allows foreign authorities to provide oversight of the work performed at repair facilities without any involvement from FAA inspectors. This eliminates the need for the inspector to travel to the repair station at all and entrusts responsibility entirely to a foreign entity. According to the IG, however, foreign authorities do not provide the FAA with sufficient information on what was inspected, the problems discovered and how these problems were addressed. The IG cited an example in which FAA inspectors for one air carrier had not visited a major foreign engine repair facility even though the repair station had performed maintenance on 39 (74 percent) of the 53 engines repaired for the air carrier. Furthermore, FAA inspectors had not conducted any spot inspections of this facility in five years.<sup>13</sup>

In order to ensure that the work performed at foreign repair stations meets FAA and air carrier standards, PASS believes that all certificated foreign repair stations should be inspected at least twice a year by an FAA inspector and all workers working on U.S. aircraft should be drug and alcohol tested. PASS appreciates that language regarding foreign repair stations was included in the 2007 House-passed FAA reauthorization bill. The union believes that this language must be included in this year's version of the bill in order to ensure the safety of the work performed at foreign repair stations.

#### *Use of Non-Certificated Repair Facilities*

With airlines increasing their use of outsourced maintenance work, there has been a significant increase in the use of non-certificated repair stations. "Non-certificated" means that the repair facility does not possess a certificate issued by the FAA to operate under Federal Aviation Regulation Part 145 and is therefore not subject to direct FAA oversight. A certificated repair station meets the standards as outlined in the Federal Aviation Regulation and is therefore subject to direct FAA oversight to ensure that it continues to meet those same standards. The differences in regulatory requirements and standards at the two facilities are extremely troubling. For example, in an FAA-certificated repair station, it is required that there be designated supervisors and inspectors and a training program. These items are not required at non-certificated repair facilities.

Effective oversight of non-certificated repair facilities gained attention in the aftermath of the January 2003 Air Midwest crash in Charlotte, N.C. The National Transportation Safety Board determined that incorrect rigging of the elevator system by a contractor contributed to the

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<sup>13</sup> Department of Transportation Inspector General, *Aviation Safety FAA's Oversight of Outsourced Maintenance Facilities*, CC-2007-035 (Washington, D.C.: March 29, 2007), p. 9.



accident and pointed to “lack of oversight” by Air Midwest and the FAA.<sup>14</sup> The airline contracted out the work to an FAA-certificated repair station, which then subcontracted to a non-certificated repair facility. Under federal regulations, the airline is ultimately responsible for ensuring that the work is performed in accordance with FAA standards and requirements.

According to the IG, the FAA does not know how many non-certificated maintenance facilities air carriers currently use, but the IG identified “over 1,400 non-certificated repair facilities performing maintenance and more than 100 of these facilities were located in foreign countries.”<sup>15</sup> The IG also discovered that there are no limitations to the amount of maintenance work non-certificated facilities can provide, and that these facilities are performing far more work than minor services, including much of the same type of work FAA-certificated repair stations perform, such as repairing parts used to measure airspeed, removing and replacing jet engines, and replacing flight control motors. Some of these non-certificated facilities are even performing critical preventative maintenance.

Despite the fact that these facilities are performing safety-critical work, FAA oversight is practically nonexistent. In other words, these facilities are performing work pivotal to aviation safety with no guarantee that it is being done in line with FAA and air carrier standards. It is obvious that there must be changes made regarding air carriers’ use of non-certificated repair facilities. As was done in the 2007 House-passed FAA reauthorization bill, PASS is in full support of including language in this year’s version of FAA reauthorization requiring that within three years all air carrier maintenance work (substantial, regularly scheduled or required inspection items) only be performed by an FAA-certificated repair station.

## Conclusion

PASS is looking forward to working with this committee to ensure the safe and efficient modernization of this country’s aviation system. The work of the highly trained and skilled employees represented by PASS is essential to protecting aviation safety and fulfilling the agency’s mission. PASS and the bargaining unit employees we represent are hopeful that this committee will enact significant legislation that will promote positive labor-management relations, protect the work performed by FAA employees and ensure that safety of the aviation system is always the top priority.

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<sup>14</sup> National Transportation Safety Board, *Loss of Pitch Control During Takeoff, Air Midwest Flight 5481, Raytheon (Beechcraft) 1900D, N233YV, Charlotte, North Carolina, January 8, 2003*, Aircraft Accident Report NTSB/AAR-04/01 (Washington, D.C.: 2004), p. x.

<sup>15</sup> Department of Transportation Inspector General, *Aviation Safety: FAA’s Oversight of Outsourced Maintenance Facilities*, CC-2007-035 (Washington, D.C.: March 29, 2007), p.13.

**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

Subcommittee on Aviation

Hearing: FAA Reauthorization Act of 2009

February 11, 2009

Written Statement of Roger Cohen, President  
Regional Airline Association

Good morning Mr. Chairman and Members of the Subcommittee. My name is Roger Cohen and I am President of the Regional Airline Association. I thank you for the opportunity to appear before this panel today.

In recent years, regional airlines have played a critical role in our nation's air transportation system, providing safe, efficient, cost-effective and convenient air service to every corner of this country. Today's regional airlines carry approximately 160 million passengers annually, with nearly one in five U.S. domestic passengers traveling on a regional airline. Regional aircraft constitute approximately 40 percent of the nation's commercial passenger airline fleet and regional airlines operate nearly 50 percent of all scheduled flights. Most importantly, regional airlines serve more than 600 airports across the nation and provide the only source of scheduled airline service at 476 of these airports. This means just about 75 percent of our nation's commercial airports receive scheduled air service *exclusively* by regional airlines. While regional airlines provide valuable air service to communities of all sizes, regional airlines are often the only airlines capable of serving small and mid-sized markets efficiently.

When we last testified before this Committee, regional airlines were, like the rest of us, operating under different economic conditions. Last year's drastic fuel cost incline, alongside the severe downturn in our nation's economy, created a very challenging operating environment for regional airlines. Consider that between December 2006 and December 2007, regional airlines added 77 new nonstop markets; however, in just one year these numbers were turned upside down. As major airlines were forced to make extensive capacity cuts in order to remain viable, regional airline growth has tapered off and the industry is currently contracting. In 2008, regional airlines suffered a net loss of 243 non-stop routes. To put this into proper perspective, compare this to a net loss of 101 mainline routes. Capacity is down across all segments of the commercial airline industry, yet regional airlines are experiencing the deepest cuts, with dozens of regional airports losing all scheduled air service last year. While other carriers have stepped in to restore service as quickly as possible, programs like the Essential Air Service program, designed to provide continued air service to rural communities, are already severely underfunded. Several regional airlines have gone out of business altogether, with Air Midwest, Big Sky, and Skyway being notable losses. Another regional airline, ExpressJet, ended its independently branded service last year although it continues to operate as Continental Express.

While these challenges have brought many changes to the regional airline industry since this time last year, the principals for FAA Reauthorization laid out by RAA's Board of Directors remain largely unchanged. In fact, they have become even more critical today. H.R. 915, in great measure, reflects many of our shared objectives and we intend to support this Committee in

advancing the measure. As we move forward, RAA will continue to provide input and feedback on individual provisions of the bill as we seek to find common ground.

***New taxes and fees jeopardize regional airline service.***

As the FAA Reauthorization bill moves through the legislative process and amendments are considered, we urge this Committee to consider the unique role regional airlines play in providing the only source of scheduled air service to three quarters of our nation's commercial airports. These communities have already suffered tremendous air service losses in recent years. Moreover, it is not just the smallest communities at risk for losing air service. While cities like Appleton, Hartford, Abilene, Billings, Bemidji, Bellingham, Boise, Butte, Casper, Cincinnati, Cheyenne, Daytona Beach, Eugene, Evansville, Farmington, Gainesville, Green Bay, Lewistown, Milwaukee, Wichita Falls, Sarasota, Sioux City, Tallahassee, Toledo and Tucson are neither the largest nor smallest in the country, the link between reliable air service and a sound economy is no less evident there than anywhere else. Each of these communities and many others like them lost at least one quarter of their scheduled departures last year.

While our government partners cannot single-handedly bring about a return to capacity across all industry sectors, you may nonetheless help our industry by rejecting new taxes and fees on our industry at a time when it can least afford new costs. As our nation tightens its collective purse strings, our passengers will almost certainly react to increased fees and charges by taking fewer trips. Should the number of passengers traveling decrease in sufficient numbers, airlines will find it increasingly difficult to serve the small and mid-sized markets already at risk. We specifically ask that this Committee reconsider its proposed increase to the Passenger Facility Charge included as part of H.R. 915 and also ask that Congress help to restore the balance of the 1990 ANCA law, under which airport fees would be spent primarily on expanding and improving the airport and airways infrastructure.

While fuel costs have abated in recent months, we believe energy speculation played a large role in the recent fuel cost crisis that curtailed regional airline growth and damaged the entire airline industry. Leading energy experts across the country agree that unprecedented jumps in crude oil prices in years past were due, in large measure, to rampant speculation in the energy commodities markets. We urge Congress to continue to monitor oil speculation and to ensure a transparent and balanced energy commodities market, not one that is skewed to benefit institutional investors.

***Now is the time to modernize our ATC System.***

Today's temporary capacity cutbacks, painful to airlines, airports, and passengers alike, have but one silver lining: this downturn provides a golden opportunity to act on the transition to the Next Generation Air Transportation System (NextGen).

This time last year, RAA was defending regional airline service against proposals to limit aircraft access at popular airports in order to artificially limit demand according to airport and ATC constraints. During those times when our Air Traffic System has been at or near peak capacity,

severe delays have plagued the system, causing costly delays for airlines and our passengers. For example, systemic deficiencies have allowed isolated weather at a single airport to impact traffic flow across the nation. Satellite-based technologies will greatly improve safety and expand capacity while reducing fuel burn, carbon emissions, and noise. Completion of a comprehensive, multi-year FAA Reauthorization will help provide the direction and funding necessary to move forward with this critical transformation of our nation's Air Traffic System.

Regional airlines have embraced NextGen and are committing substantial resources to the transition. In fact, four RAA members (Skywest, Shuttle America, Piedmont, and Commutair) have installed Electronic Flight Bags on aircraft as part of the Capstone 3 program in order to prevent runway incursions. Another RAA member, Horizon Air, was the second airline in the nation to be approved for RNP approaches. If we miss this opportunity to modernize, it will not be long before stories of costly flight delays and unhappy passengers once again dominate the airwaves, despite our best efforts to the contrary.

As part of our attention to ATC modernization, it is important to discuss ATC funding. RAA agrees with many of our industry partners that funding for Air Traffic Control should be more fairly divided among user groups. We agree that commercial aviation – both mainline and regional carriers alike – should not be asked to carry a disproportionate share of the cost burden. As we continue to do our part to move forward towards ATC modernization, RAA greatly appreciates the efforts of this Committee to protect regional airlines from unworkable new costs that could imperil regional air service.

#### ***Uphold the Essential Air Service Promise***

In recent years, airlines, communities and other stakeholders have cited problems with the Essential Air Service Program, a program set up by Congress and administered by the DOT to preserve air service to rural communities in a deregulated airline market. Through the years, the skyrocketing costs of operating smaller aircraft and a tremendous spike in fuel costs have greatly increased costs associated with the EAS program. RAA believes this worthy program would benefit from thoughtful reform.

Under the current EAS program, DOT enters into contracts with carriers (typically two years in length) where carriers agree to provide air service at a predetermined subsidy rate. Carriers are allowed a slim, five percent profit margin after taking into account projected costs and revenues and are not currently able to seek real-time adjustments to that subsidy rate even when costs increase dramatically. Instead, carriers must file 90-day service termination notices in order to renegotiate rates, at which point DOT reopens the competitive bidding process while holding the incumbent carrier in the market at loss rates for 180 additional days.

RAA first raised this issue many years ago and, with the help of this Committee, secured a voluntary tool where DOT could adjust subsidy rates in instances of increased carrier costs. Unfortunately, DOT declined to use this tool when it would have been truly helpful and the window of opportunity for such a simple fix has come and gone. Facing enormous cost challenges, three EAS carriers went out of business in the years since RAA began asking for

real-time rate adjustments. The few remaining EAS carriers have tried to backfill air service losses resulting from failing carriers but surviving EAS carriers nonetheless face limitations on how quickly they can restore service. Moreover, the slim profit margins allowed by the program make this niche service less attractive to non-EAS specialty carriers who might otherwise play a valuable role restoring or maintaining air service to abandoned markets were they not afraid to enter EAS markets. After years of proposed cuts and inflexible rate structures under the previous Administration, some carriers and communities alike question DOT's commitment to program. In other words, hold-in policies remain constant yet funding and program continuity seem constantly at risk.

Despite these challenges, the EAS specialty carriers among RAA's membership remain firmly committed to the program. We recognize and appreciate this Committee's commitment to the program, as well. Your continued efforts to secure adequate funding for the program have not gone unnoticed. If this program is truly to succeed, Congress must authorize and appropriate at least \$200 million annually for basic program continuity. RAA greatly appreciates your authorization of that amount in H.R. 915. \$200 million represents the absolute minimum funding level necessary to continue service to even those EAS communities currently receiving service. As we have discussed previously, funding EAS at this level does not account for new communities that may potentially qualify for EAS subsidy and does not allow for expenditures on marketing or other programs. It does, however, allow carriers to continue providing EAS service to communities currently eligible for subsidy.

While all EAS stakeholders agree on the need for reform, RAA urges Congress to make only those changes to the program that would truly improve air service and restore health to the program. RAA does not believe it is appropriate or even feasible, for instance, to ask air carriers to establish joint fares beyond the hub airport. Aside from the regulatory issues in play under joint fares, EAS carriers simply do not have the ability to set through-fares. On the other hand, we applaud the provision in this HR 915 repealing the troublesome community cost-sharing program that, if implemented, could have dismantled the program. With respect to broad EAS reform, we appreciate your consideration of the following recommendations:

1. Increase overall program funding by retaining current standing appropriation, of \$50 million and authorizing an additional \$150 million for FY2010, bringing total program funding to \$200 million. (RAA applauds this Committee's effort to provide full and appropriate funding for this program).
2. Amend the carrier profit margin allowance from five to 15 percent. This modest upward adjustment would not be a windfall to carriers but rather, would provide needed insulation against cost fluctuations, which can erase profitability and lead to great losses over the lifespan of a contract.
3. Encourage DOT to engage in five-year EAS service contracts with carriers. Longer contracts help airlines access capital when seeking to finance aircraft and would also serve to stabilize air service from both the carrier and community perspective. (RAA appreciates the guidance included in H.R. 915 towards that end and recommends more explicit direction to DOT in setting 5 year contracts).
4. Increase the per-passenger subsidy cap for inflation. (RAA appreciates the Committee's support for this objective in H.R. 915).

***Conclusion***

As we work together to navigate these challenging times, we applaud this Committee's efforts to bring aviation to the forefront of our national attention span. We hope this Committee will continue to view RAA as a true partner as we advance our shared goal of safe, reliable, and cost effective air service for communities large and small across the nation. In introducing HR 915, this Committee has taken a great first step toward accomplishing these common objectives. I want to thank you and your staff for your tireless work. Mr. Chairman, this concludes my formal statement. I look forward to answering your questions at the conclusion of the panel.

United States Government Accountability Office

GAO

Testimony  
Before the Subcommittee on Aviation,  
Committee on Transportation and  
Infrastructure, House of Representatives

For Release on Delivery  
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## NATIONAL AIRSPACE SYSTEM

### FAA Reauthorization Issues are Critical to System Transformation and Operations

Statement of Gerald L. Dillingham, Ph.D.  
Director, Physical Infrastructure Issues



GAO-09-377T



Highlights of GAO-09-377T, a testimony before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives

### Why GAO Did This Study

As requested, this statement discusses issues for the reauthorization of the Federal Aviation Administration (FAA). The aviation industry is in a period of economic turmoil and faces an uncertain future. At the same time, FAA is undertaking one of its most ambitious efforts ever to transform the nation's air traffic control system. The reauthorization of FAA provides an opportunity for Congress and FAA to focus on several key issues to improve the national airspace system.

This statement is based on recent and ongoing work and on discussions with selected senior FAA officials and representatives of the aviation industry. This work was conducted in accordance with generally accepted government auditing standards. Those standards require that GAO plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on the audit objectives. GAO believes that the evidence obtained provides a reasonable basis for the findings and conclusions based on the audit objectives. A list of related GAO products is included at the end of this statement.

### What GAO Recommends

GAO has made prior recommendations to address some of these issues. FAA has begun to address GAO's recommendations, although some have not yet been fully implemented.

To view the full product, including the scope and methodology, click on GAO-09-377T. For more information, contact Gerald L. Dillingham, Ph.D., at (202) 512-2834 or [dillingham@gao.gov](mailto:dillingham@gao.gov).

February 11, 2009

## NATIONAL AIRSPACE SYSTEM

### FAA Reauthorization Issues Are Critical to System Transformation and Operations

#### What GAO Found

This statement discusses six issues that are important in reauthorizing FAA programs. Many of these issues are deeply intertwined, and addressing one can affect the others. Balancing all of these issues will be a challenge, but is essential to FAA's ability to transform and operate the national airspace system safely and efficiently.

**Ensuring the safe and efficient transformation to the Next Generation Air Transportation System (NextGen).** FAA will need to accelerate the implementation of new and existing technologies, consider incentives for airlines to acquire those technologies, reconfigure facilities and enhance runways to take full advantage of NextGen's benefits, and sustain the current system while transitioning to the new one.

**Strengthening oversight of aviation safety.** Incomplete and inaccurate safety data jeopardize FAA's implementation of a new safety management approach. In addition, improvement of runway and ramp safety oversight is a key issue. For example, last year there were 25 incidents when collisions between aircraft on runways were narrowly avoided.

**Reducing congestion and providing access to the national airspace system.** FAA has taken steps to enhance capacity and reduce delays, such as redesigning airspace and placing caps on operations, but progress and improvements have been limited. Even as some areas experience more congestion, however, other areas of the country have seen service decline. This may increase demand for the Department of Transportation's subsidy program to provide a minimal level of scheduled air service for certain small communities.

**Addressing aviation's impact on the environment.** FAA, airports, and other stakeholders have worked to reduce noise, emissions, and other pollutants. Further efforts will be needed, particularly when trying to expand airport capacity.

**Ensuring a sufficient, trained workforce.** FAA faces a retiring air traffic controller workforce, the need for additional technical expertise to implement NextGen, and the need to improve relations with its labor unions.

**Ensuring timely reauthorization of FAA programs.** Short-term funding extensions and continuing resolutions could delay key capital projects. Timely reauthorization is critical to sustaining FAA's current programs and advancing NextGen.

FAA reviewed a draft of this statement and provided technical corrections, which GAO incorporated as appropriate.



## NextGen

## Ensuring The Safe And Efficient Transformation To NextGen

### What Is the Issue?

The Federal Aviation Administration (FAA) is the agency largely responsible for developing and implementing the policies and systems necessary for the transformation of the nation's current radar-based air traffic control (ATC) system into a more automated, aircraft-centered, satellite-based Next Generation Air Transportation System (NextGen) by 2025. This issue has several dimensions including the following:

#### Accelerating the implementation of available NextGen capabilities

According to some industry stakeholders, many of the technical capabilities fundamental to NextGen already exist but are not being implemented fast enough to have NextGen in place by 2025. FAA has entered into agreements with private sector firms to conduct NextGen technology demonstration projects; is working with industry and the local community on their plans to build an aviation research and technology park where FAA can work with industry on the research and development, integration, and testing of NextGen technologies; and established a NextGen mid-term task force to forge a consensus on operational improvements and planned benefits for 2013 through 2018. In addition, FAA recently responded to stakeholder concerns about the fragmentation of management responsibility for NextGen activities by reorganizing the FAA office that has primary responsibility for implementing NextGen.

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#### Encouraging airlines to acquire NextGen equipment

Implementing NextGen depends not only on FAA, but also on aircraft operators, who must acquire the necessary equipment. For example, aircraft must be equipped with FAA-compatible technology to use Automatic Dependent Surveillance-Broadcast (ADS-B), a key satellite-based component of NextGen. The Air Transport Association expects the U.S. airline industry to pay more than \$20 billion for NextGen equipment over the next 2 decades. Some airlines have purchased some of the necessary technology, but overall, airlines are waiting for FAA to specify requirements and address funding concerns. One objective of the new mid-term task force is to help operators identify the benefits of acquiring the equipment sooner rather than later.

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#### Reconfiguring facilities and enhancing runways

NextGen will require a new configuration of ATC facilities and increased runway capacity. FAA has not developed a comprehensive reconfiguration plan, but intends to report on the cost implications of reconfiguration this year. Additionally, FAA has determined that even after planned improvements have been completed at 35 of the busiest airports, 14 airports—including some of the 35 busiest—will still need enhanced capacity by 2025. FAA has begun implementing the High-Density Terminal and Airport Operations initiative, which is intended to increase the capacity of existing runways at busy airports through changes in the requirements for aircraft separation and spacing, among other things.

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#### Sustaining the current ATC system and maintaining facilities

During the transition to NextGen, FAA must continue to maintain existing systems. More and longer unscheduled outages of existing ATC equipment and ancillary support systems indicate more frequent system failures. FAA says that it considers user impact and resource efficiency when planning and

responding to equipment outages. In addition, FAA estimated a one-time cost to repair existing terminal facilities ranging from \$250 million to \$350 million.

#### **What Is the Way Forward?**

##### ***Align responsibilities to accelerate NextGen:***

- After the recent reorganization of the FAA office responsible for implementing NextGen, many NextGen capabilities continue to span operational units both within and outside that office. The division of responsibility for NextGen efforts among them is not clear. Monitoring the effects of the reorganization would inform decisionmakers about the progress of NextGen.
- FAA has taken important steps, such as forming partnerships with industry, to accelerate the availability of NextGen capabilities. As we have stated in other reports, these types of partnerships are beneficial in accomplishing program objectives in a timely manner.

##### ***Incentivize purchase of new equipment:***

- FAA will need to work with the stakeholders to explore a range of potential options available to provide incentives to aircraft operators to purchase equipment and to suppliers to develop that equipment. These options could include some combination of mandated deadlines, operational credits, or equipment investment credits that financially support equipment implementation for a limited initial set of aircraft operators.

##### ***Plan for future needs:***

- The House reauthorization bill, H.R. 915, 111th Cong. (2009), provides a step forward in directing FAA to establish a working group to develop criteria and make recommendations for the realignment of services and facilities—considering safety, potential cost savings, and other criteria, in concert with stakeholders, including employee groups—to assist in the NextGen transition. Until FAA establishes this working group and they develop recommendations, the configurations needed for NextGen cannot be implemented and potential savings that could help offset the cost of NextGen will not be realized.
- Our research has shown that the full implementation of NextGen should be considered necessary, but not necessarily sufficient, to fully eliminate current and future delays and congestion. Planning infrastructure projects to increase capacity, such as building additional runways, can be a lengthy process, and would require significant advance planning.

##### ***Allocate resources to legacy systems:***

- It will be critical for FAA to ensure the safety and efficiency of the legacy ATC systems, since they will be the core of the national airspace system for a number of years and, in some cases, will become part of NextGen. These circumstances will require the agency to continue to identify the necessary resources to implement a robust preventive and regular maintenance strategy and to support the skilled personnel that will be required to implement the strategy.



Safety

Strengthening Oversight Of Aviation Safety

What Is the Issue?	
Enhancing access to aviation safety data	<p>The U.S. commercial aviation industry is among the safest in the world. However, when passenger airlines have accidents or serious incidents, regardless of their rarity, the consequences can be tragic, as a single accident can result in hundreds of deaths. In order to maintain the industry's current level of safety, it is important that FAA's oversight and monitoring provide early warnings of potential safety risks. Key aspects of strengthening FAA's oversight of aviation safety include (1) enhancing FAA's access to aviation safety data as it moves to a safety management system approach, (2) improving runway and ramp safety, and (3) improving safety in several industry sectors—air ambulances, air cargo, and general aviation.</p>
	<p>FAA's ability to monitor and manage risk is limited by incomplete and inaccurate safety data. Such information is particularly important for FAA as it moves away from an oversight approach that focuses on labor-intensive safety inspections to a data-driven, risk-based safety management system approach. FAA receives important data through its partnership programs with industry, such as the Aviation Safety Action Program (ASAP), through which pilots and others voluntarily report safety-related incidents. These programs help identify and correct safety issues before they result in an accident. However, some major carriers have recently discontinued ASAP programs because of disagreements between the pilot union and management over what can be reported and what actions management can take against reporting pilots. Additionally, concerns have been raised that a legal decision in 2008 allowing ASAP reports to be disclosed to litigants in a court of law under certain circumstances may result in fewer reports. FAA is in the early stages of planning and developing the Aviation Safety Information Analysis and Sharing (ASIAS) initiative, the goal of which is to provide access to large volumes of federal and industry data, including ASAP. However, the agency has not established time frames or a roadmap for achieving its goal for ASIAS.</p>
Improving runway and ramp safety	<p>—</p>
	<p>In fiscal year 2008, 25 serious runway incursions—when collisions between aircraft on runways were narrowly avoided—occurred, 9 of which involved commercial aircraft. In addition, since 2001, there have been at least 18 runway overruns—when an aircraft goes beyond the end of a runway—that resulted in 26 fatalities. FAA has taken recent actions to improve runway safety, including (1) conducting safety reviews at airports; (2) establishing the FAA-industry Runway Safety Council to analyze the root causes of serious incursions and recommend runway safety improvements; (3) testing a voluntary safety reporting program for air traffic controllers; and (4) issuing its National Runway Safety Plan in December 2008.</p> <p>At least 29 fatal ramp accidents have occurred since 2001. However, efforts to improve airport ramp safety are hindered by a lack of complete accident data and standards for ground handling. FAA has generally taken an indirect role in overseeing ramp safety, and there are no federal or industrywide standards for ramp operations. Varied standards for ramp operations could lead to confusion about operating procedures and safety rules among ground handling companies that provide service to several airlines and increase the likelihood of accidents.</p>

Promoting  
safety in  
other  
industry  
sectors

From 2002 through 2008 at least 74 *air ambulance* accidents occurred—the highest number since the 1980s—with at least 84 fatalities. Because FAA does not collect data on the number of air ambulance flights or flight hours, it is not known whether the increased number of accidents reflects an increased accident rate or growth in the industry. In response to recent air ambulance accidents, FAA has encouraged risk management training for air ambulance flight crews and has promoted the use of technology (e.g., night vision goggles and helicopter terrain awareness and warning systems).

Since 2002, 42 fatal *air cargo* accidents have occurred—all involving smaller air cargo carriers. For the most part, FAA safety efforts are the same for both passenger and cargo operators. Such efforts have likely enhanced cargo safety. For example, FAA's Capstone program, which began in 1999, focuses on reducing aviation accidents in Alaska, where the terrain and weather pose particular challenges to pilots, through the use of better technology on the aircraft. The number of cargo accidents in Alaska dropped from 20 in 1997 to 4 in 2008. In addition, the air cargo industry is advocating the use of safety management systems to improve safety.

A lack of national data on operations involving air ambulances, air cargo, and *general aviation* hinders FAA's ability to evaluate accident trends and manage risks in these sectors. For example, an average of 324 fatal general aviation accidents has occurred annually since 2000. Similar to data on air ambulance operators, FAA does not collect actual flight data for general aviation operators, which prevents a meaningful evaluation of accident trends.

#### What Is the Way Forward?

##### *Work with carriers to improve data access:*

- We agree with recommendations by the National Transportation Safety Board (NTSB) and others that FAA strongly encourage and assist air carriers in implementing ASAP. In addition, we are currently assessing FAA's use of data in safety oversight for the Chairman of this Subcommittee and others. We expect to issue a report and recommendations to FAA later this year.

##### *Implement national runway safety plan and continue data collection:*

- FAA needs to continue to implement recommendations that we made in November 2007 to enhance runway and ramp safety, including implementing its recently issued national runway safety plan and continuing to develop plans to collect and analyze data on runway overruns and excursions and ramp accidents. Such data would help FAA to understand the nature and scope of runway and ramp safety events and identify corrective actions.

##### *Collect national safety data and establish an appropriate regulatory approach for some industry sectors:*

- FAA lacks information to monitor the rate of accidents and determine the effectiveness of its oversight. FAA needs to continue to develop a process to collect such data for air ambulances, as we previously recommended.
- NTSB has recommended that FAA establish an appropriate regulatory approach for air ambulance operators, whose pilots operate under different standards depending on whether they are carrying patients. The standards differ significantly in two key areas—(1) weather and visibility minimums and (2) rest requirements for pilot and crew.
- We plan to issue a report to this Subcommittee on air cargo safety later this year that discusses what FAA and industry could do to further improve cargo safety.

## Mobility

### Reducing Congestion And Providing Access To The National Airspace System

#### What Is the Issue?

Flight delays and cancellations at congested airports continue to plague the U.S. aviation system. Other airports are facing the loss of scheduled air service because of the airline industry's current contraction. Key factors hindering FAA's ability to provide efficient mobility through the national airspace system include (1) continued congestion at some large airports and (2) changes in the aviation industry that could affect service to small communities.

#### Addressing continued congestion

According to the Department of Transportation (DOT), almost one in four flights either arrived late or was canceled in 2008, and the average flight delay increased despite a 6 percent decline in the total number of operations through December 2008. Delays are particularly a problem at a few airports, such as those in the New York area, where less than 70 percent of flights arrive on time. Because the entire airspace system is highly interdependent, delays at one airport may lead to delays rippling across the system and throughout the day. Delays and cancellations are caused by a variety of factors, among them airline and aircraft problems, weather, security, and congestion in the national airspace system.

DOT and FAA initiated or completed a number of actions in 2008 intended to enhance system capacity, meet the demand for air travel, and reduce delays. For example:

- In the New York area, FAA implemented a number of operational and procedural initiatives to reduce congestion, including placing or maintaining caps on the number of hourly operations.
- Airspace redesign improvements have begun at airports in the New York area, Chicago, Houston, and other regions. These redesigns are complex and time-consuming, in part because of the environmental review process that is typically required.
- As a demand management tactic, DOT issued a policy statement amending the Airport Rates and Charges policy of 1996. One of the policy amendments allows operators of congested airports greater discretion in setting their landing fees.
- New runway projects in Chicago, Washington-Dulles, and Seattle were completed.
- As part of NextGen, FAA is working to provide aircraft with onboard, real-time weather information and to integrate weather information into decision support tools to help avoid weather-related delays.

#### Providing service to small communities

Continuing to provide mobility options and access to air service is becoming more difficult in the face of changes in the structure and economics of the aviation industry. The Essential Air Service (EAS) is a DOT subsidy program enacted to guarantee that certain small communities that otherwise would not receive air service will maintain a minimal level of scheduled air service.

- Airline consolidation and other factors have reduced the number of air carriers able and willing to participate in EAS. Today, 10 carriers are active in the EAS program—compared with 14 in 1998—and 4 of these serve more than three-quarters of the routes.

- Also, because air service operating costs are rising—including fuel, labor, and regulatory costs—the EAS carriers face increased competition for passengers with low-cost carriers at larger airports. In 2008, some communities in the EAS program temporarily lost service when three airlines ceased operating.

The EAS program has not been extensively revised since it was developed 30 years ago, despite changes in the structure and economics of the aviation industry.

#### **What Is the Way Forward?**

##### ***Reduce congestion through long-term investment or other actions:***

- The growing air traffic congestion and delay problems faced in this country are the result of many factors, including airline practices, inadequate investment in airport and air traffic control infrastructure, and how the use of aviation infrastructure is priced. DOT and FAA should be commended for taking steps last year to reduce delays and cancellations, but as we predicted last summer, many of these initiatives were unlikely to substantially reduce congestion. Long-term investments in airport infrastructure and air traffic control, or other actions by Congress, DOT, or FAA could address the fundamental imbalance between underlying demand for, and supply of, airspace capacity.

##### ***Consider changes to EAS:***

- The possible increase in the number of communities requiring subsidies to retain service and the associated costs raise concerns about the amount of funding that will be needed to continue to provide service in an environment of federal deficits. As a result, it is an appropriate time to conduct a comprehensive review of the EAS program to determine how it might be improved as well to consider additional options for providing federal assistance that may more efficiently facilitate small communities' connections to the transportation network, such as rail or bus.

## Environment

## Addressing Aviation's Impact On The Environment

### What Is the Issue?

Conducting airport capacity expansion projects requires compliance with laws, rules, and regulations intended to address environmental, public health, and noise concerns. Failure to meet these requirements can delay capacity expansion projects. Airports implementing expansion projects—such as new runways—must be prepared to address concerns about noise, emissions, and water quality.

#### Reducing effects of noise on communities

Community opposition to aviation-related noise, particularly from jet aircraft during takeoffs and landings, could constrain airport operations and the future growth of the national airspace system. Perceptions of aviation noise vary from one individual to another, and, as a result, even comparatively low levels of noise exposure can create opposition to airport expansion in communities surrounding airports. More stringent standards for aircraft noise levels—imposed through the Airport Noise and Capacity Act of 1990 and enabled by technological advancements—led to the retirement or modification of older, noisier jet aircraft. As a result, many fewer people are exposed to significant noise levels as defined by FAA. The agency assisted airlines in meeting the act's requirements to phase out or retrofit the noisiest aircraft, arguably one of the biggest accomplishments in reducing aviation noise. Local government decisions that allow communities to expand near airports may, however, erode some of the gains from these reductions in noise. FAA has issued guidance that discourages incompatible land uses, such as residences, schools, and hospitals, in areas with significant aviation noise. Communities, however, face strong development pressures, and research suggests that federal land-use guidelines have had mixed results in deterring residential development in these areas.

#### Controlling emissions

Although aviation-related activities produce a small portion of total U.S. air pollution, these pollutants are expected to increase with forecasted growth in the aviation sector. Aircraft are the primary source of aviation emissions, but airport service and passenger vehicles also produce emissions. Together, aircraft operations in the vicinity of the airport and other airport sources emit nitrogen oxides and volatile organic compounds, which lead to the formation of ground-level ozone (that is, smog), and other substances that contribute to local air pollution, as well as carbon dioxide and other greenhouse gases that rise into the atmosphere and contribute to climate change. FAA's Voluntary Airport Low Emissions Program allows the use of federal funding for airport equipment that reduces emissions, such as the purchase of electric ground support equipment. Airports in areas that do not meet air quality standards set by the Environmental Protection Agency under the Clean Air Act may need to mitigate emissions in order to gain approval for development projects. In addition, as communities gain more awareness of the health and environmental effects of aviation emissions, opposition to airport expansion projects, which has thus far focused mainly on aviation noise, could broaden to include emissions.

#### Maintaining water quality

Airports can potentially affect water quality through activities such as deicing, as well as aircraft and vehicle fueling and maintenance. Chemicals from such activities may contaminate groundwater and surface water supplies if allowed to flow from airport facilities to storm drains or waterways. Airports involved

in runway expansion projects, particularly those located near wetlands and other bodies of water, may need to take expensive measures to contain or treat runoff. Fuel spills are another concern: leaks, improper connections, and improperly monitored storage tanks can lead to fuel spills, which may contaminate soil or groundwater if not contained or diverted to an established treatment system.

**Addressing  
interrelated  
environmental  
issues**

FAA has taken similar approaches in addressing a number of these issues, particularly when those issues are interrelated. FAA is addressing environmental concerns through grant programs, research and development efforts, and technical assistance.

- FAA has contributed to a number of federal research and development efforts that have increased the understanding of aviation's environmental effects, improved available options for addressing those effects, and achieved significant reductions in aircraft noise and emissions over the last 30 years.
- FAA provides funding and technical assistance for many airport environmental activities. As a result, airports have instituted residential sound insulation programs, implemented policies to reduce emissions, and constructed stormwater retention basins, among other things.
- FAA and airports have begun implementing elements of NextGen that will use new technology to guide more efficient flight paths, reducing aircraft noise and emissions.

#### **What is the Way Forward?**

*Contribute to further advances:*

- FAA's plans to provide funding to accelerate the maturation and implementation of aviation development ideas could contribute to environmental improvements.
- FAA's plans for continued investment in research and development could help balance trade-offs among environmental issues, such as increased emissions from quieter aircraft engines.
- FAA's plans to foster the development of alternative fuels and to assess the health and welfare risks of aviation noise and emissions could address environmental concerns.
- Implementing NextGen in a timely manner could allow for full realization of capabilities to reduce emissions and improve fuel-efficient aircraft routing to achieve operational improvements in the near term, while awaiting results from longer-term research and development efforts.

We expect to issue reports to this Subcommittee later this year on efforts to reduce aviation's contribution to greenhouse gas emissions and on airports' efforts to address environmental concerns.



## Human Capital

### Ensuring A Sufficient, Trained Workforce

#### What Is the Issue?

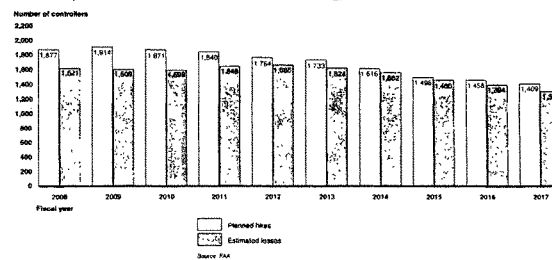
As it deals with the other reauthorization issues identified in this statement, FAA also faces workforce issues. To ensure that it has a sufficient number of personnel trained to handle the tasks associated with managing the national airspace system safely and efficiently, FAA will have to (1) hire and train thousands of new air traffic controllers while ensuring that aircraft continue to fly safely, 24 hours a day, 7 days a week; (2) ensure that its workforce has the right mix of technical skills to implement NextGen; and (3) work to improve relations with its labor unions.

#### Replacing the retiring controller workforce

FAA projects that about 72 percent of its controller workforce will become eligible for retirement by 2016, and between 2008 and 2017 it will lose approximately 15,000 controllers through retirement and other reasons. To replace them, FAA has already begun hiring new controllers and plans to hire almost 17,000 additional controllers by fiscal year 2017.

FAA is on track with its hiring and has instituted training improvements to reduce the amount of time controllers remain in trainee status. However, the pace of hiring and training has changed some of FAA's training procedures. More often than in the past, FAA sends developmental controllers directly to busy facilities to begin their on-the-job training. In the past, developmental controllers would normally go to less-busy facilities for their first assignment, where they would gain experience before moving up to a busier facility. FAA must also carefully manage the flow of developmental controllers to each facility so that their numbers do not overwhelm the facility's capacity to train them. Furthermore, with fewer fully certified controllers and greater on-the-job training demands, controllers may work more overtime hours. Overtime can lead to fatigue, and many controllers routinely work overtime, raising safety concerns.

FAA's Projected Air Traffic Controller Losses and Hiring, Fiscal Years 2008-2017



#### Ensuring technical expertise for implementing NextGen

To manage the implementation of NextGen, FAA will need staff with technical skills, such as systems engineering and contract management expertise. Because of the scope and complexity of the NextGen effort, the agency may not currently have the in-house expertise to manage the transition to NextGen without assistance. FAA contracted with the National Academy of Public Administration (NAPA) to determine the mix of positions—such as contract specialists, program managers, engineers, scientists, researchers, and financial specialists—and strategies that would provide the necessary

expertise for NextGen. FAA estimates that it will need to hire about 350 additional staff over the next 2 years to obtain the needed skills.

Improving  
labor  
management  
relations

FAA is involved in extended contract disputes with two of its largest labor unions. The air traffic controllers are operating under a contract that resulted from an impasse, while bargaining units from the safety inspectors' union are operating under an old contract because no agreement was reached on a new one more than 5 years ago. According to senior union representatives, these situations contribute to low morale. As a result, the strained relationship between FAA management and the unions could slow the implementation of NextGen.

#### What Is the Way Forward?

##### *Hire and integrate:*

- As FAA continues to hire additional controllers, it needs to integrate new staff in a timely fashion so as not to delay the integration of new technologies and the transformation of the national airspace system. We are comparing FAA's human capital structures and processes with those of leading organizations and expect to issue a report to this Subcommittee later this year.

##### *Provide training:*

- FAA has to provide technical training for all of its controllers on the new equipment necessary for NextGen while maintaining skills on existing equipment.
- FAA will need to be vigilant to ensure that sending developmental controllers directly to busy facilities neither impairs safety nor results in increased failures that might not have occurred if they had been sent to less-busy facilities.

##### *Work with unions:*

- While some progress has been made in working with labor unions, it should remain a priority for the involved parties to follow through and reach agreement.

## Timely Reauthorization

## Ensuring Timely Reauthorization Of FAA Programs

### What Is the Issue?

FAA's authorizing legislation expired at the end of fiscal year 2007, and for the past 17 months, the agency has been operating under a series of funding extensions and continuing resolutions. In addition, the excise taxes that fund the Airport and Airway Trust Fund (Trust Fund) also expired at the end of fiscal year 2007 but were extended as a part of 2008 continuing resolutions. Several key issues directly affect future funding and FAA's ability to move forward with plans to address the needs of the national airspace system.

- *Dealing with the effects of temporary funding measures:* The short-term funding extensions and continuing resolutions could lead to delays in key capital projects.
  - According to FAA, the agency requires funding to support NextGen near-term decision points and associated pre-implementation activities, which will initiate new acquisitions programs for the midterm (2013 through 2018). Delays in NextGen funding could delay these critical activities and push the achievement of operational capabilities and operational improvements for the national airspace system beyond the midterm, according to FAA.
  - Delays in reauthorizing FAA programs have also hampered the planning and development of needed airport infrastructure projects funded through the Airport Improvement Program (AIP), according to FAA. Under short-term extensions of AIP or partial-year continuing resolutions, an airport's entitlement funding is prorated. Because of the uncertainty associated with future AIP funding levels, airport sponsors are less willing to commit partial-year entitlements to projects, instead electing to defer projects to subsequent years. According to FAA, approximately \$209 million of fiscal year 2009 airport entitlements remained unused as of the end of January. Delays could lead to increases in construction costs.
- *Declining revenues in the Trust Fund:* Trust Fund revenues have been less than previously forecasted, and forecasts of future revenues have declined. For the short run, Congress faces the likelihood of lower-than-expected excise tax revenues, mainly resulting from the downturn in the economy, and the impact of this shortfall on the availability of Trust Fund revenues to fund FAA programs this year and next. In the longer run, revenues may be lower than projected several years ago, meaning that there may be less money available for capital projects than had been previously anticipated without a larger contribution to FAA's overall funding from the general fund. The House reauthorization bill attempts to address the concern that the Trust Fund balance might no longer be large enough to ensure that sufficient Trust Fund revenues are available to FAA even when actual revenues fall short of forecasted revenues. It proposes to base expenditures from the Trust Fund on 95 percent, rather than 100 percent, of estimated Trust Fund revenues. This would reduce the likelihood of running the Trust Fund balance to zero, an event that would create implications for Congress in funding FAA programs.
- *Lack of a permanent administrator:* The agency is facing a critical point in its transformation of the national airspace system, with many crucial decision points in the next 2 fiscal years. A permanent administrator could help guide FAA through these times.

Key programs discussed in this testimony, such as for NextGen and safety, are adversely affected by breaks in funding. The House reauthorization bill proposes actions to address many of the issues raised in this statement. To its credit, FAA has also undertaken a number of initiatives to address the issues in the meantime. However, timely reauthorization—that takes into account the issues addressed here—is critical to ensuring the continuity of FAA's current programs and the agency's continuing progress toward NextGen.

## Appendix

### Contributors

For further information on this testimony, please contact Dr. Gerald L. Dillingham at (202) 512-2834 or [dillinghamg@gao.gov](mailto:dillinghamg@gao.gov). Individuals making key contributions to this testimony include Teresa Spisak (Assistant Director), Paul Aussendorff, Lauren Calhoun, Jay Cherlow, Cathy Colwell, Jessica Evans, Cathv Kim, Bonnie Leer, Jessica Lucas-Judy, Ed Menoche, Richard Scott, and Pam Vines.

### Selected GAO Products

*Federal Aviation Administration: Challenges Facing the Agency in Fiscal Year 2009 and Beyond.* GAO-08-460T. Washington, D.C.: February 7, 2008.

*Federal Aviation Administration: Challenges Facing the Agency in Fiscal Year 2009 and Beyond.* GAO-07-400T. Washington, D.C.: February 14, 2007.

### NextGen

*Next Generation Air Transportation System: Status of Systems Acquisition and the Transition to the Next Generation Air Transportation System.* GAO-08-1078. Washington, D.C.: September 11, 2008.

*Next Generation Air Transportation System: Status of the Transition to the Future Air Traffic Control System.* GAO-07-784T. Washington, D.C.: May 9, 2007.

*Joint Planning and Development Office: Progress and Key Issues in Planning the Transition to the Next Generation Air Transportation System.* GAO-07-600T. Washington, D.C.: March 20, 2007.

*Federal Aviation Administration: Key Issues in Ensuring the Efficient Development and Safe Operation of the Next Generation Air Transportation System.* GAO-07-636T. Washington, D.C.: March 22, 2007.

### Safety

*Aviation Safety: FAA Has Increased Efforts to Address Runway Incursions.* GAO-08-1169T. Washington, D.C.: September 25, 2008.

*Runway Safety: Progress on Reducing Runway Incursions Impeded by Leadership, Technology, and Other Challenges.* GAO-08-481T. Washington, D.C.: February 13, 2008.

*Aviation Runway and Ramp Safety: Sustained Efforts to Address Leadership, Technology, and Other Challenges Needed to Reduce Accidents and Incidents.* GAO-08-29. Washington, D.C.: November 20, 2007.

*Aviation Safety: Improved Data Collection Needed for Effective Oversight of Air Ambulance Industry.* GAO-07-353. Washington, D.C.: February 21, 2007.

### Mobility

*Commercial Aviation: Impact of Airline Crew Scheduling on Delays and Cancellations of Commercial Flights.* GAO-08-1041R. Washington, D.C.: September 17, 2008.

*FAA Airspace Redesign: An Analysis of the New York/New Jersey/Philadelphia Project.* GAO-08-786. Washington, D.C.: Washington, D.C.: July 31, 2008.

*National Airspace System: DOT and FAA Actions Will Likely Have a Limited Effect on Reducing Delays during Summer 2008 Travel Season.* GAO-08-934T. Washington, D.C.: July 15, 2008.

*Commercial Aviation: Programs and Options for Providing Air Service to Small Communities.* GAO-07-793T. Washington, D.C.: April 25, 2007.

*Commercial Aviation: Programs and Options for the Federal Approach to Providing and Improving Air Service to Small Communities.* GAO-06-398T. Washington, D.C.: September 14, 2006.

**Environment**

*Aviation and the Environment: NextGen and Research and Development Are Keys to Reducing Emissions and Their Impact on Health and Climate.* GAO-08-706T. Washington, D.C.: May 6, 2008.

*Aviation and the Environment: Impact of Aviation Noise on Communities Presents Challenges for Airport Operations and Future Growth of the National Airspace System.* GAO-08-216T. Washington, D.C.: October 24, 2007.

**Human Capital**

*Federal Aviation Administration: Efforts to Hire, Staff, and Train Air Traffic Controllers Are Generally on Track, but Challenges Remain.* GAO-08-908T. Washington, D.C.: June 11, 2008.

**Reauthorization**

*Aviation Finance: Observations on the Current FAA Funding Structure's Support for Aviation Activities, Issues Affecting Future Costs, and Proposed Funding Changes.* GAO-07-1163T. Washington, D.C.: August 1, 2007.

*Federal Aviation Administration: Observations on Selected Changes to FAA's Funding and Budget Structure in the Administration's Reauthorization Proposal.* GAO-07-625T. Washington, D.C.: March 21, 2007.

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**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**

**James L. Oberstar**  
**Chairman**

**Washington, DC 20515**

**John L. Mica**  
**Ranking Republican Member**

February 18, 2009

David Heymsfeld, Chief of Staff  
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James W. Conn II, Republican Chief of Staff

Dr. Gerald Dillingham  
Director, Physical Infrastructure Issues  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Dr. Dillingham:

On February 11, 2009, the Subcommittee on Aviation held a hearing on the "FAA Reauthorization Act of 2009."

Attached are questions to answer for the record. I would appreciate receiving your written response to these questions within 14 days so that they may be made a part of the hearing record.

Sincerely,

A handwritten signature in black ink that reads "Jerry F. Costello".

Jerry F. Costello  
Chairman

Subcommittee on Aviation



**FEBRUARY 11, 2009  
SUBCOMMITTEE ON AVIATION  
HEARING ON**

**FAA REAUTHORIZATION ACT OF 2009**

**QUESTIONS FOR THE RECORD**

**TO:**

**DR. GERALD DILLINGHAM,  
DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES  
U.S. GOVERNMENT ACCOUNTABILITY OFFICE**

1. Dr. Dillingham, in your written testimony you state that the FAA will need to work with the stakeholders to explore a range of potential options available to provide incentives to purchase equipment and to suppliers to develop that equipment. You further state that these options could include some combination of mandated deadlines, operational credits, or equipment investment credits that financially support equipment implementation for a limited initial set of aircraft operators. Please define what you mean by “operational credits” or “equipment investment credits” and explain how they might be used.
2. Dr. Dillingham, in your written testimony you state that the FAA has entered into agreements with private sector firms to conduct NextGen technology demonstration projects. Please provide the Subcommittee with a list of these projects.



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**

**James L. Oberstar**  
**Chairman**

**Washington, DC 20515**

**John L. Mica**  
**Ranking Republican Member**

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February 20, 2009

James W. Conn II, Republican Chief of Staff

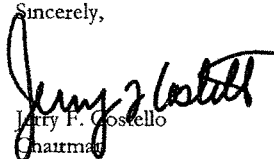
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Subcommittee on Aviation

**FEBRUARY 11, 2009  
SUBCOMMITTEE ON AVIATION  
HEARING ON**

**FAA REAUTHORIZATION ACT OF 2009**

**QUESTIONS FOR THE RECORD**

**To:**

**DR. GERALD DILLINGHAM,  
DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES  
U.S. GOVERNMENT ACCOUNTABILITY OFFICE**

1. GAO has previously reported that FAA briefed the industry on preliminary near-term costs for NextGen in April 2006, and this preliminary estimate provided approximately \$1 billion more through 2012 than FAA's most recent 5 year capital investment plan (CIP) for FAA facilities and equipment. If Congress were to provide the level of funding outlined in the FAA's preliminary estimate, approximately \$1 billion more through 2012 than the most recent CIP, would it help to accelerate the development and deployment of NextGen?
2. Would additional Facilities and Equipment funding help to bridge the so-called NASA gap? In other words, could it be used for the type of intermediate development and demonstration projects that NASA would no longer fund?
3. Would you cite additional research, development and deployment that could be done with funding over and above FAA's capital investment plan funding levels?



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**  
**Washington, DC 20515**

**James L. Oberstar**  
**Chairman**

David Heymsfeld, Chief of Staff  
Ward W. McCarragher, Chief Counsel

**John L. Mica**  
**Ranking Republican Member**

James W. Conn II, Republican Chief of Staff

February 23, 2009

Dr. Gerald Dillingham  
Director, Physical Infrastructure Issues  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Dr. Dillingham:

On February 11, 2009, the Subcommittee on Aviation held a hearing on the "FAA Reauthorization Act of 2009."

Attached are questions to answer for the record. I would appreciate receiving your written response to these questions within 14 days so that they may be made a part of the hearing record.

Sincerely,

A handwritten signature in black ink that reads "Jerry F. Costello".

Jerry F. Costello  
Chairman  
Subcommittee on Aviation

**FEBRUARY 11, 2009  
SUBCOMMITTEE ON AVIATION  
HEARING ON**

**FAA REAUTHORIZATION ACT OF 2009**

**QUESTIONS FOR THE RECORD**

**To:**

**DR. GERALD DILLINGHAM,  
DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES  
U.S. GOVERNMENT ACCOUNTABILITY OFFICE**

Dr. Dillingham, GAO recently took the FAA's air traffic control modernization program off its "high risk" list. With regard to this decision, please provide me with answers to the following questions:

- a. Does GAO draw a distinction between the FAA's ATC modernization program and the Next Generation Air Transportation System (NextGen) effort? If so, please explain the distinction?
- b. Does GAO deem NextGen to be a "high risk" effort? If not, why not?



G A O

Accountability • Integrity • Reliability

United States Government Accountability Office  
Washington, DC 20548

March 10, 2009

The Honorable Jerry Costello  
Chairman  
Subcommittee on Aviation  
Committee on Transportation and Infrastructure  
House of Representatives

Subject: *Responses to Questions for the Record: February 11, 2009, Hearing on the  
FAA Reauthorization Act of 2009*

Dear Mr. Chairman:

This letter responds to your request that we address questions submitted for the record related to the February 11, 2009, hearing entitled *FAA Reauthorization Act of 2009*. Our attached responses to these questions are based on updates to our previous work (see enc. 2) and our knowledge of the areas addressed by the questions.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 10 days after its issuance date. At that time, we will send copies of this report to the Acting Administrator, Federal Aviation Administration. We will make copies available to others on request. The report will also be available on GAO's Web site at [www.gao.gov](http://www.gao.gov).

If you have any questions or would like to discuss the responses, please contact me at (202) 512-2834 or [dillingham@gao.gov](mailto:dillingham@gao.gov).

Sincerely yours,

Gerald L. Dillingham, Ph.D.  
Director  
Physical Infrastructure Issues

Enclosures

Enclosure I

**February 11, 2009  
Subcommittee on Aviation  
Hearing on  
FAA Reauthorization Act of 2009  
Questions for the Record**

**To:  
Dr. Gerald Dillingham  
Director, Physical Infrastructure Issues  
U.S. Government Accountability Office**

- 1. Dr. Dillingham, in your written testimony you state that the FAA will need to work with the stakeholders to explore a range of potential options available to provide incentives to purchase equipment and to suppliers to develop that equipment. You further state that these options could include some combination of mandated deadlines, operational credits, or equipment investment credits that financially support equipment implementation for a limited initial set of aircraft operators. Please define what you mean by “operational credits” or “equipment investment credits” and explain how they might be used.**

RESPONSE: The next generation air transportation system (NextGen) includes the policies, procedures, and equipment that will allow satellite-based navigation in the national airspace system. However, this system's ability to meet forecasted traffic volumes also depends on aircraft being equipped to take advantage of NextGen capabilities. Purchase incentives could encourage carriers to equip their aircraft as soon as the Federal Aviation Administration (FAA) makes the procedures for operating in a NextGen environment available. Traditionally, FAA mandates the equipage of aircraft and provides several years for operators to comply. For a variety of reasons, some operators do not equip until the deadline for equipping is near. FAA has proposed an option to incentivize early equipage. It is referred to as “best-equipped, best-served.” Under this option, FAA would offer those aircraft operators who choose to equip their aircraft as soon as possible with various operational benefits, such as preferred airspace, routings, or runway access.

Another option, conceptualized by a Boeing air traffic management expert, is a type of “reverse auction” in which federal investment tax credits would be combined with operational benefits. Under this option, the carriers would bid for a level of investment credits in exchange for equipping a particular number of aircraft within a specified early time frame. The value of the investment credit would decrease as the auction proceeded. Those aircraft that were equipped would then operate under the best-equipped, best-served option. The Boeing expert has acknowledged that the total resources needed to pay for such tax credits would be quite large if the credits were extended to all carriers. However, he acknowledged that if the tax credit were extended only to a “critical mass” of carriers—for example, the first third of the carriers—the costs would be about \$750 million annually. He further stated that if the auction drove down the price by a third, the costs could be about \$500 million a year. But these costs would be over and above what FAA's Air Traffic Organization (ATO) would already be spending on its own

## Enclosure I

equipment, facilities, and training. In any case, the proposal could only be implemented if Congress were to find some additional large source of funding for the tax credits.

**2. Dr. Dillingham, in your written testimony you state that the FAA has entered into agreements with private sector firms to conduct NextGen technology demonstration projects. Please provide the Subcommittee with a list of these projects.**

RESPONSE: FAA's NextGen demonstration projects for fiscal year 2009 are listed in the following table. Some projects are in the early planning stages and the partners have not been selected yet; other projects continue from previous years.

Project	Description	Location	Partners
Surface Traffic Management	Provide situational awareness information to and data exchange among airport stakeholders using technology such as Airport Surface Detection Equipment-Model X (ASDE-X) to support new decision support tools.	Memphis, John F. Kennedy, and Orlando airports	Airport authorities, FedEx, and Northwest Airlines
Surface Conformance Monitoring	Begin to link the movement of aircraft on the surface between air traffic control and future cockpit moving map displays.	TBD	TBD
Arrival Management (Continuous Descent Arrivals, Tailored Arrivals)	Use integrated automation tools and data communication to provide a cleared trajectory path, which is transferred to the aircraft and flown by the flight management system.	Miami, Charlotte, Atlanta, Los Angeles, Charleston (SC), and San Francisco airports	NASA Ames, Boeing, Sensis, American Airlines, Delta Airlines, U.S. Air Force Mobility Command, Georgia Institute of Technology, MITRE Corporation, and foreign carriers
Three-dimensional Path Arrival Management (3D-PAM)	Will provide, at high-density airports, a means to achieve accurate, predictable, and fuel-efficient routes, which are designed to decrease controller and pilot workload, as well as decrease adverse environmental impacts (emissions and noise) while potentially enhancing airport throughput.	Denver	NASA Ames, Boeing
Ground Based Augmentation System (GBAS)	Initially define and test Area Navigation/ Required Navigation Performance (RNAV/RNP) approach routes into and out of Teterborough, and separate Teterborough traffic from Newark's traffic. Operational demonstrations will be conducted using satellite navigation (SATNAV) technology in a complex environment to assist in identifying and implementing RNAV/RNP operations for performance-based navigation.	Newark and Teterborough airports	NY Port Authority and Continental Airlines
Oceanic Trajectory Based Operations (AIRE and ASPIRE)	Demonstrate potential benefits for oceanic trajectory optimization in terms of fuel savings and emissions reductions.	Atlantic and Pacific Oceans (beginning in fiscal year 2010) operational areas	Boeing; CSSI, Inc.; MITRE Corporation; American Airlines; foreign carriers and European partners



## Enclosure I

Project	Description	Location	Partners
International Flight Data Object (IFDO)	Conduct research, development, and laboratory proof of concept of IFDO exchange using collaborative flight planning capability for oceanic and en route air traffic services.	Daytona Beach airport	Lockheed Martin, Computer Sciences Corporation, Boeing, Harris, Adacel, and Nav Portugal
Four-Dimensional Flight Management System	One of a series of joint demonstration projects aimed at promoting global air traffic control leadership and collaboration with research and development activities in other countries.	TBD	TBD
Unmanned Aircraft Systems (UAS)	Examine potential for widespread integration of UASs into the future NextGen environment.	Kennedy Space Center	AAI Corporation, General Atomics, and GE
Network Enabled Operations Program	Develop and leverage network information technology to provide an agile, highly connective network for net-centric shared situational awareness.	TBD	TBD
Staffed NextGen Towers	Provide surface and tower services without the requirement for direct visual observation by air traffic control personnel from an airport tower cab.	TBD	TBD
Weather Integrated into Traffic Management Advisor and En Route Automation Modernization	Research, evaluate, and demonstrate NextGen concepts, procedures, technologies, and capabilities. Initial demonstration to show the incorporation of convective weather data into the Traffic Management Advisor tool to better maintain airport arrival rates.	Daytona Beach airport	Embry-Riddle Aeronautical University; Lockheed Martin; Computer Sciences Corporation; ENSCO, Inc.

Source: GAO analysis of FAA documents.

**3. Dr. Dillingham, GAO recently took the FAA's air traffic control modernization program off its "high risk" list. With regard to this distinction, please provide me with answers to the following questions:**

**a. Does GAO draw a distinction between the FAA's ATC modernization program and the Next Generation Air Transportation System (NextGen) effort? If so, please explain the distinction?**

RESPONSE: Yes, GAO draws a distinction between air traffic control (ATC) modernization and NextGen. The ATC modernization program, which was placed on GAO's High-Risk List in 1995, focused primarily on the acquisition of ATC systems. Key projects within that modernization program experienced cost overruns, schedule delays, and performance shortfalls that affected FAA's ability to deliver systems as promised. GAO removed FAA's ATC modernization program from the High-Risk List in January 2009<sup>1</sup> because of the agency's progress in addressing most of the root causes of its past problems and its commitment to sustaining progress in the future.

NextGen is a total transformation of the air transportation system. NextGen represents a paradigm shift from air traffic control to air traffic management. It is a shift from ground-based radar control of aircraft to a satellite-based, aircraft-centric national airspace system. NextGen includes the acquisition of some new systems, but it also involves the

<sup>1</sup>GAO, High-Risk Series: An Update, GAO-09-271 (Washington, D.C., January 2009).

## Enclosure I

integration of “legacy systems” with those new systems, along with the development of policies and procedures that will enable a safe expansion of system capacity and efficiency to meet projected traffic demands by 2025. For example, the implementation of Automatic Dependence Surveillance-Broadcast (ADS-B) technology is designed to enable greater use of existing performance-based navigation techniques, which in turn would lead to a greater number of more efficient, more environmentally-friendly aircraft operations.

NextGen also differs from ATC modernization in its organizational structure. The implementation of NextGen extends beyond FAA’s ATO, which was almost solely responsible for ATC modernization, to other lines of business such as Airports, Safety, and Environment. Additionally, NextGen includes cooperative relations among FAA; the Departments of Transportation, Defense, Homeland Security, and Commerce; the National Aeronautics and Space Administration (NASA); and the White House Office of Science and Technology Policy. It also includes nonfederal aviation stakeholders, such as aircraft and avionics manufacturers, air carriers, airports, and aircraft operators.

**b. Does GAO deem NextGen to be a “high risk” effort? If not, why not?**

RESPONSE: While NextGen is a high-risk effort because of its dollar cost and complexity, it is not currently on GAO’s High-Risk List. NextGen has only recently begun to move from the planning stage to implementation. As we noted in our 2009 High-Risk update, we plan to closely monitor FAA’s efforts to implement NextGen as the program continues to mature. At the request of this Subcommittee, we will be monitoring NextGen’s implementation and regularly updating the Subcommittee. Therefore, NextGen will be receiving the scrutiny that any high-risk program would receive and will be evaluated against criteria set out in our guidance document *Determining Performance and Accountability Challenges and High Risks*.<sup>2</sup>

**4. GAO has previously reported that FAA briefed the industry on preliminary near-term costs for NextGen in April 2006 and this preliminary estimate provided approximately \$1 billion more through 2012 than FAA’s most recent 5 year capital investment plan (CIP) for FAA facilities and equipment. If Congress were to provide the level of funding outlined in the FAA’s preliminary estimate, approximately \$1 billion more through 2012 than the most recent CIP, would it help to accelerate the development and deployment of NextGen?**

RESPONSE: Yes, if Congress provided FAA with additional funding, that funding could be applied to a variety of projects and initiatives that would help to accelerate the development and deployment of NextGen. We discuss the specific research, development, and deployment that could be undertaken should Congress provide additional funding in my response to a question below.

<sup>2</sup>GAO, *Determining Performance and Accountability Challenges and High Risks*, GAO-01-159SP (Washington, D.C.: November 2000).

Enclosure I

**5. Would additional Facilities and Equipment funding help to bridge the so-called NASA gap? In other words, could it be used for the type of intermediate development and demonstration projects that NASA would no longer fund?**

RESPONSE: In the past, NASA conducted a significant portion of aeronautics research and development but the funding for those efforts declined when NASA's aeronautical research portfolio was restructured to focus more on fundamental research. Meanwhile, budget requests for FAA's NextGen-related research and development have increased in recent years to address the gap that resulted from both the previous administration's cuts to NASA's aeronautics research funding and the expanded requirements of NextGen. Nonetheless, our work has identified areas that would benefit from additional research and development, such as the environmental impact of aviation, human factors, and other areas that are discussed further in my response to the question below. Additional research and development in such areas is critical for the timely implementation of NextGen and could benefit from additional funding, should Congress decide to provide it.

**6. Would you cite additional research, development and deployment that could be done with funding over and above FAA's capital investment plan funding levels?**

RESPONSE: While we have not evaluated the full merits of providing additional funding, additional research, development, and deployment could be undertaken or accelerated in several areas with funding over and above the level provided in FAA's 2009 through 2013 CIP. Through our work, we found two closely related areas that are critical and time-sensitive for the implementation of NextGen and could be candidates for increased funding—avionics development and aircraft equipage. Additional support in these areas could accelerate the transition to satellite-based navigation, which requires the commercial fleet to be equipped with advanced avionics. This transition would allow FAA to pursue the elimination of costly ground-based navigation aids; the transition to data link; and the standardization of future aircraft capabilities such as flight management systems, traffic collision avoidance systems, and modular avionics.

The development and deployment of NextGen will require a series of incremental changes that must be demonstrated and tested to help ensure that they do not degrade the safety of current systems. Developing the evidence for regulatory bodies and for the public that these incremental changes are safe will be time-consuming, costly, and difficult. For example, additional development funding could help with the testing of a system in which pilots and air traffic controllers share in decisions about the aircraft's flight path. Such a system would increase the level of safety assurance for en route and terminal automation and support the acquisition of air-to-ground data communications to support trajectory negotiation.

Our research has shown that human factors is another area that could benefit from additional funding. As we have previously reported, one of the principal changes under NextGen will be a transformation from air traffic control to air traffic management. This

## Enclosure I

will mean new roles for all participants in the system, including air traffic controllers and pilots. Additional funding could accelerate human factors research and training initiatives that are central to the success of NextGen, such as initiatives defining the relative responsibilities of aircraft personnel and ground controllers, and modernizing controller training through the use of advanced simulation and intelligent tutoring tools.

According to FAA officials we interviewed, research and development for advanced concepts and applications could also be strengthened and accelerated in the area of airborne applications. This research could include spacing and merging approaches, including optimizing the spacing of aircraft that are in flight, allowing for closely spaced parallel approaches and reduced separation standards, and addressing wake turbulence. Additional funding could allow for limited field trials to refine operational and system requirements, and work could be done to integrate unmanned aerial systems into the national airspace system. Establishing supporting processes for rulemaking and software certification could also accelerate the removal of potential bottlenecks to implementing NextGen.

## Enclosure II

**Related GAO Products**

*Next Generation Air Transportation System: Status of Systems Acquisition and the Transition to the Next Generation Air Transportation System.* GAO-08-1078. Washington, D.C.: September 11, 2008.

*Next Generation Air Transportation System: Status of Key Issues Associated with the Transition to NextGen.* GAO-08-1154T. Washington, D.C.: September 11, 2008.

*Responses to Questions for the Record; Hearing on the Future of Air Traffic Control Modernization.* GAO-07-928R. Washington, D.C.: May 30, 2007.

*Responses to Questions for the Record; Hearing on JPDO and the Next Generation Air Transportation System: Status and Issues.* GAO-07-918R. Washington, D.C.: May 29, 2007.

*Next Generation Air Transportation System: Progress and Challenges Associated with the Transformation of the National Airspace System.* GAO-07-25. Washington, D.C.: November 13, 2006.

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**Jim Elwood, A.A.E.**  
**Airport Director, Aspen-Pitkin County Airport**  
**Chair, American Association of Airport Executives**

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181

**Statement of**  
**Jim Elwood, A.A.E.**  
**Airport Director,**  
**Aspen-Pitkin County Airport**  
**and Chair,**  
**American Association of Airport Executives**  
**Before the**  
**Subcommittee on Aviation**  
**Committee on Transportation and Infrastructure**  
**U.S. House of Representatives**  
**February 11, 2009**

Chairman Costello, Ranking Member Petri and members of the House Transportation and Infrastructure Subcommittee on Aviation, thank you for inviting me to participate in this hearing on the Federal Aviation Administration (FAA) reauthorization bill. I am Jim Elwood, A.A.E., the Airport Director of the Aspen-Pitkin County Airport. I am also the Chair of the American Association of Airport Executives (AAAE).

The Aspen-Pitkin County Airport is a commercial service airport in the heart of the Colorado Rockies. The airport is important to the state of Colorado and the local community with an economic impact of over \$1 billion annually. AAAE is the world's largest professional organization representing the men and women who manage primary, commercial service, reliever and general aviation airports.

Mr. Chairman, I would like to begin by commending you, Ranking Member Petri, Chairman Oberstar and Ranking Member Mica for all of the good work that you did on H.R. 2881, the FAA Reauthorization Act of 2007. The four-year bill, which the House passed in the last Congress, includes a number of key provisions that airport executives strongly support: It would raise the cap on Passenger Facility Charges (PFCs) from \$4.50 to \$7.00, increase Airport Improvement Program (AIP) funding by \$100 million per year and increase funding for programs that help small communities.

Airports and the US aviation industry are at a critical point as we look to the future. Collectively, Congress, the FAA, airlines, general aviation and every aviation stakeholder must be willing to come together to ensure that our aviation system remains the world's

best. Every day that we fail to focus on the future needs of this industry is a day that we cannot get back. Meanwhile, others around the world continue to make progress and forge ahead. We must be diligent and tireless to improve capacity and create efficiencies to ensure that we retain our position as the world's leader in aviation – a position that we have held for over a century. Quickly passing a multi-year FAA reauthorization bill provides us with key opportunity to help protect that position.

It has been well over a year since Vision 100 – Century of Aviation Reauthorization Act expired. Since Congress has been unable to send a multi-year FAA reauthorization bill to the President's desk, lawmakers have approved a series of short-term extensions instead. Airports appreciate the successful efforts to extend FAA programs and prevent lapses in aviation excise taxes. However, extensions and uncertain funding levels can be very disruptive to airports as they try to plan their construction projects. Moreover, every month that goes by without the PFC increase proposed in H.R. 2881 costs airports approximately \$100 million – funds that could be used to improve airports and create jobs around the country.

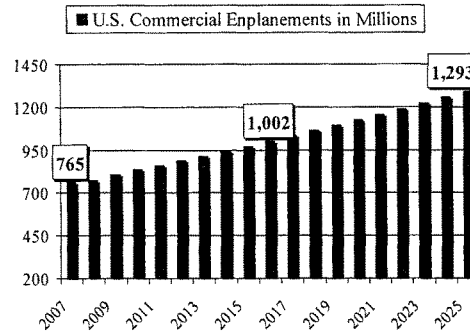
With help from this committee, the House of Representatives did its part by approving the FAA Reauthorization Act of 2007. We deeply appreciate the hard work that went into passing that multi-year bill. Unfortunately, the FAA reauthorization bill stalled on the other side of the Capitol. Airports around the country hope that this committee will help guide a multi-year FAA reauthorization bill through Congress early this year that raises the PFC cap to \$7.50 and increases AIP funding and improves programs that help small communities.

#### **Demand, Delays and Airport Capital Needs**

***Passenger Demand:*** Last March, the FAA released its Aerospace Forecast for 2008 to 2025. The report indicated that the number of passengers flying in the United States increased 22.1% between 2002 and 2007. The agency also predicted that enplanements will increase from approximately 765 million in 2007 to more than one billion passengers in 2016 and to almost 1.3 billion by 2025 at an average annual increase of 3.0%.

### Projected Passenger Levels

(Source: FAA Aerospace Forecast 2008-2025)



Much has changed since the FAA issued its Aerospace Forecast. Oil prices skyrocketed to nearly \$150 per barrel last year, and the airlines responded by reducing capacity throughout the aviation system. The economic downturn is also having a negative impact on the aviation industry. The Bureau of Transportation Statistics (BTS) reported earlier this month that the number of scheduled domestic and international passengers on U.S. carriers dropped more than 7% in October 2008 from the same month in 2007. For the first ten months of 2008, passenger levels declined 2.6% from the same timeframe the previous year.

Although monthly passenger levels declined in 2008 from 2007, we can expect that enplanements will rebound again like they did after the terrorist attacks in 2001. Airports need to prepare for the long term when more than 1 billion passengers are expected to be flying by 2016. Even if that threshold is delayed by a year, we must continue to plan ahead. Airports around the country must take advantage of this temporary downturn and prepare for the inevitable higher passenger levels to come.

Passenger levels are expected to climb at large and small airports in the future. According to the FAA's Terminal Area Forecast issued in December, enplanements are expected to increase from 42.8 million in 2008 to 69.4 million at the Hartsfield-Jackson Atlanta International Airport – a 62.1% increase. At Chicago's O'Hare International Airport, enplanements are expected to increase from 34.8 million to 49.5 million in the same timeframe – a 42.2% increase. Enplanements at the Aspen-Pitkin County Airport are expected to increase approximately 13.5 % percent.

The demand for air cargo is also expected to grow. The FAA predicted that total Revenue Ton Miles – or the measurement of moving one ton of cargo one mile – will more than double from 40.1 billion in 2007 to 83.3 billion in 2022. To handle that

increased workload, the number of cargo aircraft is expected to increase from approximately 1,000 in 2006 to 1,468 in 2020, which is an increase of 47.2%.

**Operations:** As passenger and cargo levels increase so do operations at airports around the country. During the FAA Forecast Conference last year former FAA Acting Administrator Robert Sturgell said, “From an operations standpoint, we predict that, on average, every year, from now until 2025, we’re going to add the equivalent of JFK, LaGuardia and Newark combined into system.”

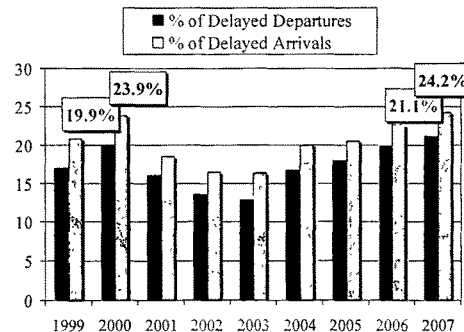
Overall, the FAA predicted that the number of take-offs and landings at the nation’s towered airports will increase from 61.4 million in 2008 to more than 84 million in 2025 – an increase of 37.4%. According to the Terminal Area Forecast, operations are expected to increase by 54.8% in Atlanta between now and 2025 and by 47% at Washington Dulles International Airport. Operations at Los Angeles International Airport are expected to increase by 35.1%.

**Flight Delays:** Flight delays were also on the rise between 2003 and 2007. According to the BTS, 24.2% of all flights in 2007 arrived at their gates 15 minutes or more after their scheduled arrival time. That’s a 1.6% increase from 2006, and it’s higher than the previous record delays that occurred in 2000 when approximately 23.9% of all flights arrived at their gates behind schedule.

BTS also tracks the number of flights that leave their gates on-time. In 2007 21.1% of all flights left their gates 15 minutes or more after their scheduled departure time. That’s up almost 1.2% from the previous year and it’s even higher than the delays that occurred in 2000 when 19.9% of all flights left their gates late. In other words, delays measured in both arrivals and departures exceeded the 2000 levels when one in four flights was delayed, cancelled or diverted.

### Flight Delays

(January to December/Source: BTS)



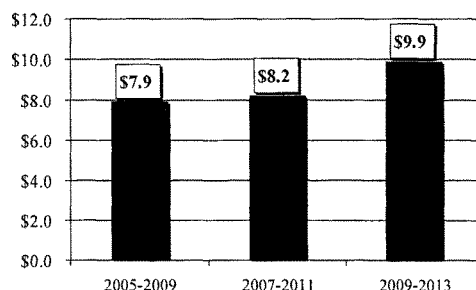
Not surprisingly airline on-time arrivals began to improve in 2008 as the airlines began cutting back air service and reducing their aircraft. Between January and November of 2008, 76.9% of the flights arrived at their destinations on time. This is up from the previous two years during the same timeframe. Again, however, we should expect that flight delays and cancellations will creep back up when the economy improves and more passengers and aircraft return to the system.

**Airport Capital Needs:** Despite recent cuts in air service, airports must continue to invest in safety and security projects and they must be prepared to meet passenger demands in the long term. Late last year, the FAA also released its National Plan of Integrated Airport Systems (NPIAS) for 2009 to 2013. The report indicates that there will be \$49.7 billion of AIP-eligible projects during the next five years – or an average of \$9.9 billion per year. This is approximately 21% higher than the \$41.2 billion that FAA estimated for AIP-eligible construction projects for 2007 to 2011.

The NPIAS identifies 3,356 existing and 55 newly proposed public-use airports that are eligible to receive AIP grants. According to the report, 27% of the planned development is to bring airports up to current design standards and 17% is for capacity-related projects. Another 17% of the planned development is for replacing or rehabilitating airport facilities such as pavement and lighting systems.

### Average Annual AIP-Eligible Projects

(Source: FAA NPIAS 2009-2013)  
(Dollars in Billions)



Airports rely on a number of sources for airport capital development projects. The overwhelming majority of funds come from airport bonds, AIP and PFCs. However, the FAA acknowledges in the report that “the NPIAS only includes planned development that is eligible to receive Federal grants under the AIP. It does not include ineligible airport development, such as automobile parking structures, hangars, air cargo building, or the revenue-producing portion of large passenger terminal buildings.”

The FAA’s latest NPIAS states that its estimates for the 2009 to 2013 period may be “overstated” because of the impact of high fuel prices last year and the declining

economy. **However, the FAA correctly points out that “the large scale, long-term programs (i.e. a new runway or a significant runway extension) involving a sequence of planning, environmental analysis, approval, financing, and construction, typically over a 10- to 15-year period, are not particularly sensitive to short-term fluctuations in traffic.”**

In November, new runways opened at Washington Dulles, Chicago O’Hare and Seattle-Tacoma International Airports. According to the Department of Transportation (DOT), the three new runways will accommodate an additional 330,000 take-offs and landings per year. However, each of those critical projects took years to complete. For example, the Port of Seattle began planning to increase capacity at its airport in 1989 -- approximately 20 years ago. In 2007, the FAA also issued a report entitled, “Capacity Needs in the National Airspace System.” The report examined which of the busiest 35 airports in the FAA’s Operational Evolution Plan will be able to meet future demand. It indicates that “18 airports around the country are identified as needing additional capacity by 2015, and 27 by 2025, if the airport system remains the same as it is today without the planned improvements.”

Even if planned improvements occur, the report identifies 6 airports that will need additional capacity by 2015 and 14 airports that will need additional capacity by 2025. Given the time it takes to bring airport infrastructure projects to completion, it is critical that we act now to address this situation. Again, airport executives need to continue planning and improving their facilities now so they are prepared for the long-term increases in passenger levels and operations.

#### **Airports Need Additional Resources to Accommodate Future Demand and High Construction Costs**

The FAA and DOT should be commended for highlighting the need for a Next Generation Air Transportation System (NextGen). Modernizing the air traffic control system will improve efficiencies and help reduce delays throughout the system. According to the FAA, however, “new runways and runway extensions provide the most significant capacity increases.”

As I mentioned previously, the passenger level is expected to increase from 765 million in 2007 to more than 1 billion in the next ten years. That is the equivalent of adding the entire population of the U.S. to our aviation system. While many are understandably focusing on the need to implement a satellite-based navigation system to reduce congestion in the skies, we should not lose sight of the need to increase capacity and reduce congestion on the ground.

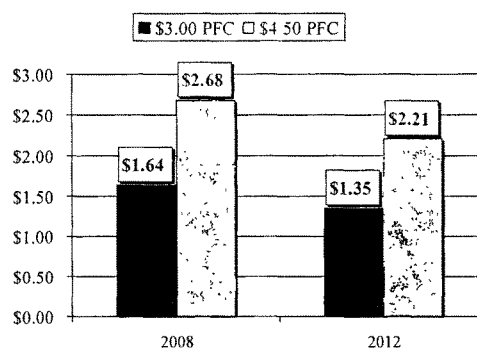
In an effort to build the infrastructure necessary to accommodate increasing demand and to offset the impacts of construction costs, which have skyrocketed in recent years, airport executives are continuing to urge Congress to raise the PFC cap, increase AIP funding and reduce the costs of airport bonds. We are grateful that Congress and particularly this subcommittee have taken steps to help airports prepare for the future.

**Raise PFC Cap:** As members of this panel know, the Aviation Safety and Capacity and Expansion Act of 1990 included a provision that has allowed airports to impose a local fee of up to \$3 on passengers boarding aircraft at their facilities. AIR-21, which Congress passed in 2000, included a provision that allowed airports to increase that amount to \$4.50. Money generated from PFCs augments AIP funding and other sources or revenue that airports use for a variety of purposes including building new runways, taxiways and terminals as well as paying for debt service.

Airports collected about \$2.8 billion from PFCs in 2007. Unfortunately, however, the value of PFCs has eroded over time due to inflation and increased construction costs, which have increased by almost 27% since 2005 at an average annual rate of more than six percent. When you factor in the Consumer Price Index, a \$3.00 PFC in 1990 was worth only about \$1.85 in 2008, and a \$4.50 PFC was worth only about \$3.07.

The picture gets even worse when you examine construction cost inflation, which provides you with a more accurate picture of the costs associated with airport construction projects. In that case a \$3.00 PFC in 1990 was worth only about \$1.64 in 2008, and a \$4.50 PFC was worth only about \$2.68. Unless corrective action is taken, the value of PFCs will erode even more by 2012 when a \$3.00 PFC is expected to be worth only \$1.35, and a \$4.50 PFC is expected to be worth only \$2.21.

### Erosion of PFC Value Due to Construction Cost Inflation



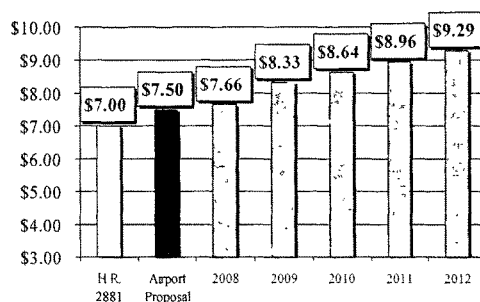
To offset the impacts of inflation it is necessary to raise the cap on PFCs. For instance, a \$3.00 PFC needed to be adjusted to \$4.88 in 2008 to offset the impact of inflation, and a \$4.50 PFC needed to be set at approximately \$6.73. If adjusted for increasing construction costs, a \$3 PFC needed to be set at \$5.50 in 2008, and a \$4.50 PFC needed to be set at \$7.66.

Airport executives commend this subcommittee for including a provision in H.R. 2881 that would raise the PFC cap from \$4.50 to \$7.00. According to the FAA, if all those

airports collecting \$4.00 and \$4.50 PFCs today began collecting \$7.00 PFCs, raising the cap would generate approximately \$1.3 billion per year. The additional revenue would help close some of the gap between airport capital needs and the amount of revenue that is currently available for airport capital development projects. It would also create tens of thousands of much-needed jobs.

Again, we deeply appreciate the efforts by the subcommittee to raise the PFC cap to \$7.00. Of course, we would prefer that Congress raise the PFC cap to \$7.50. As you can see from the chart on the next page, a \$3.00 increase would be enough to offset the impact of construction cost inflation in 2008. To prevent further erosion of the value of PFCs, we also ask you to include a provision in the next FAA reauthorization bill that would index PFCs to account for increasing construction costs.

### Adjusting PFC Cap for Construction Cost Inflation



Some may suggest that raising the PFC cap by \$3.00 is too much of an increase at one time. However, this committee and the House of Representatives approved a proposal to raise the PFC cap from \$3.00 to \$6.00 in 1999 – a \$3.00 increase – almost 10 years ago during consideration of AIR-21. Unfortunately, the Senate version of the bill did not include a similar increase, and the final version of FAA reauthorization bill increased the cap to \$4.50 instead.

Mr. Chairman, in the past some have expressed concerns about how much PFC revenue airports are using for airside capacity-related projects. In 2007 we reported to this committee that approximately 32% of PFCs approved in FY06 were for airside projects. This is about \$1.4 billion for capacity projects such as building new runways, taxiways and aprons. That percentage is going up. According to the FAA, approximately 37% of PFCs approved in FY08 are for airside projects.

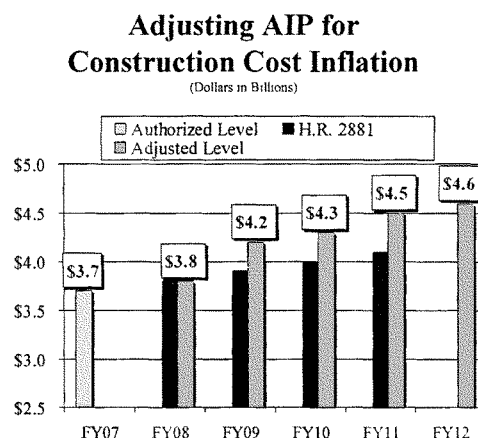
Airports – including the 35 busiest airports in the FAA’s Operational Evolution Plan (OEP) – rely on PFCs for airside projects to enhance capacity at their facilities. According to the FAA, the Seattle-Tacoma International Airport used \$370 million in



PFC revenue to construct its third runway. Overall, 15 OEP airports are using almost \$4 billion in PFCs to help build new runways and increase capacity at their facilities.

**Increase AIP Funding:** In addition to raising the PFC cap, airport executives are continuing to urge Congress to increase AIP funding. AIP is an important source of funding for all sizes of airports and especially smaller airports around the country. Large and medium hub airports also depend on AIP funding – particularly money distributed through the Letter of Intent Program (both entitlement and discretionary funds) to help pay for large capacity projects.

Airport executives are grateful that this subcommittee and the House of Representatives authorized a record-level \$15.8 billion for AIP and recommended increasing AIP funding by \$100 million per year. We hope that you will increase AIP funding by at least that amount in the next FAA reauthorization bill. We also encourage you to consider increasing AIP funding so that the program keeps up with increased construction costs. Doing so would translate into \$4.3 billion for AIP in FY10, \$4.5 billion in FY11 and \$4.6 billion in FY12.



#### AIP and PFC Modifications

**Streamline PFC Process:** Airports supported the previous Administration’s proposal of streamline the PFC application and approval process. The FAA pointed out that “current law requires an application and approval of each PFC project (or amendment to a project) that sometimes involves prolonged reviews and delays.” We agree with the FAA’s assessment and strongly support streamlining the PFC process, which currently takes several months to complete.

Airports work closely with our airline partners to reach consensus on PFC-funded projects and will continue to do so if Congress endorses PFC streamlining. For instance,

airports would continue to provide a reasonable notice and comment period for carriers operating at their facilities. However, airports should be allowed to impose a new PFC earlier in the process, avoid months in unnecessary delays, and create jobs more quickly. Should a carrier file an objection, DOT would have the authority to terminate the airport's authority to collect PFCs for the new project if the agency concurred with the objection.

***Maintain Higher Federal Match for Small Airports:*** Vision 100 included a helpful provision that increased the federal share for small hub and smaller airports from 90% to 95% through FY07. H.R. 2881 would allow that provision to expire and return the federal share to a maximum of 90% for many small airports. In these challenging economic times, small communities around the country are finding it very difficult to come up with a 5% percent local matching share. Increasing their required contribution to 10% could prevent certain small airports from moving forward with planned construction projects. We hope you will include a provision in the next reauthorization bill that would extend the higher federal match for small airports.

***Minimum Entitlements and Annual Apportionments:*** We also recommend that you include a provision in the bill that would allow airports to continue to receive the minimum entitlements even if their enplanements dipped below 10,000 in 2008 as a result of service cuts related to high fuel costs and/or the downturn in the economy. We are similarly proposing that entitlements for airports with more than 10,000 enplanements not be reduced if the their passenger levels declined in 2008.

Commercial service airports rely on revenue generated from airlines, other airport tenants and passengers to meet their operational and infrastructure requirements. Decreasing numbers of flights and passengers translate into fewer dollars for airports to use for operational purposes or to invest in infrastructure projects that help stimulate the economy by creating jobs. Allowing airports to continue to maintain their minimum entitlements and annual apportionments would ensure that airports are not unnecessarily penalized even more.

***Land Acquired for Noise Compatibility Purposes:*** H.R. 2881 would make a grant assurance change regarding the sale of land that an airport initially acquired for a noise compatibility purpose but not longer needs. Current law requires that the proceeds proportional to the federal government's share of the land acquisition be returned to the aviation trust fund. The reauthorization bill would allow DOT to reinvest the government's share of the proceeds in another project at that airport or another airport. However, airport executives are concerned that the proposal does not resolve the question about what happens if an airport leases land initially acquired for a noise compatibility purpose. We would like to work with this subcommittee to address that issue.

### **Funding of FAA Programs**

**Maintain Budget Protections:** AIR-21 included an airport executive-supported provision that requires all receipts and interest credited to the aviation trust fund to be spent on aviation. It also makes it difficult for Congress to appropriate less than the full amount authorized for AIP. Those budget points of order have worked extremely well in the House over the past several years, and we encourage you to maintain them in the next FAA reauthorization bill as you did in H.R. 2881.

### **Small Community Issues**

**Increase Funding for Small Community Air Service Development Program:** AAAE has been a long-time proponent of the Small Community Air Service Development Program. Since Congress created the Small Community Program in 2000, it has helped numerous small communities around the country suffering from insufficient air service or unreasonably high fares. Airports are grateful that H.R. 2881 would have authorized \$35 million per year for this critical program.

Considering the number of communities that apply for funds from this program and the increasing pressures on small communities, we urge this subcommittee to consider making a greater investment in this critical program. Specifically, we urge you to authorize \$50 million for the program per year and allow communities to receive follow-on grants for the same project. We also recommend that small airports be allowed to reduce their operating costs by using small community grants for ground handling services.

Mr. Chairman, we would also like to bring to your attention an issue related to the Small Community Program. Last year, DOT received 66 proposals from communities in 32 states requesting more than \$36 million “to support new and ongoing air service development projects.” However, the demand for federal assistance far exceeded the approximately \$10 million that Congress approved for the program in the FY08.

In September, DOT announced that it had awarded grants that will benefit 16 communities in 12 states. Those communities will receive between \$100,000 and \$750,000 in grants and are contributing their own resources to their respective projects. However, airport executives were shocked to learn that of the \$10 million that Congress appropriated for this program, only \$6.85 million is actually slated to go to small communities that need assistance. According to DOT’s order, the other \$3.15 million will be used to cover “current and future administrative support costs.”

Designating 32% of funds appropriated for the Small Community Program for administrative purposes seems unreasonably high to us. By contrast, the FAA received \$75 million in Fiscal Year 2007 to distribute more than 2,000 AIP grants – or approximately 2 percent of the \$3.5 billion that Congress appropriated for the AIP program that year.

Many airport executives question why DOT needs \$3.2 million to administer only 16 Small Community Program grants. Some or all of those funds could be distributed to other small communities struggling to retain or attract new commercial air service instead. Based on the average grant award, \$3.2 million could be used to fund another seven projects.

We encourage you and your colleagues on the Transportation and Infrastructure Committee to examine DOT's decision to allocate such a large portion of small community funds for administrative purposes. Airports would strongly prefer that DOT designate some or all of the \$3.2 million to other small communities that have applied for grants instead.

***Maintain Essential Air Service Program:*** Last year was a challenging year for many EAS communities. Due, in part, to rapidly increasing fuel prices and air service cuts, 37 eligible EAS communities temporarily lost service last year. When all the service disruptions were added up, EAS communities were without air service for more than 200 months. Seven EAS communities still do not have air service.

Airport executives are pleased that this subcommittee rejected the previous Administration's proposal to drastically cut funding for the program to \$50 million per year. Small airports around the country were encouraged that H.R. 2881 included \$50 million from overflight fees for the program and authorized an additional \$83 million for a total of \$133 million per year. We encourage Congress to maintain adequate funding for EAS and continue to take steps to improve this important program.

***Invest in FAA's Contract Tower Program:*** Another program that has improved service and safety at airports in small communities is the FAA's Contract Tower Program. This program has been in place since 1982 and currently provides for the efficient and cost-effective operation of air traffic control towers at 242 smaller airports in 46 states. Without the Contract Tower Program many simply would not have any air traffic control services at their facilities.

AIR-21 included a provision that created the Contract Tower Cost Share Program, which currently allows 16 airports in 12 states that fall slightly below the eligibility criteria to participate in the program if they provide local funds. We recommend that this subcommittee authorize \$9 million for the Contract Tower Cost Share Program in FY09 and increase the amount by \$500,000 per year – the same funding levels included in H.R. 2881. Doing so would keep the existing towers operating and allow additional non-towered airports to participate in the program.

#### **Other Recommendations**

***Fairly Conclude ARFF Rulemaking Process:*** Mr. Chairman, safety is by far the most important priority for airports around the country, and airport operators devote a great deal of time, effort and resources to continue to improve safety at their facilities. As part of that commitment to safety, airports work closely with the FAA and follow strict

aircraft rescue and fire fighting requirements. Fire fighters are an integral components of a teams of professionals dedicated to ensuring aviation safety, and all of us owe them a debt of gratitude for their service.

Despite our strong relationship with fire fighters and our tremendous respect for their mission, we have deep concerns about a plan proposed by the International Association of Fire Fighters (IAFF) that would force airports to comply with National Fire Protection Association (NFPA) standards. At first glance, this may seem like a reasonable approach to improve aviation safety. Upon closer review, however, it is clear that the plan would have a huge financial impact on airports of all sizes without demonstrating a clear safety benefit. It could also lead to unintended consequences as severe as the loss of commercial air service at some smaller airports around the country.

Under the IAFF plan, airports would be required to dramatically increase the number of fire fighters at their facilities without any evidence that additional personnel are actually necessary. Airports would have no choice but to pass those additional operating costs on to the airlines at a time when large and small airports are trying to keep their costs low. Increased operating costs would be particularly devastating to small airports struggling to maintain and attract new commercial air service.

The Fort Wayne-Allen County Airport Authority, which operates a non-hub airport in Indiana, estimates that the IAFF plan would increase its personnel costs by \$1.2 million per year. According to airport officials, the IAFF proposal “would require the Fort Wayne International Airport to more than double the ARFF staff, from four personnel per shift to nine personnel per shift.”

The Durango-La Plata Country Airport in my home state of Colorado estimates that the IAFF plan would require the airport to hire a large number of additional firefighters, a new Aircraft Rescue and Fire Fighting (ARFF) truck and modify its ARFF facilities. The airport warns that the proposal would ultimately “result in the cessation of all air service to Durango” because the airport would be required to “raise airline landing fees and rents to meet the additional costs of this unnecessary proposal.”

The proposed ARFF standards would also dramatically increase airport infrastructure and equipment costs with little benefit in terms of enhanced safety. The requirements would force airports to divert scarce AIP dollars away from critical safety, security and capacity projects in order to construct ARFF facilities and purchase new fire fighting vehicles. These additional infrastructure and equipment costs could easily wipe out the AIP funding increases called for in H.R. 2881.

The Columbus Regional Airport Authority said that the IAFF proposal would require for Port Columbus International an estimated initial capital outlay of \$6.7 million for a second ARFF station and additional equipment. The IAFF proposal also would require construction of a new ARFF station at Rickenbacker International, a full-service cargo airport, at an estimated cost of \$3.3 million. Some airports have even indicated that they

would be required to move recently-built ARFF facilities to comply with the new requirements.

As many of you may know, there is a process already underway by an FAA-led Aviation Rulemaking Advisory Committee to review and update ARFF standards. We agree with calls to conclude that rulemaking process. However, it is our view that the language included in the House bill last year needs modification in order to avoid tilting the playing field in one direction or the other.

Specifically, H.R. 2881 requires the final rule to “address” the mission of ARFF personnel including passenger egress, proper staffing levels, response times, the handling of hazardous materials incidents, proper vehicle deployment and equipment modernization. More importantly, it requires the FAA to issue a final rule “to the extent practical” that is consistent with NFPA standards. Airport executives are concerned that legislatively requiring the FAA to come up with a proposed rule that “to the extent practical” is consistent with NFPA standards gives the IAFF an unfair advantage in what should be a neutral rulemaking process.

The IAFF proposal also states that if the final rule is not consistent with NFPA standards, the FAA must explain to the White House Office of Management and Budget (OMB) why the rule is not consistent with those standards. We are concerned that forcing the FAA to explain its actions to OMB would undercut the ARFF rulemaking process even more.

Again, airports are only seeking a fair and unbiased rulemaking process that doesn’t unnecessarily tilt the playing field toward one particular aviation stakeholder. As debate on the FAA reauthorization bill continues, we hope the members of this committee will work with us to achieve that goal.

**Expand VALE Program:** As a result of a provision contained in Vision 100, the FAA established the Voluntary Airport Low Emissions (VALE) program to assist airports with implementing air quality emission reduction programs. Only those airports that are in nonattainment and maintenance areas for certain pollutants are eligible to participate in this program. Given the importance of air quality to communities such as Aspen, we believe that this program should be opened up to all airports, regardless of their air quality designation. As a recent Governmental Accountability Office report noted, airports are just beginning to take advantage of this program, and opening it to more airports would enhance its success and reduce emissions.

**Phase Out Stage Two Aircraft:** H.R. 2881 included a welcome provision calling for the phase out of Stage 2 aircraft with a maximum weight of 75,000 pounds by December 31, 2012. My colleague, Robert Bogan, the Deputy Executive Director at the Morristown Municipal Airport, discussed the merits of phasing out small noisy aircraft when he testified before this committee in 2007. We encourage you to maintain the provision in next version of the FAA reauthorization bill.

### Economic Recovery Bill

Mr. Chairman, I would like to thank you and your colleagues in the U.S. House of Representatives for including provisions in H.R. 1, the American Recovery and Reinvestment Act of 2009, that would help airports and stimulate the economy by creating jobs. As the House and the Senate versions are melded into a final package, here our recommendations for airport-related provisions.

***Inject Additional AIP Funding in the Economy; Create Construction Jobs:*** Airports are pleased that the House-passed version of the economic stimulus package included \$3 billion for airport construction projects. As the report accompanying the bill indicates, “these investments will not only provide important safety benefits but will improve capacity and efficiency at our nation’s airports....”

As Congress finalizes the economic recovery package, we encourage you and your colleagues to include at least \$3 billion for AIP. Chairman Oberstar’s proposal to “Rebuild America by Investing in Transportation and Environmental Infrastructure” recommended \$5 billion for AIP. Airports could commence work on literally hundreds of important safety, security and capacity projects. These projects are needed to meet the future aviation system for the country and would create and maintain tens of thousands of construction jobs.

Beyond the existing baseline of \$3.5 billion for AIP, the FAA has indicated that \$1.7 billion could be dedicated to “ready-to-go projects” – projects that can be bid and under contract within 180 days. The FAA has identified as much as \$5 billion in additional funds that could be used for AIP projects during the next two years if airports had additional lead time for final design work and environmental approvals. An additional \$3 to \$5 billion for AIP could create more than 100,000 high-paying jobs and allow the FAA to proceed with high-priority projects including those related to runways, taxiways and aprons.

Despite this committee’s support for increasing AIP funding by \$100 million per year, Congress has appropriated slightly more than \$3.5 billion for AIP per year during the past three fiscal years and is expected to do so again for FY09. This means that airports will receive almost \$1 billion less in AIP funds from FY06 through FY09 than this committee approved. Providing airports with additional AIP funding in the economic stimulus package would offset that shortfall and help stimulate the economy by creating jobs.

***Eliminate Local Match Requirement:*** In addition to increasing the amount of AIP funds in the economic recovery package to \$5 billion, we urge you to eliminate the local matching requirement for those funds. As I mentioned previously, local communities have been hit hard by the current financial crisis, and numerous airports around the country would have difficulty coming up with local revenue. In addition to eliminating the local match requirement airports are also calling for additional flexibility so they can use AIP funds contained in the stimulus for other purposes such as debt service and shovel-ready terminal projects.

***Eliminate AMT Penalty on Airport Private Activity Bonds:*** Federal tax law unfairly classifies the vast majority of bonds that airports use as private activity – even though they are used to finance runways, taxiways and other facilities that benefit the public. Since private activity bonds are subject to the Alternative Minimum Tax (AMT), airport bond issuers are charged higher rates on their borrowing.

Due to the current financial crisis, virtually no long-term airport AMT bonds have been sold in the past few months. Consequently, airports are being forced to either postpone key infrastructure projects or find other sources of short-term financing. AAAE, ACI-NA and airports around the country have been urging Congress to eliminate the AMT so airports can move forward with key infrastructure projects, create jobs and stimulate the economy.

The House and Senate versions of the economic stimulus package eliminate the AMT penalty on new airport private activity bonds issued in the 2009 and 2010. We strongly support that proposal and thank Congress and particularly the House Ways and Means Committee for taking action to help airports secure long-term financing. We encourage lawmakers to expand the provision by allowing airports to current refund their existing debt and by making those changes permanent so airports can finance critical infrastructure projects in the long term.

***Increase Funding for Explosive Detection Systems:*** Expediting the installation of in-line Explosive Detection Systems (EDS) in airports remains a top priority for AAAE. Many airports have submitted plans to the Transportation Security Administration that can be acted on in the short-term, which will produce security enhancements and quickly create jobs. We appreciate the committee's long-time support of this airport priority and encourage Congress to include at least \$1.2 billion in the economic stimulus package for checked baggage upgrades and checkpoint technologies. This is the same funding level included in the Senate version of the bill. We also recommend segmenting that funding to ensure that sufficient resources are dedicated to EDS purchase and installation.

I realize that these two issues are – AMT relief and EDS funding – are not under the jurisdiction of this committee. However, bond financing is critical to building airport infrastructure projects around the country. On behalf of the airport community, I would like to thank Ranking Member Mica, Rep. James Duncan and Rep. John Boozman for urging the House Ways and Means Committee to eliminate the AMT penalty on airport private activity bonds as a part of the economic stimulus package.

### **Conclusion**

Chairman Costello, Ranking Member Petri and members of the House Transportation and Infrastructure Subcommittee on Aviation, thank you again for inviting me to appear before your committee to discuss the FAA reauthorization bill. As I mentioned at the beginning of my statement, airports are grateful to this committee for including a number of key airport provisions in the House-passed FAA reauthorization bill in the last Congress. We look forward to continuing to work with as you reconsider the FAA reauthorization bill again this year.



**Testimony of**

**Patrick Forrey, President,  
National Air Traffic Controllers Association**

**Before the House Transportation and Infrastructure Committee**

**Subcommittee on Aviation**

**Wednesday, February 11, 2009**

**FAA Reauthorization Act of 2009**



### Introduction

The National Air Traffic Controllers Association (NATCA) is the exclusive representative of over 14,000 air traffic controllers serving the Federal Aviation Administration (FAA), the Department of Defense and the private sector. In addition, NATCA represents approximately 1,200 FAA engineers, 600 traffic management coordinators, 500 aircraft certification professionals, agency operational support staff, regional personnel from FAA's logistics, budget, finance and computer specialist divisions, and agency occupational health specialists, nurses and medical program specialists. NATCA's mission is to preserve, promote and improve the safety of air travel within the United States, and to serve as an advocate for air traffic controllers and other aviation safety professionals. NATCA has a long history of supporting new aviation technology, modernizing and enhancing our nation's air traffic control system, and working to ensure that we are prepared to meet the growing demand for aviation services.

### NATCA's Recommendations for FAA Reauthorization

1. **Collective Bargaining:** NATCA fully supports and endorses the provisions of the FAA Reauthorization Act of 2009, addressing the Federal Aviation Administration Personnel Management System. This section nullifies the imposed work rules (IWRs) and orders the FAA to return to the bargaining table to reach a mutually agreeable contract with NATCA. In order to prevent future disputes, the bill amends Title 49 to allow for, in the event of a bargaining impasse, the proposals to go through mediation and ultimately, binding arbitration.
2. **Realignment of Facilities and Services:** NATCA supports the inclusion of comprehensive language in FAA Reauthorization that would ensure that all FAA realignment initiatives are considered in a collaborative environment and provide a specific operational benefit. NATCA supports the establishment of a workgroup of stakeholders, included in the FAA Reauthorization Act of 2009. This group must review all realignment proposals prior to the FAA beginning the realignment process and must include representatives of all of the affected bargaining units. Additionally, NATCA recommends that realignment be clearly defined.
3. **Staffing:** NATCA fully supports and endorses the FAA Air Traffic Controller Staffing provision within the FAA Reauthorization Act of 2009, which authorizes a scientific study of the system's needed level for air traffic controller staffing to be conducted by an objective third party. This language would allow the FAA, Congress, and NATCA to truly assess the current risk to the National Airspace System (NAS) and set benchmarks for resolving the staffing crisis.
4. **Modernization:** NATCA supports the funding levels set aside in the FAA Reauthorization of 2009 to modernize the air traffic control system. The NextGen modernization project's start was less than expected, as the plan lacked clearly defined goals, leadership, and had begun without including stakeholders in the process. NextGen's success is highly dependent upon a cooperative environment for the development and implementation of new and pre-existing technology.

- 5. Maintenance of Air Traffic Control (ATC) Infrastructure:** It is imperative that the funding of NextGen does not come at the expense of the NowGen. During the previous administration, the FAA allowed existing facilities to fall into disrepair while focusing all its energy and budget on NextGen projects. While NATCA supports the modernization of the system, we also insist upon the maintenance of the system. FAA facilities and ATC infrastructure must be maintained in a manner that ensures the safety and security of FAA personnel and allows aviation safety professionals the tools they need to do their jobs to the high standard of excellence we expect and depend on.

#### **The State of the Air Traffic Control Workforce**

NATCA and the FAA began contract negotiations in July 2005 over a successor agreement to the 2003 extension to the parties' 1998 collective bargaining agreement. The FAA unilaterally declared an impasse after only nine months of negotiations. In June of 2006, the FAA announced its unilateral imposition of work and pay rules on the air traffic controller workforce, which it ultimately implemented in September 2006. This action not only violated the FAA's legal obligation to bargain in good faith, but it also violated fundamental principles of fairness. This action, in effect, eliminated collective bargaining rights for FAA employees.

The effects of the imposed work rules have been devastating, not only to the working lives of controllers, but to the safety and integrity of the National Airspace System. Prior to the imposed work rules, NATCA officials warned that imposing work rules would result in a mass exodus of controllers from the FAA workforce and would result in dangerously low staffing levels. NATCA's predictions have proven accurate.

In the two fiscal years following the imposed work rules 2,626 air traffic controllers left the FAA workforce through attrition. This excludes the estimated 730 controllers who left the workforce through promotions or transfers. Of those that left due to attrition, less than two percent had reached the mandatory retirement age of 56. Ninety-eight percent left the FAA before mandatory retirement.<sup>1</sup>

The FAA now insists that this exodus had been long anticipated and that it was the result of nothing more than an increase in retirement eligibility. This, however, is not the case. In FY2008 there were 947 retirements and 442 resignations, removals and deaths. Three months prior to the implementation of the IWRs, the FAA predicted there would be 645 retirements and 84 resignations removals and deaths in FY2008,<sup>2</sup> approximately half of the actual attrition level.

As NATCA has previously testified, the gap between the FAA's prediction and the actual attrition can be attributed directly to the IWRs and the adverse work environment that those rules created. These rules removed career advancement opportunities, established new pay bands that decreased controller wages by an average of 30 percent, reduced the availability and duration of rest periods, instituted unpopular changes to the annual leave policy, and created an adverse work environment without a viable process to appeal or address managerial abuse of authority.

<sup>1</sup> Based on payroll data provided to NATCA from the FAA.

<sup>2</sup> Based on the "A Plan for the Future 2006-2015: The Federal Aviation Administration's 10-Year Strategy for the Air Traffic Control Workforce" June 2006.

Veteran controllers who are eligible to retire have, because of the new pay bands, already worked their three highest salary years that will determine their pensions. Combined with the deterioration of working conditions and a more acute fear of errors due to increased workload, all incentives for experienced controllers to stay on board until their mandatory retirement age have been removed. On the other end of the spectrum, new hires are experiencing the stress and challenge of air traffic control, coupled with poor treatment from management and B-Scale wages, and are choosing to leave the FAA in favor of careers in the private sector.

One former controller summed up the sentiments of many in his resignation letter to the FAA:

Under the FAA's new imposed work rules I cannot justify staying with the Agency... I do not feel I can continue to work in an environment that is so vindictive, or for an employer who is more worried about the bottom line rather than safety. I cannot justify staying when I can return to a company that knows how and makes it a point to take care of its employees. My take home pay will go up, my quality of life will improve and my workload will decrease.<sup>3</sup>

### **Fatigue**

The staffing shortage has created an environment conducive to high levels of fatigue among air traffic controllers, as controllers are required to work excessive amounts of overtime and work on short-staffed shifts.

At Orlando International Tower and TRACON, for example, controllers were required to work an average of 558 hours of overtime per pay period in CY2008. If divided evenly among the fully certified controllers, each controller would have to work more than 14 additional hours per pay period<sup>4</sup> -- cutting available rest and recovery time almost in half. While moderate amounts of overtime can be absorbed into the system without noticeable effects on performance, excessive overtime introduces fatigue into the system. In order to absorb the fatigue-inducing effects of overtime, an individual controller must have sufficient time for recovery following a long week, while the workforce must be made up of non-fatigued controllers who can provide support during the shifts themselves. With the staffing shortage such as it is, this is impossible. In addition, excessive overtime negatively affects controllers' quality of life and interferes with home life issues such as childcare, lowering the morale of the workforce.

The alternative to excessive overtime is to work each shift without proper staffing levels. A short-staffed shift often means controllers are afforded fewer opportunities for rest and recovery during the shift itself. They are being required to work longer on position and given shorter rest periods. Although the FAA had, until recently, limited time on position to two hours based on the results of a Civil Aeronautics Medical Institute (CAMI) study, this limitation was removed when the imposed work rules were instituted and is ignored throughout the system. At

<sup>3</sup> Employee resigned from Albuquerque ARTCC, in October 2006.

<sup>4</sup> According to NATCA records, there were 38 certified professional controllers (CPCs) at MCO

Atlanta tower (ATL), controllers report that they are given exactly 20 minutes of break time, regardless of the length of time on position or the intensity of the traffic.

Not only are controllers working longer on position, but the workload during that time has increased as well. On a short-handed shift, managers reduce the number of radar assistants (RAs), increasing the workload for the controller working radar. A controller working without an assistant is responsible not only for communication with aircraft but also coordination with other controller positions and facilities, as well as updating flight progress information. Additionally, managers may be forced to combine positions, creating greater complexity by requiring each controller to monitor greater numbers of conflict points and an increased volume of aircraft. One recent internal FAA document reported that as many as 56.3 percent of errors in Eastern En Route facilities occur when there are combined sectors, combined Radar/RA positions, or both.<sup>5</sup>

#### **Hiring Alone Is Not Enough: Inexperience and the Training Backlog**

Rather than taking meaningful steps to stem the flow of experienced personnel, the FAA simply began a massive hiring effort. As a result, trainees now make up an extremely high percentage of the workforce. As of the end of FY2008, trainees (excluding CPC-ITS, previously certified controllers training on a new area or facility) accounted for nearly a quarter of the controller workforce (22 percent). This exceeds what the Inspector General of the Department of Transportation recently reported experts to consider the safe upper limit for the system.<sup>6</sup> In many facilities the situation is even worse, with 48 facilities exceeding 35 percent trainees.

Staffing shortages and high trainee ratios have a direct effect on the efficiency of training itself. With so many trainees, and a small and shrinking number of Certified Professional Controllers (CPCs), there are a limited number of controllers capable of providing training, creating a backlog of trainees. At Miami Center (ZMA), for example, trainees have had to wait up to sixteen months from to receive on the job training (OJT)<sup>7</sup> due to the facility's staffing shortage.

For the first time since the 1980s, trainees are being put directly into some of the most demanding and difficult terminal facilities after completing their classroom training at Oklahoma City. These facilities include Atlanta Hartsfield Jackson Tower (ATL), Atlanta TRACON (A80), Charlotte Tower (CLT), New York TRACON (N90), Dallas-Fort Worth Tower (DFW), San Francisco Tower (SFO), Southern California TRACON (SCT), and Northern California TRACON (NCT). These higher level facilities do not have training curricula designed to teach new hires aircraft types, airline identification and other basic fundamental air traffic control knowledge and skills. In the past, terminal trainees were placed in a lower-level tower to receive initial certification and would transfer to a higher-level facility as their careers and skills advanced. The imposed work rules, however, removed financial incentives for experienced controllers to transfer to more difficult facilities because many would actually take a pay cut with such a transfer. Because retirement eligible controllers are leaving in record numbers, staffing

<sup>5</sup> Weekly En Route (FY 08) Report May 30, 2008 Eastern Facilities, Federal Aviation Administration.

<sup>6</sup> Statement made by Calvin L. Scovel II, Inspector General, US Department of Transportation before the Senate Committee on Appropriations Subcommittee on Transportation, Housing and Urban Development and Related Agencies. April 17, 2008. "Key Safety and Modernization Challenges Facing the Federal Aviation Administration."

<sup>7</sup> Interview with facility representative from ZMA.

has become critical at these terminal facilities, forcing the agency to hire trainees with no previous air traffic control experience.

Even as these trainees certify, the air traffic control system is still left staffed by individuals with little to no experience. These new hires are the future of air traffic control and have tremendous potential, but they are denied the opportunity to learn from experienced controllers and are forced to shoulder too much of the air traffic control burden at this early stage of their careers.

Since the implementation of the imposed work rules, the FAA lost more than 46,000 years of air traffic control experience through retirements alone.<sup>8</sup> Nearly one third (27 percent) of air traffic controllers in the FAA have less than five years experience, and 40 air traffic control facilities have more than half of its workforce composed of individuals with less than five years experience.

#### **Implications for FAA Reauthorization: Fair Dispute Resolution**

The human factors issues facing the FAA are caused largely by the imposed work rules of 2006. These imposed work rules have precipitated the high rate of attrition, which in turn has caused understaffing, fatigue, high trainee ratios, and inexperience. It is vital to stem this flow of experienced controllers so that the system may be allowed to recover. The critical steps in this process is removing the imposed work rules and ordering the FAA to return to the bargaining table under the terms and conditions of the 2003 collective bargaining agreement to reach a mutually agreeable contract with NATCA.

The FAA Reauthorization Act of 2009 would accomplish this task. It would nullify the imposed work rules and order the FAA to return to the bargaining table under the terms of the last mutually-agreed-upon contract. NATCA believes that this will reduce the rate of attrition for experienced controllers, allowing new-hires the best possible opportunity to train with seasoned veterans and maintaining what is left of the experienced workforce to control air traffic while the workforce is replenished.

The FAA Reauthorization Act of 2009 also amends Title 49 to include a fair dispute resolution process for FAA contract negotiations. If, during future negotiations, the parties arrive at impasse, both parties' proposals will be sent to mediation and ultimately binding arbitration. This time-tested and fair process is used for impartial dispute resolution in workplaces throughout the country. It will ensure that the air traffic control workforce will never again find itself working under an imposed set of working conditions and pay rules.

NATCA fully supports and endorses the dispute resolution section of the FAA Reauthorization Bill of 2009.

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<sup>8</sup> Calculation assumes 25 years experience for every retiree. Twenty-five years of services is the minimum for retirement eligibility for most air traffic controllers.

### Realignment of Facilities and Services

Realignment – the consolidation, deconsolidation or reorganization of FAA facilities and services – must be implemented only when such changes enhance operational services, provide continued or improved safety, support and facilitate modernization of the NAS, is cost effective, and the impact on stakeholders is addressed and mitigated. NATCA has supported realignment initiatives in the past because such plans served an operational need and were designed and implemented in a collaborative environment. During the past 20 years, the FAA has completed several successful realignments with NATCA's full support, including the creation of combined TRACON facilities in Southern California, Northern California, and the Baltimore/Washington, D.C./Virginia (Potomac) area.

During the previous Administration, the FAA began to separate radar and tower air traffic services at several airports across the country without seeking input from stakeholders. The FAA continued to move forward on these initiatives despite serious outstanding concerns over the effect such changes would have on safety and doubts over the operational benefit. Of particular concern in these cases was the staffing shortage, loss of staffing flexibility, barriers to coordination, and the deterioration of controllers' knowledge of operations.

At Memphis International Airport (MEM) the FAA conducted a study which found that a stand-alone TRACON at MEM would need to be staffed with 43 certified professional controllers (CPCs) while the tower would require 37. A split facility would therefore require a total of 80 CPCs.<sup>9</sup> However the combined facility currently employs only 47 CPCs<sup>10</sup>, less than 60 percent of what is necessary to operate a split facility. In general, split facilities require additional staffing, as there is a reduction in flexibility when the workforce is split. At Orlando International Airport (MCO) the split has left the tower with dangerous levels of inexperience; more than fifty percent of MCO tower controllers have five years of experience or less. When the facility was combined this percentage was reduced to 35 percent, which, while still very high, was less dangerous.

Additionally, controllers at combined tower/TRACON facilities must learn all aspects of operations required for safe and efficient arrivals and departures. Controllers therefore understand how their actions at one position effect the operation of adjacent positions, enabling them to optimize their performance for both safety and efficiency. When facilities are split this knowledge is lost. Not only will new trainees be denied the opportunity to train on all aspects of the operation, they will not even have the opportunity to observe operations at other sectors.

For Miami and Philadelphia, NATCA offered an alternative configuration which enabled the facility to simultaneously maintain the advantages of a combined facility while reducing training time. After congressional and public pressure forced the FAA to review this alternative configuration the FAA ultimately agreed that the proposed configuration would resolve the issues at-hand without creating additional safety risks. This sudden course correction revealed the need for a thorough and open selection and review process for FAA facility realignment initiatives.

<sup>9</sup> FAA Document "Needs Comparison for 4 Splits: MTP Comparison for the 4 Splits"

<sup>10</sup> Based on Payroll data provided to NATCA from the FAA. This data is current as of the end of FY 2008

The FAA has an obligation to involve Members of Congress, the public, airport operators, pilots, controllers, and other stakeholders in the decision-making, planning, and implementation process of any agency effort that could affect the safety and efficiency of the airspace. Regrettably, the agency has chosen to exclude stakeholders from the process, ignore their concerns, and inform the public only after its decision has been made. This go-it-alone method allows the FAA to remain ignorant of authentic and substantial inadequacies in the plans.

This is why NATCA supports the inclusion of comprehensive language in FAA Reauthorization that would ensure that all FAA realignment initiatives are considered in a collaborative environment and provide a specific operational benefit. We support the section in the Reauthorization Act of 2009 that requires the establishment of a workgroup of stakeholders to review all realignment proposals prior to the FAA beginning the realignment process. Representatives of all of the affected bargaining units must be included in this workgroup and realignment must be clearly defined.

#### **Establishing Scientific Staffing Standards**

In 1998 the FAA and NATCA agreed upon the optimal number of controllers for each facility based on a scientific study that factored in time-and-motion studies, sector complexity and workload, number of operations on the 90<sup>th</sup> percentile day, and relevant non-operational activities (i.e. training, annual/sick leave). Although the number of operations is similar to that of 1998<sup>11</sup> the FAA has abandoned these standards in favor of staffing ranges concocted to conceal the severity of the controller staffing shortage.

As part of its 2007 Controller Workforce Plan the FAA established staffing ranges for each air traffic control facility, which it modified slightly in 2008. Rather than basing its staffing goals on an accurate and precise scientific assessment of each facility's requirements for safe operation, the FAA has designed these ranges in order to deliberately mislead stakeholders about the staffing crisis currently facing the air traffic control system in this country. They were also designed in order to meet specific budget goals, with regional directors identifying the number of air traffic control positions it could fund at each facility and remain within its fixed budgets.<sup>12</sup> NATCA has reason to believe that the FAA's official staffing ranges were engineered by the Air Traffic Organization (ATO) Finance office, rather than the ATO Safety Office based on a memo written by the workforce staffing manager, Jodi McCarthy<sup>13</sup>.

The FAA attempts to justify this budget-based staffing standard by presenting a pseudo-scientific justification for its staffing numbers in its controller workforce plan. The FAA's reasoning is based on an average of the following:

<sup>11</sup> According to the FAA's OPSNET database there were 45,394,027 instrument operations in FY2007 compared to 48,985,472 in FY1998 (93%).

<sup>12</sup> Letter from FAA Regional Administrator Christopher R. Blum, Central Region, to Congressman Dennis Moore, February 22, 2006.

<sup>13</sup> Untitled memo from Jodi S. McCarthy, ATO-T Finance, Manager, Workforce Staffing. Received February 28, 2007 on the topic of the Staffing ranges featured in the 2007 Controller Workforce Plan.



1. Scientific Data – The FAA does not specify which study this refers to, who conducted it, or whether the study was conducted by an unbiased third party. It has thus far refused to provide NATCA with the details of the study parameters or the results.
2. Current staffing at peer facilities – As the entire system is suffering the same staffing shortage, peer facilities will be equally understaffed. Therefore using these as a basis of comparison yields a dangerously low standard.
3. Past staffing lows – The FAA misleadingly refers to this comparison as the past year of “highest productivity.” However, it goes on to define productivity as the highest number of operations per controller – or the year when the fewest controllers were relied upon to control the largest amount of traffic – without taking into account error rates, delays, or effect on the workforce. By using this definition of productivity the FAA is selecting a dangerously low staffing number as a standard again.
4. Managers’ advice – The FAA misleadingly refers to this as “service unit input.” This input did not include input from NATCA and came entirely from within FAA management ranks who are under pressure to conceal the extent of the staffing shortage and assure Congress and the flying public that all is under control. Therefore this too is likely to yield a dangerously low and inaccurate estimate of needed staffing.

In the summer of 2008 the FAA acted in a way that corroborated NATCA’s claims of the invalidity of these staffing ranges by offering significant relocation incentives to controllers to transfer to many facilities throughout the country. These incentives included increases to base pay, bonuses, relocation payments, and allowed controllers to remain above the new pay bands, contrary to transfer procedure outlined in the imposed work rules. Yet in every case where such incentives were offered, current controller staffing is *within* or in some cases even *above* the FAA staffing ranges (See table 1). If FAA’s staffing ranges were accepted as valid it would appear as if the agency is offering lucrative incentives to transfer controllers to well-staffed, even overstaffed, facilities. The truth however, is that the facilities are indeed severely understaffed.

NATCA fully supports and endorses the language in the FAA Reauthorization Act of 2009 that authorizes a scientific study of the system’s air traffic controller staffing to be conducted by an objective third party. This language allows the FAA, Congress and NATCA to truly assess the current risk to the NAS and set benchmarks for resolving the staffing crisis.

Table 1

Facility Name	FAC ID	Total On Board Staffing <sup>15</sup>	FAA Staffing Range <sup>16</sup>	1998 Authorized
Atlanta TRACON	A80	93	86-105	104
Atlanta ATCT	ATL	50	42-52	55
Chicago TRACON	C90	99	82-100	101
Charlotte ATCT	CLT	79	68-84	74
Cincinnati ATCT	CVG	78	69-73	86
Detroit TRACON	D21	48	47-57	71
Spokane ATCT	GEG	30	23-28	32
Green Bay ATCT	GRB	25	20-24	22
Greer ATCT	GSP	21	16-20	18
Houston TRACON	I90	77	69-85	76
Indianapolis ATCT	IND	43	42-52	56
Los Angeles ATCT	LAX	46	39-47	47
Milwaukee ATCT	MKE	48	38-46	51
New York TRACON	N90	223	176-215	270
O'hare ATCT	ORD	69	56-68	71
Norfolk ATCT	ORF	42	34-42	UNK
Potomac TRACON	PCT	168	151-185	211
Raleigh ATCT	RDU	44	38-46	48
Rochester ATCT	ROA	26	20-24	30
South Bend IND	SBN	24	20-24	24
Southern California TRACON	SCT	221	194-237	261
Syracuse ATCT	SYR	22	20-24	30
Tampa ATCT	TPA	70	55-67	67

Within FAA ranges  
Above FAA ranges

### Modernization

NATCA supports the modernization of the NAS, and applauds the generous funding provided for FAA Facilities and Equipment in the FAA Reauthorization Act of 2009. Such funding will accelerate the implementation of the Next Generation Air Transportation System (NextGen).

Our support of NextGen is not without conditions, however. Thus far, NATCA, like much of the industry community, has been disappointed by the FAA's lack of clear direction for NextGen plans as well as the FAA's continued exclusion of stakeholders from the planning and implementation of new technologies. NextGen will only be successful if it is done with complete participation and agreement from government, labor and industry groups from development through implementation. For example the technological initiatives of NextGen require extensive testing and NATCA members, with their current front-line experience, would be able to provide valuable contributions and insight during the testing phase.

During the late 1990s and into the early part of this decade, the FAA completed more than 7,100 projects to install and integrate new facilities, systems and equipment into the NAS. In addition, more than 10,000 hardware and software upgrades were completed. NATCA had representatives

<sup>14</sup> Transfer incentives identified on the FAA career opportunities website <http://jobs.faa.gov>.

<sup>15</sup> Staffing based on payroll information provided to NATCA by the FAA. Total on-board staffing includes both CPCs and Trainees.

<sup>16</sup> Federal Aviation Administration "A Plan for the Future: The Federal Aviation Administration's 10-year Strategy for the Air Traffic Control Workforce 2006-2017".

on over 70 modernization and procedure development projects<sup>17</sup>. Under the Bush Administration, the FAA routinely avoided collaboration with NATCA on key issues and initiatives related to modernization and ultimately terminated the successful Controller Liaison Program, under which controllers provided crucial insight and guidance for the development and implementation of some of the most effective technological and procedural advancements including: Advanced Technologies and Oceanic Procedures (ATOP), Display System Replacement (DSR), User Request Evaluation Tool (URET), Voice Switching, Control System (VSCS), Reduced Vertical Separation Minimum (DRVSM) and Standard Terminal Automation Replacement System (STARS).

NATCA believes that the success of NextGen is dependent on this level of controller involvement. It is our hope that after the imposed work rules are removed and NATCA and the FAA reach a mutually agreeable collective bargaining agreement we can again return to an era of cooperation and collaboration that will best serve the needs of the NAS and the flying public.

#### **Maintenance of Air Traffic Control Infrastructure**

While NATCA supports the upgrade of air traffic control technology, it is imperative that the funding of NextGen not come at the expense of NowGen. During the previous administration, FAA facilities were allowed to fall into disrepair while the FAA pursued its ill-defined modernization goals.

According to a recent report by the Department of Transportation Inspector General, 59 percent of FAA facilities are beyond their 30-year design life. All En Route centers are over 40 years old and falling into disrepair. Certain terminal facilities are also falling into unacceptable levels of disrepair – putting the health and safety of FAA employees at risk. For example, inspectors have confirmed the presence at Detroit Metropolitan Airport Tower and TRACON of stachybotrys, a toxic form of mold believed to be a contributory factor in health problems experienced by controllers at the facility (including cases of occupational asthma as well as seven cancer diagnoses during the past six years.)

This level of deterioration is unacceptable. The FAA must repair and maintain existing air traffic control facilities in a manner that ensures the safety and security of FAA personnel and allows aviation safety professionals the tools they need to do their jobs to the high standard of excellence we expect and depend on.

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<sup>17</sup> National Air Traffic Controllers Association *2002 Air Traffic Modernization Tools*

**Conclusion**

NATCA commends the Aviation Subcommittee of the House Transportation and Infrastructure Committee for its demonstrated understanding of the important issues facing the nation's aviation infrastructure as well as its efforts to quickly and thoroughly address these critical topics. NATCA is pleased with the bill's approach to collective bargaining and dispute resolution at the FAA, as well as its attempts to ensure stakeholder inclusion in realignment efforts. We also fully support the authorization of a scientific staffing standard established by an unbiased third party. We are pleased with the level of funding for modernization, and urge the FAA not to neglect the maintenance of existing infrastructure while planning for the future. In NATCA's view, the FAA Reauthorization Bill of 2009 is comprehensive and addresses many of the most important aviation issues, and we fully supports the bill's swift passage.

209

TESTIMONY OF

PATRICIA A. FRIEND  
INTERNATIONAL PRESIDENT

ASSOCIATION OF FLIGHT ATTENDANTS –  
CWA, AFL-CIO

BEFORE

THE SUBCOMMITTEE ON AVIATION OF THE  
TRANSPORTATION AND INFRASTRUCTURE  
COMMITTEE

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC

FEBRUARY 11<sup>TH</sup>, 2009

Association of Flight Attendants – CWA, AFL-CIO

501 Third St. NW

Washington, DC 20016

202-434-1300

Thank you, Chairman Costello for giving us the opportunity to testify today. My name is Patricia A. Fricnd and I am the International President of the Association of Flight Attendants – CWA (AFA-CWA), AFL-CIO. AFA-CWA represents over 55,000 flight attendants at 20 different airlines throughout the United States and is the world's largest flight attendant union. Flight attendants, as the first responders in the aircraft cabin, have a unique perspective on a number of the safety programs of the Federal Aviation Administration (FAA) and we are pleased to have a seat here today to discuss many of the issues which remain for the FAA to address.

My testimony today does not differ much from that given almost two years ago when this Committee began work on the most recent FAA Reauthorization legislation. I applaud this Committee for the good work done on the bill and your efforts to clear that legislation. Unfortunately, I'm here to tell you that not much has changed in the past two years. The FAA has continued to fail to take action on several fronts to improve the overall safety and health of the employees that work under its jurisdiction. We firmly believe that the FAA's mentality of denial and delay towards these serious health and safety issues only threaten the overall safety of the aviation system for the traveling public as well. That is why the continued vigilance and oversight of the FAA by the members of this Committee is necessary and vital. We look forward to working with this Committee in the coming weeks as you work towards passing a comprehensive FAA Reauthorization bill to address a number of the matters we will highlight today.

#### **FLIGHT ATTENDANT FATIGUE**

We all know that the FAA's failure to address the growing problem of fatigue for numerous aviation industry workers – not just flight attendants, but pilots and air traffic controllers as well – could lead to an incident resulting in the loss of many lives. I know that you have heard from our brothers and sisters at ALPA and NATCA about their ongoing concerns with the FAA and its inability to address fatigue amongst their members. I am here to tell you that fatigue is a very real and serious concern for the flight attendant workforce in this country as well. As the deep concessions demanded of flight attendants during the recent and ongoing financial turmoil of the airline industry

have taken hold it has become clear that airline management hopes to keep our members working for as long as possible with greatly reduced time off between duty. Some air carriers are routinely taking advantage of a “reduced rest” provision in the Federal Aviation Administration’s Flight Attendant Duty Time and Rest Regulations which allows the minimum rest of nine hours to be reduced to eight. The exception has become the rule and flight attendants are so exhausted that they have informed us that they have in some cases forgotten to perform critical safety functions, including the arming of doors and even fallen asleep on the jumpseats. Even more troubling is that the FAA continues to allow the carriers to schedule reduced rest periods, making them more routine, and has failed to recognize or show any concern for the impact that flight attendant fatigue has on the overall safety of the aviation system.

Multiple studies have shown that reaction time and performance diminishes with extreme fatigue – an unacceptable situation for safety and security sensitive employees. Flight attendants are required to be on board to assist in case an aircraft emergency evacuation is necessary. In addition, they are inflight first responders who are trained to handle inflight fires, medical emergencies including CPR and emergency births. Furthermore, since 9-11 the security responsibilities of flight attendants have greatly increased. It has become even more important for flight attendants to be constantly vigilant of the situation in the aircraft cabin and aware of their surroundings at all times. An inability to function due to fatigue jeopardizes the traveling public and other crewmembers.

According to the Federal Aviation Regulations (FAR’s), flight attendants must have a minimum rest period of at least nine hours following any duty period of less than 14 hours. The nine-hour period can be reduced to as little as eight hours, if the employer schedules a 10-hour rest period following the next duty period. I’d like to make a further clarification at this point. Using the term “rest period” can be misleading because much more must be done during this period of time other than simply sleeping. The “rest period” can begin as soon as fifteen minutes after an aircraft pulls into the gate and continues until one hour prior to their next departure. This “rest period” must also include travel through an airport, waiting time for a shuttle to the layover hotel, travel to

the hotel, checking-in, possibly finding time to eat a meal since many of our carriers in an effort to cut costs have removed flight attendant crew meals from the flights, getting prepared for bed, getting dressed and prepared for work the next morning, travel back to the airport and last, but certainly not least is sleep time. Our members are continually reporting that the actual sleep time this schedule allows is in many cases between only 3-5 hours of actual sleep before beginning another full duty day.

The airline industry practice has been to schedule as little as nine hours of rest for flight attendants. It is our understanding that the reduced rest period provision was originally meant to accommodate "day of" scheduling when carriers encounter delays out of the carriers' control such as bad weather or air traffic control delays. The FAA has chosen to ignore the routine implementation of this provision by airline management and the further erosion of meaningful rest periods for flight attendants. To further highlight the FAA's turning of a blind eye to this practice, an FAA spokesperson, in response to a question from the media on this issue stated, "The FAA rules on flight time and rest for both pilots and flight attendants are fundamentally sound. They serve aviation safety very well." We fundamentally disagree.

Congress also has expressed concerns. The Omnibus Appropriations for FY '05 contained an appropriation for \$200,000 directing the FAA to conduct a study of flight attendant fatigue. The FAA was to report back to Congress by June 1, 2005 with their findings. The report language stated: "The Committee is concerned about evidence that FAA minimum crew rest regulations may not allow adequate rest time for flight attendants. Especially since the terrorist attacks of September 11, 2001, the nation's flight attendants have been asked to assume a greater role in protecting the safety of air travelers during flight. Current flight attendant duty and rest rules state that flight attendants should have a minimum of nine hours off duty, that may be reduced to eight hours, if the following rest period is ten hours. Although these rules have been in place for several years, they do not reflect the increased security responsibilities since 2001, and only recently have carriers begun scheduling attendants for less than nine hours off.



There is evidence that what was once occasional use of the 'reduced rest' flexibility is now becoming common practice at some carriers."

The FAA delayed release of the report for over one year, even though the study itself was completed. The FAA repeatedly ignored requests from AFA-CWA and members of Congress to release the report and explain the delay in reviewing the study by the Administrator's office. Finally, after AFA-CWA staged an all night "sleep-in" by flight attendants in front of the FAA headquarters in order to draw attention to the issue, the FAA released the report.

In order to complete the required study, representatives of the FAA from the Civil Aerospace Medical Institute (CAMI) initiated an agreement with NASA Ames Research Center to perform an evaluation of the flight attendant fatigue issue. Due to the short internal deadline for conducting the report, the researchers were unable to conduct a thorough and comprehensive study of flight attendant fatigue. It primarily consisted of a review of existing literature on the issue, an evaluation of flight attendant duty schedules and a comparison of those schedules to the current regulations regarding rest. Based just on this limited research, the report concluded that flight attendants are "experiencing fatigue and tiredness and as such, is a salient issue warranting further evaluation." They also stated that "not all the information needed could be acquired to gain a complete understanding of the phenomenon/problem of flight attendant fatigue."

The report listed a number of recommendations for further study. They were:

- 1) A scientifically based, randomly selected survey of flight attendants as they work. Such a study would assess the frequency with which fatigue is experienced, the situations in which it appears, and the consequences that follow.
- 2) A focused study of aviation incident reports in order to determine what role fatigue played in already reported safety incidents.
- 3) The need for research on the effects of fatigue. This research would explore the impact that rest schedules, circadian factors and sleep loss have on flight attendants' ability to perform their duties.

- 4) The determination and validation of fatigue models for assessing how fatigued a flight attendant will become. Developing a reliable fatigue modeling system would be an important tool for the aviation industry in helping to determine when rest periods should be scheduled.
- 5) A study of International policies and practices to see how other countries address these issues.
- 6) Development of training material to reduce the level of fatigue that may be experienced by flight crews and to avoid factors that may increase fatigue levels.

Based on this limited report and its recommendations, Congress included funding for a continuation of the study and for CAMI to act on these recommendations for further study and to continue their research on this important aviation safety issue in the Consolidated Appropriations Act for 2008. The legislation called for CAMI to complete the study and report back to Congress by the end of 2009.

Unfortunately, the airlines have attempted to stonewall this Congressionally mandated study by refusing to provide to the CAMI researchers contact information for flight attendants. Fortunately, by working with flight attendant unions and the FAA flight attendant certification database, the researchers were able to get their initial information sent to flight attendants. Because of this stonewalling as well as delays resulting from the change in Administrations, it appears that the CAMI research team will need additional time to complete work on the study. We encourage the Committee to extend the deadline for the report to Congress on the research an additional six months.

Furthermore, we believe that based on the FAA's clearly stated belief that "...rules on flight time and rest for both pilots and flight attendants are fundamentally sound." and their demonstrated efforts to stonewall and delay release of the initial report, along with the carriers efforts to stymie the study, Congress must provide firm and strong guidance to the FAA to address this growing problem to aviation safety.

### **WORKPLACE SAFETY AND HEALTH PROTECTIONS**

For well over 30 years AFA-CWA has been fighting for even the most basic workplace safety and health protections for flight attendants. Those pleas have continued to fall on deaf ears at the FAA. Flight attendants encounter numerous occupational hazards while working aboard commercial flights, including but not limited to turbulence, severe air pressure changes, unwieldy service carts, broken luggage bins, balky exit doors and door handles, exposure to toxic chemicals mixed with the engine air that is bled into the passenger cabin, unruly passengers, communicable diseases and emergency evacuations. These hazards cause flight attendants to suffer occupational injuries and illnesses at rates far in excess of those experienced by workers in almost every other sector of private industry, as is evident from an analysis of survey data available from the U.S. Bureau of Labor Statistics (BLS). For example, occupational injury and illness rates among flight attendants and all scheduled air transport workers are historically several times greater than the rates for all private industry workers; and even significantly greater than the rates experienced by construction workers.

With respect to specific characteristics of injuries and illnesses experienced by flight attendants, detailed in data from the BLS surveys reveal that:

- Overexertion, contact with objects/equipment, exposure to harmful substances/environments, and falls are the most significant exposure events;
- Approximately 90% of injuries are traumatic in nature, and include sprains/strains/tears, effects of air pressure, and bruises and contusions;
- All body parts are affected, but injuries/illnesses to the trunk, head and extremities predominate.

#### **1975 FAA Assertion of Jurisdiction over Crewmember Health and Safety**

The reason that flight attendants continue to experience such high rates of injuries, is that flight attendants are not covered under the Occupational Safety and Health Act (OSHA) nor has the FAA made any effort to regulate the safety and health of flight attendants in the aircraft cabin. On July 10, 1975, the FAA published a statement in the Federal

Register (40 Fed. Reg. 29114, 1975) asserting complete and exclusive jurisdiction over crewmember health and safety on “civil aircraft in operation...from the time it is first boarded by a crewmember, preparatory to a flight, to the time the last crewmember leaves the aircraft after completion of that flight,...even if the engines are shut down.” In asserting such jurisdiction over crewmember health and safety, the FAA claimed that “with respect to civil aircraft in operation, the overall FAA regulatory program...fully occupies and exhausts the field of aircraft crewmember occupational safety and health.”

Since 1975, the FAA has continued to assert complete and exclusive jurisdiction over crewmember health and safety aboard a civil aircraft; unfortunately, at all relevant times since 1975, the FAA has **declined** to exercise its asserted statutory authority to prescribe or enforce standards or regulations affecting the occupational safety and health of crewmembers. Significant areas of regulatory neglect include but are not limited to, recording and reporting of occupational injuries and illnesses; blood borne pathogens; noise; sanitation; hazard communications; access to employee exposure and medical records, and anti-discrimination protections for reporting safety and health violations.

#### 1990 AFA Petition of Rulemaking

After years of inaction by the FAA, on May 8, 1990, AFA-CWA filed a petition for rulemaking with the FAA that asked the agency to adopt selected OSHA safety regulations and apply them to the crewmembers working in the airline industry, addressing such areas as the recording and reporting of injuries; access to employee exposure and medical records; right to inspections; safety definitions; the handling of hazardous materials; personal protective equipment; medical and first aid; fire protection, and toxic and hazardous substances. In submitting its petition, AFA-CWA was attempting to fill the void created when the FAA asserted jurisdiction over crewmember health and safety without actually exercising that authority. As AFA-CWA stated in its petition:

This petition offers one solution to the gaps in crewmember health and safety coverage caused by the FAA’s *de facto* industry-wide preemption of OSHA. Although this industry-wide preemption is probably incorrect as a matter of law,

it is the rule currently followed by OSHA and the FAA, with the possible exception of OSHA's recordkeeping requirement. If the FAA is going to claim total jurisdiction over crewmembers, it should *exercise* that jurisdiction by providing protections equal to those provided by OSHA. It is for that reason that this petition asks the FAA to adopt the OSHA regulations and apply them to crewmembers. (Emphasis added).

*FAA Rejection of AFA-CWA Petition for Rulemaking*

Almost seven (7) years after AFA-CWA filed its petition for rulemaking, the FAA finally responded by letter dated June 6, 1997, in which it stated in part:

The FAA has determined that the issues identified in your petition may have merit but do not address an immediate safety concern. Because of budgetary constraints, and the need to meet the demands of a changing aviation industry and a complex air transportation system, the FAA finds that it must dedicate its rulemaking resources to the most pressing problems and issues associated with safety. For these reasons, we are unable to consider your petition for Rulemaking; therefore it is declined.

*August 7, 2000 Memorandum of Understanding between FAA and OSHA*

On August 7, 2000, after increased pressure from AFA-CWA, the FAA and OSHA entered into an historic Memorandum of Understanding (MOU), the purpose of which was "to enhance safety and health in the aviation industry." In the MOU, FAA and OSHA agreed to establish a joint team (FAA/OSHA Aviation Safety and Health Team or Joint Team) to identify the factors to be considered in determining whether the OSH Act's requirements could be applied to the working conditions of employees on aircraft in operation (other than the flight deck crew) without compromising aviation safety.

The MOU required the Joint Team to produce a first report within 120 days from the date of the MOU's execution that addressed whether and to what extent OSHA's existing standards and regulations with respect to six (6) specific health and safety areas could be applied to employees on aircraft in operation, without compromising aviation safety. In

December 2000, the first report of the FAA/OSHA aviation safety and health team concluded that, with the exception of bloodborne pathogens and noise, the other five (5) subject areas under consideration could be implemented for all employees in the aviation industry without implicating aviation safety concerns. Those five subject areas are recordkeeping, sanitation, hazard communication, anti-discrimination and access to employee exposure/medical records. With respect to bloodborne pathogens and noise, the report found that the "OSHA requirements that necessitate engineering and administrative controls may implicate aviation safety and would need to be subject to FAA approval."

The report also proposed that the team give further consideration to establishing "a procedure for coordinating and supporting enforcement of the OSH Act with respect to working conditions of employees on aircraft in operation (other than the flight deck crew) and for resolving jurisdictional questions." Although the December 2000 report recommended that the Joint Team continue to meet to resolve this and other issues, the team did not meet again until January, 2002, at which time they could not agree on a timeline for implementation of relevant OSHA regulatory standards for employees on aircraft in operation.

*September 2001 Report of the Office of Inspector General of the DOT*

In September 2001, the Office of the Inspector General (OIG) for the Department of Transportation (DOT) issued a report titled: "Further Delays in Implementing Occupational Safety and Health Standards for Flight Attendants Are Likely" (the OIG Report). The OIG review was requested by a distinguished member of this Committee, Representative Peter DeFazio, who expressed concerns over the dearth of OSHA standards for airline employees in the areas of bloodborne pathogens, repetitive motion injuries, noise, and unhealthy cabin air.

The OIG Report found that in the 26 years since the FAA asserted statutory authority for prescribing and enforcing occupational safety and health standards for aircraft crewmembers onboard aircraft;

...it has not issued industry standards to address employee safety and health issues associated with working conditions onboard aircraft in operation. Instead, FAA focused its resources on providing and enforcing industry standards for aircraft design and operational problems affecting safety.

Furthermore, the OIG Report concluded that “unless FAA and OSHA resume working together, we have no confidence that industry standards will be issued in the near future to address occupational hazards.” Accordingly, the OIG Report recommended that within 90 days of the issuance of its report,

FAA in conjunction with OSHA should establish milestones for the completion of work begun under the August 2000 MOU, and address the occupational safety and health concerns identified in the December 2000 joint report. Within this timeframe, FAA should also reinstitute its rulemaking procedures on injury and illness recordkeeping and reporting, which FAA can do without OSHA’s assistance. This is necessary in order to identify the types and frequency of injuries and illnesses occurring. If FAA implements our recommendations, it will in our opinion, be a clear sign of forward progress. We will advise the Secretary of Transportation and the Congress of FAA’s actions. *If these recommendations are not implemented, it will, in our opinion, be apparent that after 25 years of limited progress, an alternative approach will be necessary. One approach would be to revoke FAA’s exclusive authority to provide occupational safety and health standards for employees in aircraft, and have this function performed by OSHA. FAA would then intervene in any regulatory proceedings, when in FAA’s judgement, a proposed OSHA regulation would negatively affect the safety of air traffic operations.* (Emphasis added).

To date, although the FAA/OSHA Aviation Safety and Health Team met on several occasions since the September 2001 publication of the OIG Report, the FAA and OSHA have taken no steps to implement the recommendations of the OIG Report, or in any other way regulate the workplace health and safety of flight attendants.

#### Aviation Safety and Health Partnership Program

The FAA took one final step towards complete abandonment of its August 2000 MOU with OSHA when it announced on March 4, 2003 that it was creating the “Aviation Safety and Health Partnership Program” (ASHPP). In an announcement in the Federal

Register (68 Fed. REG. 10145, 2003), the FAA claimed that the ASHPP was being created to provide “empirical data concerning injury and illness hazards on aircraft in operation” to allow air carriers to “voluntarily” provide “selective” safety and health protections for “employees not covered by OSHA.” In addition, the FAA announced that the ASHPP

would preserve the FAA’s preeminent authority over aviation safety issues by reserving to the FAA complete and exclusive responsibility for determining whether proposed abatements of safety and health hazards would compromise or negatively affect aviation safety. The ASHPP would include electronic web based procedures for air carriers to report employees’ injury and illness information, thereby enabling FAA to obtain the required data. This data will be used to determine if FAA should take additional measures, including rulemaking activities, to address safety and health issues in air carrier operations.

On March 31, 2003, AFA-CWA, along with many of the other affiliated unions of the Transportation Trades Department (TTD) of the AFL-CIO, wrote to the FAA Flight Standards Service informing them that the TTD unions were “disappointed with and angered by the FAA’s decision to create a voluntary program that will halt the progress we have made over the years towards providing the nation’s flight attendants with the federal safety and health protections they need and deserve.” Furthermore, the TTD wrote that it was troubled by the “fact that the ASIIPP proposal relies solely on voluntary measures, with no underlying regulatory requirements or enforcement provisions.”

Since its inception, the ASHPP has failed to propose or institute procedures, rules or guidelines for carriers to follow to improve airline employee health and safety protections. As a result of the voluntary nature of the ASHPP, air carriers have instituted no improvements to reduce or mitigate flight attendant injuries. As a direct result of the FAA’s failure to exercise its asserted statutory authority, flight attendants are substantially more likely to be injured on the job than employees in other industries.

#### *AFA-CWA Lawsuit Filed in US District Court*

On September 19, 2005, AFA-CWA filed a complaint in the United States District Court for the District of Columbia against the Secretary of Labor and the FAA Administrator.



The AFA-CWA complaint asked the court to issue an order declaring that the FAA has failed to exercise its asserted jurisdiction to establish occupational health and safety standards for flight attendants and crewmembers, and, as a result, the Secretary of Labor failed to fulfill her statutory duty under the OSH Act to ensure healthy and safe working conditions for flight attendants. On May 22, 2006, the District Court dismissed AFA-CWA's complaint for lack of subject matter jurisdiction; On January 10, 2007, AFA-CWA filed an appeal brief; on February 9, 2007, the FAA filed an appeal brief; on February 23, 2007, AFA-CWA filed a reply brief; and on March 26, 2007 oral arguments were heard before the District of Columbia Circuit Court of Appeals. In 2007, the D.C. Circuit Court of Appeals affirmed the district court's dismissal of AFA's suit to compel the Dept. of Labor to apply OSHA workplace standards on the FAA. The Appeals court found that the court did not have jurisdiction to hear AFA's suit.

In light of the continued stonewalling on the part of the FAA to act on behalf of the safety and health of flight attendants and its obvious attempts to totally disavow the 2000 MOU, we believe that it is time for Congress to act in order to force the FAA to relinquish the exclusive jurisdiction that it has claimed, without any subsequent action, for over 30 years.

#### **AIRCRAFT CABIN AIR QUALITY**

The issue of poor aircraft cabin air quality and in many cases the contamination of the air supply by potentially toxic chemicals continues to pose a threat to those that work onboard the aircraft as well as those that travel onboard the aircraft. At the heart of the failure of the US Federal Aviation Administration (FAA), the manufacturers, and the airlines to *resolve* problems with aircraft air quality is their failure to *acknowledge* problems with aircraft air quality. There are no standards for protective measures or access to information necessary to prove individuals' cases; there is effectively no government oversight, allowing the steady flow of "anecdotal" reports to be dismissed as unreliable, and therefore irrelevant.

It is no small task to describe and document problems with air quality on aircraft; hence, the length of this submission. The problems are varied, but the lack of oversight and protective measures is common to all and is in desperate need of remedy. Here, seven problems with aircraft air quality are described in detail. The highlights are described here:

**Inadequate ventilation:** In buildings, owners must meet minimum ventilation standards intended to protect occupant health and comfort. On aircraft, there is no ventilation standard, despite the fact that aircraft are the most densely occupied of any environment. In buildings, workers can request an OSHA investigation of indoor air quality. On aircraft, there is no government body assigned to investigate related illness reports. Further, there are no protections in place for flight attendants assigned to fly to areas affected by Severe Acute Respiratory Syndrome (SARS), even though crewmembers do not have the option of "postponing non-essential travel." The World Health Organization recognizes flight attendants as potential "close contacts"; the Centers for Disease Control and Prevention does not.

**Polluted air supply on the ground.** Exhaust fumes and heated deicing fluids can be ingested into the air supply systems, especially during ground operations.

**Exposure to heated oils and hydraulic fluids.** Heated oils and hydraulic fluids can leak or spill into the air supply systems during any phase of flight, potentially exposing passengers and crew to carbon monoxide and neurotoxins, such as tricresylphosphates. There are almost no protective measures in place to prevent air supply contamination, and contaminated aircraft can be – and are - dispatched as "airworthy." Chronic or even permanent neurological damage can result, although affected passengers and crew have little recourse without any record of air monitoring or access to maintenance records. Pilot incapacitation is an additional risk. The FAA has shown no signs that it plans to follow the recent National Research Council committee recommendation for requisite carbon monoxide monitoring on all flights.

**Reduced oxygen in the ambient air during flight.** During flight, the aircraft cabin is maintained at a reduced pressure, generally equivalent to an altitude of 6,000 – 8,000 feet, although sometimes higher. At an effective altitude of 8,000 feet, the supply of oxygen is reduced by 25% relative to sea level. There is evidence that the current "8000 feet standard", first issued in 1957, is based not on health, but on operating costs, and that the reduced oxygen supply may be inappropriately low for a substantial portion of the flying public.

**Inadequate attention to the thermal environment.** Providing air nozzles ("gaspsers") at each occupant seat and work area allows flight attendants and passengers to adjust the temperature of their environment. This is especially important in areas where flight attendants are physically active. In addition, flight attendants regularly report that the galleys and jumpseats located near the aircraft doors can be uncomfortably cold at ankle level, presumably because the doors are poorly insulated. A standard that defines a target temperature range and maximum vertical and horizontal temperature differentials would address this problem. Door heaters have already proven an effective and practical remedy.

**Exposure to ozone gas:** Symptoms associated with ozone exposure are well documented and include respiratory distress and increased susceptibility to infection. Ozone levels increase with altitude and latitude, and are highest in the late winter and early spring. The exposure limit for ozone cited in the Federal Aviation Regulations is 2.5 times higher than the workplace limit set by the National Institute for Occupational Safety & Health. Airlines are under no obligation to monitor or record ozone levels in the cabin.

**Exposure to potentially high concentrations of pesticides:** Some countries require that incoming aircraft are sprayed with pesticides to kill any insects that may be on board and may carry disease. The pesticides are applied in occupied or soon-to-be-occupied aircraft cabin without any measures to inform or protect the health of passengers or crew. Reported symptoms range from sinus problems and rash to anaphylactic shock and nerve damage. Differences in exposure levels and individual susceptibilities are described. The

US Department of Transportation's investigation into the feasibility and efficacy of non-chemical methods to keep aircraft cabins insect free must be actively supported

It is imperative that the members of this Committee keep the FAA focused on addressing this serious issue and supporting vital research that will help clarify and solve this ongoing problem. It is also important that the Committee assist in preventing airline management from stonewalling efforts to conduct vital studies of and efforts to address aircraft cabin air quality.

#### **FLIGHT ATTENDANT ENGLISH LANGUAGE STANDARDS**

AFA CWA believes that it is long past due for an English language regulatory standard for flight attendants that is similar to the existing standard for pilots, flight engineers and security personnel. The FAA requires flight attendants on board most commercial flights to protect the safety and security of the cabin and the passengers. Effective communication is essential to fulfilling these responsibilities.

Virtually every type of safety, security or health related cabin emergency requires effective communication with other flight attendants, with passengers and with the flight deck crew. For example, if there is a fire in the galley, the flight attendant must clearly, quickly and completely explain the problem to the flight deck so the captain in command can make the appropriate decision(s). In addition, the cabin crew needs to be able to coordinate the emergency response by clearly communicating with each other as well as to the passengers. In the event of an emergency flight attendants would need to brief able bodied passengers to assist in an evacuation. It is crucial that the passengers completely understand the briefing and actions they would be expected to perform. Clear, distinct, and audible directions and commands are essential in the process of evacuating an aircraft. It is imperative that during an emergency the entire crew work as a team to prepare for or respond to an emergency in the cabin.

The FAA has been working on developing an English language proficiency standard for over a decade. In April of 1994, the FAA issued an Advanced Notice of Proposed Rule

Making (ANPRM) on Flight Attendant English Language Docket No. 27694; Notice No. 94-11. “The FAA is considering rulemaking to establish requirements to ensure that flight attendants understand sufficient English language to communicate, coordinate, and perform all required safety related duties. If the FAA actually proposes such a requirement, it would be comparable to regulatory requirements for other crewmembers and dispatchers. Improvements in communication, coordination, and performance of required safety related duties that may result from this regulatory process would benefit crewmembers and passengers.”

In February of 1996, the FAA announced the formation of an Aviation Rulemaking Advisory Committee (ARAC) to dispose of the comments made to the 1994 ANPRM No. 94-11 and recommend an appropriate rulemaking action (e.g. NPRM, withdrawal) or if advisory material should be issued. Represented on the group were representatives from various flight attendant unions and airlines. Midstream of the ARAC process the FAA withdrew the ANRPM stating that any possible rulemaking on the subject would be incorporated into the overall context of a crew training rulemaking project currently being developed internally at the FAA. This all, despite the ARAC working group voting 11-2 that an NPRM should be developed and 10-2 that an Advisory Circular should also be developed to provide guidance on implementation of such a rule.

In 2004, the Crewmember/Dispatcher Qualification Aviation Rulemaking Committee (ARC) was tasked with finishing the training rulemaking project that was started in 1997. The proposed new regulatory section provides an English Language requirement for all crewmembers, including flight attendants, to help ensure that crewmember communication is in accordance with crew resource management objectives and that flight attendants can communicate with passengers. This rulemaking was recently published and currently open for comments. The ARC proposed the following language to the FAA:

*English language requirement*

*No certificate holder may use any person nor may any person serve as a pilot, flight engineer, or flight attendant under this part, unless that person*

*has demonstrated to an individual qualified to evaluate that person under this part, the ability to do the following:*

- (a) Read, write, speak and understand the English language.*
- (b) Have their English language speech and writings understood.*

AFA-CWA hopes that Congress will push the FAA to ensure that proposed language on an English language regulatory standard for flight attendants becomes mandatory.

### **CARRY-ON BAGGAGE LIMITATIONS**

AFA-CWA strongly urges legislation which would direct the Transportation Security Administration (TSA) and the Federal Aviation Administration (FAA) to issue regulations that would set a limit on carry-on baggage that may be brought on an airplane. Current guidelines for carry-on bags were established more than two decades ago when air travel was much different than today. Carriers had to have individual programs to control the weight, size and number of carry-on bags. This created a maze of varying carrier programs making it difficult and confusing for passengers. This individual program philosophy is still in force today. Furthermore, the recent actions taken by most airlines to charge a fee for checked baggage has resulted in an increase in the size and number of items being brought onboard and into the passenger cabin.

AFA-CWA has filed two petitions for rulemaking requesting the FAA to enhance their carry-on baggage rule, citing incidents involving carry-on bags that range from disruption in the cabin, delays in boarding and deplaning, physical and verbal abuses of flight attendants and passenger, and injuries and impediments to speedy evacuations. Despite these two requests for rulemaking the FAA has failed to establish a specific requirement regarding size and number of carry-on bags allowed stating the FAA simply provides guidance to carriers on how to establish their programs. According to the FAA, this allows the carriers flexibility to create a program that fits their individual unique operations.

The September 11 terrorist attacks underscored the need for a comprehensive effort to improve security and further supported the need for a tighter limit on carry-on baggage. Reducing the size and number of carry-on bags would ultimately enhance security screening by reducing the number of bags that need to be screened and reducing the volume of the individual bag, both of which would allow for a better, clearer, uncomplicated e-ray image.

The concept of limiting the size, type and amount of carry-on baggage is nothing new and was recommended by an FAA Aviation Security Advisory Committee in 1996. International countries and bodies, such as the European Union (EU) which represents 25 member states, also recognize the security enhancements relative to limiting the number and size and have adopted a new rule effective April 2007 that would limit passengers to one carry-on item with a size limit of 56 cm by 45 cm by 25 cm (22 in by 17.75 in by 9.85 in approx).

FAA and Transportation Security Administration (TSA) recognizing the necessity to limit carry on baggage both issued guidance to carriers that limited passengers to one carry-on bag and one personal bag (such as a purse or briefcase). These restrictions are loosely enforced and neither agency is very explicit in their information to the public regarding the limit. In fact, the TSA website no longer even mentions the limit of one carry-on and one personal bag.

AFA-CWA will continue to fight for clear and concise limits on the number and size of carry-on bags to ensure continued enhancement of security and safety for the traveling public.

#### **HUMAN INTERVENTION MANAGEMENT STUDY (HIMS)**

Flight attendants and pilots work under nearly identical and strict regulations of the DOT and FAA regarding drug and alcohol abuse. Both groups are subjected to drug and alcohol testing on a random basis; following a serious aircraft accident or incident; or based on suspicion of co-workers and supervisors.

However, there is one major difference: Pilots who test positive for prohibited substances have access to a rehabilitation and recovery process called Human Intervention Management Study (HIMS) and, if a pilot complies with the recovery program, he/she may return to flying. On the other hand, flight attendants who test positive are terminated quickly and have little to no access to treatment making recovery improbable. It is time for the FAA to institute a HIMS program for the nation's flight attendants.

HIMS was formed and funded in 1992 by Congress, is administered by the FAA, and provides a comprehensive education and training program for alcohol and drug abuse prevention in the airline industry. Congress has appropriated approximately \$500,000 to fund HIMS.

The success of HIMS for pilots is well documented and provides a glimpse at the potential assistance this worthy program can provide for flight attendants. Over 3,500 pilots have been returned to the flight deck through their own efforts with the support of the HIMS program. Importantly, over 57,000 pilots and their families at 47 carriers have received preventative educational services from the HIMS program.

Flight attendants earn their wings by first passing a company training program which includes mandatory FAA training requirements. The FAA orders that flight attendants pass proficiency tests during training. Training records and test results are a part of a flight attendants permanent personnel file and can be accessed at any time by management and by the FAA in post-serious aircraft incident and/or accident investigations. Following successful completion of the initial training course, the FAA issues a certificate to the flight attendant who must attend on-going training courses and pass proficiency tests to remain certified each year throughout her/his career. Flight attendants are also subject to unannounced inspections by FAA Cabin Safety Inspectors and are subject to FAA enforcement action for non-compliance with FAA regulations.



This FAA oversight of flight attendants is nearly identical to the way in which the FAA governs and enforces federal regulations concerning other aviation professionals such as pilots and mechanics. Therefore, an effective HIMS program will provide parity for flight attendants and their aviation industry colleagues.

According to Employee Assistance Program (EAP) experts, flight attendants are at greater risk for developing addiction diseases because they may be exposed to multiple traumatic and near traumatic incidents while on the job. As the first responders in cabin safety and security incidents, flight attendants, like other emergency response professionals who experience traumatic incidents, can become vulnerable to substance abuse.

Company sponsored employee assistance programs are valuable but limited in their scope. They offer intervention with troubled employees by training supervisors to refer workers with observable performance problems for help. Unfortunately, these programs have a narrow capacity to identify “at risk” flight attendants simply because the vast majority of the time, a flight attendant is unsupervised, working in a distant environment at 30,000 feet.

HIMS can provide a safe harbor for flight attendants, as it does for pilots, who want to report fellow crewmembers they suspect of having an abuse problem. In a largely unsupervised work environment, fellow flight attendants are often the first to suspect and/or recognize substance abuse patterns of a co-worker. But currently, the practice of alerting management to a flight attendant that may be struggling with an addiction is the fast track to her/his unemployment with no health benefits to count on for help.

HIMS can prevent a wasteful human toll and can produce cost efficiencies at airlines that effectively promote and utilize the HIMS model. A HIMS model for flight attendants could save substantial training costs for carriers that currently have to hire new flight attendants to fill vacancies that result when management fires flight attendants for a first

positive drug or alcohol test. Each time a flight attendant is terminated, the costs of training that flight attendant are a wasted investment.

Because HIMS promotes peer identification and intervention, it increases the chance that a flight attendant will get treatment early and avoid mounting medical bills that often result from a sustained substance abuse. Also, absenteeism and on the job injuries, costly bottom lines for management, may also improve with an effective HIMS program. Countless union and management dollars could be saved as a result of HIMS. Airline expenses for grievances, system board and arbitration for substance abuse cases are substantial. With management and union endorsement, HIMS can reduce costly legal bills associated with substance abuse termination and/or discipline cases.

It's well past time to institute HIMS programs for flight attendants. It's time to give all flight attendants a chance at rehabilitation and recovery and a return to their careers. Too many of our colleagues have suffered in silence, afraid to speak up about their addiction struggles and management's draconian termination policies silence those who want to extend a helping hand. The warning signs often come too late to save careers. Expanding the HIMS program for flight attendants can usher in a cooperative environment that will work to ensure safety in the air and hope and recovery for those of our colleagues in need.

**DEVELOPMENT OF A METHOD FOR ASSESSING EVACUATION  
CAPABILITY OF AIRCRAFT UNDER ACTUAL EMERGENCY CONDITIONS.**

AFA-CWA urges Congress to have the National Academy of Sciences study the issues related to emergency evacuation certification of passenger transport aircraft and begin the process of developing a method for assessing evacuation capability of aircraft under real emergency conditions.

Design standards are used in the design phase of a project, and can be verified while the product, in this case, an airplane, "is still on the drawing board." i.e., before the airplane is built. Performance standards evaluate the performance of the product, often under the

influence of factors that cannot be effectively integrated or evaluated during the design. Typically, a performance standard involves a test of the product after it is built. In the case of a full scale evacuation demonstration (a performance standard) of an airplane, the factors that must be evaluated are the performance of the passengers and crew.

The FAA made a change in policy that would allow new airplane designs or any increase in an existing design's capacity to be approved using analysis of data from past tests, rather than conducting a full scale test of the model requiring certification. But there is currently no analytical method that is capable of predicting failure of the crew and passengers to meet the performance standard after the design standard has been met. There have been such failures in the past. Since there are no analytical methods that can properly substitute for the full scale demonstration, the FAA cannot enforce their policy.

The requirement for full-scale emergency evacuation demonstrations was introduced by FAA NPRM 63-42 (28 FR 11507, October 23, 1963). This notice justified this proposal by stating: "Recently, the Agency observed several simulated passenger emergency evacuation demonstrations which were conducted by various air carriers using different types of airplanes. The time required to accomplish each of these demonstrations varied from 131 to 213 seconds using 178 to 189 persons. In all instances, it was evident that a more realistic assignment of functions within the cabin would have resulted in lesser time to evacuate the airplane satisfactorily. From these demonstrations, it has been concluded that a physical demonstration of an air carrier's ability to execute its established emergency evacuation procedures within a specific time period is necessary in the interest of safety and to insure a more realistic assignment of functions which, in turn, will result in satisfactory accomplishment of emergency evacuation procedures."

Clearly, the original intent of the evacuation demonstration was to show the satisfactory accomplishment of emergency evacuation procedures. The final rule reinforced this intent (30 FR 3200, March 9, 1965).

The following year, FAA Notice 66-26 (31 FR 10275, July 29, 1966) proposed to establish comparable requirements for the airplane manufacturers. This notice stated that "...traditionally, it has been considered sufficient to provide the necessary components for emergency evacuation through detailed quantitative requirements prescribed in the airworthiness rules. However, experience has shown that compliance with these requirements does not ensure that the airplane can be evacuated, during an emergency, within an acceptable time interval. Differences in the relationships between elements of the emergency evacuation system introduce a considerable variation in evacuation time, and this variation is expected to be even more marked on larger transport aircraft under development." Thus it was acknowledged that relationships between the various elements of the evacuation system, not just the elements themselves, had a critical influence on evacuation time. In other words, the whole was considerably more complicated than the sum of its parts. Since the manufacturer would be demonstrating the basic capability of a new airplane type without regard to crewmember training, operating procedures and similar items (such demonstration of procedures was still required under Part 121, the operational requirements), this new demonstration was not expected to validate the evacuation procedures of the air carriers or operators. FAA Notice 66-26 also proposed that once a manufacturer had successfully conducted an evacuation demonstration for a particular airplane type, the passenger seating capacity could be increased by no more than five percent if the manufacturer could substantiate, by analysis, that all the passengers could be evacuated within the prescribed time limit. This appears to be the first proposal to suggest the use of "analysis" in lieu of full-scale evacuation testing. However, this analysis was intended to provide comparison with the full scale evacuation actually conducted on the airplane. These proposals were adopted as a final rule (32 FR 13255, September 20, 1967).

The tests conducted by operators to show satisfactory accomplishment of emergency evacuation procedures and by manufacturers to show that the aircraft interior configuration and the relationship between the elements of its emergency evacuation system could be evacuated within a specified time period were allowed to be satisfied under a single test under Amendment 25-46 (43 FR 50578, October 30, 1978). Under

this amendment, the FAA also stated that “A combination of analysis and tests may be used to show that the airplane is capable of being evacuated within 90 seconds under the conditions specified in 25.803(c) of this section if the Administrator finds that the combination of analysis and tests will provide data with respect to the emergency evacuation capability of the aircraft equivalent to that which would be obtained by actual demonstration.” The FAA recognized the problems with this new provision and in its discussion of it concluded that: “Several commentators objected to the proposed amendment to 25.803(d) which would allow analysis in showing that the airplane is capable of being evacuated within 90 seconds. One commentator stated that analysis alone is an incomplete means of showing compliance and should not be allowed. Another commentator stated that extrapolations based on analytical testing have no practical relation to actual conditions which occur in accidents and evacuation demonstrations. The FAA agrees that the limitations on the use of analytical procedures should be made clear. The requirement that the Administrator find the analysis data acceptable was intended to *preclude approvals which might be based on insufficient test data, such as in the case of a completely new model or a model which has major changes or a considerably larger passenger capacity than a previously approved model*” (Italics ours.)

This intent was reinforced by the FAA Administrator in a 1986 Regulatory Interpretation and FAA Advisory Circular (AC) 25.803.1, Emergency Evacuation Demonstrations, issued November 13, 1989.

In 1985 testimony before the U.S. House of Representatives Subcommittee on Investigations and Oversight of this Committee (formerly named Public Works and Transportation Committee) and its Chairman, James Oberstar, the FAA Administrator suggested that a reassessment of regulations pertaining to emergency evacuation of transport airplanes was warranted. Consequently, an Emergency Evacuation Task Force, open to the public, for that purpose was established in September, 1985. The continued use of full scale emergency evacuation demonstrations was one of the matters considered by that task force. One of the presentations, by Boeing, suggested that a rudimentary

analytical procedure be used in lieu of full scale demonstrations. Basically, the manufacturers favored analysis, while the representatives of people who flew on the airplanes, either as crewmembers or passengers, opposed analysis. The task force was unable to reach consensus on when to accept analysis in lieu of a demonstration. A similar process was undertaken by an advisory committee to the FAA in the 1990s with the same failure to reach consensus.

The procedures used by the flight attendants in a full scale emergency evacuation certification demonstration are intended to become the baseline procedures for the aircraft type and model tested. This was the reason for the promulgation of the 1965 rule requiring operators to conduct full scale emergency evacuation demonstrations. These procedures are found in the Flight Standardization Board Report for each type and model of aircraft. Yet some demonstrations conducted since 1996 have utilized a procedure that makes it easier for the manufacturer to pass the test, but it is not a procedure that is used by U.S. scheduled operators. The intent of the regulation requiring full scale evacuation demonstrations is not being carried out by the FAA.

The analytical method does little more than calculate that, if the design standards are met, the aircraft could be evacuated within the requirements of the performance standard. Since the design requirements were intended to provide an airplane capable of being evacuated within the requirements of the performance standard, use of the analytical method is redundant.

Analysis is not a method that can predict failure of an emergency evacuation system, unlike a full scale demonstration utilizing appropriate evacuation procedures.

The result of the FAA's policy and of the currently inadequate "state of the art" analytical methods accepted under the policy, is that the first full scale evacuation of a new airplane will be performed by the traveling public under emergency conditions rather than by paid test subjects under the controlled test conditions of a demonstration. There is no

assurance that the evacuation would be successful. For this reason, the FAA should be required to rescind its policy of allowing the use of analysis in lieu of the full scale demonstration until a scientifically valid method is developed.

The time is past due for development of a method for assessing the evacuation capability of aircraft under real emergency conditions. An independent blue ribbon panel needs to be established within the National Academy of Sciences (NAS) to examine these problems in depth and design a study to develop such a method, if not develop the method itself.

#### **FOREIGN CONTROL OF US AIRLINES**

Recent years have seen an effort in the airline industry to move towards greater globalization. We remain concerned that these efforts will lead to greater foreign control of U.S. airlines, something that Congress has historically opposed on a strong bipartisan basis. We are pleased to see that the Committee has included language to address these concerns in the legislation passed last year by the House of Representatives. AFA believes that Congress should require that oral evidentiary hearings are held by DOT when an application for a certificate of public convenience and necessity is submitted by or on behalf of an applicant with any direct or indirect foreign carrier investment. Oral evidentiary hearings should also be required at DOT when a continuing fitness review of a carrier's certificate is held if that carrier has any direct or indirect foreign carrier investment in order to ensure that all issues are fully addressed, that Congressional intent in this area is carried out and the public interest is protected.

As you can tell from our testimony, AFA-CWA believes that there are a number of areas where improvements could be made by the FAA to improve aviation safety. We look forward to continuing our working relationship with this Committee and the Chairman to make progress on these important issues. Thank you again for the opportunity to testify today.



**AIRCRAFT OWNERS AND PILOTS ASSOCIATION**

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**Statement of Craig Fuller, President**

**Aircraft Owners and Pilots Association**

before the

**Committee on Transportation and Infrastructure's  
Aviation Subcommittee  
U.S. House of Representatives**

concerning

**FAA Reauthorization**

**February 11, 2009**



Good morning. My name is Craig Fuller, and I am President and Chief Executive Officer of the Aircraft Owners and Pilots Association (AOPA), a not-for-profit individual membership organization representing more than 416,000 members, which is nearly three-quarters of the nation's pilots. AOPA's mission is to effectively represent the interests of its members as aircraft owners and pilots concerning the economy, safety, utility, and popularity of flight in general aviation (GA) aircraft.

As pilots flying in the United States, we experience firsthand the safest and most efficient air transportation system in the world. This aviation network of 5,200 public use airports, complemented by the more than 13,000 privately owned landing facilities is a unique national resource. In a poll conducted on election night last November, more than 60 percent of American voters said they understood that general aviation (all flying other than military or commercial airlines) is a vital part of America's transportation system. Each year, 170 million passengers fly using personal aviation, the equivalent of one of the nation's major airlines, contributing more than \$150 billion to U.S. economic output, directly or indirectly, and employing nearly 1.3 million people whose collective annual earnings exceed \$53 billion.

We appreciate the opportunity to offer testimony at this hearing early in the new Congress because the enactment of long-term (four years) Federal Aviation Administration (FAA) authorization legislation is a top priority for AOPA and our members.

#### **Current Economic Climate**

The general aviation community, like many other parts of the aviation industry has been adversely impacted by the economic downturn. Sales of aviation gasoline, the life blood of light aircraft flying, is down by 12 percent. Flight training has slowed, with a more than 12 percent reduction in student pilot certificates issued for the first half of last year and there is a six percent reduction in the number of private pilot certificates issued in 2008, the lowest since 1984. Another indicator of the downturn is the number of airplanes flying through the system. According to the FAA's traffic statistics, general aviation flew 13 percent fewer flights at airports with operating control towers.

Over the past several months tens of thousands of manufacturing workers have been laid off from aircraft and parts production plants, and factories. Well known companies such as Cessna, Hawker/Beechcraft and Piper have all announced layoffs and have scaled back their rates of production. Mooney Aircraft has scaled back dramatically and is in "super hibernation," and last month while in Duluth, Minnesota, I saw firsthand the adverse effects of the economy on Cirrus aircraft.

#### **Economic Stimulus Welcome First Step**

This Committee with your leadership Mr. Chairman and this Congress through the passage of H.R. 1 have recognized the contribution aviation makes to the economic viability of this country and our members are grateful. Investing in aviation infrastructure with \$3 billion in AIP will put people to work, help local communities, and encourage more economic investment.

There are plenty of “shovel ready” aviation projects out there and this money will benefit airports of all sizes and will undoubtedly provide needed stimulus to both large cities and rural communities in all 50 states. Certainly this Committee recognizes that it not just construction that will help aviation survive the economic downturn.

Charting new WAAS approaches and adding lights and runway markings will increase the safety and utility of GA airports by giving them satellite-based precision approaches, which will make them stronger engines of economic activity in smaller communities.

Perhaps the silver lining in this economic downturn that has resulted in decreased flight activity and reduced congestion, is the opportunity to modernize the aviation system and get ahead of an upturn in flying. If we invest wisely, the system will be prepared for the economic turn-around.

#### **Aircraft Equipage Key to Air Traffic Control Modernization**

We also believe federal assistance for aircraft avionics can help “jump start” the technology for implementing air traffic control modernization (Next Generation Air Traffic Control or NextGen). For nearly two decades the FAA has been in the process of migrating from a ground-based air traffic control system to a satellite based system that relies on the Global Positioning System (GPS) for navigation, aircraft position and precision timing.

While the specifics of the FAA’s rulemaking for implementing the Automatic Dependant Surveillance-Broadcast (ADS-B) system that replaces ground based radar with GPS signals as the primary means of air traffic surveillance are still being refined, it is clear that aircraft owners will need new avionics.

In fact, much of the FAA’s NextGen plan hinges on the installation of a new generation of electronics in nearly all aircraft. The result, aircraft equipment upgrades will be at least as much, if not more, than the FAA’s upgrades for air traffic control modernization over the next two decades. That is why we have been a supporter of the industry-wide effort to have the stimulus legislation include an FAA grant program for these types of investments. This is also an important element that should be included in the FAA authorization legislation.

#### **Long Term FAA Funding Needed**

A four-year FAA authorization bill and the certainty it provides is vital for federal investments in safety, modernizing the air traffic control system, FAA operations, airport improvements and aviation research efforts.

AOPA members were extremely pleased by your leadership Mr. Chairman and Members of this Committee during the FAA Reauthorization debate in the last Congress that led to an agreement not to impose user fees – everybody knows how concerned our members are about user fees. AOPA strongly supported the financing approach contained in H.R. 2881 of using the time-tested system of passenger transportation and general aviation fuel taxes in combination with

general fund tax revenues to support the FAA and the aviation system. AOPA members continue to support the agreed-to increases in the aviation fuel taxes. We encourage the Committee to expeditiously approve legislation following that framework.

#### **Looking Ahead on Air Traffic Control Modernization**

Aviation in America is growing in size and diversity in both the civilian and military sectors. New technologies have resulted in engine and airframe enhancements that have sparked the introduction of several new general aviation airplane designs. Meanwhile, the Department of Defense has increased their use of unmanned aircraft, resulting in the need for the FAA to accommodate their operations without affecting current airspace users.

In late January the FAA released their ten-year (mid-term) plan for NextGen, called the NextGen Implementation Plan (NGIP), outlining key projects and activities that the FAA wants to complete by 2018. It is encouraging that the FAA plan includes the proliferation of much needed precision approaches at thousands of general aviation airports, and the FAA intends to improve services at small airports, upgrading the level of ATC services to nearly the same quality as those found only at large hub airports. However, the ten-year plan also recommends policy changes that raise concerns about general aviation's access to airports and airspace. Specifically the plan suggests transitioning away from today's first-come/first-served airspace philosophy, into a new paradigm of best equipped/first-served. Implementation plans for such a policy shift will require full participation from AOPA and the entire aviation industry to avoid conflict.

The FAA has wisely created an industry Task Force to review the 10-year plan to identify areas of industry consensus on the FAA's NextGen plans. In the past, the absence of this type of planning has resulted in unresolved issues.

Finally, context is important when discussing Next Gen. While incorporating new technology will improve the air traffic control system, it takes time and there is a limit to the amount of improvement and capacity modernization brings.

#### **Investment and Protections for Airports**

As I travel to airports across the nation, I am constantly reminded that airports are as critical to the aviation transportation system as on- and off-ramps are to our federal highway system. Federal airport funding should be no less than \$3.8 billion.

Repeatedly, I find communities enthusiastic about airport expansions that produce immediate jobs as well as renewed opportunities in the community for economic growth. The importance of airports and runways was illustrated recently when the FAA commissioned new runways at three major airline airports, greatly increasing capacity and improving efficiency for the aviation system. Of course, it is not just airline airports that serve economic growth. General aviation facilities are an important part of the U.S. infrastructure and should not be left out of any infrastructure initiative.

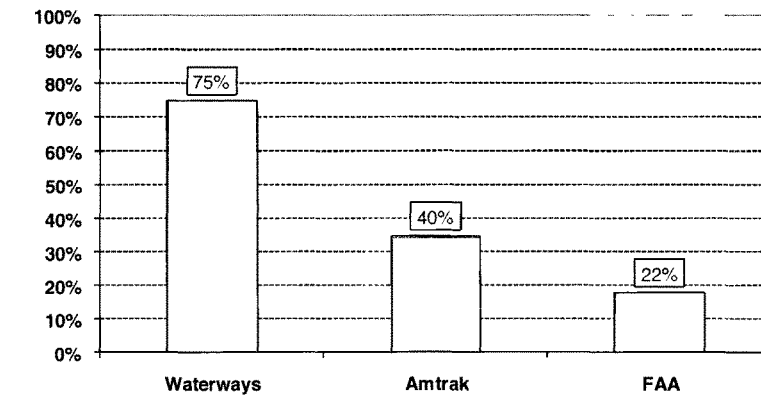
AOPA appreciates the work of this Committee to fend off threats to critical aviation infrastructure by a robust federal airport grant program. The FAA should continue proactive efforts through its policies and enforcement of federal airport grant provisions to protect the aviation infrastructure.

**Aviation Excise Taxes Combined with a General Fund Contribution Work**

Historically, Congress has used a system of passenger transportation and general aviation fuel taxes in combination with general fund tax revenues to support the FAA and the aviation system. Just prior to establishing the FAA's Airport and Airway Trust Fund in 1969, Congress recognized that a general fund contribution is necessary. Nearly 40 years ago, they observed that, "there are others who are indirectly benefited by air transportation because of the non-aviation employment which air transportation generates." We encourage the Committee to include a General Fund contribution of no less than 25 percent annually.

The use of General Fund investment in transportation is consistent in other areas of the federal budget. For example, the waterway system receives **75 percent** of its funds from general taxpayers. Amtrak receives more than **40 percent** from the General Fund, and even highways received \$8 billion from the General Fund this past year.

**Percent of Total Budget Paid by Taxpayers Through the General Fund**



The current sharp economic downturn is affecting all sectors of the economy, and year-to-date data show that the revenue stream to the Aviation Trust Fund (AATF) is no exception. Although Trust Fund tax receipts for FY2008 came in about as projected at roughly \$12 billion, Trust Fund receipts for FY2009 are forecast to drop to \$11.25 billion. The revenue stream is likely to begin to gradually improve in 2010. Forecasts differ on how long it will take for a complete rebound, so we are not in a position to make firm projections. Of course, much will depend on the overall economy.

What are the implications of this? The situation clearly bears watching, but the Committee should anticipate a need for a larger General Fund contribution to FAA's budget, probably in the neighborhood of 25-30 percent in 2009--still well within historical norms. The average General Fund contribution to the Aviation Trust Fund since 1982 has been 32 percent and over the last eight years has averaged 22 percent. In 2008, that contribution was about 20 percent or \$2.9 billion.

Congress has wisely recognized that a federal aviation network is only possible by using tax revenues from various parts of the system for financial support. As an illustration of how this is similar to other modes, if federal highways had been built in only those states that have contributed "their fair share" since 1956, the Interstate and U.S. highway system would exist in only 15 states! Drivers in Wisconsin, New Jersey, Tennessee, California, Missouri, Florida, Ohio, Georgia, Michigan, South Carolina, North Carolina, Oklahoma, Indiana and Texas have "subsidized" federal-aid highway construction in 35 other states and the District of Columbia.

#### **Registration Fees Impact General Aviation**

Although not a topic of much discussion in consideration of H.R 2881, the legislation included significant increases in various FAA fees for aircraft and airman registration. Many of these fees have not been increased since 1963. Based on an analysis conducted by AOPA in 2007, many of these adjusted fees would be similar, or in the range of those imposed on automobiles and boats.

However, many members objected to establishing a new \$42 fee for issuing an airman's medical certificate. Unique to aviation, the FAA requires each Aviation Medical Examiner to not only evaluate an airman's medical condition, but also to process and transmit the completed medical application and approval package to the FAA, and the medical examiner currently recovers the costs associated with this service. Therefore, AOPA questions the extent to which the FAA incurs any additional expenses to simply file airman medicals, and therefore we do not believe an FAA medical issuance fee is warranted.

#### **Aviation and the Environment**

It is important that the Department of Transportation and the FAA be involved in environmental issues that affect aviation. AOPA urges the Committee to ensure that the FAA is prepared to address proposed policies, regulations and standards that target aviation gasoline, greenhouse gas emissions, and aircraft noise. It is also important that the FAA continue supporting efforts by the aviation industry to

identify an unleaded replacement for aviation gasoline. This research was specifically covered in Section 911 of last year's bill and we request that it be included in the legislation.

**FAA Administrator Will Play Vital Role in Aviation's Future**

This Committee is well aware how important strong leadership is for the FAA. The FAA must respond to the challenges being faced by the aviation industry and ensure that the air transportation system continues its role in the economic revitalization of the country.

AOPA believes that the next Administrator must make unifying the aviation community a priority. In addition, the FAA Administrator should also have technical and people-management, including labor relations skills, combined with an understanding of the aviation industry and should have the political acumen necessary to lead the organization.

**Conclusion**

On behalf of the members of AOPA, thank you for your leadership in examining the need for action on the FAA Authorization legislation. We urge you to move expeditiously in approving a four-year bill that provides support for federal investments in safety, modernizing the air traffic control system, FAA operations, airport improvements and aviation research efforts. We endorse the financing mechanism similar to that contained in H.R. 2881 approved by the House in the 110<sup>th</sup> Congress.

Thank you for the opportunity to appear before this Subcommittee.



**Transport Workers Union of America, AFL-CIO**

**1791 Hurstview, Hurst, TX 76054**

**Testimony of Robert Gless**

**Assistant Director, Air Transport Division**

**Transport Workers Union of America**

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**BEFORE THE SUBCOMMITTEE ON AVIATION OF THE COMMITTEE ON  
TRANSPORTATION AND INFRASTRUCTURE  
HEARING ON FAA REAUTHORIZATION**

**Washington, DC**

**FEBRUARY 11, 2009**

The Transport Workers Union of America, AFL-CIO (TWU) on behalf of its 200,000 active and retired members in the transportation industry, including airline mechanics at American Airlines and American Eagle and flight attendants at Southwest Airlines, appreciates the opportunity to appear before this Committee.

In particular, I thank the Committee for its diligence in passing H.R. 2881, the FAA Reauthorization Bill, in the 110<sup>th</sup> Congress. We look forward in this 111<sup>th</sup> Congress to the successful passage in the House and Senate of a Reauthorization Bill that discontinues the double standard that is applied to aircraft maintenance at outsourced stations, as opposed to that performed at the carriers themselves. In addition, we hope to see the FAA put into place critical and timely provisions for flight attendants that will enable them to perform their duties safely.

Briefly, since I know that the AFA will speak specifically on flight attendant issues, we support occupational safety and health standards for flight attendants on board aircraft. We think they are long overdue.

Completing the study on flight attendant fatigue is another endeavor that will ensure that flight attendants will be able to perform their duties to the best of their ability.

Air carrier citizenship is an important protection that will help to ensure that during the foreign ownership discussions at the EU labor relations will be preserved, along with other operational matters such as marketing, branding, fleet compositions, pricing and route selection. All of these are important to workers of air carriers around the country with various airlines.

Specifically today I would like to speak on the issue of aircraft maintenance. We represent some 15,000 workers who fall within this category of interest.

There are four recommendations regarding aircraft maintenance that we see as necessary to ensure safe and secure air travel for the American public:

1. Require that all maintenance on aircraft used in domestic U.S. service be done in FAA-certified repair facilities.
2. Require, as a condition of Federal Aviation Administration (FAA) certification, that all repair stations meet the same standards. This would include, but not be limited to, drug and alcohol testing and Part 65 aircraft mechanic certification. Any requirement that is not imposed on foreign stations should be repealed as a requirement of U.S. stations.
3. Reconfigure FAA inspection and oversight to place the greatest scrutiny on those repair stations whose audits determine to pose the greatest risk to safety and security.
4. Require, as a condition of FAA-certification, that all repair stations be subject to unannounced FAA inspections. The FAA shall be prohibited from certifying any repair



station in a country that prohibits unannounced inspections and shall immediately revoke any existing certifications in such a country.

### **Aircraft Used in Domestic U.S. / In-House Work**

There is no doubt maintenance work that is done in-house by U.S. carriers themselves is probably the safest, most secure type of maintenance done. This is so because the work is done under the direct control of the carriers' supervisors and there is an additional layer of supervisors and inspectors dedicated to compliance with FAA safety regulations.

Ironically, this work has received the greatest scrutiny and FAA oversight, but it poses the least risk because of the following factors:

1. The carriers have shouldered the responsibility to monitor themselves and are mindful of the in-house regulations that they are required to meet.
2. The Federal FAA regulations hold domestic station aircraft mechanics to a high standard, including having all aircraft mechanics being subject to random drug and alcohol testing, all aircraft mechanics passing criminal background checks and all aircraft mechanics being subject to unannounced inspections by FAA inspectors at any time and any place.

Additionally, mechanics who work on aircraft are usually certified under Part 65 and for those that sign-off on work done on the aircraft, this certification is required. If all of the aircraft flown in U.S. domestic service was "serviced" by a domestic aircraft mechanic, then the concern of the lack of oversight would be null.

However, as reported in the FAA's recent report AV-2008-090, "Air Carriers Outsourcing of Aircraft Maintenance" issued September 30, 2008, out of the nine air carriers that were reviewed (AirTran Airways, Alaska Airlines, America West Airlines-aka USAir, Continental Airlines, Delta Air Line, JetBlue Airways, Northwest Airlines, Southwest Airlines, and United Airlines), 71 % of their heavy airframe maintenance check work was outsourced to a repair station. Since 2003, this trend of sending aircraft maintenance work out of the in-house domestic stations has more than doubled in statistical data from 34% in 2003 to 71% in 2007.

Thus, the FAA must increase its oversight of monitoring aircraft maintenance to ensure that safety measures are being satisfied in the ever growing and changing industry. This means that the safety layers that have been placed on the in-house domestic stations should at the least be the same safety layers that are placed on all repair stations, foreign included. The trend of sending aircraft maintenance out to stations who receive less safety scrutiny than that of in-house domestic stations should not be allowed without at least matching the same safety

criteria and scrutiny. Otherwise, the appearance is that the FAA and air carriers are merely gambling on the safety of the U.S. traveling public.

### **Foreign Aircraft Repair Stations**

The standard for domestic in-house aircraft mechanics mandates certification, additional layers of security, and drug and alcohol testing. However, the norm for foreign aircraft mechanics is exempt of safety and security requirements of the same type.

Irresponsible regulatory changes in 1988 have allowed the FAA to certify foreign aircraft repair stations to work on U.S. aircraft not engaged in international travel and to do so under different standards than that applied to domestic stations. The concerns stemming from the aftermath of September 11, 2001, with the safety and security of U.S. flagged aircraft, demands that we take seriously the lack of oversight of aircraft maintenance being performed outside the reach of domestic in-house stations, which is being performed without having the same rigorous and demanding standards applied.

### **Drug and Alcohol Testing Standard**

Most, except for a handful of foreign aircraft repair stations, do not require personnel who work on aircraft destined for U.S. domestic air service to pass a drug and alcohol test. The U.S. Congress determined that drug and alcohol impairment is an unacceptable risk for airline passengers. Additionally, the Supreme Court upheld the requirement on the grounds of safety for "safety-sensitive personnel". Airline mechanics have been deemed as "safety-sensitive personnel". The question begs, if mechanics doing in-house repair work are deemed "safety-sensitive personnel," why are those that work on aircraft destined for U.S. domestic air service carrying U.S. passengers not deemed the same as "safety-sensitive personnel" that should also be monitored for the safety of our flying public?

Presently, in-house air carrier mechanics are held to the highest safety standards and receive the majority of FAA inspection oversight. However, foreign aircraft repair station air carrier mechanics are less scrutinized, held to a lower standard, and receive almost no FAA inspection oversight. It is our belief that at least the same safety guidelines should be followed at foreign aircraft repair stations and domestic in-house repair stations.

The suggestion is not that foreign countries must adapt and change their laws to institute widespread drug and alcohol testing and criminal background checks. However, to achieve the highest level of safety and security, and to ensure that we are meeting the safety standards that the U.S. flying public believes that they are receiving, the federal government-Congress must require those that work on U.S. flag flying aircraft to meet the same safety and security standards that the FAA imposes on U.S. domestic stations.

Food, prescribed drugs, and even automobiles imported into the U.S. are required to meet the safety standards that the U.S. government has put in place. U.S. safety standards, no matter the safety standard of the product in the country of origin, must be met to ensure that products will not harm or cause any potential danger to the American Public. We must insist that the rules and standards apply broadly, as opposed to the narrow rules and standards that apply today. The standards of aircraft mechanic certification, criminal background checks, inspecting of repair stations, as well as drug and alcohol testing should be seriously examined and applied equally across the board in foreign stations, just as they are in in-house domestic stations so that the potential of danger and risk is minimized.

### **Certification Standard**

Obtaining a Part 65 mechanic's license is a time consuming and demanding process. The FAA requires mechanics who perform a number of jobs on U.S. aircraft to go through it. But, what is the requirement at foreign stations? There is no such requirement. Nor, is there anything comparable to the requirement. In fact, as long as there is one person at the station who can read the repair manual, the rest of the mechanics don't have to, as long as that one mechanic can and will sign off on the work of the others. This is an unequal standard, unsafe, and indeed a gamble.

### **Security Standard**

Since the horrific events of September 11, 2001, layer upon layer of security has been deemed the norm of protecting yet another attack. Additional layers of protections and restrictions were imposed on domestic aircraft mechanics and other airline workers. These rules were put into place because policymakers believed that it was important to maintain security.

Limiting and controlling access areas to aircraft, imposing criminal background checks, and checking terrorist watch lists are all rules that were imposed on aircraft mechanics working domestically in the U.S. by Congress and the Transportation Security Administration (TSA). Rules were also issued that would revoke airman certificates, which include a Part 65 mechanic certification of any individual determined by the TSA to pose a threat to aviation security.

Yet no entity of the U.S. government, the FAA, TSA, or any other agency requires any type of background check for workers at foreign repair stations who repair or maintain U.S. aircraft. At least at domestic contract repair stations, Part 65 mechanics are covered by the TSA/FAA rule. While in theory the TSA/FAA rule applies to Part 65 mechanics located overseas, foreign stations are allowed to work on U.S. aircraft without having any certified mechanics; as such, from a practical standpoint, this rule does not apply to foreign stations.

Loose or nonexistent security at foreign aviation facilities provides a window of opportunity for terrorists with designs on U.S. air travel. From a security standpoint, it is not hard to imagine how certified foreign aircraft repair stations, working on U.S. aircraft, could provide terrorists with an opportunity to sabotage U.S. aircraft or components that will eventually re-enter the U.S.

### **Standard of Oversight and Inspection**

The standard of scrutiny of oversight and inspection of foreign repair stations is not only inadequate, it is somewhat non-existent.

A 2003 report by the department of Transportation Inspector General found that though foreign repair stations were widely used by U.S. carriers, some FAA-certified foreign repair stations are not inspected at all by FAA inspectors because civil aviation authorities review these facilities on behalf of the FAA. The consequence of such is that sufficient data to determine what was inspected is lacking.

Foreign repair stations that the FAA inspected fare about the same. One reason is that the law only requires a recertification inspection every two years. Since 1988, when the rules were loosened, there were only 200 such stations; as of September 30, 2008, there were 709 such stations. With this rapidly increasing amount of stations, oversight has not kept pace with the amount of FAA inspectors needed to inspect them.

Since U.S. policy requires the FAA to give advance notice to a country of any inspection of FAA-certified aircraft repair stations sited in their country, no such real oversight by the FAA is maintained.

Therefore, whether it is because: 1) civil aviation authorities review foreign repair stations instead of FAA inspectors or 2) there are too many foreign repair stations for the relatively few FAA International Field Officers to maintain a consistent inspection standard or 3) that foreign repair stations are not subjected to the same unannounced visits which ensure around the clock adherence to the standards. As a result, no true oversight and inspection exists for the majority of foreign repair stations or mechanics.

The Gap must be closed. The U.S. government must "mind the gap" and close loopholes that continue to jeopardize the safety of those that depend on the industry. This lack of oversight has consequences.

### **Background on TWU and Aircraft Maintenance**

In 1989, the TWU testified against the FAA's rule change. Unfortunately, we were right in predicting that the elimination of limits on movement of maintenance would result in the outsourcing and loss of tens of thousands of jobs to overseas facilities. And, we were also right in predicting that the FAA would not have the capacity to give proper oversight on the work and that the work and workers who performed it would not be subject to the same regulatory requirements the US mechanics function under. We were labeled "exaggerators".

The work that TWU managed to secure at American happens not to be the norm. In "Air Carriers Outsourcing of Aircraft Maintenance", the FAA report of September 30, 2008, American Airlines, which was the largest U.S. air carrier, "was not included in outsourcing data since it retained its heavy maintenance as opposed to making a significant shift to outsourcing". Using American in the data would have skewed the results.

The 18 heavy checks performed at American are all done in house at bases in Tulsa, and Alliance Fort Worth and until recently, Kansas City. Being the only major carrier that still does the majority of its own maintenance, at a time when other carriers are outsourcing their maintenance, has its issues.

American is competing in an industrial environment where some carriers are more interested in saving a dollar. Where other carriers have lessened their cost and outsourced their work, American continues, at a cost, to keep U.S. citizens employed, working under the strictest scrutiny to ensure safety and security.

Just days ago the Congress, to which this committee is a party, passed an economic stimulus package that would put some people back to work. I suggest to this body to help keep the airline industry afloat and 1) keep it safe and secure by encouraging more air carriers to ensure safety by establishing the same rules and scrutiny on foreign maintenance bases as we have here in the states. This will lower the demand of shopping for the lowest bidder to do the important safety sensitive work on U.S. aircraft outside of the U.S. and, 2) it will keep U.S. air carrier mechanics working.

The alternative of double standards, strict scrutiny where already layers of protection are applied vs. the lack of oversight where layers of protection are absent, is merely a roadmap for disaster. That is disastrous for the American flying public as well as disastrous for the integrity of the American worker.

Thank you for the opportunity to testify before you today. I am available to answer questions that you may pose regarding my testimony today.



## FlyersRights.org

Prepared Testimony of  
Kate Hanni<sup>1</sup>  
Executive Director and Spokesperson  
on

**FAA REAUTHORIZATION ACT OF 2009**  
**INCLUDING PASSENGER BILL OF RIGHTS**

Before the  
Subcommittee on Aviation  
Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Washington, D.C.

February 11, 2009

Mr. Chairman and Ranking Member Petri:

Thank you for inviting FlyersRights.org<sup>2</sup> to testify in connection with your Committee's introducing an **FAA Reauthorization Act of 2009**, hopefully including a Passenger Bill of Rights title that's even stronger than the last Congress' House-passed bill (H.R. 2881).

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<sup>1</sup> Contact information: c/o FlyersRight.org. 159 Silverado Springs Drive, Napa, CA 94558. Phone: (707) 337-0328. Email: kate@flyersrights.com.

<sup>2</sup> FlyersRights.org is the new organizational name for the Coalition for an Airline Passengers Bill of Rights. Our section 501(c)(4) tax-exempt consumer group has grown to more than 24,000 air traveler advocates. After a passenger bill of rights legislation is enacted -- hopefully this year, we will still have a continuing agenda of safety, health and regulatory issues of continuing importance to airline passengers.



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**Maximum Aviation Funding from House-Senate Conference  
on Economic Stimulus Legislation**

First, our members are grateful for this Committee's support of higher levels of funding for aviation programs in H.R. 1, the House's economic stimulus legislation. Specifically we hope House conferees will be successful in pressing in conference for the highest possible level of airport grant funds, funds to the Transportation Security Administration (TSA) for speed-up of in-line baggage screening installations at U.S. airports, and investment in the NextGen airways modernization program. Industry witnesses appearing before you today are all divided as to how to allocate scarce airport capacity at the New York area airports during the near term. The sooner NextGen gets fully funded at the Federal level the sooner additional capacity will be available.

**No Real Progress Since Your Last Hearing on Aviation Consumer Rights**

Since your hearing on aviation consumer issues last April, a lot of trees have been sacrificed to produce a disappointing DOT Task Force Report on tarmac delays<sup>3</sup> (see enclosed New York Times editorial) and a DOT-proposed regulation<sup>4</sup> of passenger protections -- that won't protect passengers.

You will likely hear from the major scheduled airlines that "We're now doing a better job reducing or handling long tarmac delays." ...And with DOT's issuance of the industry Task Force Report and with DOT's working to finalize a draft regulation, there's no need for Federal passenger rights provisions to be included in your FAA Reauthorization Act legislation."

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<sup>3</sup> DOT Task Force, "Development of Contingency Plans for Lengthy Airline On-Board Delays" (November 12, 2008).

<sup>4</sup> DOT Notice of Proposed Rule Making, "Enhancing Airline Passenger Protections" (December 8, 2008)



“Let us handle it,” they say again, using the same arguments they advanced in convincing Congress in 1999 to stop working on passenger rights legislation and accepting instead voluntary Airline Customer Service Commitments.<sup>5</sup> However, the DOT’s Inspector General testified here in 2001 and 2006 that airline efforts slacked off after the threat of legislation abated, and after the 9/11 terrorist tragedy.<sup>6</sup> ... And those Commitments or Customer Service Plans aren’t even enforceable.<sup>7</sup>

#### -- Task Force Exercise Was Disappointing to Passengers

We had asked the Task Force to establish minimum standards for passenger health and safety issues and for a maximum period for tarmac strandings. Instead, the airlines on the Task Force accepted no standards, with everything still being left to their unregulated discretion. ... And with no penalties for negligence.

During the Task Force meetings we also asked the FAA to allow ATC personnel to delay the “pushback” of airline flights from their gates if a long tarmac delay on the taxiway was inevitable. (We had reports from airline staff that airlines often move their planes away from their gates knowing that long tarmac delays are inevitable so they can load other scheduled planes from those same gates. Airport taxiways then often become aircraft parking lots.)

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<sup>5</sup> DOT OIG Report Number AV-2001-020, “Final Report on Airline Customer Service Commitment” (February 12, 2001) at p. 1: “Congress, the Department of Transportation (DOT), and the Air Transport Association (ATA) agreed that the air carriers should have an opportunity to improve their customer service without legislation. To demonstrate the Airlines’ ongoing dedication to improving air travel, ATA and its member Airlines executed the Airline Customer Service Commitment (the Commitment), on June 17, 1999. Each airline agreed to prepare a Customer Service Plan (Plan) implementing the 12 provisions of the commitment. The Airlines committed to:

- Offer the lowest fare available
- Notify customers of known delays, cancellations, and diversions
- On-time baggage delivery
- Support an increase in the baggage liability limit
- Allow reservations to be held or canceled
- Provide prompt ticket refunds
- Properly accommodate disabled and special needs passengers
- Meet customers’ essential needs during long on-aircraft delays
- Handle “bumped” passengers with fairness and consistency
- Disclose travel itinerary, cancellation policies, frequent flyer rules, and aircraft configuration
- Ensure good customer service from code-share partners
- Be more responsive to customer complaints.”

<sup>6</sup> DOT OIG Report AV-2007-012, “Follow-up Review: Performance of U.S. Airlines in Implementing Selected Provisions of the Airline Customer Service Commitment” (November 12, 2006), at p. 4: “The ATA airlines committed to notify customers and the airport and on board an affected aircraft in a timely manner of the best available information regarding delays, cancellations, and diversions. However, just as we found in our prior review, the information being provided about delays and cancellations in boarding areas was not timely or adequate during our tests.” (Emphasis added)

<sup>7</sup> American Airlines, Customer Service Plan (website as of 2-1-09): “The Customer Service Plan does not create contractual or legal rights.”

We cited a Joint Economic Committee Staff Report<sup>8</sup> that concluded that 20% of all flight delays occur during taxiing to the runway, involving excess fuel burn as well as time costs for airlines and passengers measured in the billions of dollars annually.

FAA, a Task Force member, was totally unhelpful, citing existing policy that the airlines alone determine when to push back their aircraft from gates onto the tarmac, no matter how long the taxiway backup will be. FAA only regulates aluminum tubes, we were told; we should contact the DOT Secretary's office which alone has consumer protection jurisdiction for the passengers stuck for hours in those tubes on the tarmac.

**– DOT's Proposed "Passenger Protections" Regulation Has No Standards**

Similarly, in DOT's current draft of its weak, toothless "Enhancing Airline Passenger Protections" regulation, the airlines are asked to create their own contingency plans for long tarmac delays – with no DOT review for adequacy, no minimum standards, and no practical way for passengers to enforce whatever the carriers propose to offer.

The airline comments in the DOT rulemaking process make clear that they don't want any government body or individual passenger to be able to enforce any standards of airline behavior during long tarmac delays:

- **NOT THE STATES:** The airlines litigated the State of New York's recent attempt to establish minimum standards for air passenger health and welfare, imposing fines for violations. Ruling: only the Federal Government may regulate the airlines in this preempted area.
- **NOT FEDERAL DOT STAFF:** The airlines know that the Federal DOT staff won't enforce airline violations for individual passengers but merely collects passenger complaints and ships them off to the airlines "for appropriate action" without follow-up.
- **NOT FEDERAL REGULATION:** The airlines are opposed to DOT's requiring them in its pending rulemaking to list their 1999 Commitments and their tarmac stranding policies in their Contracts of Carriage<sup>9</sup> for fear that some passengers will try to litigate those promises in state courts.
- **THUS, ONLY CONGRESS** can assure minimum protections for passengers.

<sup>8</sup> Joint Economic Committee Majority Staff, "Your Flight Has Been Delayed Again: Flight Delays Cost Passengers, Airlines and the U.S. Economy Billions" (May 2008)

<sup>9</sup> A Contract of Carriage is the document that air carriers use to specify any legal obligations to passengers, and technically is supposed to be enforceable in state courts. Each air carrier must provide a copy of its Contract of Carriage free of charge upon request. NOTE: FlyersRights.org believes that passenger lawsuits on Contract of Carriage provisions are both impractical and unsuccessful: (1) because the cost to a passenger of pursuing litigation is so high; and (2) because that Contract is filled with "wiggly lawyer words": "as appropriate," "if available," and "to the extent reasonable," so that judicial enforcement is unlikely.

### **Tarmac Strandings Continue Unabated**

Our members were tremendously disappointed that the Passenger Bill of Rights provisions in your and the Senate's FAA Reauthorization Bills were not enacted during the last Congress. Airline and Federal agency (Customs and Border Protection (CBP), TSA) treatment of stranded airline passengers is not getting any better. I am attaching to my testimony partial transcripts from some typical calls to our 24-hour FlyersRights.org hotline. These frustrated passengers are Congress' constituents.

### **Strengthening Passenger Right Provisions In FAA Reauthorization Act of 2009**

The bottom line here, Mr. Chairman, is that unless Congress mandates in your FAA Reauthorization legislation minimum standards for adequate food, water, working toilets and a passenger option to deplane<sup>10</sup> after 3-plus hours of a tarmac delay (if it can be done safely), tomorrow's passengers will continue to be as exposed to airline negligence during tarmac strandings as they are today.

We urge you to update the passenger rights provisions you included in your last Congress' legislation. Some provisions are no longer needed and other provisions should be strengthened. Specifically, we hope you will incorporate the text of Congressman Thompson's H.R. 624, Airline Passenger Bill of Rights Act of 2009 (text enclosed). Your acceptance of that legislation, with 23 co-sponsors to date, would demonstrate that the new Congress cares about airline passenger health and safety and would also require DOT to strengthen its current draft regulation accordingly.

Again, thank you for the opportunity to testify. I'd be pleased to answer your questions.

Enclosures

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<sup>10</sup> DOT's draft regulation assumes incorrectly that deplaning involves returning the plane to the gate and giving up that plane's place in the queue on the taxiway. Not so. On some taxiways, buses (whose purchase is a Federal airport grant eligible item) could deplane those passengers who would opt off after long tarmac delays. Other airports have nearby holding areas that could be used for deplaning purposes.

# The New York Times

ARTHUR OCHS SULZBERGER JR., Publisher

## The Tarmac's Madding Crowds

A federal study group — created with fanfare to tackle the wretched ordeal of passengers stranded for hours on idled jetliners — has refused to mandate how long airlines can keep their passengers trapped before taxing back for relief.

The experts' answer: Suck it up and sit there on America's unfriendly tarmacs for as long as it takes.

The task seemed a no-brainer a year ago when advocates for harried nonfliers estimated three hours would be a reasonable limit before heading back to the gate and civilization. But the so-called tarmac task force set up by the Department of Transportation was stacked with airline and airport executives who treated the definition of a lengthy delay as if it were some conundrum of astrophysics.

Instead, the 36-member task force feebly recommends that airlines try to update passengers every 15 minutes, even if there's nothing new to report and, of course, no end now mandated for their predicament.

As for the grisly tales of parched and frenzied passengers stranded without food or drink, the task force recommends that airlines offer refreshments and entertainment "when practical." Oh yes, and make reasonable efforts to keep restrooms more usable than fetid as stalled planes sit there clueless and unairconditioned.

The department's inspector general had recommended setting a limit for how long passengers can be forced to be sealed off in planes. But the task force's conclusion was that this is a complicated question best left to the different airlines and airports. Or, as one industry member arrogantly maintained: "One size doesn't fit all." Enough already.

Surely the incoming administration will be less captive to industry on this issue — and every other. It certainly doesn't take an expert to realize that it is the passengers who pay to keep the airlines airborne. It's only humane that they be accorded something short of full captivity on the ground.

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## Sample Airline Stranding/Long Tarmac Delay Stories

**January 1st, Albany:** **United flight 5309** pushed only a few feet from the gate and sits for 7 hours and 50 minutes. The airline tell the passengers they could have deplaned, the door was shut and they were pushed back from the gate, but only a few yards from the gate. United opened the door but no stairs were presented. Passengers were told "you get off you don't get your luggage". The passengers were hungry, angry and lost. Their flight was, after 7 hours and 50 minutes canceled. Dan Higgins from the Times Post described it as near mutiny and said that many passengers were relieved to have a law that would protect them. Since the New York Law was overturned there are still no protections and the passengers got nothing to compensate them.

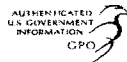
**January 16th: Delta in Atlanta flight 1201:** Chaira Bell sitting next to two elderly folks in coach was pushed back from the gate to a deicing line. This was early evening. She was headed from Atlanta to Palm Beach. The pilot said they would have to de-ice. What was never shared with them were the number of jets in the deicing line were 90. At 25 minutes per jet to de-ice, they were in the deicing line 5 hours before the pilot came on and said he was returning to the gate to allow folks to go get food, water, and a toilet, they had 15 minutes. He threatened them with not getting their baggage and not having a flight home at all if they did not return to complete the flight. He said they would re-plane immediately and take off. But with full knowledge on the part of pilot and crew they went out and sat for another 5 hours in the deicing line and then took off. Elderly were shaking, diabetics were near shock and no one cared...For 4 solid days the Atlanta Constitution Journal reported that Delta airlines had lines of 30 to 90 jets deicing and folks sat for 8 to 10 hours in aircraft that held live human beings who were parched, hungry, tired and unsuspecting.

**June 9, Gary Indiana:** **United flight 1020** was diverted out of Chicago airspace to Gary Indiana. The landing was so rough that the flight attendants had bruised ribs. Passengers were shaken from the dangerous landing and now at an airport that was closed. For 12 hours they were in that plane with no food, water or ability to get off. There were medical events treated on board but no plan in place for airports or airlines to do what should have been done to help them off of the plane. The airline blamed the airport for not being open. The airport said the airline never called them. The DOT stated, when I asked them, that folks were "just happy to be on the ground". We had a member on that plane Lucy Fitzpatrick and she was outraged to hear this summary dismissal of what really happened inside the plane. The passengers did want off and like prisoners, simply weren't allowed.

**December 1st, TACA airlines flight 670** was diverted to Ontario airport due to FOG at LAX. Apparently their Brand New airbus 321 did not have appropriate equipment to land in FOG? Having been in flight for 5 hours they were then put down on the ground to sit for 9 solid hours. One passenger was so ill, she needed her medication and they made no effort to get it for her. She then called 911. Emergency vehicles came to the jet, but when passengers wanted off they were refused.

**December 16th, AA flight 154** from Norita to Chicago was diverted to Detroit. Chris O'meara and his classmates were on board in Coach. DETROIT, the infamous home of the NWA debacle of 1999. Chris said he and his college friends were trading cell phones, trying to reach their parents as each cell phone died he found himself the only one with a live cell phone. When Chris went to the restroom (having been on board the same plane for 19 hours) there was vomit in the sink. Chris said there was no water, no food and people were shaking from lack of both. They were lied to and told that no gate was the size of their jet. Then no customs people were available. Then, well, the pilots rest hours expired so guess what? Gate and customs were ready and waiting.

**January 22, Portland Oregon.** Aero Mexico plane diverts to Portland. They had already flown for 6 hours and were tired when they were informed they were diverting to Portland due to fog in Seattle. The passengers became restless after 4 hours on the ground (10 hours in the plane) and they began to let the crew know they wanted off, the excuse was "No customs". Homeland Security entered the aircraft and told the hot, angry, hungry, thirsty people "if you want off, you'll be arrested". That plane then took off and flew all the way back to Mexico, only to turn around and fly back to Seattle.



111TH CONGRESS  
1ST SESSION

# H. R. 624

To amend title 49, United States Code, to ensure air passengers have access to necessary services while on a grounded air carrier, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 21, 2009

Mr. THOMPSON of California introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To amend title 49, United States Code, to ensure air passengers have access to necessary services while on a grounded air carrier, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Airline Passenger Bill  
5 of Rights Act of 2009”.

### 6 SEC. 2. AIRLINE CUSTOMER SERVICE COMMITMENT.

7 (a) IN GENERAL.—Chapter 417 of title 49, United  
8 States Code, is amended by adding at the end the fol-  
9 lowing:

1 “SUBCHAPTER IV—AIRLINE CUSTOMER  
2 SERVICE

3 “§ 41781. Air carrier and airport contingency plans  
4 for long on-board tarmac delays

5 “(a) DEFINITION OF TARMAC DELAY.—The term  
6 ‘tarmac delay’ means the holding of an aircraft on the  
7 ground before taking off or after landing with no oppor-  
8 tunity for its passengers to deplane.

9 “(b) SUBMISSION OF AIR CARRIER AND AIRPORT  
10 PLANS.—Not later than 60 days after the date of the en-  
11 actment of the Airline Passenger Bill of Rights Act of  
12 2009, each air carrier and airport operator shall submit,  
13 in accordance with the requirements under this section,  
14 a proposed contingency plan to the Secretary of Transpor-  
15 tation for review and approval.

16 “(c) MINIMUM STANDARDS.—The Secretary of  
17 Transportation shall establish minimum standards for ele-  
18 ments in contingency plans required to be submitted under  
19 this section to ensure that such plans effectively address  
20 long on-board tarmac delays and provide for the health  
21 and safety of passengers and crew.

22 “(d) AIR CARRIER PLANS.—The plan shall require  
23 each air carrier to implement at a minimum the following:

24 “(1) PROVISION OF ESSENTIAL SERVICES.—  
25 Each air carrier shall provide for the essential needs

1 of passengers on board an aircraft at an airport in  
2 any case in which the departure of a flight is de-  
3 layed or disembarkation of passengers on an arriving  
4 flight that has landed is substantially delayed, in-  
5 cluding—

6 “(A) adequate food and potable water;

7 “(B) adequate restroom facilities;

8 “(C) cabin ventilation and comfortable  
9 cabin temperatures; and

10 “(D) access to necessary medical treat-  
11 ment.

12 “(2) RIGHT TO DEPLANE.—

13 “(A) IN GENERAL.—Each air carrier shall  
14 submit a proposed contingency plan to the Sec-  
15 retary of Transportation that identifies a clear  
16 time frame under which passengers would be  
17 permitted to deplane a delayed aircraft. After  
18 the Secretary has reviewed and approved the  
19 proposed plan, the air carrier shall make the  
20 plan available to the public.

21 “(B) DELAYS.—

22 “(i) IN GENERAL.—As part of the  
23 plan, except as provided under clause (iii),  
24 an air carrier shall provide passengers with  
25 the option of deplaning and returning to



1 the terminal at which such deplaning could  
2 be safely completed, or deplaning at the  
3 terminal if—

4 “(I) 3 hours have elapsed after  
5 passengers have boarded the aircraft,  
6 the aircraft doors are closed, and the  
7 aircraft has not departed; or

8 “(II) 3 hours have elapsed after  
9 the aircraft has landed and the pas-  
10 sengers on the aircraft have been un-  
11 able to deplane.

12 “(ii) FREQUENCY.—The option de-  
13 scribed in clause (i) shall be offered to pas-  
14 sengers at a minimum not less often than  
15 once during each successive 3-hour period  
16 that the plane remains on the ground.

17 “(iii) EXCEPTIONS.—This subpara-  
18 graph shall not apply if—

19 “(I) the pilot of such aircraft  
20 reasonably determines that the air-  
21 craft will depart or be unloaded at the  
22 terminal not later than 30 minutes  
23 after the 3 hour delay; or

24 “(II) the pilot of such aircraft  
25 reasonably determines that permitting

1 a passenger to deplane would jeop-  
2 ardize passenger safety or security.

3 “(C) APPLICATION TO DIVERTED  
4 FLIGHTS.—This section applies to aircraft with-  
5 out regard to whether they have been diverted  
6 to an airport other than the original destina-  
7 tion.

8 “(D) REPORTS.—Not later than 30 days  
9 after any flight experiences a tarmac delay last-  
10 ing at least 3 hours, the air carrier responsible  
11 for such flight shall submit a written descrip-  
12 tion of the incident and its resolution to the  
13 Aviation Consumer Protection Office of the De-  
14 partment of Transportation.

15 “(e) AIRPORT PLANS.—Each airport operator shall  
16 submit a proposed contingency plan under subsection (b)  
17 that contains a description of—

18 “(1) how the airport operator will provide for  
19 the deplanement of passengers following a long  
20 tarmac delay; and

21 “(2) how, to the maximum extent practicable,  
22 the airport operator will provide for the sharing of  
23 facilities and make gates available at the airport for  
24 use by aircraft experiencing such delays.

1       “(f) UPDATES.—The Secretary shall require periodic  
2 reviews and updates of the plans as necessary.

3       “(g) APPROVAL.—

4           “(1) IN GENERAL.—Not later than 6 months  
5 after the date of the enactment of this section, the  
6 Secretary of Transportation shall—

7           “(A) review the initial contingency plans  
8 submitted under subsection (b); and

9           “(B) approve plans that closely adhere to  
10 the standards described in subsections (d) or  
11 (e), whichever is applicable.

12       “(2) UPDATES.—Not later than 60 days after  
13 the submission of an update under subsection (f) or  
14 an initial contingency plan by a new air carrier or  
15 airport, the Secretary shall—

16           “(A) review the plan; and

17           “(B) approve the plan if it closely adheres  
18 to the standards described in subsections (d) or  
19 (e), which ever is applicable.

20       “(h) CIVIL PENALTIES.—The Secretary may assess  
21 a civil penalty under section 46301 against any air carrier  
22 or airport operator that does not submit, obtain approval  
23 of, or adhere to a contingency plan submitted under this  
24 section.

1 “(i) PUBLIC ACCESS.—Each air carrier and airport  
2 operator required to submit a contingency plan under this  
3 section shall ensure public access to an approved plan  
4 under this section by—

5 “(1) including the plan on the Internet Web  
6 site of the carrier or airport; or

7 “(2) disseminating the plan by other means, as  
8 determined by the Secretary.

9 **“§ 41782. Air passenger complaints hotline and infor-**  
10 **mation**

11 “(a) AIR PASSENGER COMPLAINTS HOTLINE TELE-  
12 PHONE NUMBER.—The Secretary of Transportation shall  
13 establish a consumer complaints hotline telephone number  
14 for the use of air passengers.

15 “(b) PUBLIC NOTICE.—The Secretary shall notify  
16 the public of the telephone number established under sub-  
17 section (a).

18 “(c) AUTHORIZATION OF APPROPRIATIONS.—There  
19 are authorized to be appropriated such sums as may be  
20 necessary to carry out this section, which sums shall re-  
21 main available until expended.”.

22 (b) CONFORMING AMENDMENT.—The chapter anal-  
23 ysis for chapter 417 of title 49, United States Code, is  
24 amended by adding at the end the following:

“41781. Air carrier and airport contingency plans for long on-board tarmac  
delays.

“41782. Air passenger complaints hotline and information ”.

**Testimony of Clayton M. Jones,**  
**Chairman, President and CEO of Rockwell Collins**  
**Before the House Transportation and Infrastructure**  
**Aviation Subcommittee**  
**February 11, 2009**

Chairman Costello and Ranking Member Petri, on behalf of the more than 20,000 Rockwell Collins employees around the world, as well as the Aeronautical Repair Station Association (ARSA), the Aerospace Industries Association (AIA), the General Aviation Manufacturers Association (GAMA) and all of the men and women who help design, build and maintain aircraft across this nation, I am grateful to have the opportunity to testify before you and the House Aviation Subcommittee.

Mr. Chairman, there are few industries in the world today that have experienced the same rapid pace – and magnitude – of change as the U.S. aerospace and aviation industry. Since the Wright Brothers' first historic flight over Kitty Hawk a little more than a century ago, the accomplishments of the human race in aerospace have been nothing short of miraculous. Since that first flight, the U.S. aerospace and aviation industry has become a crucial element of the global transportation infrastructure. It is an industry that moves people and goods quickly – and virtually anywhere in the world.

Today, the civil aviation industry plays a critical role in the health of our domestic economy, employing nearly 11 million workers in all 50 states. The annual earnings of those workers total almost \$370 billion. Furthermore, civil aviation contributes more than \$1.2 trillion annually to the U.S. economy<sup>1</sup>, or more than five percent of gross domestic product. The aerospace industry also produces one of our nation's few remaining trade surpluses with domestic aviation manufacturers showing a \$54.1 billion positive trade balance<sup>2</sup> in 2007, the largest of any domestic industry.

Despite these laudable figures and the enormous recent growth of the civil aviation marketplace, these are challenging times. In order to adjust to the financial realities of the day, companies large and small have been forced to liquidate business and commercial aircraft they can no longer afford. This sharp reduction in utilization – coupled with the rapidly increasing inventory of used aircraft – is further depressing already slumping demand for new planes.

Everyday across our nation in places like Cahokia, Illinois; Seattle, Washington; Appleton, Wisconsin; Duluth, Minnesota; and my company's headquarters of Cedar Rapids, Iowa, thousands of employees report to work and undertake the high-paying jobs that keep our country and our industry strong. Unfortunately, as aircraft order backlogs are shrinking right before our eyes, manufacturers of both general aviation (GA) and commercial aircraft – as well as their suppliers – have been forced to take painful steps and lay-off thousands of hard-working employees from coast to coast.

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<sup>1</sup> Federal Aviation Administration, *NextGen Implementation Plan*, 2009, Page 5

<sup>2</sup> United States Department of Commerce

Perhaps even more troubling are the indications that these cuts may not be the last, as it is growing increasingly clear that the current economic situation – at least as it applies to the aircraft manufacturing community – will get worse before it gets better.

This Committee is well aware of the benefits the GA industry provides to our nation, whether in job creation, access to small communities, or export sales. As such, I respectfully request that – as you consider legislation during these troubling times – you remind your colleagues of these benefits and do nothing to prevent corporate ownership of these aircraft and damage this important industry.

Mr. Chairman, today, in addition to the overall importance of the civil aviation industry, I would like to focus on three important issues which this Committee is ideally positioned to address - the need for long-term Federal Aviation Administration (FAA) reauthorization legislation, an increased focus on the development and deployment of Next Generation Air Transportation System (NextGen) technologies to address environmental and congestion concerns, and adjustments to language contained in H.R. 2881 that deals with foreign repair station oversight.

#### **FAA Reauthorization**

This hearing once again underscores your leadership in moving FAA reauthorization legislation forward. We must find agreement on outstanding issues blocking passage of this bill and move forward on a long-term reauthorization for the FAA as quickly as possible.

In the coming weeks, we are hopeful that President Obama will nominate a new FAA Administrator who, when confirmed, will be faced with a litany of issues to address. Passage of a long-term reauthorization bill will provide critical direction from Congress and allow the new Administrator to focus his or her attention on managing these challenges.

The recent inability to get a long-term reauthorization passed has also had a significant negative impact on FAA programs. In the Airport Improvement Program (AIP), for example, grants have only been issued for the length of each authorization extension – increasing grant management costs and resulting in delays in safety and capacity projects as a result of sponsor uncertainty over the availability of long-term funding. In addition, the NextGen program has suffered due to the lack of a clear, long-term commitment as represented by a multi-year reauthorization bill.

It is my hope that, under your leadership, 2009 will see passage of this much needed legislation and progress on these pressing issues.

#### **Next Generation Air Transportation System**

Mr. Chairman, smoldering beneath today's immediate economic crisis and political difficulties is a much longer term challenge – a challenge that has the potential to

inflict significant damage to the economy of the United States in the future, and our standing in the world economic markets.

While we enjoy the fruits of a vibrant aerospace industry today, we face the serious challenge of modernizing an air transportation system that has not kept pace with rapid growth – or applied advances in technology. Today, we are operating with an aviation infrastructure that is designed around a radar-based system from the 1940s that will soon burst at the seams. It is time for the United States to accelerate the transformation of its air traffic management system from a system of the 20<sup>th</sup> century to a comprehensive 21<sup>st</sup> century solution - a solution that takes into account advances in information management and satellite-based flight tracking and navigation to yield significant improvements in safety, efficiency, and environmental sustainability.

To be clear, NextGen is not a mere “modernization program.” NextGen is a transformation, and will replace our current outdated system, with one capable of accommodating future growth without costing the American economy tens of billions of dollars per year in lost productivity and unnecessary energy consumption resulting from flight delays and inefficient air traffic management.

When fully implemented, NextGen – with its network-enabled, satellite-based ground infrastructure and cockpit equipment – will safely and efficiently handle more than twice the air traffic we have today with less delay and far greater fuel efficiency. Those who believe that this expansion in capacity is unnecessary due to recent drops in global traffic, need only be reminded that following 9/11 – when we saw a 10.4 percent drop in system revenue passenger miles – traffic quickly recovered. In fact, by 2004 it was on par with 2001 activity levels and has grown to historic levels in the years since.

Considering future barriers to growth, the civil aviation industry faces no issue more significant than the environment. The aerospace industry has made great strides at minimizing the environmental impact of its products through technological advancements and operational practices that reduce noise and emissions. In fact, while much work remains to be done, commercial aircraft have increased fuel efficiency by approximately 70 percent over the last 40 years<sup>3</sup>.

Despite this progress, en route and airport congestion and delay pose considerable environmental challenges, resulting in excessive fuel burn which translates to increased CO<sub>2</sub> emissions. In these respects, NextGen is a powerful environmental tool with its technology and improved operational measures creating the potential for a 10 to 12 percent reduction in carbon emissions. Coupled with fuel saving initiatives in place or contemplated by aircraft manufacturers and operators, NextGen holds the key to achieving carbon neutral growth in aviation in the years to come.

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<sup>3</sup> Intergovernmental Panel on Climate Change; *Aviation and the Global Atmosphere*, 1999, P. 297

Because the air traffic system provides important public policy benefits to our citizens and the military, I believe it important that we discuss the role the General Fund plays in funding FAA operations. In order to accommodate public good projects like NextGen, appropriations from the General Fund should return to historic levels. Although fund contributions fell dramatically in recent years, FAA operations funded through this account averaged 29 percent in the 1990s. In hopes of returning to this sensible level of government funding, I request Congress increase the General Fund share of FAA operations to 25 percent per year through the life of this pending legislation.

Mr. Chairman, industry was very encouraged by the introduction last week of a Senate amendment designed to provide the FAA with increased certification resources and expedite the deployment of critical NextGen technologies such as ADS-B ground infrastructure and area navigation (RNAV)/required navigation performance (RNP). If this provision makes it in to the final Senate legislation and through Conference review, it will allow for the accrual of RNP and ADS-B benefits much sooner than the previously scheduled 2018 date.

With the potential inclusion of such language, which industry strongly supports, we request that this Committee take the next bold step to accelerate airspace modernization. Based on the system-wide benefits the NextGen system is sure to provide, we ask Congress to authorize and appropriate three billion general fund dollars over the next four years to fund equipage of ADS-B. This funding will allow the vast majority of the commercial and GA fleet to be equipped with this important technology at a far earlier date than the current 2020 FAA rule would promote. When tied in to the earlier ground equipage date proposed by the Senate amendment, this acceleration would also allow for increased federal savings through the closure of a number of radar sites and stimulate employment activity at avionics manufacturers and repair and maintenance depots around the country.

#### **Industry's Commitment to Safety**

Finally Mr. Chairman, I would like to stress the aviation industry's commitment to safety and security at our manufacturing facilities and repair stations around the world. As you know, aviation is a global industry and – as such – it requires an international network of safe, secure stations to repair and maintain aircraft.

Although Section 304 of H.R. 2881 was no doubt designed to improve the safety oversight of foreign repair stations, I believe it could ultimately undermine the exact safety systems we are constantly improving – while damaging the FAA's leadership around the world.

I am particularly concerned about the provision setting a minimum number of inspections by FAA personnel. Rockwell Collins and other companies that operate foreign repair facilities welcome inspections and oversight by the FAA. Our facilities are constantly inspected – by the FAA, foreign aviation authorities, our air carrier customers and by our internal auditors. However, requiring the FAA to inspect each foreign repair station “not fewer than two times” annually presents several problems.



First, the FAA does not have the resources or the inspection personnel required to inspect every foreign repair station with such frequency. Based on this challenge, I believe the agency should employ a risk-based model for inspections in order to use its valuable personnel in the most efficient manner possible. I believe it makes more sense to send inspectors to facilities whose safety oversight may be called into question rather than waste these resources carrying out redundant inspections in locations we know to have exemplary safety records.

Equally concerning is the premise that any foreign repair station which the FAA fails to inspect twice annually - whether or not it is in compliance with FAA safety rules - would lose its FAA repair certificate. I believe this to be fundamentally unfair.

Second, the inspection requirement essentially undercuts the recently signed U.S.-European Union (E.U.) safety agreement. This agreement, as a general rule, requires reciprocal maintenance oversight (i.e. the FAA provides surveillance of U.S. based E.U. certificated repair stations and vice versa). The FAA has operated under reciprocal maintenance agreements with European nations for more than 35 years. If the FAA is forced to back out of this agreement, the E.U. would have to send its own inspectors to the U.S. to certificate repair stations to work on European registered airplanes. As a result, these U.S. based repair stations would be subjected to additional certification fees, risking the ability to repair European registered airplanes, all of which could result in a significant loss of business and employment - an outcome devastating to the hundreds of small businesses that comprise the aviation maintenance industry. As the U.S. currently has a positive balance of trade in repair work with the E.U. - with more than 1,200 U.S. based repair stations certificated to repair E.U. registered airplanes, and only 708 FAA certificated repair stations around the world - domestic operators stand to lose far more work than we could ever hope to gain.

Another consequence of backing out of the U.S. - E.U. agreement is that we risk jeopardizing our access to foreign markets. As I stated earlier, the aerospace industry provides the largest trade surplus of any domestic manufacturing industry. A large part of this success rests with our ability to easily export products overseas. In addition to safety oversight, the bilateral provides for reciprocal certification of aircraft. As you know, Mr. Chairman, it can take up to five years for a new aircraft to go through the FAA certification process. Under the agreement, the E.U. accepts the FAA's certification which allows for instant access to their markets. Without this, our manufacturers would have to go through a separate certification process for every European market - an effort that would cost time, money and jeopardize our export base.

Mr. Chairman, we will send our bi-lateral partners a terrible message if we violate this safety agreement. After decades of cooperative oversight, we would signal our lack of faith in their work. Doing so would insult our European partners, undermine the FAA's credibility, and make it harder for the FAA to maintain its worldwide leadership on safety issues.

The importance of this agreement simply cannot be overstated. The U.S. – E.U safety agreement will serve as a foundation for future negotiations in areas such as licensing and operations that have huge economic impacts for U.S. industry. To endanger this agreement through foreign repair station legislation risks future economic growth and job creation in our country.

For these reasons, I respectfully ask the Committee to take my comments into consideration and continue to examine this issue and its ramifications for the aerospace industry and workforce.

Mr. Chairman, thank you for inviting me to testify before your Committee. Many of the challenges facing our industry today can be rectified by the House and your colleagues in the Senate, but Congress is not the only group which has work to do. Industry should focus on the broader impacts of this legislation and work to find common ground on the best way to fund FAA operations. Such an agreement would help this Committee and the federal government to move forward with the long-term authorization necessary to accelerate development and deployment of NextGen and resolve many of our capacity and environmental concerns.

Thank you and I would be happy to answer any questions you may have.

STATEMENT OF LYNNE OSMUS, ACTING ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, ON THE FAA REAUTHORIZATION ACT OF 2009, BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE, SUBCOMMITTEE ON AVIATION, FEBRUARY 11, 2009.

Chairman Costello, Congressman Petri, and Members of the Subcommittee:

Thank you for inviting me here today to be a part of your discussion about the reauthorization of the Federal Aviation Administration (FAA). We at the FAA, and the U.S. Department of Transportation (DOT) as a whole, look forward to working with this Committee and the new Congress on achieving a robust, multiyear bill that will help ensure the safety of the flying public and efficiency of the National Airspace System (NAS). This is an exciting time in our Nation's history, as a new Administration takes the reins and establishes its policies. With new Members in Congress as well, fresh ideas and innovative approaches to challenging problems are sure to come. As Acting Administrator, I look forward to facilitating that as much as possible.

FAA reauthorization is a priority for the Department. As the new Administration settles in and continues to get its policy team in place, we will have the opportunity to analyze the Committee's proposal and develop an Administration position on FAA reauthorization. There is a challenging legislative agenda this session and circumstances have dictated that during this first month of the Administration, the legislative focus be on the economic stimulus package. I can assure you, though, that the Secretary views the aviation reauthorization as one of his top legislative priorities. In the meantime, please accept my gratitude on behalf of the Administration for your efforts in moving the FAA's reauthorization forward. There is a consensus in the aviation community, and certainly in the FAA, that multiple, short-term extensions as we have had in the last 18 months are burdensome and disruptive, and do not permit the careful planning and efficient execution that is necessary for successful infrastructure and technology programs.

Secretary LaHood has demonstrated that the FAA is at the top of his list of priorities. He visited FAA headquarters twice in his first week as Secretary, meeting first with the

executive management team, and then holding a town hall meeting where all employees were invited to attend. In addition to the overflow crowd in the FAA auditorium, the town hall was shown via video broadcast to other FAA offices.

The Secretary has indicated several times in his confirmation hearing and to FAA employees that one of his immediate goals is to fill the position of FAA Administrator, in order to move forward as quickly and seamlessly as possible. He has expressed that the new Administrator will be one who can advance the Next Generation Air Transportation System (NextGen) and refine benchmarks for the program for the next five to eight years. The Secretary has also noted that one criterion for a successful FAA Administrator is someone with the people skills to resolve outstanding labor issues, something to which many Members of this Committee are also committed. I am also confident that any new Administrator will work closely with the Committee to ensure these goals are part of any future aviation legislation.

Secretary LaHood has also established four primary areas of focus for the DOT and FAA: safety, economy, sustainability, and livability. At the FAA, our highest priority is always safety. It is our mandate and it is our passion. We are currently in the safest period in commercial aviation history, and every day, every hour, we are doing everything we can to make sure that continues. Secretary LaHood intends to continue that legacy.

Even with the strong safety record aviation is currently enjoying, we are continuing our efforts to make the system even safer. For example, the FAA is making it a priority to reduce the number of runway incursions—and we are seeing strong results. There were no serious runway incursions in the first quarter of fiscal year 2009 — not a single Category A or B event during 12.8 million aircraft operations. Category A and B runway incursions are the most serious, in which a collision was narrowly avoided or where there is a significant potential for a collision. Category C and D incidents present no immediate safety consequences to the public.

This phenomenal achievement is the direct result of a focused commitment at all levels of the aviation industry – from management at airports, airlines, and the FAA to pilots,

mechanics, vehicle operators, and air traffic controllers. Between fiscal year 2000 and the close of fiscal year 2008 on Sept. 30, 2008, serious runway incursions have decreased by 63 percent. All categories of runway incursions were down slightly for the first quarter of fiscal 2009 versus the same period a year earlier – 224 in 2009 compared to 226 in 2008.

Runway safety initiatives include enhancements to airport markings, signage and lighting; implementation of new technology such as runway status lights and cockpit moving map displays; and increased runway safety training and awareness among pilots, air traffic controllers and airport vehicle drivers. We have accelerated our runway status lights program, and the systems are scheduled to be installed at 22 of the nation's busiest airports by FY 2011.

In these challenging economic times, we must also consider our aviation infrastructure. As the Secretary has noted, transportation infrastructure is a substantial part of the Administration's economic recovery plan, and he is making the successful implementation of that initiative one of his top priorities. New infrastructure investment pays enormous short- and long-term dividends, creating economic and social benefits for generations. The Secretary has also committed to supporting investments that will help bring the country's transportation assets up to a state of good repair.

We have only to look as far back as last November for a prime example. That was when we commissioned three new runways in a single day – at Washington Dulles, Chicago O'Hare, and Seattle-Tacoma (Sea-Tac) International Airports. Spanning a total of more than 25,000 feet, these three runways are expected to increase capacity at these major airports, as well as significantly reduce delays. The new runways at Dulles and O'Hare have the potential to accommodate more than 150,000 additional annual operations in the NAS (100,000 at Dulles and 52,000 at O'Hare), while we expect delays to decrease at both airports.

The Sea-Tac runway is expected to significantly reduce weather-related delays that have plagued the airport. Because of low clouds — which occur about 44 percent of the time

— the airport is often confined to using one arrival stream instead of two. The introduction of a third runway will allow Sea-Tac to handle two simultaneous staggered arrival streams in poor weather. This translates into as many as eight additional on-time arrivals per hour.

While we are looking to improve economic development, we must also give priority attention to environmental stewardship – the Secretary’s sustainability priority. Increases in air transportation demand will place significant environmental pressures on the national airspace system. Environmental protection that allows sustainable aviation growth is a key goal, and we have placed addressing environmental issues at the heart of NextGen. We have a plan that offers a systematic approach that builds on better science and improved decision support tools, advanced air traffic procedures, enhanced aircraft technology, sustainable alternative fuels, and policies to address environmental challenges. Advances in aircraft technology and renewable fuels are essential if we are to provide solutions for the energy and climate challenges for the U.S. aviation system. The close partner to this sustainable development is livability, the fourth area of this Administration’s priorities. In aviation, this entails a commitment to the flying public to continue to focus on the safety, convenience, and confidence of the traveling public, with minimal environmental impacts on our communities.

With these priorities on the table, the DOT and FAA are poised to move forward. But while we have new leadership still to come, we are not content simply to sit back.

Just two weeks ago, the Government Accountability Office (GAO) removed the FAA’s air traffic control modernization program from its High Risk List (HRL) for the first time in 14 years. The HRL identifies Federal programs and operations that the GAO deems as high risk due to their greater vulnerabilities to fraud, waste, abuse, and mismanagement. The FAA was initially placed on the HRL in 1995 due to our poor track record of program deployment and cost over-runs. The GAO noted that management focus and willingness to attack and rectify our shortcomings were the reasons that it felt comfortable removing FAA modernization from the High Risk List. The GAO also noted our plan to continue improvements into 2009.

Also this January, testing for NextGen is accelerating with an agreement to equip US Airways aircraft with GPS-based Automatic Dependent Surveillance-Broadcast. The FAA partnership with US Airways and Aviation Communication and Surveillance Systems will equip 20 US Airways Airbus A330s with ADS-B avionics for tests at Philadelphia International Airport. ADS-B allows aircraft to be tracked by satellite rather than radar, allowing more precise information to boost safety and ease congestion. ADS-B uses GPS to broadcast the position and intent of an aircraft to air traffic controllers and other pilots.

Under the agreement, the A330s will use both ADS-B “In” and ADS-B “Out” signals. ADS-B “In” is information sent into the cockpit, and will be used to evaluate potential safety improvements on the airport surface; ADS-B “Out” involves an aircraft broadcasting information, such as its location, out to ground stations and other aircraft, allowing controllers to separate traffic. In 2007, FAA issued a proposed regulation that, if finalized, would require ADS-B “Out” equipment on all aircraft operating in certain classes of airspace within the NAS by 2020. FAA has yet not issued a regulation proposing a timeframe for the adoption of ADS-B “In”.

On January 30, we published an updated NextGen Implementation Plan that details our strategies for accelerating NextGen operational capabilities in the 2012-2018 mid-term timeframe. Implementing NextGen over the next 10 years will enable significant safety, environmental, and operational improvements. This is clearly seen through our initial NextGen demonstrations, operational trials and deployments. This early work has also provided invaluable data and insights to allow FAA to use the power of modeling and simulation to assess the integrated NextGen benefits across a range of future scenarios.

Our preliminary modeling of a series of NextGen capabilities shows that by 2018 total flight delays may be reduced by 35-40 percent, saving almost a billion gallons of fuel. This is compared to the “do nothing” case, which shows what would happen if we operate in 2018 the same way as today. The current model includes one-third of the NextGen changes. It is important to note that our modeling and simulation results are

preliminary, and as the model matures the FAA expects these benefits values will increase.

As NextGen planning evolves, we may reduce uncertainty in our assumptions and we may develop and validate additional modeling capability for currently un-modeled NextGen capabilities, such as improved traffic flow around adverse weather. Because NextGen benefits are integrally linked to equipage rates, it is imperative that the FAA works closely with all aspects of the aviation community on NextGen deployment.

Finally, no organization is successful without its most valuable asset – its workforce. Controller hiring is up and we have a record number of applicants. While our historical hiring goal was a “one-for-one” model (one new hire for every one retirement), beginning in 2004, we increased our hiring targets to prepare for the anticipated retirements in the next decade. We’ve hired 5000 new controllers over the past three years. We exceeded our hiring goals for FY 2008, and we are on track to meet our end of year hiring goal in FY 2009. New controllers are completing their training faster – in fact, we anticipate that 1000 new hires will complete training to reach full certification this year, compared to 762 last year. Controller retirements have also leveled out and are trending below what we had projected for this year.

For the past several years we have also enjoyed increased hiring in the Aviation Safety organization. Through those hires, we have been able to support certification of new products and new operators – while assuring the continued operational safety of all those who hold FAA certificates. But we will never have enough people to be present at the operation of every aircraft or the turning of every wrench. That’s why we need to rely on voluntary reporting systems – where pilots, mechanics, flight attendants and operators can tell us what they’re seeing in the system that may introduce risk. I know this Committee identified some concerns over our management of voluntary reporting systems. We have improved those processes and will continue to do so. You have our commitment that they will be used to enhance safety – and not abused by anyone in the system.



As you can see, we are still actively moving forward on all key areas. The FAA is a growing, learning organization, dedicated to the safety of the traveling public and the efficient operation of the NAS. We look forward to supporting the new President's agenda for aviation, a new FAA Administrator, and to working with this Committee and the rest of the Congress on FAA reauthorization legislation. In the meantime, we remain focused on our duties to ensure aviation safety and efficiency.

Mr. Chairman, Congressman Petri, Members of the Subcommittee, this concludes my prepared remarks. I would be happy to answer any questions that you may have.



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**

**James L. Oberstar**  
Chairman

Washington, DC 20515

**John L. Mica**  
Ranking Republican Member

David Heymsfeld, Chief of Staff  
Ward W. McCarragher, Chief Counsel

February 19, 2009

James W. Coon II, Republican Chief of Staff


Ms. Nancy LoBue  
Acting Assistant Administrator  
Aviation Policy, Planning, and Environment  
Federal Aviation Administration  
800 Independence Avenue, SW  
Washington, D.C. 20591

Dear Ms. LoBue:

On February 11, 2009, the Subcommittee on Aviation held a hearing on the “**FAA Reauthorization Act of 2009.**”

Attached are questions to answer for the record submitted by Rep. Mazie Hirono. I would appreciate receiving your written response to these questions within 14 days so that they may be made a part of the hearing record.

Sincerely,

  
Jerry F. Costello  
Chairman  
Subcommittee on Aviation

JFC:pk  
Attachment

**FEBRUARY 11, 2009  
SUBCOMMITTEE ON AVIATION  
HEARING ON  
THE "FAA REAUTHORIZATION ACT OF 2009"**

**QUESTION FOR THE RECORD**

**TO:**

**Ms. NANCY LOBUE  
ACTING ASSISTANT ADMINISTRATOR  
AVIATION POLICY, PLANNING, AND ENVIRONMENT  
FEDERAL AVIATION ADMINISTRATION**

I have recently learned that thousands of corporate aircraft, the Secretary of Transportation, the Secretary of Homeland Security, senior military leaders, and the Federal Aviation Administration have technology on its aircraft that enable pilots to see under conditions of unstoppable, blinding smoke in the cockpit.

I was surprised to learn, however, that there is no FAA requirement that passenger airliners or military aircraft have an equivalent system to ensure that pilots can see under these conditions. The technology in question costs approximately \$25,000 to \$30,000 per aircraft – which equates to a penny or so per ticket over the life of the system.

As I understand it, the FAA's minimum safety standard is that any failure of systems or components that result in catastrophic consequences must be "extremely improbable," and that "extremely improbable" is defined by the FAA as not one catastrophic event in one billion flight hours.

According to Boeing data, American certified planes have not flown one billion flight hours worldwide in the last 50 years. There have, however, been numerous catastrophic fatal airliner accidents in which smoke in the cockpit has been a cause or a factor during that period.

Like with U.S. Airways Flight 1549, seconds count. Fortunately, in that case the pilot could see to land, even if under very difficult conditions. If the emergency had been continuous, unstoppable smoke in the cockpit and the pilot had been unable to see, it is unlikely we would have had such a happy outcome.

1. Can you tell the committee why the FAA should not mandate emergency vision technology to enable pilots to see to control and land safely during in-flight emergencies with unstoppable blinding smoke in the cockpit?
2. Please provide a list in which smoke in the cockpit was a cause or a factor in the loss of life or damage to any aircraft certified by the FAA or its predecessors.
3. Has the FAA ever required an aircraft manufacturer to certify that pilots can see in the presence of unstoppable, blinding smoke in the cockpit? If not, why not?

In the late 1990s, FAA contracted operations of a number of level 1 airport towers operating under visual flight rules (Class D) to private operators.

One such tower is at Kona International Airport on the island of Hawaii in my district. Kona International Airport is currently classified as a Class D airspace and, therefore, does not have approach control run by the FAA.

Kona International Airport has become increasingly busy over the past 15 years, and it now more than qualifies for Class C status based on the annual count of enplaned passengers: 1.3 million passengers compared with the minimum of 250,000 for a Class C airspace. Class C airspace requires FAA approach control.

Some flight professionals (pilots and air traffic controllers) have expressed concern because of the increasing number of safety alerts related to departures and arrivals at Kona International Airport. It is important to note that Kona is an international airport servicing heavy jets.

4. I want to know if there is a mechanism for contract towers to revert back to FAA control. I have heard that the current contract for Kona International Airport is up in September of this year; therefore, this seems like an opportune time to review the safety needs at this airport.

3/17/09

**FEBRUARY 11, 2009  
SUBCOMMITTEE ON AVIATION  
HEARING ON  
THE "FAA REAUTHORIZATION ACT OF 2009"**

**RESPONSES TO  
QUESTIONS FOR THE RECORD FROM REP. MAZIE K. HIRONO  
TO:  
MS. NANCY LOBUE  
ACTING ASSISTANT ADMINISTRATOR  
AVIATION POLICY, PLANNING, AND ENVIRONMENT  
FEDERAL AVIATION ADMINISTRATION**

**Mandate Emergency Vision Technology**

**Question #1:** Can you tell the committee why the FAA should not mandate emergency vision technology to enable pilots to see and to control and land safely during in-flight emergencies with unstoppable blinding smoke in the cockpit?

**Answer:** Although in the past, there have been incidents where commercial aircraft have had to make emergency landings due to what was later reported as smoke in the cockpit, no accidents or catastrophic events can be tied solely to the presence of smoke in the cockpit. There are numerous systems and procedures in place to both prevent and mitigate smoke in the cockpit. Today's passenger-carrying aircraft are designed with ventilation systems capable of efficiently clearing smoke from the cockpit. Flight crews are trained in handling incidents of smoke in the cockpit. All cockpits have emergency equipment that includes quick-don oxygen masks for breathing, smoke goggles that allow pilots to see the instruments, and fire extinguishers.

The FAA does not discourage operators from installing systems to aid pilots' vision in cases of smoke in the cockpit. We have certified and approved this type of equipment for optional installation on over 100 aircraft models. The first such approval, for the Emergency Vision Assurance System (EVAS) was issued to Vision Safe, Inc., in 1990. However, EVAS, or any similar system, is not required for safe operation of an airplane. Therefore, the installation of EVAS, or any similar system, remains an equipment option and is available to operators based on their assessed needs.

There is no data to warrant defining "unstoppable, blinding smoke" as an unsafe condition. It is an abnormal condition. The presence of smoke in a cockpit is a side-effect of an underlying defect in a component or system and can be mitigated by the crew, using aircraft systems and equipment and by employing effective crew procedures.

3/17/09

#### Smoke in the Cockpit Accidents

**Question #2:** Please provide a list in which smoke in the cockpit was a cause or a factor in the loss of life or damage to any aircraft certified by the FAA or its predecessors.

**Answer:** No investigation authority such as the National Transportation Safety Board (NTSB) has identified smoke in the cockpit as a causal factor in an airline accident since 1973.

A comprehensive list of “. . . any aircraft certified by the FAA or its predecessors” would be dominated by the technology and risks of by-gone eras. Instead, please see the table on the next page. This table is a list of all airline accidents in the past 15 years (1994 through 2008) involving an airborne fire in aircraft certified in the United States. Not one of the fatal accidents was caused by, or had as a contributing cause, smoke in the cockpit. Additional equipment to handle smoke in the cockpit, such as EVAS, would not have saved a single life.

Table on next page.

3/17/09

The following table shows the number airline accidents reported in-flight fires in the past fifteen years. This list is dominated by first- and second-generation jets, plus a piston-powered DC-6. For comparison, the Boeing 787 and the Airbus A380 represent fifth-generation jets.

**Airline Accidents Involving In-Flight Fires, 1994-2008, Involving US-Certified Aircraft**

DATE	Operator	LOCATION	Aircraft	Type A/C	Type Flight	Fatal Inj.	Ser. Inj.	On- Bd.	% Loss	Scenario	Issues
12/19/1994	Nigeria Airways	70km. NE of Kano, Nigeria	B707	Gen 1 Jet	Cargo	3	0	3	100	Cargo fire. Destroyed pitch rim; crashed & burned.	Passed appropriate airport with suspected fire.
5/11/1996	Valujet	MIA	MD-82	Gen 3 Jet	Pax	110	0	110	100	Intense oxygen-fed fire. All controls failed. Crashed & sank in Everglades.	Hazmat; maintenance procedures; regulatory
7/17/1996	TWA	JFK	B747-100	Gen 2 Jet	Pax	230	0	230	100	Center fuel tank exploded in flight.	Ignition source versus fuel inerting
7/20/1996	Northern Air Cargo	Russian Mission, AK	DC-6	Piston Cargo	Cargo	4	0	4	100	Fire in piston engine due to failed master rod. Wing failed on approach to emergency landing.	Passed appropriate airport with suspected fire; old technology.
9/5/1996	FedEx	Newburgh, NY	DC-10	Gen 2 Jet	Cargo	0	0	5	100	Cargo fire on descent. Emergency landing. Burnt out.	Hazmat.
9/2/1998	Swissair	Nova Scotia	MD-11	Gen 3 Jet	Pax	229	0	229	100	Fire from certified entertainment system; flight controls failed & crashed into ocean.	Passed appropriate airport with suspected fire; certification.
8/24/1999	UNI Air	Hualien, Taiwan	MD-90	Gen 3 Jet	Pax	1	13	96	100	Fire on short final due to gasoline stored in the overhead bins. Landed & evacuated; burnt out.	Passenger stored gasoline in light plastic container in overhead; leaked & saturated overhead, causing short-circuit & ignition.
8/8/2000	AirTran	Greensboro	DC-9-32	Gen 2 Jet	Pax	0	0	63	67	Dense smoke from fire in insulation; emergency landing and evacuation.	Phase-to-phase arc in left heat exchanger cooling fan relay ignited surrounding insulation; unauthorized repair.
9/21/2000	Government of Togo	Namoy, Niger	B707	Gen 1 Jet	Exec	0	1	11	100	Short circuit & on route fire. Emergency landing with smoke "blowing" from fuselage, burnt out.	Continued for 120 miles with known fire. Not clear if crew passed appropriate military airfield(s).
11/29/2000	AirTran	Atlanta	DC-9-32	Gen 2 Jet	Pax	0	0	97	57	Lavatory leakage caused short-circuit & fire. Emergency landing & evacuation.	Inadequate servicing of lavatory.
8/11/2002	Iberia	JFK	B747-200	Gen 2 Jet	Pax	0	2	386	8	Engine fire on climbout; returned to airport & evacuated; injuries on evacuation.	Fire around accessory gearbox, due to hot air bypassing damaged compressor.
2/8/2006	UPS	PHL	DC-8-71F	Gen 1 Jet	Cargo	0	0	3	100	Cargo fire on route. Emergency landing at original destination; burnt out.	Passed appropriate airport with suspected fire.

3/17/09

**Aircraft Manufacturer Certification**

**Question #3:** Has the FAA ever required an aircraft manufacturer to certify that pilots can see in the presence of unstoppable, blinding smoke in the cockpit? If not, why not?

**Answer:** No. The FAA has never required an aircraft manufacturer to certify that pilots can see in the presence of unstoppable, blinding smoke in the cockpit.

There is no data to warrant defining “unstoppable, blinding smoke” as an unsafe condition. Smoke in the cockpit is an abnormal condition. The presence of smoke in a cockpit is a side-effect of an underlying defect in a component or system and can be mitigated by the crew, using aircraft systems and equipment and by employing effective crew procedures.

The existing procedures for the clearing of flight deck smoke, established for each aircraft model, have been evaluated by the FAA and determined to provide an acceptable level of safety necessary for continued safe operation during events of smoke and fumes in the flight deck.

FAA airworthiness standards for transport airplanes and air carrier operations focus on preventing or detecting small fires before they lead to catastrophic conditions. We also require a means to prevent smoke penetration into occupied areas and require flight tests to show compliance. In addition, procedures to clear flight deck smoke must be successfully demonstrated for all events, except extreme fires, before the aircraft can be certified and these procedures must be in the approved Airplane Flight Manual.

We continue to explore the feasibility of new technologies to preclude smoke and fire events and reduce hazards associated with smoke and fire. For instance: we mandated new standards for insulation material; new aircraft are designed with better access to interior walls to fight in-flight fires; and many aircraft systems are designed so that power can be removed quickly from a faulty system.

The FAA continues to improve the safety of electrical systems on aircraft. The Enhanced Airworthiness Program for Airplane Systems rule, published in November 2007, adopts new safety requirements for design, installation, and maintenance programs related to electrical wiring for future transport airplanes. That rule also requires enhanced maintenance actions for the existing transport fleet. These safety improvements will lessen the potential for failures that could result in the fire and smoke events.



3/17/09

**Question #4:** I want to know if there is a mechanism for contract towers to revert back to FAA control. I have heard that the current contract for Kona International Airport is up in September of this year; therefore, this seems like an opportune time to review the safety needs at this airport.

**Answer:** There is no current policy on criteria for contract towers to revert to FAA control and there is no case where a contract tower has converted back to FAA control.

The Kona Airport Traffic Control Tower was converted to the FAA's Contract Tower (FCT) Program on November 6, 1999. Kona FCT provides Visual Flight Rules (VFR) control tower functions within Class D airspace surrounding the Kona International Airport. The Honolulu Control Facility (HCF) has the Instrument Flight Rules (IFR) jurisdiction over the aircraft which operate in and out the Kona International Airport. You are correct that the current contract for Kona's contract tower expires September 30<sup>th</sup> of this year. Our contract tower program staff anticipates that, through the usual competitive process, a follow-on contract will be awarded for the Kona airport tower in August to continue providing air traffic control services. The term of the new contract is expected to be five years (base year plus 4 option years).



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**  
**Washington, DC 20515**

**James L. Oberstar**  
**Chairman**

**John L. Mica**  
**Ranking Republican Member**

David Heymsfeld, Chief of Staff  
Ward W. McCarragher, Chief Counsel

March 13, 2009

James W. Coon II, Republican Chief of Staff

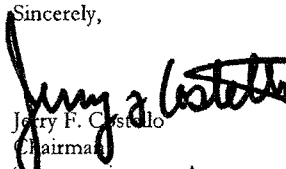
Ms. Nancy LoBue  
Acting Assistant Administrator  
Aviation Policy, Planning, and Environment  
Federal Aviation Administration  
800 Independence Avenue, SW  
Washington, D.C. 20591

Dear Ms. LoBue:

On February 11, 2009, the Subcommittee on Aviation held a hearing on the “**FAA Reauthorization Act of 2009.**”

Attached is a question to answer for the record. I would appreciate receiving your written response to the question within 5 days so that it may be made a part of the hearing record.

Sincerely,

  
Jerry F. Costello  
Chairman  
Subcommittee on Aviation

JFC:pk  
Attachment

**FEBRUARY 11, 2009  
SUBCOMMITTEE ON AVIATION  
HEARING ON  
THE "FAA REAUTHORIZATION ACT OF 2009"**

**QUESTION FOR THE RECORD**

**TO:**

**MS. NANCY LOBUE  
ACTING ASSISTANT ADMINISTRATOR  
AVIATION POLICY, PLANNING, AND ENVIRONMENT  
FEDERAL AVIATION ADMINISTRATION**

Recent litigation involving other government programs to provide opportunity for certain small, minority and women-owned businesses' participation in government assisted grant and contract programs has challenged the basis for such programs. With regard to the FAA's program, is there a continuing need for the disadvantaged business enterprise (DBE) program for airports that receive federal assistance through the AIP program?



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

March 17, 2009

The Honorable Jerry F. Costello  
Chairman  
Subcommittee on Aviation  
Committee on Transportation and Infrastructure  
U.S. House of Representatives  
2165 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Costello:

Per your request, please find enclosed our response to your question for the record for Nancy Lobue, Acting Assistant Administrator for Aviation Policy, Planning, and Environment, following the February 11, 2009 hearing on the "FAA Reauthorization Act of 2009."

I hope that this information is helpful to the Subcommittee. Please feel free to contact Clare Donelan of my staff at (202) 267-8556 if you need any other information or have other questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary U. Walsh".

Mary U. Walsh  
Assistant Chief Counsel for Legislation

3/17/09

**Question: Recent litigation involving other government programs to provide opportunity for certain small, minority and women-owned businesses' participation in government assisted grant and contract programs has challenged the basis for such programs. With regard to the FAA's program, is there a continuing need for the disadvantaged business enterprise (DBE) program for airports that receive federal assistance through the AIP program? Is there a continuing need for the DBE program for airports that receive federal assistance through the AIP program?**

**Answer: Yes.**

The Department of Transportation's (DOT) Disadvantaged Business Enterprise (DBE) program is intended to make possible a level playing field on which all firms, including DBEs, can compete free from the effects of discrimination.

Under 49 CFR Part 26<sup>1</sup>, the Department's DBE regulation, airports that receive Airport Improvement Program (AIP) funds must set an evidence-based DBE overall goal that estimates the amount of DBE participation in the airport's federally-assisted contracts that would occur if this level playing field existed (i.e. in the absence of discrimination). The airport must then project how much of the overall goal can be achieved using "race-neutral"<sup>2</sup> means (i.e., without the application of any criteria that favor DBEs over non-DBEs). If the airport estimates that race-neutral means will be insufficient to meet the entire overall goal, then the airport must also use "race-conscious"<sup>3</sup> means (e.g., DBE contract goals) to attempt to achieve the remainder of the overall goal.

The determination by an airport that it must use race-conscious measures indicates that nondiscriminatory use of contractors cannot be achieved wholly by race-neutral means. Without the use of race-conscious measures, the level playing field could not be achieved, leaving unremediated the effects of discrimination on the ability of DBEs to obtain FAA-assisted work.

The attached chart shows FY 2007 DBE statistics for several large airports in different parts of the country. For example, the DBE overall goal for LaGuardia was 17 percent; The Port Authority of New York and New Jersey projected that LaGuardia could meet 5 percent of the goal through race-neutral means, leaving 12 percent to be obtained through race-conscious means. In fact, LaGuardia was unable to obtain any race-neutral participation, and only better-than-expected participation through race-conscious means allowed LaGuardia to come close to meeting its overall goal.

Other airports, like Salt Lake City and Chicago Midway, followed a similar pattern. Kansas City, which projected that it could meet the bulk of its overall goal through race-neutral means, in fact fell well short of race-neutral portion of its goal and was able to

<sup>1</sup> Title 49 USC § 47113 provides authority for 49 CFR Part 26. The standard AIP grant assurances contain DBE Assurance No. 37, as well as an express requirement to comply with 49 CFR Part 26.

<sup>2</sup> Race-neutral includes gender-neutrality.

<sup>3</sup> Race-conscious includes gender (i.e. women-owned DBEs).

3/17/09

come close to meeting its overall goal only through higher-than-projected participation through race-conscious means.

Numbers of this kind vary from year to year and from airport to airport. In some cases (e.g., Covington/Cincinnati) airports have been substantially more successful than anticipated at achieving DBE participation by race-neutral means. However, if the tool of race-conscious measures is denied to airports, many or most would likely be unable to achieve the levels of DBE participation that would be consistent with a nondiscriminatory marketplace. Keeping this tool available to airports, through the continued use of the Department's DBE program, is crucial to ensuring nondiscrimination in contracting under the AIP grant program.

Further information supporting the need for the program comes from airports located in states in the 9<sup>th</sup> Federal Judicial Circuit, in which a court decision had the effect of requiring airports and other DOT recipients to use all race-neutral goals, pending the completion of disparity studies.<sup>4</sup> This meant that until the studies were completed, these airports were not able to use race-conscious measures as a tool to meet their goals. On the second attached chart, one can see that of the airports in this region for which numbers were available in both 2004 (the last year before the effects of the court decision were felt) and 2007 (the most recent year for which data have been compiled), 28 that had race-conscious components in their 2004 goals had no race-conscious components in their 2007 goals. Of these 28 airports, 18 (64%) had DBE participation that was lower--and for most quite dramatically lower--in percentage terms, in 2007 than in 2004. These numbers reflect the absence of a necessary tool to ensure DBE participation at a level consistent with the relative availability of ready, willing and able DBE contractors.

Accordingly, there is a continuing need for the DBE program for airports that receive federal financial assistance.

Two Attachments

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<sup>4</sup> *Western States Paving Co., Inc v Washington State Dept. of Transp.*, 407 F.3d 983, (9th Cir. May 09, 2005).

State	Recipient	Dollars Awarded	FY-2007 DBE Statistics						DBE % Accompl	RN Accompl Dollars	RN Accompl %	RC Accompl Dollars	RC Accompl %	
			DBE Goal Dollars	DBE Overall Goal %	RN Goal Dollars	RN Goal %	RC Goal Dollars	RC Goal %						
TX	Dallas/Ft Worth	9,502,239	3,040,716	32.0%	380,080	4.0%	2,680,627	28.0%	1,544,324	16.3%	0	0.0%	1,544,324	16.3%
NC	Charlotte/Douglas Intl	46,590,048	7,361,228	15.8%	0	0.0%	7,361,228	15.6%	5,979,343	12.8%	531,184	1.1%	5,448,159	11.7%
NY	John F. Kennedy Intl	15,365,103	2,612,068	17.0%	768,255	5.0%	1,843,812	12.0%	1,320,000	8.6%	0	0	1,320,000	8.6%
UT	Salt Lake City Intl	21,469,985	1,760,539	8.2%	901,735	4.2%	858,799	4.0%	1,466,015	6.8%	23,532	0.1%	1,442,483	6.7%
NY	LaGuardia	10,606,175	1,803,050	17.0%	530,309	5.0%	1,272,741	12.0%	1,772,975	16.7%	0	0	1,772,975	16.7%
TN	Memphis Intl	12,102,994	2,347,981	19.4%	0	0.0%	2,347,981	19.4%	1,452,468	12.0%	23,586	0.2%	1,428,872	11.8%
MO	Coumpton/Cannamah Intl	10,623,954	1,306,746	12.3%	84,592	0.8%	1,221,755	11.5%	1,447,376	13.6%	1,447,376	13.6%	0	0.0%
IL	Chicago Midway	5,376,630	1,182,859	22.0%	161,299	3.0%	1,021,560	19.0%	1,389,862	25.9%	0	0.0%	1,389,862	25.9%
WA	Washington National	0*												
MO	Lambert - St. Louis Intl	33,036,849	7,598,475	23.0%	1,321,474	4.0%	6,277,001	19.0%	11,493,166	34.8%	3,071,662	9.3%	8,421,504	25.5%
PA	Pittsburg Intl	2,697,011	404,552	15.0%	26,970	1.0%	377,582	14.0%	25,740	1.0%	0	0	25,740	1.0%
IN	Indianapolis Intl	6,723,449	941,283	14.0%	295,832	4.4%	645,451	9.6%	960,935	14.5%	13,122	0.2%	967,813	14.4%
MO	Kansas City Intl	15,882,605	2,383,891	15.0%	2,066,039	13.0%	317,852	2.0%	2,294,834	14.4%	330,459	2.0%	1,964,375	12.4%

**DBE Achievements in 9<sup>th</sup> Circuit States Before and After  
Western States Decision**

FAA had DBE achievements data for the following airports for both 2004 and 2007. Some airports (e.g., Seattle, Las Vegas) are excluded from this chart because there is no data for them in one year or the other (e.g., because they had no FAA financial assistance in a particular year).

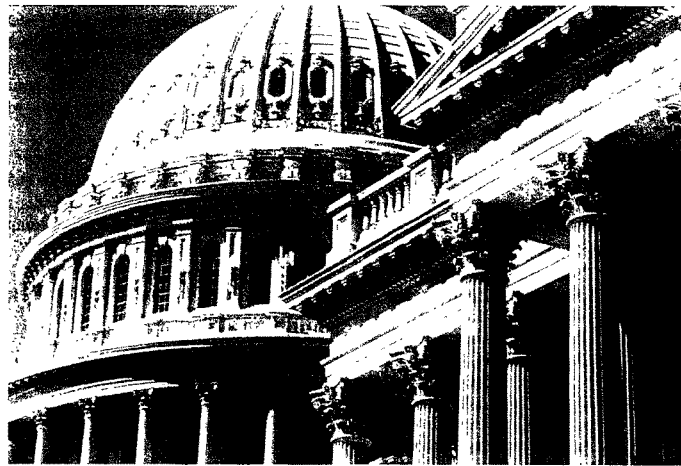
Achievements are expressed in percentages of FAA financial assistance used in contracting. Airports whose entries are in bold are those whose DBE achievements were lower in 2007 than in 2004.

<b>Airport</b>	<b>DBE Achievements 2004 (%)</b>	<b>DBE Achievements 2007 (%)</b>
<b>Anchorage, AK</b>	<b>6.9</b>	<b>0</b>
Kodiak, AK	11.5	22.3
Palmer, AK	2.8	47.3
<b>Page, AZ</b>	<b>20.2</b>	<b>0.8</b>
Ryan Airfield, AZ	12.9	13.2
<b>Tucson, AZ</b>	<b>7.0</b>	<b>0.8</b>
San Francisco, CA	33.0	34.5
<b>Fresno, CA</b>	<b>8.7</b>	<b>7.8</b>
<b>Palm Springs, CA</b>	<b>6.1</b>	<b>0.9</b>
<b>Santa Barbara, CA</b>	<b>2.1</b>	<b>0.5</b>
Contra Costa, CA	3.6	5.4
<b>County of San Diego, CA</b>	<b>6.9</b>	<b>4.6</b>
Ventura, CA	10.5	40.6
<b>San Diego County Regional, CA</b>	<b>11.3</b>	<b>4.6</b>
<b>Honolulu, HI</b>	<b>66</b>	<b>0</b>
<b>State of Hawaii</b>	<b>22</b>	<b>0</b>
<b>Friedman Memorial, ID</b>	<b>1.7</b>	<b>0</b>
<b>Gooding, ID</b>	<b>7.7</b>	<b>6.4</b>
Pocatello, ID	9.9	15.8
<b>Lemhi County, ID</b>	<b>44.2</b>	<b>1.9</b>
Bert Mooney, MT	4.6	16.8
<b>Missoula, MT</b>	<b>8.9</b>	<b>4.6</b>
Sanders County, MT	4.1	4.8
Sidney Richland, MT	0.2	1.0
<b>Reno Stead, NV</b>	<b>5.2</b>	<b>0</b>
<b>State of Nevada</b>	<b>10.1</b>	<b>8.9</b>
<b>Klamath Falls, OR</b>	<b>0.9</b>	<b>0.4</b>
<b>Portland, OR</b>	<b>27.9</b>	<b>2.0</b>



ATA TESTIMONY

***FAA REAUTHORIZATION ACT OF 2009***



Statement of James C. May  
President and CEO  
Air Transport Association of America, Inc. (ATA)  
before the  
Subcommittee on Aviation  
of the  
House Committee on Transportation and Infrastructure

February 11, 2009



AIR TRANSPORT ASSOCIATION

## OVERVIEW

There are few constants in the commercial airline industry. The one immutable constant, of course, is the airlines' commitment to safety, which is reflected in the remarkable safety record of the past several years. Another constant is change, and today the industry is changing rapidly, both in the U.S. and internationally. Technology, business aviation, energy supplies and prices, domestic and international competition, environmental concerns and the economy continuously impact the airline *business* and force change. For airlines, adapting to change is an absolute in the constant – and frequently unsuccessful – struggle to achieve financial stability and a return on investment for shareholders.

Key factors in this equation are the air traffic control (ATC) services provided by the Federal Aviation Administration (FAA) and funding policies for airport development. They are woefully outdated and inadequate, and deprive the flying public, shareholders and the public at large of tremendous economic, environmental and competitive benefits that are sorely needed. In particular, ATC modernization is critical to improved aircraft fuel efficiency, reduced fuel burn and reduced energy costs, which in turn will drive financial stability for the U.S. airline industry.

Now is the time for Congress to make the policy and infrastructure changes needed for U.S. airlines to regain financial viability, achieve consistent operational integrity and improved customer service, reduce environmental impacts and enable U.S. airlines to compete effectively against global competitors. FAA reauthorization offers Congress the opportunity to lead and enable much needed change:

- Change technology – modernize the ATC system as quickly as possible
- Change ATC funding – embrace equitable cost-based funding so that the airline industry does not subsidize other user groups
- Change infrastructure development funding – enable innovative financing
- Change aviation's environmental impact – ATC modernization will enable material improvements in fuel efficiency and a corresponding reduction in emissions
- Change philosophy – recognize that airlines are modern, publicly owned businesses that will not be able to improve wages and benefits for employees and attract much needed capital if financial stability continues to remain elusive

These, then, are ATA's primary goals for FAA reauthorization: (1) program authority and funding for FAA to swiftly transform the ATC system into a modern, satellite-based system, including authority for research and development, innovative financing mechanisms for modernization equipment acquisition and deployment, support for aircraft equipage and asset/human resource management to capture cost savings; (2) an ATC cost recovery structure that is fair and equitable so that user groups pay in proportion to their use of the system; (3) an Airport Improvement Program (AIP) structure that does not use funds derived from commercial airlines and their passengers to subsidize noncommercial airport development – our point here is not that public-use airports do not deserve funding, but merely that funding should be public-source funds such as the General Fund; and (4) a forward-looking national aviation policy to address the many challenges facing the industry.

## THE AIRLINE INDUSTRY IS A SUBSTANTIAL AND CRITICAL DRIVER OF U.S. ECONOMIC ACTIVITY

As we have noted on many occasions, the U.S. airline industry is not simply an important sector of the national economy; its services fuel our entire economy. Air transportation is an indispensable element of America's infrastructure and our nation's economic well-being. The airline industry is the foundation of

the commercial aviation sector, which is comprised of airlines, airports, manufacturers and associated vendors. **U.S. commercial aviation ultimately drives \$1.1 trillion in U.S. economic activity and 10.2 million U.S. jobs.** By any measure, the U.S. airline industry is a valuable national asset and its continued economic health should be a matter of national concern.

Recent events illustrate the positive impact that a healthy industry can have on our national economy. Prior to the fourth quarter of 2008, U.S. airlines transported over two million passengers on a typical day, operating approximately 30,000 flights per day and directly employing 550,000 persons to do so. Airlines were forced to reduce operations and staffing in the fourth quarter 2008 due to the meteoric rise of jet fuel prices earlier that year. As a result, the industry lost between \$8 billion - \$9 billion in 2008. Because of the current recession, airlines are unable to restore those operations and jobs, and now employ less than 500,000 people, with the prospect of further cutbacks if the economy continues to falter. It is clear from these events that a healthy industry can drive high-paying jobs and that, in turn, will help drive the economy back to health. For this reason, government policies in all areas should foster financial stability and growth in the airline industry.

Commercial air service also is critical to the small communities of our nation. For this reason, we firmly support the continuation of a strong Essential Air Service Program. Any reauthorization needs to include such a continuation.

The U.S. airline industry cannot sustain its vital role of transporting people and goods if the government infrastructure that it depends on, the ATC system, becomes an impediment. U.S. airlines risk becoming a wasting national asset if the industry's fundamental features – speed, dependability and efficiency – are undermined by an obsolescent ATC system.

#### MODERNIZATION IS NEEDED NOW

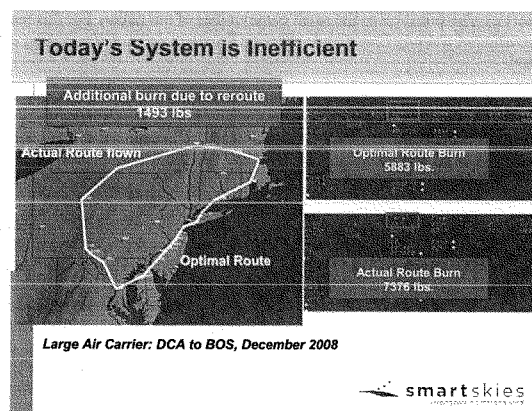
**All sectors of the broader aviation industry – airports, airlines, business aviation, manufacturers, passengers and shippers – agree that the FAA ATC system is badly in need of modernization and that it is needed now.** As laid out by many witnesses in numerous prior hearings, the current ATC system is inadequate and outdated. It is a ground system that is based on decades-old radar technology. It is less accurate and precise than modern satellite-based technology, has reached the limits of its capabilities, is expensive to maintain and it is labor intensive to operate. In several areas of the country, most notably in the Northeast, it is unable to provide the capacity needed to meet the demand for ATC services at peak periods and at times of severe weather conditions. With FAA forecasting significant long-term growth, it is critical that modernization initiatives be implemented as soon as possible. The current recession may delay that growth, but it will be only a short respite that we cannot afford to waste.

The FAA Next Generation Air Transportation System (NextGen), which will employ a number of new technologies in a satellite-based air traffic management system, will provide tremendous improvements over the current system that will benefit all system users, passengers and shippers, the public in general and the U.S. economy. Public benefits include improved operational efficiency, reduced fuel consumption and emissions and lower operating costs for airlines. NextGen will provide several critical needs:

- **Capacity.** The current ATC system is saturated and, in some locations, cannot provide the capacity to meet the public's demand for convenient, safe air transportation. This situation inhibits competition and industry growth. It also is the source of unnecessary congestion and delays, and compounds the effect of weather-related delays. NextGen will enable more precise spacing of aircraft and flight paths, which will allow FAA to handle safely and efficiently the traffic growth it forecasts.

- Efficiency and Productivity.** NextGen will enable more efficient flying. Today's ground radar system requires planes to fly over specific points on the ground to maintain radar and communications contact. Navigational aids, radar and controllers are all terrestrial. They are linked to form a complex network system that supports airways, through which aircraft fly. Today's system also requires spacing to accommodate the time it takes for radar to detect objects. Consequently, aircraft fly indirect routings and aircraft spacing – required for safety – wastes capacity. Today's ATC system cannot, and never will be able to, take full advantage of available technology or integrate and fully exploit emerging technology.

The environmental and economic impact of today's inefficient ATC system is illustrated below. The flight in this example burned an additional 1493 pounds of fuel (218 gallons). This added an extra 4,560 pounds of carbon dioxide (CO<sub>2</sub>) that was released into the air and cost the carrier an extra \$688 in fuel (given the razor-thin margins, this is significant).



In contrast to today's ATC system, NextGen will enable: optimized, direct routings between airports; reduced aircraft spacing; continuous descent arrivals, precise arrival and departure routings (known as RNAV and RNP procedures), and closely spaced approaches on parallel runways in instrument flight rule conditions. These are just a few of the operational benefits of NextGen.

These efficiency enhancements will drive significant improvements in productivity – both in terms of asset utilization and personnel. That, in turn, will reduce operating costs, which will help keep fares down and enable those savings to be plowed back into wages and benefits and operating capital.

Improved ATC efficiency also will benefit private aircraft owners. Corporations use private aircraft with the expectation that such use is efficient. While we disagree with that proposition, ATC modernization will provide corporate aircraft owners the same kind of efficiency benefits that commercial airlines will enjoy if their aircraft are properly equipped. Even if they are not properly equipped, they still will enjoy a spin-off benefit simply from operating in the same airspace as more efficient commercial aircraft.

- **Environmental Benefits.** More efficient operations also will use less fuel, increasing aircraft fuel efficiency and reducing greenhouse gas and other emissions. It was estimated initially that full implementation of NextGen would reduce emissions by 12-15 percent. However, early implementation of certain NextGen elements is providing some benefit already, as are other airline initiatives, so that as time passes the benefit of full implementation will be somewhat less. Nevertheless, the environmental benefits of ATC modernization are real and important. Improved fuel efficiency also will reduce operating costs and contribute to improved financial conditions that, like the productivity improvements discussed above, will benefit the public and employees.
- **Operational Integrity and Customer Satisfaction.** Closely linked to capacity, efficiency and productivity is operational integrity. By expanding capacity and enabling more efficient operations, NextGen will enable better on-time performance and improved customer satisfaction. Today's outdated ATC system contributes to delays and disruptions that could be avoided and will be avoided when NextGen is implemented. With improved operational integrity comes fewer delays, fewer missed connections, fewer misplaced checked bags and more satisfied customers.
- **Safety.** NextGen's satellite-based system will look and act much like a network to which aircraft and ATC are interconnected. It will provide more precise information to both controllers and pilots about aircraft locations, both in the air and on the ground, and will enable aircraft to constantly know one another's locations. This locational awareness and corresponding digital communications capability will provide critical real-time flight status information not available today. Some of the technology and operating procedures have already been tested and produced dramatic results. A sharp drop in aircraft accidents in Alaska occurred under the Capstone Program, introduced earlier this decade, which utilizes ADS-B technology, a foundational technology for NextGen.
- **Scalability.** NextGen will be considerably more nimble than today's facility and labor intensive system. Accordingly, it will be much easier for the FAA to scale the system to meet demand from all aviation sectors, whether that demand is a steady growth curve or fluctuates from time to time. Automation and digital data communications will make it easier for the FAA to adjust the system as needed.
- **Improved Financial Performance.** Modernization will respond to legitimate shareholder expectations that the airlines they invest in will earn a positive return on investment. The current ATC system hobbles the industry's ability to achieve financial stability because of the costs it drives by being inefficient. These failures lead to delays and congestion. In the twelve-month period ending September 2008, 138 million system delay minutes drove an estimated **\$10 billion in direct operating costs for scheduled U.S. passenger airlines**. Delayed aircraft also drive the need for extra gates and ground personnel and impose costs on airline customers (including shippers) in the form of lost productivity, wages and goodwill. Delay costs for air travelers are considerable and we estimate **the total cost to passengers to be \$4.5 billion**. The industry cannot survive, and the public will not invest in it, if these conditions remain the *status quo*.

## ESTABLISH FAIR AND EQUITABLE ATC FUNDING

The ATC system is funded by its users through fees and taxes. Unfortunately, the funding structure has remained static since its creation even though system use has changed over time. Consequently, the share that each user group pays is not aligned with its use of the ATC system. It is time to repair the funding structure so that it is fair to all users and equitably charges user groups based on their use of ATC services.

In 1970 when the Trust Fund was established, airlines were the principal users of the ATC system. FAA data show 2,586 airliners were in service then compared with 1,833 corporate aircraft. Today there are almost 10,500 *more* high-performance general aviation aircraft than commercial airliners in the U.S. fleet. While this fact alone does not mean corporate and private jet operations have overtaken commercial jet operations, common sense tells us that they are much bigger users of the ATC system today than they were in 1970. And in fact, an FAA study shows that high-performance general aviation and fractional aircraft account for 17 percent of ATC costs.

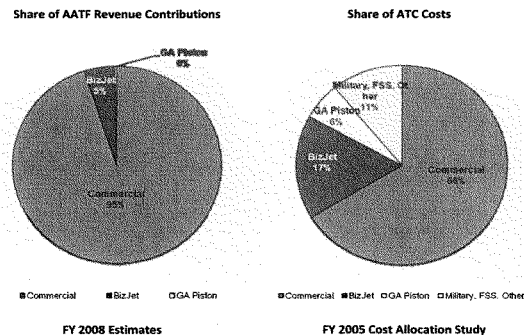
Number of Aircraft	1970	2007	Growth
U.S. air carriers (all psgr. and cargo props and jets)	2,586	7,816	3.0x
Turbine-powered GA (turboprops + turbojets)	1,833	19,187	10.5x
<b>Turbine GA share of total</b>	<b>41 percent</b>	<b>71 percent</b>	<b>30 pts.</b>

Unfortunately, the taxes and fees paid by this user group have not kept up with this dramatic growth, leading to an imbalance in payments into the Trust Fund. This imbalance in ATC system use and payments has led to an obvious and undeniable economic distortion that has airlines and their customers subsidizing business aviation.

According to data compiled by the FAA and certified by the IRS, airlines and their customers contributed \$11 billion to the Trust Fund, well in excess of 90 percent of total Trust Fund receipts, yet the FAA Cost Allocation Report shows that passenger and cargo airline operations only account for approximately two-thirds of ATC costs.<sup>1</sup> In contrast, business jets (general aviation, turbine aircraft and fractional aircraft) contributed only 5 percent of the revenue (\$573 million) but accounted for 17 percent of the costs.<sup>2</sup>

<sup>1</sup> The FAA cost-allocation study for FY 2005.

<sup>2</sup> The cost-allocation study breaks it down as follows: general aviation turbine and air taxis/fractionals drove 9.7 percent and 7.2 percent of system costs respectively; general aviation piston drove 5.9 percent of system costs.



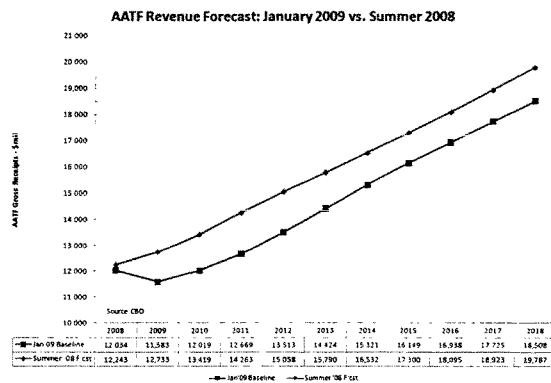
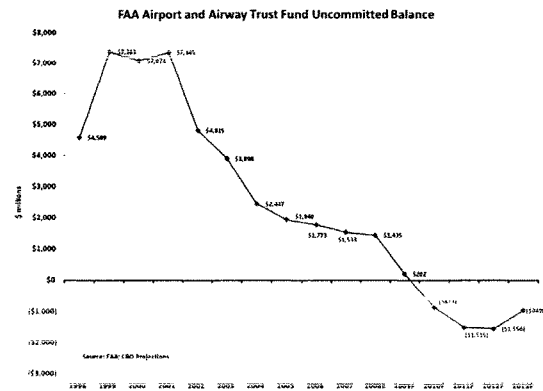
The inequity of this situation is illustrated by comparing the taxes and fees paid by a commercial passenger flight and a private corporate aircraft flight over the same route. A commercial passenger Boeing 737 flying from Washington, D.C. to Fort Lauderdale, Florida, a distance of 902 miles, would generate approximately \$1,434 in taxes and fees, assuming a load factor of 75 percent. A private Cessna C750 carrying four passengers would pay just \$112. That's more than a tenfold difference. The same aircraft on a flight from Washington, D.C. to New York City would pay \$1007 and \$26, respectively, while a transcontinental flight from Washington, D.C. to Los Angeles would generate \$1,897 from the commercial airline and just \$287 from the corporate jet. **The irony, of course, is that the FAA provides the same air traffic control services to the commercial flights and private aircraft in these examples.** Day-in and day-out, corporate aircraft operate in the same airspace as commercial aircraft and utilize the exact same ATC services, but at a fraction of the cost.

ATA has long supported the principle that ATC system charges to different user groups should reflect each group's use of the system. We continue to endorse that principle and urge that it be embraced in FAA reauthorization legislation.

#### UPDATE HOW AVIATION INFRASTRUCTURE IS FUNDED

##### *The Trust Fund is at Risk*

It is time to alter the traditional approach to funding FAA operations and infrastructure development from the Airport and Airway Trust Fund (Trust Fund) and passenger facility charges (PFCs). In particular, the Trust Fund is at risk. Given the recent decline in airline operations and the potential for additional cuts in 2009, near-term revenue into the Trust Fund will decline significantly. It is unclear when growth will return in light of current economic terms – it could be 2010 or even later. This situation has two important adverse effects: (a) the uncommitted balance – discretionary funds – will soon fall into negative territory and likely remain there for several years, and (b) it diminishes the long-term revenue forecast. The charts below illustrate these problems:



This situation demands a solution and justifies new, diversified approaches to funding infrastructure development as well as FAA operations in general. FAA funding, and in particular funding for NextGen, has been debated for years. Not only have we missed the opportunity to get ahead of this challenge, the Trust Fund is now experiencing pressure that, if allowed to continue, will delay the introduction of NextGen.



*The Role of the General Fund Should Expand*

As a preliminary matter, it should be an obvious fundamental principle that “public good” programs and functions carried out by the FAA to protect the public, such as safety regulation and oversight, are funded by the General Fund. The Trust Fund should be reserved for its original intended purpose, to provide for the expansion and improvement of the Nation’s airport and airway system.<sup>3</sup> Adhering to this fundamental principle will relieve the Trust Fund of “mission creep” and ensure the public fairly contributes to the cost the FAA incurs in overseeing the safest air transportation system in the world. The public derives tremendous value from the FAA’s safety activities. It bears repeating here that U.S. commercial aviation ultimately drives \$1.1 trillion in U.S. economic activity and 10.2 million U.S. jobs.

Another appropriate role for the General Fund is to fund airport development projects at public-use airports, instead of funding them with Trust Fund revenues through the Airport Improvement Program (AIP). Roughly \$1 billion of Trust Fund revenues is allocated through AIP annually to public-use airports that do not receive any commercial service. But, as discussed above, the users of those airports contribute very little to the Trust Fund. Thus, commercial aviation is unfairly subsidizing development projects at public-use airports and the effect is to drain the Trust Fund of badly needed revenues that could be used to pay for ATC services, the development of NextGen and critical infrastructure projects at key commercial airports. ATA does not oppose development at public use airports. Just like FAA safety regulation and enforcement, however, these projects are “public good” activities and should not be funded out of the Trust Fund. Instead, General Fund revenues should be substituted for the Trust Fund revenues that support these projects through AIP. This would help repair the health of the Trust Fund.

*New Ideas for NextGen*

The condition of the Trust Fund combined with the urgent need to implement NextGen makes the historical way of funding this project – on a cash-only basis by means of annual appropriations – impracticable. The present circumstances demand that we look at new ideas.

First among these creative financing concepts is to give the FAA bonding authority. The benefit of bonding authority is that it would give the FAA a known and reliable funding stream without the vagaries of the annual appropriations process. In addition, FAA would be able to leverage this funding stream to accelerate NextGen.

Another concept is to make NextGen eligible for funding from a National Infrastructure Bank, as proposed by Congress and the president. Creating an independent national infrastructure bank with the power to issue the equivalent of municipal bonds would be instrumental in providing NextGen with a known, reliable funding source and would hasten NextGen’s full deployment.

*Changes for Airport Development Funding*

Airports are hampered in their efforts to issue bonds for development projects due to application of the AMT tax. This occurs because federal tax law classifies most airport bonds as private activity bonds, even though they finance projects that realistically are public works projects. AMT application has two effects – the earnings on airport bonds are subject to AMT tax calculation, making them less attractive, and airport issuers are charged higher rates on their borrowing. Eliminating this punitive tax on airport bonds

<sup>3</sup> “The principle purpose of this legislation is to provide for the expansion and improvement of the Nation’s airport and airway system. In substantial part, this purpose is to be achieved through the imposition and application of airport and airway user charges.” H.R. No. 91-601, reprinted in 1970 U.S.C.C.A.N. 3047.

would result in broader access to bond markets for critical infrastructure projects. Particularly now, when the credit is difficult to obtain, Congress should do everything it can to free up the markets for development projects that will drive jobs and important public benefits.

If Congress passes legislation establishing a National Infrastructure Bank, then airport infrastructure projects that will increase capacity and improve safety should be made eligible for such funding.

#### A FORWARD-LOOKING NATIONAL AVIATION POLICY WILL ENABLE THE INDUSTRY TO MEET THE MANY CHALLENGES IT FACES

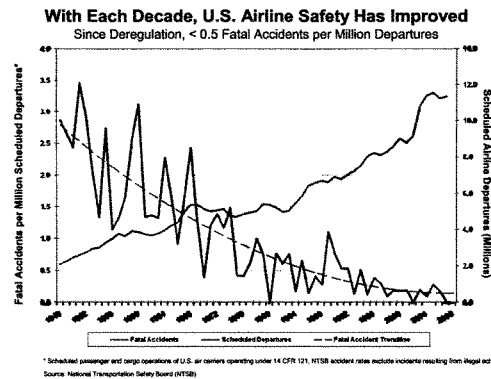
The U.S. airline industry has struggled for many years to achieve financial stability for shareholders and employees. For decades it has lurched from one crisis to the next with only brief interludes of sustained profitability that have been offset by longer periods of sustained losses. For some, the industry's ability to adapt and survive under these conditions is merely proof that "there will always be an industry" and that the names on the tails of the airplanes and the people who make the airlines work every day don't really matter. Others are happy with this situation because the resulting turmoil creates opportunity to advance a variety of causes and personal agendas. We disagree.

One important contributing factor to this malaise is the absence of a clear and forward-looking national aviation policy that recognizes the economic and social importance of the airline industry. This is surprising, even shocking, given that U.S. commercial aviation ultimately drives \$1.1 trillion in U.S. economic activity annually and 10.2 million U.S. jobs. By any measure, the U.S. airline industry is a valuable national asset and its continued economic health should be a matter of national concern. A national aviation policy would make a financially healthy airline industry a priority, encourage growth and competition by eliminating airspace and airport capacity constraints, and avoid single-interest and regressive policies that interfere with safe and rational business decisions – in other words, do no harm.

#### *Why financial health?*

Financial health and stability are important for many reasons. Airlines must achieve financial stability in order to:

- **Invest in safety.** "Safety first" is the bedrock principle of the airline industry. Operating with the highest degree of safety possible and complying with rigorous regulatory scheme of the FAA requires a significant ongoing investment in aircraft, maintenance, people, training, equipment, audit, quality assurance and compliance systems. The airlines ongoing commitment to safety has resulted in an ever-improving and unparalleled record, as illustrated by the chart below. The industry's commitment to safety means it will never shortchange the needed investment to continue this remarkable track record.

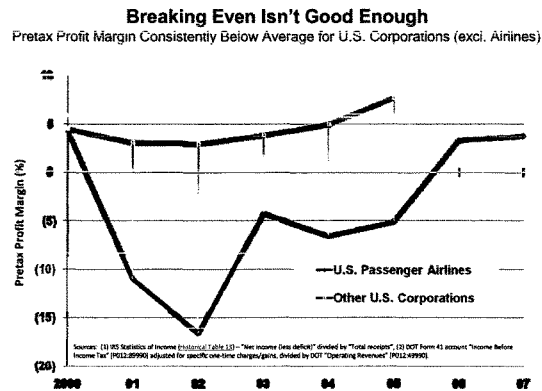


- **Improve wages and benefits for employees.** The post-Sept. 11 period saw the industry lose tens of billions of dollars and the wages and benefits of employees – those who survived reductions in force – shrink. It is obvious that this trend can be reversed only if the financial health of the industry is restored. Without sustained profitability, wages and benefits stagnate and talented employees move on to other jobs in other industries.
- **Address environmental concerns – invest in new aircraft and equipment.** To continue our decades-long track record of reducing emissions, airlines must have the financial capacity to acquire new aircraft, engines and ground service equipment. Until alternative fuels become commercially available to replace today's carbon-based fuels, the only way to reduce fuel consumption and emissions is by acquiring new and more efficient equipment. New aircraft also reduce noise and local environmental impacts.
- **Support the development and commercialization of alternative fuels.** Alternative fuels will not be developed and become commercially viable unless the airline industry provides a market for them. U.S. airlines are actively supporting the development of alternative jet fuels. That development will take years and the commercialization of alternative fuels will require significant investments in new infrastructure for their transportation, storage and delivery, in addition to the cost of acquiring the fuel itself.
- **Improve customer service.** Airlines need the ability to invest in staffing, training, systems and the equipment needed to improve customer service. New aircraft will increase reliability and further improve customer service. Equipping for NextGen, which will provide capacity and efficiency improvements, likewise will lead to higher levels of customer satisfaction.
- **Support U.S. security initiatives.** Many initiatives of the Transportation Security Administration and the Department of Homeland Security impose significant direct and ongoing costs on passenger and cargo airlines. The airlines must invest in personnel, equipment and computer systems to make these initiatives work to protect the public. The industry supports these initiatives but can do so only if they are financially sound.

- **Survive exogenous shocks.** The airline industry must be able to endure the exogenous shocks that regularly threaten its survival, from basic economic cycles to unprecedented energy prices to international wars to acts of terrorism. No other industry in America has been subjected to more challenges over the past quarter century, and without a doubt they will keep coming.
- **Attract Investment.** Airlines are publicly owned entities whose shareholders expect a return on their investment. If shareholders are continually disappointed, capital will dry up and the industry will shrink even more. Financial stability will attract the capital for the many needs discussed above.

#### *Do No Harm*

The U.S. airline industry profit margin, when it has one, is razor thin. It compares unfavorably to most other U.S. industries. This is one reason why a national aviation policy must include a "do no harm" component.



U.S. airlines are in a precarious position. While some are predicting the airline industry will be profitable in 2009 because of the drastic cuts made in response to the meteoric rise in fuel prices experienced during 2008, those predictions hinge on several assumptions, including the health of the U.S. and global economies. Weak economies will not generate business and personal air travel. Unfortunately, there are a number of indicators that this is what the industry is facing. The U.S. State Department, for example, recently said that it expected to issue just 12 million passports this year, roughly 25 percent fewer than last year. One aviation research and consulting firm just issued a report that concludes U.S. airlines will carry 41 million fewer passengers in 2009 than in 2008 and experience a revenue drop of \$7 billion in

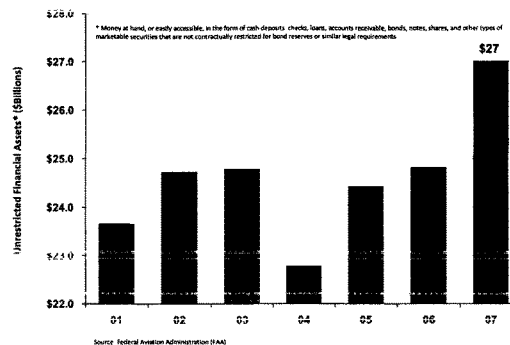
2009 and \$9 billion in 2010.<sup>4</sup> Under these circumstances, it will not take much to tip the industry into another yearly loss position.

Put simply, the U.S. airline industry cannot afford regressive policies that inhibit best business practices and unnecessarily constrict management decision-making, or that add unnecessary fees and costs. Such policies undermine the ability of airlines to earn a profit, impair shareholder value and impair the ability of airlines to attract new capital and debt financing. That downward cycle prevents airlines from improving employee wages and benefits and from investing in equipment, facilities and new employees. For this reason, Congress should avoid the temptation to interfere with practices that have proven safety records and that satisfy legitimate business needs.

Under the heading of "do no harm," passenger facility charges (PFCs) should not be increased from \$4.50 to \$7.00 per segment as advocated by the airport community. First, PFCs are a direct tax on passengers that benefit airports but harm airlines because PFCs must be included in the total ticket price. Raising PFCs to \$7.00 would impose an additional \$2 billion in taxes on passengers, raising the cost of air travel and harming both passengers and airlines. PFCs, like any other tax, ultimately reduce consumption of the underlying product or service – in this case air transportation – thereby directly impacting airlines, too. Second, there is no evidence to suggest that necessary projects will go unfunded in the future without increasing PFCs. Indeed, PFCs reached record collections of more than \$2.8 billion in 2007, providing adequate funding for capital projects. 2008 will have equaled or exceeded this level. Third, airports have accumulated more than \$27 billion in unrestricted assets, meaning discretionary funds are available to support capital projects. Fourth, virtually every PFC application has been approved since PFCs were enacted, and GAO reports that from 2001-2005 airports received an average of \$13 billion a year for planned capital projects from bonds, federal grants and PFCs. This level of funding should be sufficient to meet current and future capital needs given the current economic conditions and reduced growth projections. Finally, although credit markets are tight, airports generally have extremely high credit ratings and historically have had no trouble making successful bond offerings for critical, viable projects. While certain airports may be feeling pressure from credit markets, this temporary situation does not justify a permanent change in PFC funding, which will add billions of additional taxes. Instead, airports should revise their spending plans and Congress can consider other options such as eliminating the AMT penalty, providing funds from the General Fund or establishing other innovative financing mechanisms, discussed above.

<sup>4</sup> Boyd Group International, *Airline Traffic: 2009 Prospects Going South*, February 2009.

**Airports Have Accumulated Significant Unrestricted Financial Assets\***  
based on 521 U.S. Commercial Service Airports



Several other items also fall under the “do no harm” heading. These include:

- **Slot Auctions.** Requiring airlines to forfeit slots and then allowing FAA or airports to auction them off does nothing to address congestion but will add costs that can force airlines to raise fares and discontinue service in smaller markets.
- **Congestion Pricing.** Allowing airports to impose additional costs during congested periods will add costs that can raise fares and force airlines to discontinue service to smaller markets. Both congestion pricing and slot auctions distract policymakers from the real problem: FAA's failure to provide airspace capacity and to work with airports and airlines to develop capacity enhancements at specific locations.
- **Grandfathered Revenue Diversion.** Federal law allows a few airports to divert revenue to local or state governments, so-called grandfathered revenue diversion. These exceptions to the principle of plowing airport revenues back into maintaining and growing airports so they are self sufficient are decades old and it is questionable if they continue to serve a legitimate purpose. Airlines must make up these revenues at these airports so their costs increase unnecessarily. They should be eliminated.
- **Airport Firefighter Stations.** FAA regulations have safely dictated staffing and equipment requirements for airport fire stations for years based on the needs within the airport boundary. Increasing staffing and equipment based on surrounding populations will not enhance airport safety but will increase costs unnecessarily. These are not legitimate safety claims and should be rejected.
- **Foreign Repair Stations.** U.S. airlines have used foreign repair stations for many years without incident. They are safe and provide high quality work at competitive rates. Also, for some aircraft, the U.S. facilities do not have the capacity to meet demand, while other aircraft require maintenance while operating overseas. ATA supports FAA oversight of foreign repair station operations, but opposes calls for a moratorium or discriminatory regulations and oversight. In this case, evidence that maintenance performed at foreign repair stations is inferior or unsafe is lacking.

This FAA reauthorization legislative process offers a rare opportunity for Congress to make aviation a priority by establishing a strong, forward-looking national aviation policy. It should take advantage of this opportunity.

#### CUSTOMER SERVICE - IMPROVEMENTS ARE CONTINUING WITHOUT LEGISLATION

We said in 2007 that customer service legislation is not needed for several reasons, including marketplace competition for customers, the airlines' own self-interest in earning repeat business, public attention to this issue and regulatory oversight and enforcement by the Department of Transportation (DOT).<sup>5</sup> We stated that customer service in general would improve over time, and that airlines would learn from the unusual and extreme events of December 2006 and February 2007 in how to better handle lengthy delay situations and improve the decision process to cancel flights. We were right then and we remain firm in our conviction that legislation is not needed.

Recent DOT data show that customer service has improved across the board...

#### DOT Airline Customer Service Metrics Better on All Fronts

	YTD 2007*	YTD 2008*	Better/(Worse)
Flight Cancellations (as % of sched. domestic departures)	2.04	1.85	0.19
Flight Diversions (as % of sched. domestic departures)	0.23	0.23	0.00
On-Time Arrival Rate (% of domestic flights within 00:15)	74.2	76.9	2.7
Involuntary Denied Boardings (per 10,000 domestic passengers)	1.22	1.11	0.11
Mishandled Bags (per 1,000 domestic passengers)	6.88	5.12	1.76
Customer Complaints (per 100,000 domestic passengers)	1.40	1.14	0.26

\*January through November, with the exception of Involuntary Denied Boardings, which are January through September  
 Sources: Bureau of Transportation Statistics and DOT Air Travel Consumer Report

...and that delays are down.

#### Taxi-Out Delays Have Decreased

Taxi-Out Delays (per 10,000 departures)		
	2 hrs and/or more	3 hrs and/or more
Jan-Nov. 2007	12.16	2.24
Jan-Nov. 2008	10.07	1.73
YOY Improvement	17.2%	23.1%

<sup>5</sup> See: Statement of James C. May, President and CEO of the Air Transport Association of America before the Subcommittee on Aviation of the House Committee on Transportation and Infrastructure, April 20, 2007, on Aviation Consumer Issues.

In addition, the most recent DOT Consumer Report<sup>6</sup> shows that lengthy tarmac delays remain extremely rare:

- A total of nine flights out of 523,267 scheduled flights in November 2008 had tarmac delays of three hours or more (eight flights delayed over three hours but less than four hours).
- This amounts to *.00002 percent* of scheduled flights in November 2008
- One flight was delayed more than four hours in November 2008

Although DOT and the Bureau of Transportation Statistics (BTS) are working with airlines to ensure new data elements concerning diverted flights (discussed below) are reported properly, DOT continues to publish the lengthy tarmac delay data and any changes in the future will not alter the fact that very few lengthy delays occur. Claims to the contrary are not credible.

ATA member airlines have been very active in addressing the issues associated with lengthy tarmac delays since the winter of 2006-2007. For example, the congressional hearings in April 2007 revealed gaps in the delay data collected by BTS, particularly with respect to cancelled and diverted flights. ATA and its members supported changes to the reporting system to capture this data and worked with DOT and BTS to update the reporting system. Carriers began reporting this new data in October 2008. Questions have developed about the new data concerning delays associated with diversions and the airlines are working with DOT and BTS to resolve any confusion and ensure that the data reported is correct and accurate.

ATA and its members also participated in the National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays (Task Force) established by DOT Secretary Peters in early 2008. The Task Force addressed contingency planning for both airports and airlines, and produced an extensive document capturing numerous issues that contingency plans should address and best practices to deal with them. It was a highly successful exercise that enabled airlines and airports to review and update their internal contingency plans on an ongoing basis as the Task Force worked on these issues.

In November 2007, DOT initiated a rulemaking process to expand its consumer protection regulations for airline passengers. ATA and its members have actively participated in this rulemaking and, in fact, have supported several DOT proposals. The rulemaking is ongoing and ATA will file comments before the docket closes in early March. While we disagree with proposals having to do with incorporating contingency plans and related items into airline contracts of carriage, when finalized the rule will enable consumers to obtain more relevant information and provide additional protections to passengers when things go wrong despite the best efforts of airlines.

Beyond the regulatory front, innovation and competition continue to drive airlines to improve the passenger experience. Online and kiosk applications to obtain boarding passes are no longer novel – they are considered *de rigueur*. Airlines are now experimenting with electronic boarding passes so that cell phones and personal digital assistants (PDAs) can be used, thereby eliminating paper boarding passes entirely. And *a la carte* pricing for services not every passenger needs or wants is helping to offset upward pressure on base fares. These innovations have become a point of competition, which is exactly what Congress looked for – innovation and competition – when it passed the Airline Deregulation Act.

<sup>6</sup> Issued in January 2009 for data through November 2008.



For all of these reasons, we do not think consumer protection legislation is needed. In particular, we oppose a hard and fast rule requiring airlines to give passengers the option to deplane after three hours. Mandatory deplaning will have numerous unintended consequences that, ultimately, will create even more inconvenience for passengers and lead to even more flight cancellations. Forcing airplanes to return to the gate or get out of line to deplane a passenger to a ground vehicle on an active taxiway will be highly disruptive to airport and airline operations and raises significant safety issues.

As we noted in prior testimony,<sup>7</sup> if a flight returns to a gate and is cancelled, then the passengers will very likely be delayed at least into the next day, if not longer. Even if a flight is not cancelled, planes will lose their place in line to depart by being forced to go back to the terminal or pull out of line to deplane passengers by air stairs. This will cause even longer delays for everyone else. Consequences that will occur, particularly from a return to the gate to deplane a passenger, include:

- Cancellations because crews “time out”<sup>8</sup>
- Flights delayed because they lose their place in the departure line
- Unplanned overnight stays for unaccompanied minors
- Mishandled baggage
- Missed meetings and vacations
- Cascading cancellations and delays caused by planes and crews out of position, especially when diversions are involved
- An overall increase in cancellations because airlines will pre-cancel flights to limit passenger inconvenience and operational complications caused by the bill’s requirements

These consequences are likely to be exacerbated for flights diverted to alternate airports.

The impact of flight cancellations extends beyond the passengers on the cancelled flight. Operationally, the consequences for airlines and the next day’s passengers include:

- Crews and aircraft are ‘out of position’ and the next day’s schedule is compromised
- Passengers at the destination city must wait for the aircraft to arrive the following day, delaying or cancelling *their* departures
- Flight crews ‘deadheading’ on the cancelled flight will not reach their destinations and will not be available to operate their scheduled flights
- Aircraft will be forced to traverse congested runways/taxiways when logistically possible (as it was not for long periods at JFK during the storm gridlock) to return to the terminal

Based on objective metrics, customer service is improving and airlines are doing a better job of responding to lengthy tarmac delays. Competition, regulatory oversight and enforcement and public scrutiny are working. On the other hand, proposed legislation will be disruptive and add unnecessary costs. We continue to believe that additional legislation is not necessary.

<sup>7</sup> See footnote 5 above.

<sup>8</sup> FAA regulations on duty limits and rest requirements for pilots and flight attendants, as well as carrier collective bargaining agreements that go beyond the regulations, limit the amount of time pilots and flight attendants may be on duty without a rest break. Limited provisions that allow the duty day to be extended because of reasons beyond the control of the airline assist in dealing with weather-related delays. However, the utility of these provisions will be curtailed significantly by forcing planes back to the gate to deplane passengers.

## CONCLUSION

It is imperative that Congress enable FAA to move forward promptly with its NextGen program. The environmental, capacity and efficiency benefits of NextGen are critical to meeting the needs of the flying and shipping public and improving the financial condition of the U.S. airline industry. FAA reauthorization legislation should embrace new thinking and new ideas about infrastructure funding, especially in light of current economic conditions and the need for FAA to be able to plan its research, development and acquisitions over several years. The principle of fair and equitable funding of the ATC system and the AIP program should be imbedded in reauthorization legislation. What user groups pay for ATC services should be aligned with their consumption of those services – airlines should not subsidize other users. Likewise, AIP funding for development projects at public use airports should not come solely from the taxes and fees that commercial airlines pay into the Trust Fund. In addition, we urge Congress to adopt a forward-looking national aviation policy that recognizes the commercial airline industry's value and importance to our economy and society. Finally, customer service legislation is not needed. The industry has done a good job of responding to issues related to long tarmac delays and, on an objective basis, is providing better customer service.

311

STATEMENT OF  
CAPTAIN JOHN PRATER  
PRESIDENT  
AIR LINE PILOTS ASSOCIATION, INTERNATIONAL  
BEFORE THE  
SUBCOMMITTEE ON AVIATION  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
UNITED STATES HOUSE OF REPRESENTATIVES  
WASHINGTON, DC  
February 11, 2009

**FAA Reauthorization Act of 2009**

Air Line Pilots Association, International  
1625 Massachusetts Avenue, NW  
Washington, DC 20036  
(202) 797-4033

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BEFORE THE  
SUBCOMMITTEE ON AVIATION  
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UNITED STATES HOUSE OF REPRESENTATIVES  
ON  
THE FAA REAUTHORIZATION ACT OF 2009**

**February 11, 2009**

Good afternoon, Mr. Chairman and members of the Subcommittee. I am Captain John Prater, President of the Air Line Pilots Association, International (ALPA). ALPA represents more than 52,250 pilots who fly for 35 passenger and all-cargo airlines in the United States and Canada. On behalf of our members, I want to thank you for the opportunity to provide our perspectives on the FAA reauthorization bill. We provided input during the 110<sup>th</sup> Congress on H.R. 2881, and supported its passage as it included funding for many aviation programs and enhancements that are important to airline pilots.

Recognizing that there are new members on the Subcommittee who may not have been directly involved with H.R. 2881, our comments are intended to not only identify those provisions that are of special interest to us, but also explain why they are important.

Flight Crew Fatigue and Flight-time/Duty-Time Rules

One of the many hardships that the post-9/11 era brought to airline flying was pilots flying right up to the FAA regulatory limit. This has resulted in adverse safety impacts, fatigue, and more stress. The pay and productivity hits of the last few years mean that our members are routinely working at or near regulatory limits as a normal operating practice. Sixteen-hour domestic duty days -- even longer with some long-range international operations -- are facts of life for many airline pilots. Irregular shifts, crossing time zones, all-night operations, FAR Part 91 flying at the end of a duty day, and significant circadian rhythm challenges all contribute to pilot fatigue. Remember, too, that the current regulatory requirement of 8 hours of rest after a 16 hour day has to include travel to and from a hotel, meals, and sleep. So when we see a requirement for 8 hours of rest required for a pilot to operate a flight that translates into only a four or five hour window available for sleep.

Technological advances have exacerbated the problem of pilot fatigue. The current prescriptive regulations regarding maximum flight time and duty periods have not been significantly changed since well before jet transports came into commercial use in the

late 1950's. Some airliners being operated now can fly for more than 20 hours without refueling. With flights of this duration, combating flight crew fatigue is a real and constant concern.

The National Transportation Safety Board (NTSB) lists as one of its "most wanted" aviation safety improvements reducing the potential for accidents and incidents caused by human fatigue. Although the FAA issued a notice of proposed rulemaking in December 1995 to update the flight and duty regulations for airline pilots, in the intervening 14 years, the regulations have not been revised. Last summer, the FAA held a conference on the subject of fatigue, at which hundreds of government and industry personnel convened to discuss the need for creating new flight and duty requirements, which will protect against fatigue-related accidents and incidents. The agency has stated that it is interested in developing fatigue risk management systems (FRMS) to provide an alternative to prescriptive limitations, and it has issued new Operations Specifications for ultra-long range (ULR) operations (i.e., those in excess of 16 hours of flight time). Several ULR carriers have sued the FAA to block implementation of these operations specifications, however, further complicating efforts to address fatigue.

To address the problem of pilot fatigue, ALPA advocates for adequate rest periods, reasonable duty periods and special provisions for flying "backside of the clock" and for crossing multiple time zones. Any regulations developed to deal with fatigue should be based on modern scientific principles, and should apply to all sizes of aircraft engaged in domestic and international passenger and cargo operations. Fatigue risk management systems should complement, and not be used as a substitute for an overdue, comprehensive updating of the FAA's flight and duty time regulations. Regulatory reform must also close loopholes currently in the rules applicable to air carriers operating under FAR Part 121. Some of our smaller carriers, for example, are currently allowed to use the less restrictive rules in FAR Part 135, even though they are carrying ticketed airline passengers in scheduled service – passengers who deserve the same high "One Level of Safety" that must be the hallmark of the airline industry.

ALPA strongly supports Section 308 of H.R. 2881 which would direct FAA to: (1) arrange for a study by the National Academy of Sciences on pilot fatigue to include an examination of recommendations made by the NTSB and the National Aeronautics and Space Administration (NASA) on this subject; and (2) provide recommendations with respect to the FAA's flight and duty regulations based on the study's findings. We suggest some minor clarifications to reiterate the urgency of the problem and build on the progress made in the last year.

Currently, airline pilots may be required to operate transport aircraft for extended periods under FAR Part 91 after a long duty day of Part 121 or 135 flying. We strongly support the language contained in Section 816 of H.R. 2881 which requires that FAR Part 91 flying by airline pilots be included in the regulatory calculation of flight and duty time.

### Air Carrier Citizenship

ALPA would also like to reaffirm our support for another important element of the bill – the clarification to the air carrier citizenship requirement set forth in Section 801.

We feel it is important for Congress to affirm that U.S. citizens must be in firm control of all the key operational aspects of U.S. air carriers. This bill does that by specifically identifying marketing, branding, fleet composition, route selection, pricing and labor relations as some of the operational elements that DOT must ensure are controlled by U.S. citizens. This affirmation is consistent with the longstanding understanding of the U.S. citizenship requirements of the aviation statutes.

Section 801 would help ensure that as U.S. airlines seek to enter into ever closer alliance relationships with foreign carriers that there are clear limits on how far those relationships can go. The latest generation of joint ventures, under which U.S. and foreign carriers share revenues so that they are indifferent as to which airlines or pilots actually fly the aircraft, increases the importance of making sure that decisions that have a direct effect on the number of U.S. employees will be required for the joint services. It is essential that U.S. carriers not become subordinate components of foreign carrier networks but retain the incentive to develop and take advantage of growth opportunities that will benefit their own employees. This is particularly important at a time when the creation of high quality jobs for U.S. workers is a leading objective of the national economic and social policy.

### Protection of Voluntarily Provided Safety Data

Voluntary, non-punitive safety reporting programs have proven to be an invaluable source of safety information. The most familiar examples of these programs are the Aviation Safety Action Program (ASAP) and the Flight Operations Quality Assurance program (FOQA). These programs, especially ASAP, rely on a sound foundation of trust between three parties – the airline, the regulator, and the employee group concerned. The trust on which these programs are based needs to be embodied in a strong guarantee that when issues arise, personalities change or interpretations are made, parties to the agreement have a fundamental guarantee that their efforts to improve safety will not be met with punishment.

Pilots, flight attendants, controllers, mechanics, and other aviation professionals are on the front lines of daily operations and need to be able to report safety hazards they observe without fear of certificate action by the regulator, discipline by the company, or action in civil litigation. Pilots have a professional interest in identifying and correcting safety deficiencies and they must not be hindered from doing so. Pilots are also willing to identify and discuss the underlying causes of their own errors so that they and their peers can learn from them, but need assurance that their forthrightness will not result in punishment. In a very large percentage of cases, information obtained by ASAP reports cannot be obtained any other way. That is, no one but the reporter is aware of the problem identified. Jeopardizing the full, free and open reporting of safety concerns by

these “sole source” reporters would represent an unrecoverable loss of a significant portion of available safety data.

ASAP fosters a voluntary, cooperative, non-punitive environment, and a positive safety culture for the open reporting of safety of flight concerns. Through such reporting, all parties have access to valuable safety information that may not otherwise be obtainable. This information is analyzed to develop corrective actions aimed at solving safety issues and possibly eliminating deviations from Federal Aviation Regulations.

FOQA collects and analyzes large amounts of flight data generated during normal line operations. These data provide great insight into the total flight operations environment and have proven valuable in identifying trends that may indicate potential hazards. The information and insights provided by FOQA data, particularly when large quantities of such data are combined, can improve safety by significantly enhancing training effectiveness, operational procedures, maintenance and engineering procedures, and air traffic control procedures. While not “provided” directly by flight crews as a report, these data must nevertheless be protected from misuse for disciplinary or other punitive purposes.

Legislation is necessary to provide guaranteed protection from misuse of voluntarily supplied safety information. Programs have been suspended over misuse of reports for purposes of discipline or litigation. When the FAA, an air carrier and its employees agree on effective corrective action for voluntarily reported problems, the completion of the agreed upon corrective action should be conclusive and employees should not be subject to additional disciplinary action. Legislative protections must extend to actions by the regulator, the employer, and use in litigation. Failure to provide such protection will undoubtedly result in a significant reduction in the amount and quality of safety data that can be obtained.

Quality safety data from pilots and other aviation workers is an essential factor in meeting the requirements for implementation of Safety Management Systems (SMS).

An SMS is a systematic approach to managing safety and includes the necessary organizational structures, accountabilities, policies, and procedures. The International Civil Aviation Organization (ICAO) established a deadline of January 1, 2009, for States’ airlines, airports and service providers to implement SMS -- a deadline that the FAA declared last year that it would not meet. However, the FAA is working to establish SMS standards and regulatory guidance through an Aviation Rulemaking Committee (ARC) with the goal of meeting it in the future. A properly structured and implemented SMS will provide not only a safer operation for employees and customers, but should also eventually save money through improved efficiencies. The FAA must continue its efforts to develop SMS guidance and training materials to meet the ICAO standard. They must also provide training to their own workforce and safety inspectors to ensure correct implementation and oversight of this new way to manage safety.

### National Airspace System Modernization

Long-term, stable funding of the Nation's airspace and air traffic control (ATC) infrastructure is essential for safety, capacity and efficiency gains that are needed to modernize the aviation system. The project will take a long time; it is complicated, expensive, and absolutely must be done right the first time. ALPA believes that funding must be comprised of both Federal funds and an equitable funding stream from all airspace users since all users will benefit from modernization. All users should pay their fair share. Right now, airlines pay the majority of costs for operating the National Airspace System (NAS). Reducing the tax burden on our employers would help our industry recover. All users will reap the benefits and all should bear a share of the cost.

There is little debate over the need to modernize. The current U.S. ATC infrastructure is outdated, the equipment's capabilities are limited, facilities must be modernized, and efficiency is decreasing. The delays and similar problems in the system that currently plague the ATC system clearly underscore the critical need for ongoing NAS modernization. The entire country will benefit from the airlines' return to economic solvency if capacity and efficiency can be improved. New technologies and procedures can also increase safety, particularly in areas not well served by the current infrastructure. However, in many cases we are developing ways to put more airplanes in the same amount of space, so any new procedures must be studied, modeled, and thoroughly evaluated to guarantee that the current high level of safety is maintained or improved.

The FAA will realize the first benefits from NAS modernization; airspace users may not reap the benefits of installing new aircraft avionics for many years despite the fact that the equipage is necessary to build the foundation for the future. We urge Congress to work with the industry on the development of an appropriate NextGen airspace management system funding mechanism.

### Unmanned Aircraft Systems

The much-publicized success of Unmanned Aircraft Systems (UAS) in combat operations has created a large potential market for the use of these aircraft by commercial enterprises. Many are also in domestic use by government agencies (e.g., Law Enforcement, Customs, Agriculture, etc). As the number of these aircraft increases, and the potential for business use also increases, so does pressure to allow their unrestricted operation in the NAS.

ALPA believes that the language in Section 321 of H.R. 2881 accurately describes the depth and breadth of the study needed to evaluate this paradigm shift in the character of the NAS. The timeline set out in the bill to develop a plan may be sound, but we do not believe the actual process of UAS integration can be undertaken on a fixed timeline. A plan for integration must include a study of hazards and mitigation methods that must be taken to conclusion -- however long that takes. Before UAS can be authorized to occupy the same airspace as airlines, or operate in areas where UAS might inadvertently stray into airspace used by commercial flights, there needs to be in place a standard or combination of standards that will ensure the same high level of safety as is currently



present in the NAS. In order to guarantee that high level of safety, extensive study of all potential hazards and ways to mitigate those hazards must be undertaken.

The extreme variation of UAS types -- which range in size from as small as a bird to as large as a Boeing 737 -- makes this a complex issue. So, too, does the fact that they are flown remotely from operational centers or control stations which may be located at the launch-and-recovery site or thousands of miles away. Some are capable of "autonomous operation," meaning that they follow pre-programmed instructions without direct operator control. The pilots of autonomous operation UAS are not presently required to hold any FAA license. Most of the current designs were developed for the Department of Defense (DoD) for use in combat areas and so are not necessarily designed, built, maintained or operated in the same manner as other aircraft in the NAS. As a result, they are typically flown today in segregated airspace, i.e., military restricted airspace or its equivalent.

ALPA believes that a well-trained and well-qualified pilot is the most important safety component of the commercial aviation system. The role of the pilot is a major area of concern within the UAS and piloted aircraft communities. These pilots should be trained, qualified, and monitored to the same standards as pilots that operate aircraft from within the aircraft. The equipment they fly must be designed, built, and maintained to the same high standards as those operated by other commercial users of the airspace. ALPA will continue to work to protect the safety and integrity of the NAS and ensure that the introduction of UAS operations will not compromise the safety of our members, passengers, cargo or the public at large.

#### National Energy Policy and Alternative Fuel Research

There is currently no greater threat to the long-term health of the airline industry than the ongoing potential for large price escalations and scarcity of jet fuel. Jet fuel is the "lifeblood" of the airline industry and it must be in abundant supply and reasonably priced in order for commercial aviation to survive.

Despite the airline industry's best efforts to take advantage of every opportunity to improve efficiencies through technology and operational improvements to conserve fuel, jet fuel expenses have become the airlines' largest operating expense and consume as much as 40% of every revenue dollar, up from 15% in 2000. As the result of the exorbitant jet fuel price increases this past summer, many thousands of airline workers including pilots, were furloughed and the economic fallout from those increases, combined with other economic woes, is worsening still.

U.S. airlines consumed about 430 million barrels of jet fuel in 2008.<sup>1</sup> Although that is a huge amount of fuel, it represents only about 8% of total fuel used by all transportation modes in the country (96% of which is petroleum-based) and only 2% of all fuel of all types used in the U.S.<sup>2</sup> Other sources of the nation's fuel include natural gas, coal,

<sup>1</sup> Source: Air Transport Association

<sup>2</sup> Source: U.S. Department of Energy

renewables, and nuclear power. Some industries that currently use petroleum, such as electric power utilities, could convert to coal, nuclear power or renewable sources, thereby making more petroleum available to the transportation industry which relies so heavily on oil-based fuel.

Because jet fuel consumption represents a small portion of the country's total energy needs, it is impossible to significantly increase its supply, and thereby decrease its price, in the foreseeable future without (1) increasing oil production (whether domestically, abroad, or both), (2) decreasing the amounts of oil used by non-aviation entities by their switching to alternative energy source(s) in order to make more of it available to aviation, or (3) both.

ALPA was at the center of industry activity that began in early 2008 to urge Congress to reform oil commodities trading practices to reduce the effects of rampant speculation. Regardless of what may happen to the price of oil in the near future as a result of speculation reform or other short-term legislative remedies, the reality is that the U.S. does not have a comprehensive national energy policy. Without the creation and implementation of a national energy policy which will increase the supply and decrease the price of jet fuel, the future of U.S. airlines will continue to be precarious. At present, pilots can merely hope that the price of jet fuel will be so priced that their carriers can remain in business.

ALPA urges Congress to adopt a national energy policy which will include the goals of making jet fuel available and affordable into the future. Such a policy should include the following principles:

1. Regulate oil commodities trading to eliminate loopholes, increase transparency, and reduce the potential for rampant investor speculation that may lead to artificially higher prices;
2. Prohibit any new taxes, charges, or fees on fuel used by airline operations;
3. Encourage the development of new technologies and operational concepts that reduce transportation energy consumption and minimize environmental impacts;
4. Increase domestic production of energy sources focusing on clean energy and environmentally responsible oil production;
5. Promote greater use of non-oil-based energy sources within the aviation industry and transportation modes that can use alternative types of energy; and
6. Provide government-funded research and development of a low-cost, renewable, low- or non-emitting alternative fuel(s) for use by commercial aviation and other transportation modes.

We are pleased that Section 914 of H.R. 2881 included provisions for alternative fuel research and we strongly encourage that those provisions be retained in the final FAA reauthorization bill.

### Flight Deck Doors for All-Cargo Aircraft

Following the events of September 11, 2001, Congress mandated that fortified flight deck doors replace existing barriers on certain commercial aircraft types. Subsequently, the Department of Transportation (DOT) Rapid Response Team (RRT) identified a need to "...conduct a retrofit of the entire U.S. fleet of aircraft." The reinforced door has since proven to be a valuable enhancement to flight deck security, and the DOT has determined that all-cargo aircraft are "*equally vulnerable*." The Transportation Security Administration (TSA) has publicly stated that hijacking poses the greatest threat to the all-cargo domain.

In the unique all-cargo environment, many aircraft, including wide-body designs, operate with no flight deck doors at all. Flight deck doors are not required equipment on newly manufactured cargo aircraft. Flight crewmembers of all-cargo aircraft are not supported by cabin attendants or air marshals, and are not afforded the possibility of passenger intervention. It is a little known fact that all-cargo airliners frequently carry additional, non-crew personnel, such as couriers and animal handlers. It is potentially easier for an intruder to gain access to a cargo aircraft due to limited ground security procedures. These vulnerabilities can be readily exploited by terrorists or other persons with malicious intent.

In November 2005, ALPA responded to a DOT/FAA Notice of Proposed Rulemaking (NPRM) regarding crewmember monitoring of the area outside the flight deck door. Language proposed for inclusion in FAR Parts 121.313(k) and 121.582 specifically *excluded* all-cargo operations. As stated at that time, given that the same threat existing for passenger-only operations also exists for aircraft involved in all-cargo operations, ALPA continues to believe that *all* aircraft operating under FAR Part 121 must be afforded the same standard of safety and security protection. As such, all-cargo aircraft should be equipped with reinforced flight deck doors or provided an equivalent level of protection. Use of equipment that is a secondary barrier on a passenger aircraft might well provide needed additional security if used as the only barrier on an all-cargo aircraft.

### Wildlife Hazards

The recent airline accident in New York City which necessitated a ditching in the Hudson River has been attributed to the aircraft striking geese while in flight which resulted in a loss of power in both engines. The potential for bird strikes is a risk that is far from new; the Wright brothers recorded the first bird strike in 1905. The first bird strike-related fatality occurred in 1912 when aviation pioneer Cal Rodgers collided with a gull which became jammed in his aircraft's controls and caused it to crash. Striking large birds at high speeds may result in catastrophic damage to an engine, airframe, or pilot's windshield. Even a "small" bird of four pounds struck by an aircraft traveling 250 knots (288 mph) delivers the force of approximately 38,000 pounds at the point of impact.<sup>3</sup>

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<sup>3</sup> Source: Transport Canada

It is impossible to completely prevent birds from being struck by aircraft, so efforts have focused for many years on reducing the possibility of a strike and the severity of the consequences. Airframe and engine manufacturers have made great strides in designing aircraft structures, including windshields and engines that are able to withstand the force that results from striking and ingesting most birds. Engine design standards were updated in 2004 to require that engines be capable of ingesting up to an 8-pound bird depending on the engine's inlet size. Engines must also demonstrate the ability to withstand some level of damage and continue to operate. Windshields and windows must be tested to withstand a 4-pound bird strike. In 2007, new requirements addressed flocking birds and bird weight variability. ALPA was part of the team developing these standards. Obviously, however, aircraft cannot be made impervious to the effects of bird strikes, especially when all engines are impacted. Control of the wildlife population is also a critical part of the solution. The Federal Aviation Administration (FAA) requires commercial service airports to conduct wildlife hazard assessments and implement a wildlife hazard management plan, if warranted. Airport operators scare birds and wildlife away from aircraft operating areas using such measures as air guns, lasers, and wildlife patrols, and they use fencing and extermination to reduce the threat posed by large mammals such as deer.

We have been invited to testify about wildlife hazards at a February 24, 2009 hearing by this Subcommittee. We'll have more to say about this hazard at that time, but for purposes of the FAA reauthorization bill, we would urge Congress to ensure that sufficient funds are available for wildlife hazard mitigation research.

#### Runway Safety

We were pleased to testify before the Subcommittee this past September on the vitally important subject of runway safety. We urge Congress to continue to promote FAA leadership and industry efforts to mitigate the risks of runway incursions, excursions, and confusion. Congress can greatly facilitate this undertaking by ensuring that appropriate funding is available for a long-term modernization effort targeting those communications, navigation, and surveillance systems which directly impact runway safety.

Many aviation industry partners collaborated with the FAA on ways to improve runway safety following its "Call to Action on Runway Safety" in August 2007. ALPA is doing its part by engaging in activities focused on a heightened awareness of runway and airport safety. For example, we have published a series of runway safety newsletters for our membership since January 2008. Additionally, working in conjunction with AOPA, we provided our membership with an interactive runway safety website designed to inform pilots of best practices to increase their vigilance and operational safety during airport surface movements. In fact, we have made runway safety information available to non-ALPA members and the international community.

In spite of the efforts of all industry stakeholders, however, runway safety concerns remain. To its credit, the FAA established a new Runway Safety Council (RSC) and its subgroup, the Root Cause Analysis Team (RCAT) in late 2008. ALPA co-chairs the

RSC, whose mission is to provide government and industry leadership to develop and focus implementation on an integrated, data-driven strategy to reduce the number and severity of runway incursions. ALPA applauds the increased focus and attention being paid to runway incursions and we are optimistic that safety will benefit as a result.

We support language in H.R. 2881 which would require the FAA to develop a strategic runway safety plan and implement a runway safety alerting system. In addition to runway incursions, we are also focused on reducing the risk from runway excursions.

ALPA's white paper on *Runway Incursions*, published in March 2007, proposed that the U.S. government and aviation industry fulfill the commitments that were made to implement the recommendations of the Commercial Aviation Safety Team (CAST) Runway Incursion Joint Safety Implementation Team. CAST determined that 95 percent of all runway incursions could be prevented with the appropriate mix of technologies. ALPA encourages government and industry action to implement the CAST recommendations. ALPA's position on the issue of runway safety is articulated in greater detail in testimony provided to the Subcommittee on September 25, 2008.

#### Airport Rescue and Fire Fighting

Section 313 of H.R. 2881 would prompt a review of existing requirements to provide fire fighting services at airports. This represents an excellent opportunity to correct a critical safety deficiency that exists at a number of airports served by airline aircraft. Current law and FAA regulations allow airports serving airlines involved in all-cargo operations to reduce, and in some cases even eliminate, firefighting capability on the airport while those all-cargo flights are operating. This means that the crews, other occupants and contents of these all-cargo aircraft are at considerably increased risk in the event of an on-board fire. We urge the Congress to ensure that the review of airport fire fighting standards include a requirement to correct this discrepancy and provide the same level of safety for cargo operations as is available to passenger airlines.

#### Pacific Island Airfields

Funding for the continued operation of Wake Island and Midway Island airfields is important to both the financial health of our industry and the safe operation of trans-Pacific flights. Long, over-water commercial flights should always be conducted using routes that allow diversion to a suitable landing area in the event of an engine failure or similar emergency. Without these airports available as alternates in the event of an in-flight emergency, trans-Pacific flights will be required to use longer, less efficient routes. We are pleased to see support for sustaining the operation of these and other similar airfields and urge the Congress to maintain this position.

#### Non-Certificated Maintenance Providers

We support the approach in Section 312 of H.R. 2881 that would establish requirements for airlines and certificated maintenance facilities to provide effective oversight for non-certificated maintenance providers. It is vital to the safe operation of airline aircraft that maintenance performed on those aircraft be held to the highest standard, regardless of who performs the work, and the plans outlined in the current bill will effectively do so.

#### Aviation Research

As we move to modernize the Nation's air transportation system, many of the emerging procedures for capacity enhancement must be supported by sound research efforts to ensure that the U.S.'s enviable level of safety is maintained. As more and more precise navigation capability allows us to put aircraft closer together without increasing collision risk, we must nevertheless be mindful of the fact that there is much to be learned about the nature of wake vortices and the effect of wake turbulence both in the terminal and en route realms of operations.

We are encouraged by the level of support shown by the Congress in identifying the need for research into wake turbulence effects as well as the impact on operations of weather such as icing. We urge the inclusion of research into the impact of volcanic ash on operations as well. In addition, phenomena under study in these efforts must not only be studied to determine their operational impact, but methods must be developed to describe the location and effects of such phenomena. This information must be relayed in terms that are operationally relevant and can be transmitted to flight crews and dispatchers in a timely manner to support improved safety decision making.

#### Airman Certificate Denial

Section 302 of H.R. 2881 would give the FAA a right to challenge the NTSB's decision to grant an application for an airman, including medical, certificate in the U.S. Court of Appeals. Under existing law, §44703(d) of Title 49, the NTSB may review the FAA's denial of an application for the issuance or renewal of an airman, including medical, certificate. If the NTSB finds the airman qualified, the NTSB's decision is binding on the FAA and the law provides that the FAA shall issue the certificate.

Currently, only the airman has a right of further appeal from the NTSB. It should be noted that in 1992, the FAA was given a right to appeal NTSB orders issued under §44709 (i.e., suspensions or revocations of existing certificates) per P.L. 102-345. Section 302, would be an expansion of government power with no apparent safety benefit.

Accordingly, ALPA opposes Section 302 of H.R. 2881 for the following reasons:

- Current law already provides an acceptable and safe decision mechanism and appeal procedure, with a final decision made by a government board with expertise in the field;
- There has been no demonstration that the current procedures under §44703(d) are inadequate. Imposing an additional level of Court review without showing a need to change the existing procedures will simply increase the burden and complexity of the medical and airman certificate application processes without any benefit to the public, air safety or the government. A system that would require an individual airman to defend an NTSB decision in his favor in Federal Court after he or she has already defended his or her application for a certificate through two levels of government review is unduly onerous and burdensome upon both the applicant and taxpayers who would be responsible for funding both the cost of the FAA's appeal and the judicial resources necessary for review.

#### FAA Access to Criminal History Records Checks

Section 803 of H.R. 2881 would grant the FAA Administrator the authority to *"access a system of documented criminal justice information maintained by the Department of Justice or by a State but may do so only for the purpose of carrying out civil and administrative responsibilities of the Administration to protect the safety and security of the national airspace system or to support the mission of the Department of Homeland Security, and other law enforcement agencies."*

ALPA opposes the proposed amendment for the following reasons:

- We are aware of no inadequacy of current FAA procedures regarding acquisition of, or access to, criminal history information as it pertains to civil and administrative procedures related to an airman's certificate.
- We are aware of no justification that demonstrates any need for expansion of FAA authority to access criminal history record information or databases in order to support the mission of the Department of Homeland Security and other law enforcement agencies which clearly possess that ability and authority.
- Presumably the measure is intended as an aviation security measure. However, responsibility for civil aviation security has been transferred to the Transportation Security Administration (TSA). Employees of air carriers are subject to a TSA-mandated background check including the post-9/11 requirement for a comprehensive fingerprint-based Criminal History Record Check (CHRC) under 49 U.S.C. §44936 and under 49 C.F.R. Part 1544.
- TSA was also granted authority by Congress to perform Security Threat Assessments (STA) for non-air carrier FAA pilots and certificate holders under the Aviation Transportation and Security Act of 2001, now codified at 49 U.S.C. §114(h)(2) and 49 C.F.R. Part 1540.
- Additionally, there have been significant restrictions by statute and regulation placed on the training of non-U.S. citizen pilots and the use of large aircraft flight simulators.

- The proposal would duplicate effective programs already in place at TSA and would likely be a burdensome, intrusive and ineffective use of taxpayer funds.

Human Intervention and Motivation Study (HIMS) Program

The Human Intervention and Motivation Study is a vital program that helps flight crewmembers operate in as safe a manner as possible. It has been an extremely successful program since its inception in 1974, and we are pleased that Section 812 was included in H.R. 2881. It is funded through fiscal year 2009 and needs to be reauthorized for fiscal years 2010 through 2013.

Finally, I want to express ALPA's appreciation for this Committee's commitment to moving a reauthorization bill as expeditiously as possible this year. As has been discussed at length today, passing a long-term, comprehensive bill to reauthorize the activities of the FAA, to upgrade airports and modernize the NAS, and to improve aviation safety is critical not only to pilots and the aviation industry but to the entire nation and our national economy. Thank you for the opportunity to testify today. I would be pleased to address any questions that you may have.

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**Testimony of Gregory Principato  
President  
Airports Council International-North America**

**before the**

**House Transportation and Infrastructure Committee  
Subcommittee on Aviation**

***“FAA Reauthorization Act of 2009”***

**February 11, 2009**

Airports Council International-North America  
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(202) 293-8500

Chairman Costello, Chairman Oberstar, Ranking Member Petri and Ranking Member Mica, members and staff of the Subcommittee on Aviation, thank you for allowing me to participate in this important hearing. My name is Greg Principato and I am President of Airports Council International-North America (ACI-NA). Our 366 member airports enplane more than 95 percent of the domestic and virtually all of the international airline passenger and cargo traffic in North America. Nearly 400 aviation-related businesses are also members of ACI-NA, providing goods and services to airports.

As your Subcommittee begins its work to pass the Federal Aviation Administration Reauthorization Act of 2009, I want to thank you not only for your current efforts to pass this bill but for your work to include Airport Improvement Program (AIP) funding and an exemption for airport private activity bonds from the Alternative Minimum Tax in the American Recovery and Reinvestment Act of 2009. Your assistance in providing the tools for us to not only play a major role in improving transportation infrastructure, but to also help create thousands of jobs shows the important role airports play in the overall infrastructure development in the United States. Airports believe we can continue to play a role in the vigorous growth of local economies with your assistance.

Airports are tied to the fate of the airlines and air traffic on one hand, while having a responsibility to maintain facilities to meet passenger needs on the other, so our leeway in delaying projects due to financial concerns is finite. While airports must be fiscally responsible businesses that respond to the ebb and flow of market demand, they also have a responsibility to the traveling public to keep facilities safe, secure and efficient.

Because whether one plane or one hundred use an airport on a given day, we still need to maintain our facilities – runways, perimeter security, escalators, baggage carousels and elevators. Although many airports throughout the United States, in light of the recession, are facing reduced passengers, fewer flights, less competition for service and unsecure financial markets, we are committed to maintaining our facilities and preparing for the expected 25 percent growth in service that the Federal Aviation Administration (FAA) predicts our industry will face over the next eight to ten years when it is estimated that 1 billion people will take to the sky.

Some in the industry may argue that airports currently do not need additional financial tools to improve facilities. I would argue that there is no better time than right now. Airports have to plan now for the future, while working within a financing system that is extremely complicated at best. Any one individual project at an airport can rely on funds from several different sources including bonds, Passenger Facility Charge (PFC) user fees, AIP funds and locally generated revenues from non-aeronautical sources, including parking and concessions. Airports cannot construct airside or landside improvements to meet passenger demands overnight since these projects take many years to design, finance and build. We do not have the luxury of responding immediately to market demands. Runways, terminals, taxiways, and most airport infrastructure projects generally take five or 10 years, so airports need the financing tools now to lay the groundwork for the future.

**The Need for Local Financing Options**

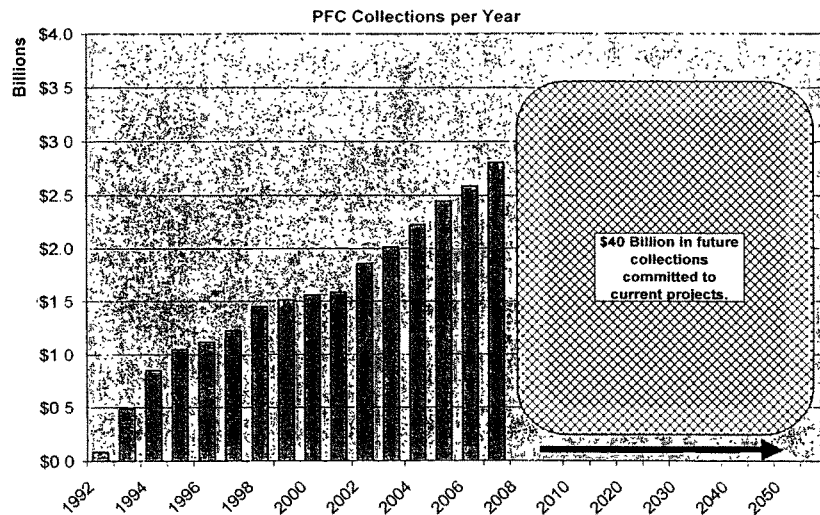
Under this Committee's leadership, airports were given a financial tool that has proved to be a model for federal-local partnerships. By granting airports the ability to generate local funding through the collection of the PFC user fee, all those who use the system have had a voice in infrastructure development in consultation with the FAA on an ongoing basis. This financing tool has allowed local communities to determine their needs and map out a plan for improvements and development at the airport in coordination with the airport users. The results speak for themselves as PFCs have been responsible for the obligation of \$64 billion in airport capital investments since being implemented in 1990. The share of U.S. airport capital investment attributable to PFCs is currently estimated to be at about 30 percent. These funds are used to support airside projects, terminal projects, access projects such as roadways, people movers or transit projects, and noise mitigation projects. Furthermore, PFCs have been used to construct new runways and other airfield improvements to significantly reduce delays at some of the most congested airports. They have also been used to build additional gates for new and expanded service, increasing airline competition and lowering fares. Over the last 15 years, these investments have allowed continued growth and have provided airports with a vital source of funds for these projects. I can think of no better example of a successful local-federal partnership with respect to aviation.

That is why ACI-NA strongly supports an increase in the PFC ceiling to at least \$7.50, and why we appreciated the inclusion of an increase in the reauthorization bill that passed the House in 2007. PFCs were first authorized by Congress in 1990 and are tied directly

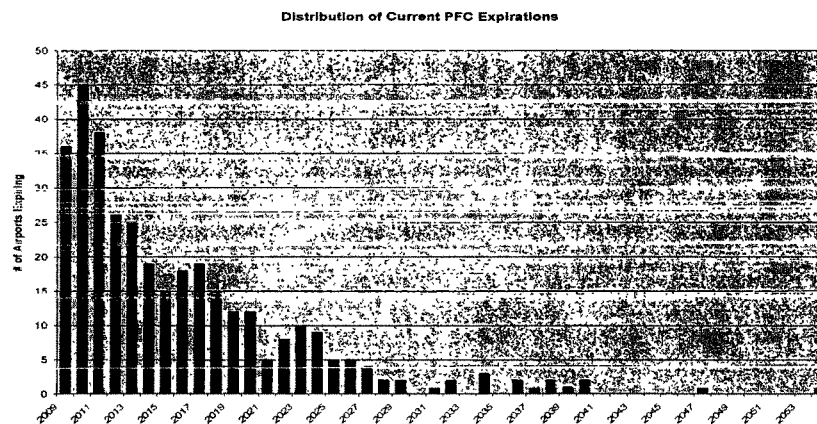
to local airport-related projects that 1) preserve or enhance safety, security and capacity of the national air transportation system, 2) reduce noise from an airport that is part of the system or 3) provide opportunities for enhanced competition between or among air carriers. PFCs cannot be used for revenue producing projects such as parking garages, terminal areas used for concessions or leased exclusively by a specific airline for more than five years, or projects that are incompatible with airport sponsor assurances agreed to with the receipt of federal grants.

Airport infrastructure investments will be challenged to continue without the inclusion of an increase in this user fee. This coupled with the devaluation of the PFC due to construction cost inflation does not allow airports the financial tools necessary to invest in improvements. Plain and simple, the purchasing power of the PFC has been greatly diminished since it is not indexed to construction cost inflation. In recent years, construction costs have skyrocketed, far surpassing consumer inflation. The current maximum PFC of \$4.50 is worth only \$2.46 today when construction cost inflation figures are applied. Fully adjusting the PFC to account for construction cost inflation would place the fee at \$8.33, which is why we have proposed indexing the PFC to construction cost inflation. Without the Committee's help in increasing the PFC, airports do not have the means of keeping up with the inflationary costs of construction. We want to continue to work with our local communities to build the infrastructure necessary to spur economic growth, but our hands are tied without a multiyear FAA reauthorization bill that will increase the PFC user fee.

Airports would not be asking for the continued support of this Committee for an increase in this user fee if it was not the lifeline of airport financing. Let me take a minute to explain. As airports look at financing options for any type of project, they review all the resources at their disposal. They first look at AIP funds that could be used, then they turn to the availability of PFC funds, airport revenue from concessions, and state grants – if available - leaving the options of bonds to fill in the balance. Bonds account for 53% of capital funding sources for all airport revenue; however, despite favorable credit ratings, airports are challenged to find buyers for their bonds. Since PFCs provide a reliable and stable revenue source, bonds backed by PFCs are viewed favorably by investors. Approximately 30% of airport bonds are backed by PFC revenues. Furthermore, as shown in the following chart, current and future PFCs are already obligated as repayment for bonds or on a PAYGO basis to fund either completed or ongoing projects.



As illustrated in the chart below, some airports have PFCs pledged to debt service for as long as 30 years out. That means at these airports, current PFC collections are already obligated to pay for in-progress or already completed construction and not for the expansion of infrastructure that would help meet expected passenger and cargo demand, support local economic growth as well as spur job creation.



Some within the airline industry have argued that airports take an “if we build it, they will come” approach to infrastructure improvements. Nothing could be farther from the truth. In fact, we have seen examples time and time again that the improvements made at airports charging PFCs have helped attract new entrants into many markets thus creating new competition and offering lower fares for our customers.

Furthermore, ACI-NA recently surveyed our membership on their capital needs. Our study is comprehensive, looking at all airport projects, not just those that are AIP eligible, as is the case with the FAA-produced National Plan of Integrated Airport Systems

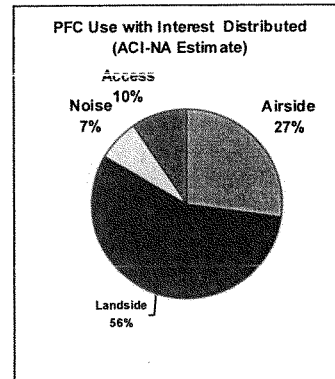
(NPIAS). The ACI-NA 2009 Capital Needs study indicates that airports, including both commercial and general aviation airports, have \$94.4 billion in total projects that are considered essential by the airport and airport users. This figure reflects projects that have already secured financing as well as those that cannot proceed due to inadequate funding and are not expected to be blocked by the airline industry. As you would expect, the majority of the capital needs are at large hub airports, many of which have experienced significant congestion in recent years.

Many airport operators that participated in ACI-NA's survey have deferred or reduced capital programs in response to the changing economy. Not surprisingly, medium and small hubs see the largest decreases of capital investment, by more than 22 percent and 8 percent respectively, among all the airport hub categories compared with the last survey conducted in 2007. This shows the prudence with which airport operators make their decisions which should debunk any "build it and they will come" arguments. Still, the impact of construction cost inflation and the reality that we still have many congested airports and unmet needs is evident by the results of our survey.

Since we know that \$1 billion in transportation infrastructure produces on average 30,000 to 47,000 jobs, if all of the \$94 billion in airport capital needs were met, the airport industry could help add 3 to 4 million jobs to our struggling economy. Again, we need your help in gaining access to the tools necessary to achieve this goal.



Mr. Chairman, there have been times when the PFC has been criticized as a means to fund land-side improvements and not air-side improvements. Although PFCs are used for terminal and other land-side development projects which are often necessary to expand capacity at the airport, or to accommodate competition, a significant portion of PFCs have been used for



airside projects. For example, the three runways that opened at Washington-Dulles International, Chicago-O'Hare International, and Seattle-Tacoma International in November of 2008 would not have been possible without the PFC. In fact, when one includes interest costs associated with issuing bonds, we estimate that 27% of all PFC revenue is used for air-side projects. Additionally, when an airport applies to implement a PFC greater than \$3.00 for a non-airside project, they must certify to the satisfaction of the FAA that all of their airside needs have been met.

FAA's FACT II study concluded that even if all currently planned improvements are made, six airports (LGA, EWR, PHL, OAK, LGB, SNA) will still face capacity issues by 2015. By 2025, this number grows to 14 airports, again, assuming all currently planned improvements take place. Airports need additional resources if they are to expand capacity sufficiently to address the needs of the traveling public.

The importance of using the PFC to fund essential infrastructure becomes even more critical when you consider potentially reduced revenues for the Airport and Airways Trust Fund (AATF) due to declining traffic. We are also concerned about the impact of the new a la carte or unbundled ticket pricing system embraced by most U.S. airlines. ACI-NA estimates that the AATF lost almost \$48 million in forgone revenue in 2008 due to the fact that airline fees for checked baggage and seat assignment are not subject to the ticket tax. ACI-NA is concerned that under these circumstances the AATF may not be able to support current and future obligations for FAA or the aviation system.

#### **PFCs Benefit Small Airports**

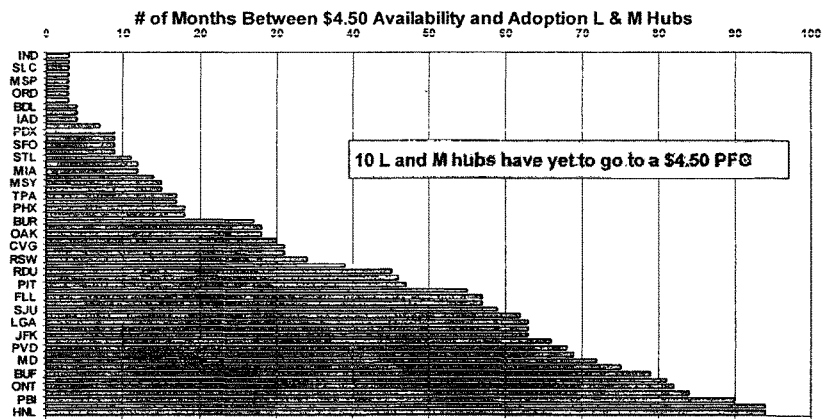
The PFC and AIP are often seen as competing, but in reality, however, they are complementary. When a large or medium hub airport implements a PFC, they must forego either 50 or 75 percent of their AIP entitlements to the FAA (depending on the level of the PFC). The "Small Airport Fund" is the recipient of 87.5 percent of these forgone entitlements with the remaining 12.5 percent going into the AIP discretionary program. In FY2007, the PFC turnback resulted in almost \$467 million additional dollars for small airports.

The current structure of the PFC has the fee assessed at the time of a ticket sale and collected by the airline. The airlines keep 11 cents of every PFC collected to cover administrative costs; this is an increase from the 7 cents allowed when the PFC was established in 1990. In 2007, airlines received \$87 million in total from all of the PFCs

collected. This number does not include the amount the airlines earned on interest from the PFC revenues collected before they distributed it to the airports.

The system Congress set up before a PFC could be implemented or raised at an airport provides local input on this fee. The airport must consult with the local community as well as all airlines providing service before a PFC can be approved by the FAA. The fact that historically 95 percent of all PFC applications submitted to the FAA are done so without objections from airlines shows that the consultation process required works. Because extensive consultation is required PFC approval does not happen overnight.

As the chart below shows, airports do not automatically move to a higher PFC level just because it is available. They work with their local communities and airline partners to determine the appropriate level that addresses their specific needs.



The bottom line is that some airports will not choose to begin the process for an increase in the PFC because it might not make financial sense to do so. In fact, after the last increase was authorized it took airports on average three years to implement increases in the PFC. This shows the prudence of airport managers and the fact that PFCs are raised only when needs are identified.

It is true that airports are deferring capital improvement projects in light of the recession. However, these projects will eventually have to be completed in order to ensure current infrastructure is maintained as well as to accommodate the expected increase in traffic over the next several years. Since this Committee is looking at a multi-year reauthorization bill, the time for an increase to \$7.50 or more is now, with indexing for construction cost inflation. We are simply asking the Committee to provide us with the financial tools we need to meet both the current and future needs of the traveling public.

#### **Airport Improvement Program**

AIP funding plays an important role in airport financing and will continue to do so in the future. The current incarnation of the AIP was established by the Airport and Airway Improvement Act of 1982 (Public Law 97-248). Since then, AIP has disbursed over \$45 billion to airports to enhance the safety, security, capacity and environmental compliance of the nation's airports. AIP also plays a crucial role in financing airport construction, especially at small airports.

A balanced capital investment strategy for a system of airports requires a strong AIP program. AIP must be reauthorized at higher levels to ensure that adequate funding is available, especially for those airports that depend on this program to fund important infrastructure improvements. Unfortunately, without a multi-year FAA reauthorization bill, despite the best efforts of this Committee in the last Congress, many airports have received only 35 percent of their anticipated funds from AIP. This has forced delays in essential infrastructure projects as airports have been unable to make the investments necessary to improve safety and security at their facilities as well as those needed to relieve passenger delays and congestion. We must have a multi-year reauthorization so this won't happen again.

As you know, the AIP Program has received \$3.5 billion in funding for the past several years without a new authorization. Although AIP is slated to receive additional dollars under the Stimulus bill, the FAA has said there are over \$5 billion in AIP-eligible projects that it could fund over the next two years alone. Since unfortunately the amount of additional funding in the Stimulus will likely not enable all of these projects, an increase in AIP funding could go a long way in ensuring these ready to go projects are funded.

#### **Environmental Improvement Efforts**

ACI-NA applauds the Committee for its work to help the aviation industry reduce emissions, improve energy efficiency, and reach environmental goals. While the industry's contribution to greenhouse gas emissions is relatively small, forecasts continue

to predict robust growth in aviation. ACI-NA member airports are working proactively to address this issue on a local, regional, national, and international level. Recognizing that the industry's main contribution to global warming - emissions from the operation of aircraft - is outside the control of any individual airport, our members are doing their part to minimize impacts to climate change just as with other environmental impacts such as water quality, noise, and local air quality.

Greenhouse gas emission reduction strategies employed by airports have included: investing in and promoting the use of alternative fuel and low emission vehicles and energy saving equipment; recycling building and construction materials, waste and water; improving the operational efficiency of the airfield and landside system; acquiring green power; and providing emissions-reducing services for aircraft at the gate. ACI-NA greatly appreciated the Committee's recognition of this work in the last bill and looks forward to continuing to work with you to pursue the reduction of greenhouse gas emissions.

In order to enhance the environment by encouraging the proactive adoption of best environmental practices, ACI-NA asks the Committee to again include the establishment of a pilot program of not more than 10 public-use airports where airport sponsors could use AIP funds to plan, design and construct new terminal facilities or retrofit existing terminal facilities with equipment, systems or other means of reducing adverse environmental impacts in the FAA Reauthorization bill.

Sustainability programs and Environmental Management Systems (EMSs) are also becoming increasingly widespread at airports across the U.S. as mechanisms to minimize their environmental footprint. Sustainability has been described as a holistic strategy that strives to balance the needs of the present without compromising the ability of future generations to meet their own needs. Within the airport context, sustainability has broad implications throughout the entire system, including energy consumption, environmental impacts and overall facility life-cycle costs. This typically addresses operating costs such as airport infrastructure, transportation fleet, utilities and a full range of social issues such as employee retention programs and community outreach.

Sustainability has become a way of doing business at many airports such as Chicago-O'Hare, which has developed a Sustainable Design Manual to guide its entire Modernization Program. Several airports, including Miami International, Westchester County airport and Denver International, have also implemented EMSs - a set of processes and practices that enable an organization to reduce its environmental impacts and increase its operating efficiency. We would appreciate your continued support for expanding AIP eligibility for the development and implementation of EMSs, including small airports which are not currently eligible for this funding assistance.

The ability of airports to use AIP funds for operational flight procedures will provide benefits to airports, airlines and for airspace capacity, which will ultimately reduce the impact of noise on those living near airports. For instance, the implementation of a Continuous Descent Approach has been shown to save fuel while reducing noise below

the flight path. Implementation of such procedures, where, appropriate, should be facilitated. We would appreciate the inclusion of this provision in your bill for the 111<sup>th</sup> Congress.

While the FAA has effective Traffic Flow Management programs in place that allow aircraft being delayed to avoid extensive airborne holding that wastes fuel and produces air pollutants, there is no comparable program for aircraft on the airfield. Each year hundreds of thousands of aircraft are given clearance to taxi, only to spend time idling in long queues or penalty boxes while awaiting their place at the head of the runway. By establishing a pilot program at up to five airports to develop Traffic Flow Management tools, methodologies, and procedures, controllers will be able to manage the flow of taxiing aircraft on the ground. The inclusion of this provision in the FAA Reauthorization bill will help to avoid excessive backups on the ground and thus reduce emissions.

#### **Aircraft Rescue and Fire Fighting (ARFF)**

ACI-NA remains concerned about proposals to mandate specific airport rescue and fire fighting standards. In fact, the proposed standards may actually result in decreasing safety and increasing risk for passengers. Further, mandating specific measures that have not been evaluated by FAA would dramatically increase equipment and staffing requirements for airports around the country. The resulting expanded operating costs would make it difficult for small airports to retain and attract new commercial air service in the communities they serve. The FAA Aviation Rulemaking Advisory Committee



(ARAC), which included airports, firefighters and other industry stakeholders, prepared a report on the proposed ARFF requirements and has recommended a rulemaking on many of the critical issues. The report is complete and will be brought to the ARAC for consideration at its June meeting. ACI-NA supports FAA initiating the rulemaking process.

#### **The Airport Role in NextGen**

Airports are supportive of development and deployment of Next Generation Air Transportation System (NextGen) improvements. These improvements—which are being developed and evaluated both within the FAA and by the Joint Program Development Office (JPDO)—include new flight procedures, air traffic separation standards, airport design standards, and operational capabilities that will have direct impacts on how airports plan and manage their facilities. These procedures and standards will also have direct effects on airport environmental impacts including noise and emissions.

As noted in the report, *Next Generation Air Transportation System: Status of Systems Acquisition and the Transition to the Next Generation Air Transportation System*, published in September 2008 by the Government Accountability Office, “With regard to airport infrastructure, a transition to NextGen will also depend on the ability of airports to handle greater capacity.” As this report notes, airports will play a critical role in implementing infrastructure and procedural enhancements needed to meet identified capacity needs, such as runway and taxiway enhancements. Airports will also be on the

front line in providing additional airport terminal and roadway capacity commensurate with the airfield and airspace capacity increases NextGen will provide.

ACI-NA applauds the efforts on the part of the FAA and the JPDO to involve airports in NextGen development. These efforts include the ongoing work of the JPDO's Airports Working Group and the recent creation of a NextGen Task Force under the leadership of RTCA. Continued funding for these important efforts is essential to successful realization of NextGen's capacity, safety, and efficiency goals.

However, ACI-NA would like to see more organizational clarity in the FAA's JPDO's efforts, which at present are quite confusing. We would also like to see expansion in their role and involvement in setting NextGen priorities and evaluating NextGen capabilities. Of particular interest in this regard is the identification of technologies and procedures that will be ready for implementation in the near term future (i.e., within five years), the infrastructure and equipage requirements associated with them, and quantification of their operational and environmental impacts. Airports are also very interested in early identification of revised design standards and operational requirements associated with NextGen improvements—including likely future parallel runway separation standards.

With regard to airport infrastructure, a transition to NextGen will also depend on the ability of airports to handle greater capacity. One way the FAA is endeavoring to increase airport runway capacity is its High-Density Terminal and Airport Operations initiative,

which the agency has just begun to implement. Under this initiative, aircraft arriving and departing from different directions would be assigned to multiple runways and safely merged into continuous flows despite bad weather and low visibility. To guarantee safe separation between aircraft, these airports would need enhanced navigation capabilities and controllers with access to increased automation. Under this initiative, aircraft would also move more efficiently on the ground, using procedures that are under development to reduce spacing and separation requirements and improve the flow of air traffic into and out of busy metropolitan airspace. Although the implementation of this initiative is in the early stages, FAA has identified the research and development needed to move it forward. FAA has also identified runway safety technologies for accelerated implementation.

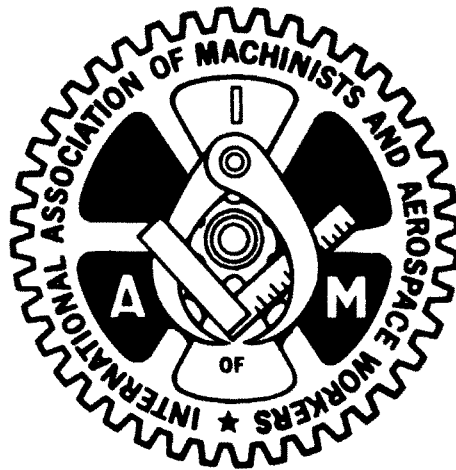
The increases in capacity expected from the High-Density Terminal and Airport Operations initiative are not likely to be sufficient to handle the expected increases in traffic. As a result, new or expanded runways will likely be needed. FAA has developed a rolling 10-year plan for capacity improvements at the nation's 35 busiest airports, and several airports are building new runways. However continued efforts in this regard are critical since the FAA's FACT II study indicates at least 14 airports will still need new runways to meet projected capacity needs, even with NextGen implementation. As all of you know, building these new runways will require considerable effort to not only develop the necessary funding, but also address the environmental and engineering challenges associated with them.

Airports are ready to work with the FAA and Congress in making NextGen a reality. We are willing to provide the infrastructure on the ground that will help make NextGen work, but again we need your help to ensure that we have the financial resources to do so.

In conclusion, airport capital needs are growing and we must act now if we are to meet the future needs of the traveling public. Increased airport capacity is critical for a safe, efficient and successful aviation system. Congress, in reauthorizing FAA, has an excellent opportunity to improve and modernize the public-private system for funding airport infrastructure. In order for that to be a success, the FAA reauthorization bill must include the financial tools that airports need to move in this direction. We look forward to working with you to pass a multi-year FAA Reauthorization bill during the 111<sup>th</sup> Congress.

**U.S. House of Representatives  
The Committee on Transportation and Infrastructure**

**“FAA Reauthorization Act of 2009”  
February 11, 2009**



**Testimony of  
Robert Roach, Jr.  
General Vice President**

**International Association of Machinists & Aerospace Workers  
9000 Machinists Place  
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**Testimony of  
Robert Roach, Jr.  
General Vice President  
International Association of Machinists & Aerospace Workers  
Before the House Transportation & Infrastructure Committee  
“FAA Reauthorization Act of 2009”**

Thank you, Mr. Chairman, and members of this subcommittee for the opportunity to speak to you today. My name is Robert Roach, Jr., General Vice President of Transportation for the International Association of Machinists and Aerospace Workers (IAM). I am appearing at the request of International President R. Thomas Buffenbarger. The Machinists Union is the largest airline union in North America. We represent more than 100,000 U.S. airline workers in almost every classification, including Flight Attendants, Ramp Service workers, Mechanics and Public Contact employees. On behalf of the workers who ensure the United States has a safe, secure and reliable air transportation system, I am presenting to you today some of the concerns they hope will be addressed in the FAA reauthorization bill.

The aviation industry is at a crossroads. Thirty years of airline deregulation, reckless management decisions and more than a hundred bankruptcies have left it hobbled. Airline workers have shouldered more than their fair share to help revitalize their employers and their industry. The FAA reauthorization bill is an opportunity to change course.

**FAA Oversight**

As carriers tried to cut costs to in an effort to deal with the effects of deregulation, they increasingly looked toward aircraft maintenance for savings, and this directly impacts the quality of the work performed.

Airlines used the grossly unfair bankruptcy laws to cut employee wages and fracture labor agreements that prohibited or strictly limited outsourcing aircraft maintenance. As a consequence of putting dollars ahead of sense, maintenance of U.S aircraft has been exported across the globe at a faster pace than the FAA could respond.

The FAA needs adequate funding to hire a sufficient number of inspectors to ensure aviation maintenance safety, at home and abroad. An immediate increase in FAA inspectors, along with the resources they need, is necessary to safeguard the U.S. aviation industry.

IAM mechanics have found aircraft that return from overseas flights departed with obvious mechanical problems. When they reported the problems to the FAA, inspectors expressed frustration. Budget constraints limit their ability to inspect overseas maintenance operations, and when they do perform inspections they must provide overseas repair stations advance notice, making the inspections worthless. Not only is more oversight of overseas repair stations necessary, but the ability to make unannounced inspections is absolutely imperative to ensure compliance with FAA directives.

. IAM mechanics working on a US Airways aircraft in Charlotte, NC encounter FAA inspectors on a daily basis. It is unacceptable that maintenance personnel working on the airline's planes in El Salvador do not have the same oversight.

Similarly, personnel who work on U.S. aircraft should meet the same eligibility requirements at home and abroad. A mechanic working on an aircraft at an airline's overhaul base in the United States must pass a criminal background check and is subject to random drug testing. Yet, a mechanic working on the same aircraft overseas is not subject to the same safety precautions. This committee should demand one level of safety and oversight for the industry regardless of where the aircraft is repaired.

### **Express Carriers**

In 1996 legislation was passed directly aimed at thwarting workers' ability to conduct local organizing drives. The term "express carrier" under the Railway Labor Act (RLA) was inserted in the FAA reauthorization bill. This allows an entire package delivery company's workforce to come under the jurisdiction of the RLA regardless of their relation to air transportation. This created a disparity that resulted in the weakening of workers' opportunity to bargain for better wages, benefits and workplace improvements.

Many of these package delivery services may seem similar at first; however, there is growing disparity among the way these workers are treated among the largest delivery companies. Some provide their full and part-time workers with good wages, full benefits (including medical and dental plans), and paid vacation time. Others find ways to take the



low road in the way they treat and classify their employees, including the growing use of so-called independent contractors and staging anti-union campaigns. One reason for the disparity is the way the government classifies employers and thus their employees. When looking at the largest delivery companies each has workers doing virtually identical work, but some companies, like UPS, have workers who are governed under the National Labor Relations Act while workers at another company, like FedEx, are all under the Railway Labor Act. What is the difference? Under the National Labor Relations Act workers can act locally in seeking to organize and collectively bargain, whereas under the Railway Labor Act workers must organize nationally, an enormous challenge in the environment workers find themselves in today.

The “express carrier” language in the Railway Labor Act needs to be modified to provide consistency throughout the industry. Those seeking to deny workers the ability to organize should not be permitted to use the “express carrier” provision of the Railway Labor Act to do so. It would be consistent to allow those workers who are directly involved with the air cargo portion of the company to be treated like their counterparts in the passenger air transport business, and therefore under the jurisdiction of the Railway Labor Act. The remaining portion of the workforce would then fall under the jurisdiction of the National Labor Relations Act with their peers in the rest of the industry. This would level the playing field by putting fairness and consistency into the law. Workers can decide for themselves whether they want to collectively bargain or not. We should at least give them the opportunity to decide.

This congress must stop the collusion between the NMB and NLRB that is denying workers their rights.

### **Flight Attendant Safety**

The recent successful evacuations of Continental flight 1404 in Denver and US Airways flight 1549 in the Hudson River demonstrate flight attendants' skill and heroism. The time is long overdue for the FAA to protect these professionals who are responsible for protecting the public.

Currently, the FAA mandates flight attendants receive only 9 hours rest on layovers, or as little as 8 hours if there are irregular operations. Although well intentioned, this regulation does little to ensure public safety because the rest period includes time when flight attendants are required to perform other job-related duties.

To prevent flight attendant fatigue, the mandatory rest period should be changed to require a period of rest EXCLUSIVE of any other job responsibilities or hotel transfer time. Flight attendants cannot ensure the safety of their passengers if they are fatigued. Rest means rest – period. While most Americans strive for an 8-hour work day and 16 hours free from work, flight attendants work 16-hour days with only 8 hours off.

The IAM's flight attendant collective bargaining agreements exceed the FAA's mandatory rest minimum, but not all flight attendants have the security of a collective

bargaining agreement. Flight attendant fatigue is a safety issue that needs to be better addressed by the Federal Air Regulations.

Similarly, the lack of health and safety regulations for flight attendants at work is dangerous. Flight attendants are one of the few work groups in the country not protected by the Occupational Safety and Health Administration (OSHA). In 1975, the FAA claimed jurisdiction over workplace safety and health of flight crew members. The FAA, however, has done nothing to enforce safety and health standards for flight attendants. After complaints from the Machinists and other unions, the FAA and OSHA in August 2000 signed a Memorandum of Understanding to explore extending OSHA jurisdiction to cover seven flight attendant health and safety issues: whistle blower protections; recordkeeping; blood borne pathogens; noise; sanitation; hazard communication; anti-discrimination and access to employee exposure/medical records. In 2001, however, the new Bush Administration abruptly stopped their progress, leaving flight attendants the only airline workers without workplace safety and health protections. It is time for this Congress and this administration to put flight attendant workplace safety under OSHA jurisdiction.

### **Fixed Base Operators**

The Railway Labor Act (RLA) vests the National Mediation Board (NMB) with the responsibility to investigate and conduct union representation elections for airline and railroad employees. The National Labor Relations Board (NLRB) has the same responsibility in virtually all other private sector industries.

In recent years the NMB has improperly asserted jurisdiction over companies that are neither airlines nor railroads, and whose employees have worked and negotiated contracts under the jurisdiction of the NLRB for decades. The misapplication of the Railway Labor Act has left many workers without a union or a contract. In one case, the NMB terminated the union representation and collective bargaining agreement for airport fuelers who were organized under the NLRA and who had union protection for more than thirty years. These workers lost the grievance procedure, right to double time, holidays, sick leave and vacation leave that had been negotiated by the Machinists Union - and they lost those benefits without a vote.

Since 9-11, airline workers have sacrificed their wages, pensions, work rules and, more than 200,000 jobs in order to rescue the airline industry. Industry conditions have imposed great burdens on workers as carriers compete to reduce costs. Such an extraordinary focus on the bottom line demands greater, not less, government oversight, and proper FAA funding is a must. No group is more interested in airline safety than IAM members. Congress must ensure that an FAA bill is good for workers, passengers and the entire aviation system. The Machinists Union urges the Committee to take appropriate action to protect our skies, and we stand willing to work with the Committee to reach that goal.

Thank you for the opportunity to speak here today. I look forward to your questions.

**Before the Committee on Transportation and Infrastructure  
Subcommittee on Aviation  
United States House of Representatives**

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**Key Issues for  
Reauthorizing the  
Federal Aviation  
Administration**

**Statement of  
The Honorable Calvin L. Scovel III  
Inspector General  
U.S. Department of Transportation**



Chairman Costello, Ranking Member Petri, and Members of the Subcommittee:

We appreciate the opportunity to discuss the key issues facing the Federal Aviation Administration (FAA) and the aviation community. As with most major industries, U.S. civil aviation is facing uncertainty amidst the current economic crisis. The National Airspace System is an integral part of the Nation's economy and handles almost 50,000 flights per day and more than 700 million passengers annually. Aviation contributed over \$1.2 trillion to the Nation's economy in 2006.

As the Subcommittee is aware, FAA does not have a long-term authorization or funding mechanism in place and has been operating on a short-term extension since September. The current extension expires in March 2009. However, the aviation environment has changed significantly since Congress last debated proposals for reauthorizing and financing FAA.

U.S. airlines have been buffeted by the softening economy and volatile fuel costs. As a result, carriers have taken a considerable amount of capacity out of the system, although load factors remain high. By November 2008, airlines cut back scheduled domestic flights and available seat miles by 13 percent and grounded approximately 360 aircraft (mostly the less fuel efficient models in their fleets), which resulted in 37,000 airline employees losing their jobs.

Airports have been impacted as well, particularly in terms of service to small communities, with some losing commercial service entirely. In the case of large airports, there are concerns that some may delay infrastructure projects as revenue sources continue to decline.

The decline in traffic has also impacted the Aviation Trust Fund, the largest source of revenue for FAA's \$15 billion annual budget. According to Treasury Department data, Trust Fund revenues have declined by more than 11 percent during the first quarter of fiscal year (FY) 2009. Given the drop in traffic and the resulting decline in passenger taxes, it is almost certain that future Trust Fund tax revenues will decrease significantly during the balance of FY 2009 and in FY 2010 as well.

Notwithstanding the uncertainties facing the industry, this situation provides FAA with opportunities to focus on key challenges it must address to be strategically positioned for an industry rebound. We see four overarching areas that need to be at the center of FAA's efforts over the next several years: (1) maintaining public confidence in FAA's ability to provide oversight of a dynamic industry, (2) setting expectations and budget priorities for NextGen, (3) bolstering key safety workforces, and (4) financing future airport development while facing unstable long-term airport funding mechanisms.

### **Maintaining Public Confidence in FAA's Ability To Provide Oversight of a Dynamic Industry**

Over the last several years, the aviation industry has experienced the safest period in history. This is due, in part, to the dedicated efforts of the professionals within FAA and throughout the aviation industry. Last month, we saw a dramatic example of aviation professionalism when U.S. Airways flight 1549 made an emergency landing in the Hudson River, and, miraculously, all 155 passengers and crew survived largely because of the skills of the pilot and crew. Nevertheless, airline consolidation and downsizing continue to drastically change the industry, and widely publicized lapses in FAA oversight in 2008 emphasize the need for FAA to continually adapt its oversight to further enhance safety. Key challenges for FAA include:

- **Maintaining public confidence in FAA's oversight of air carrier operations.** In April 2008, we reported that an FAA safety inspector had an overly collaborative relationship with Southwest Airlines. The inspector violated FAA safety directives by permitting the air carrier to operate 46 planes without required inspections for fuselage cracks. Our work at Southwest and other carriers has also found weaknesses in FAA's national program for risk-based oversight, the Air Transportation Oversight System (ATOS). At Southwest, multiple missed ATOS inspections allowed safety directive compliance issues in Southwest's maintenance program to go undetected for several years. Our current review of ATOS has disclosed that this problem was not limited to Southwest—FAA oversight offices for seven other major air carriers also missed ATOS inspections. FAA needs to bolster the integrity of its airline oversight by protecting whistleblowers, improving risk-based systems for targeting inspector resources, and establishing mechanisms at the national level to provide quality assurance and independent assessments of field office inspection efforts.
- **Following through on longstanding commitments to improve oversight of external repair facilities.** FAA continues to face challenges in identifying where critical aircraft maintenance<sup>1</sup> is performed. A key issue is that FAA's risk-based oversight system does not include critical repairs performed by non-certificated repair facilities. Currently, FAA does not require that air carriers report *all* repair stations performing repairs to critical components or that FAA inspectors validate voluntarily submitted information. FAA needs to advance risk-based oversight of outsourced maintenance providers (both foreign and domestic) by developing and implementing a system for determining how much and where aircraft maintenance is performed.
- **Improving runway safety.** Runway incidents continue to be a substantial threat to safety. The December 2008 accident at Denver International, when a

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<sup>1</sup> "Critical maintenance" describes mandatory maintenance activities that, due to their importance to the overall airworthiness of the aircraft, must be independently inspected by a specially trained inspector after the work is complete.

Continental 737 veered off the runway into an adjacent field during take-off and caught fire, underscores the seriousness of these incidents. Many see new technology as a key runway safety solution. However, our reviews of three major FAA technologies for improving runway safety disclosed serious concerns about what can be effectively deployed within the next several years. Key steps to meeting this challenge include implementing airport-specific infrastructure and procedural changes and reinvigorating existing FAA national programs for improving runway safety.

### **Setting Expectations and Budget Priorities for NextGen**

Developing the Next Generation Air Transportation System (NextGen) is a high-risk effort involving billion-dollar investments from both the Government and industry. After more than 4 years of planning, FAA must shift to implementation. To reduce risk, we recommended last April<sup>2</sup> that FAA conduct a “gap analysis” of the current system and the vastly different NextGen system planned for 2025 and develop an interim architecture. FAA has focused considerable attention on mid-term objectives, but fundamental issues need to be addressed. These include the following:

- **Completing the gap analysis of today’s system and NextGen as promised and refining the NextGen mid-term architecture.** These two efforts are important because FAA intends to rely on existing automation systems to provide the basis for NextGen through the mid term. However, until FAA establishes the detailed changes needed to transition to NextGen, it will be impossible to determine requirements that can be used to develop reliable cost and schedule estimates to achieve NextGen’s mid-term goals.
- **Establishing priorities and Agency commitments with stakeholders and reflecting them in budget requests and plans.** It remains difficult for decision makers to determine what to invest in first from the wide range of operational improvements in NextGen planning documents. Also, stakeholders have asked FAA to clearly state mid-term Agency and operator commitments in its NextGen plans.
- **Managing NextGen initiatives as portfolios and establishing clear lines of responsibility, authority, and accountability.** It is important to manage NextGen capabilities in an integrated way because new systems as well as procedure and airspace changes will be needed to deliver benefits. However, FAA’s Acquisition Management System was not designed for managing NextGen investments. Rather, FAA’s system focuses on baselines and specific capital programs—not a collection of investments. FAA recognizes that it must adjust its process for approving acquisitions. FAA could also strengthen its NextGen

<sup>2</sup> OIG Report Number AV-2008-049, “Air Traffic Control Modernization,” April 14, 2008. OIG reports and testimonies are available on our website: [www.oig.dot.gov](http://www.oig.dot.gov).



Implementation Plan by assigning responsibility, authority, and accountability for specific NextGen portfolios.

- **Identifying the number and type of facilities that will be needed to support NextGen.** FAA has not made key decisions regarding facility consolidations and infrastructure needs—a key cost driver for NextGen. FAA plans to spend \$17 million in FY 2009 to examine various alternatives for revamping its facilities. The realignment or consolidation of FAA facilities is a controversial undertaking. Therefore, FAA must ensure that this analysis clearly addresses the technological and security prerequisites, cost drivers, benefits, and logistical concerns associated with consolidation so decision makers will know what can be reasonably accomplished.

### **Bolstering Key Safety Workforces**

FAA continues to face significant attrition in two of its most critical safety workforces: air traffic controllers and aviation safety inspectors. Over the next decade, FAA must maintain enough professionals with the right skill mix in both of these workforces to ensure the safe and efficient operations of the National Airspace System. Key challenges for FAA include the following:

- **Hiring and training the next generation of air traffic controllers.** Through 2017, FAA plans to hire and train nearly 17,000 new controllers to replace those who were hired after the 1981 strike and are now retiring. A major challenge will be training and certifying the huge surge of new controllers at their assigned location, a process that currently takes up to 3 years. Controllers in training now represent nearly 26 percent of the workforce (up from 15 percent in 2004). However, many key facilities, such as the Southern California Terminal Radar Approach Control, or TRACON (which expects to have nearly 100 controllers in training later this year or over 40 percent of its workforce), already exceed the national levels. Ensuring there are enough certified controllers at FAA's more than 300 air traffic control facilities will remain a significant watch item for the Department and Congress for at least the next 10 years.
- **Addressing controller human factor issues.** As attrition increases, FAA must also continue addressing controller human factor issues such as fatigue and attention. Congress has expressed concerns regarding controller human factor issues because the influx of new controllers will need both technical and human factors training. Human factors training is critical since almost 90 percent of controller operational errors (when a controller allows two aircraft to get too close together either on the runway or in the air) are due to human factors issues rather than procedural or equipment deficiencies. Based on our ongoing work, FAA needs to focus on training controllers about fatigue and revising its policies on controller rotational shift schedules and rest requirements.

- **Ensuring a sufficient number of appropriately placed safety inspectors to address a divergent aviation environment.** It is not reasonable to expect FAA to have an inspector workforce large enough to oversee all aspects of a dynamic aviation industry; therefore, it is critical that FAA ensure its inspectors are placed where they are most needed. In a congressionally directed 2006 study, the National Research Council concluded that FAA's current methodology for allocating inspector resources was not effective and recommended that FAA develop a new approach. FAA has initiated work on a new model, but it is not planned for completion until October 2009. Given the nature of the industry, measurable progress on developing a new staffing model over the next year remains an important watch item.

### **Financing Future Airport Development While Facing Unstable Long-Term Airport Funding Mechanisms**

FAA estimates<sup>3</sup> that nearly \$50 billion will be needed for future airport development from FY 2009 to FY 2013. This exceeds the previous peak set in 2001 by more than 7 percent (\$49.7 billion versus \$46.2 billion). Airport development relies on several funding mechanisms. These include FAA assistance through grants-in-aid under its Airport Improvement Program (AIP); passenger facility charges (PFC); bonds; and self-generated revenues from airlines, parking, and concessions.

However, volatile fuel prices and a softening economy have led to airline service reductions and capacity cuts, which have caused passenger traffic to decline. This in turn has led to uncertainty with long-term airport funding mechanisms, which could inhibit future airport development. Specifically:

- When airports experience reductions in passenger traffic, PFC collections<sup>4</sup> automatically decline. PFCs are a source of funding that airports largely depend on to finance capital improvement projects that are usually ineligible to receive AIP funds (such as airport terminal improvements).
- The unstable financial markets have made it difficult for airports to issue bonds. Consequently, airports are being forced to either postpone key development projects or find other sources of short-term financing as an interim fix to keep projects moving.

Airports are taking measures to offset these decreases in revenue. These measures include requesting higher levels of AIP discretionary funding for planned capital improvement projects. Because Vision 100<sup>5</sup> expired at the end of FY 2007, and a

<sup>3</sup> Federal Aviation Administration, Report to Congress, "National Plan of Integrated Airport Systems," 2009-2013.

<sup>4</sup> PFCs are currently capped at \$4.50 per passenger enplanement (i.e., passenger boarding).

<sup>5</sup> Vision 100 – Century of Aviation Reauthorization Act, Pub. L. No. 108-176 (2003).

long-term reauthorization is not yet in place, there are no funding targets for FY 2010 and beyond.

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act,<sup>6</sup> which funded FAA in FY 2009, provided a short-term appropriation of \$1.5 billion for the AIP account but did not extend the AIP contract or obligation authority to issue new AIP grants beyond March 6, 2009. The uncertainty of future AIP grant authority makes it difficult for the Nation's airports to determine when or if they will receive their AIP grants.

The economic stimulus packages proposed in the House and Senate contain significant funding amounts for the AIP that will help to revitalize airport development this year and next year. However, such a large, rapid infusion of new funds could create significant oversight challenges for FAA. For example, there will be pressure to begin projects quickly, and FAA and the Department will have to balance this pressure against the need to continually emphasize safety. It is critical that FAA prepare for the potential risks involved and ensure steps are underway to mitigate them.

Mr. Chairman, as part of our recently announced Department-wide review of oversight challenges associated with economic stimulus funding for transportation projects, I can assure you that my office will be working with the Department to identify risks, oversight challenges, and best practices associated with the stimulus funding for the AIP.

I would now like to discuss in further detail the state of the aviation industry and FAA's budget and financing challenges as they relate to these four areas.

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<sup>6</sup> Pub L. No. 110-329 (2008).

## **PERSPECTIVES ON THE STATE OF THE AVIATION INDUSTRY, FAA'S BUDGET, AND FINANCING MECHANISMS**

Since FAA submitted its reauthorization proposal in 2007, the aviation environment has changed significantly. The current economic downturn following record-high fuel prices has caused air carriers to dramatically scale back operations. This trend is also affecting the Airport and Airway Trust Fund, the main funding mechanism for FAA programs.

- In response to last year's increased fuel prices, airlines took drastic measures to reduce costs. By November 2008, airlines cut back scheduled domestic flights and available seat miles by 13 percent and grounded approximately 360 aircraft (mostly the less fuel efficient models in their fleets), which resulted in 37,000 airline employees losing their jobs.
- Airline cutbacks hit airports of all sizes and brought the number of flights to the lowest levels in 6 years. Comparing November 2007 with November 2008, we found scheduled domestic flights in November 2008 were down approximately 10 percent for the large-hub airports, 16 percent for medium-hub airports, 14 percent for small-hub airports, and 14 percent for non-hub airports.<sup>7</sup>
- Airline reductions in capacity also helped reduce delays within the system. While 2007 trends in flight delays continued into the first half of 2008—with more than 1 in 4 flights delayed or cancelled—system-wide flight delays declined by 24 percent in the second half of 2008 as airlines initiated capacity cutbacks and schedule changes. However, high levels of delay continued at major airports such as Newark, Kennedy, Atlanta, and Miami.

### **Observations on FAA's Budget**

Over the past 3 years, FAA's annual budget has totaled between \$14.5 billion and \$15 billion. Approximately 59 percent of this funding has been allocated to the Operations account, 18 percent to the Facilities and Equipment account, 22 percent to the Airport Improvement Program, and 1 percent to the Research, Engineering, and Development account (see table 1 below). FAA does not plan to submit its 2010 budget until April.

<sup>7</sup> Based on FAA classification of airports, non-hub airports enplane fewer than 0.05 percent of system-wide passengers, small-hub airports enplane more than 0.05 percent but fewer than 0.25 percent of system-wide passengers, medium-hub airports enplane more than 0.25 but fewer than 1 percent of system-wide passengers, and large-hub airports enplane more than 1 percent of system-wide passengers.

**Table 1. FAA Budget, FY 2007 Through FY 2009 (\$ in Millions)**

Account	FY 2007 Actual	FY 2008 Enacted*	FY 2009 Request
Operations	\$8,374	\$8,740	\$8,998
Facilities & Equipment	\$2,518	\$2,514	\$2,724
Airport Improvement Program	\$3,515	\$3,515	\$2,750
Research, Engineering, and Development	\$130	\$147	\$171
<b>Total</b>	<b>\$14,537</b>	<b>\$14,915</b>	<b>\$14,643</b>

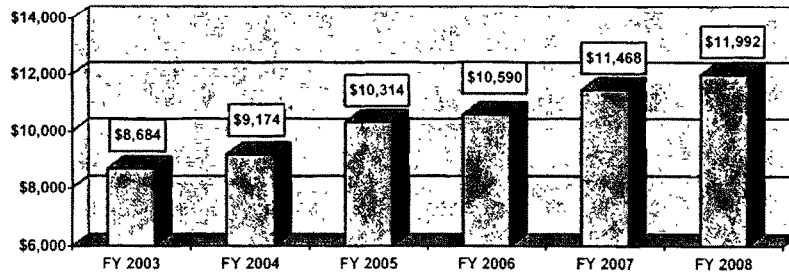
Source: FAA's FY 2009 Budget Request

\* Figures may not add up due to rounding.

FAA is currently financed by two mechanisms: excise taxes deposited into the Airport and Airway Trust Fund and a General Fund contribution. Over the past 5 years, the Trust Fund has paid for approximately 81 percent of FAA's total budget with the remaining 19 percent paid out of the General Fund.

#### Observations on the State of the Aviation Trust Fund

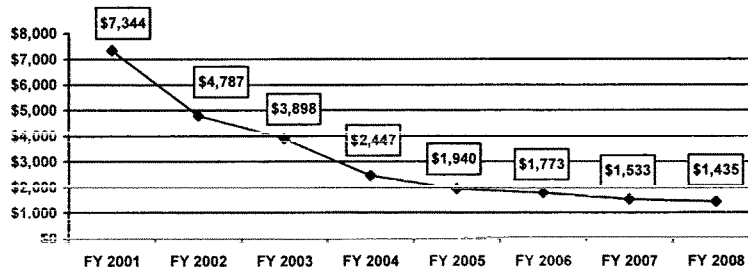
The current economic slowdown and airline capacity cuts have resulted in declining Trust Fund revenues. According to Treasury Department data, Trust Fund revenues declined by more than 11 percent during the first quarter of FY 2009. Over the past 5 years, Trust Fund tax revenues have steadily increased (see figure 1). However, given the drop in traffic and the resulting decline in passenger taxes, it is almost certain that future Trust Fund tax revenues will drop significantly during the balance of FY 2009 and in FY 2010 as well.

**Figure 1. Airport and Airway Trust Fund Tax Revenues  
FY 2003 to FY 2008 (\$ in Millions)**

In addition, past differences between FAA's budget and the Trust Fund revenues and General Fund contribution have been made up by drawing down the Trust Fund's

uncommitted balance. However, these actions have depleted that balance to the point where only a limited cushion of funding remains. As shown in figure 2 below, the uncommitted Trust Fund balance has declined by more than 80 percent, from \$7.3 billion at the end of FY 2001 to \$1.4 billion at the end of FY 2008. As a result, this practice may no longer be a viable option for funding new and existing projects.

**Figure 2. Airport and Airway Trust Fund Uncommitted Balance  
FY 2001 to FY 2008 (\$ in Millions)**



As Congress moves forward with FAA's annual appropriations and multi-year reauthorization legislation, it should monitor the status of the Trust Fund to ensure its long-term solvency while ensuring sufficient funding for Agency programs.

### **ENHANCING AVIATION SAFETY AND MAINTAINING PUBLIC CONFIDENCE IN FAA'S ABILITY TO PROVIDE EFFECTIVE OVERSIGHT OF A RAPIDLY CHANGING INDUSTRY**

Over the last several years, the aviation industry has experienced the safest period in history. This is due, in part, to the dedicated efforts of the professionals within FAA and throughout the aviation industry. Last month, we saw a dramatic example of aviation professionalism when U.S. Airways flight 1549 made an emergency landing in the Hudson River, and, miraculously, all 155 passengers and crew survived largely because of the skills of the pilot and crew. Nevertheless, airline consolidation and downsizing continue to dramatically change the industry, and widely publicized lapses in FAA oversight in 2008 emphasize the need for FAA to continually adapt its oversight to further enhance safety. Key challenges for FAA include the following:

- Maintaining public confidence in FAA's oversight of air carriers and manufacturers.
- Following through on longstanding commitments to improve oversight of external repair facilities.
- Improving runway safety.

### **Maintaining Public Confidence in FAA's Oversight of Air Carriers and Manufacturers**

A significant challenge for FAA will be to maintain public confidence in its oversight of air carrier operations. Our congressional testimonies in April 2008<sup>8</sup> before the House of Representatives and the Senate disclosed serious lapses in FAA's oversight at Southwest Airlines (SWA). We reported that an FAA safety inspector had an overly collaborative relationship with SWA and had violated FAA safety directives by permitting the air carrier to operate 46 planes without required inspections for fuselage cracks. FAA's actions in this instance appeared to focus primarily on promoting aviation over safety, which diminishes the public perception of FAA's ability to provide objective oversight.

In response to the safety lapses at SWA, on May 1, 2008, the Secretary of Transportation commissioned a panel to examine FAA's safety culture and its approach to safety management. In its final report, issued in September, the panel disclosed that it found FAA's safety staff was "unambiguously committed" to its safety mission but acknowledged that a remarkable degree of variation in regulatory philosophies exists among inspectors, which could create widespread inconsistencies in regulatory decision making.

The panel also determined that data from air carrier self-disclosures, such as the safety directive self-disclosure used in the SWA incident, were not routinely analyzed at a higher level within FAA. In our ongoing review of ATOS, we have found that self-disclosure data are neither analyzed at a higher level within FAA nor analyzed and used by FAA field offices to assess risks within air carrier maintenance programs.

We also found this to be true of another voluntary reporting program, called the Aviation Safety Action Program, in which aviation employees self-report possible regulatory violations. FAA collects summary information on the number of reports submitted but has overlooked an opportunity to enhance the national margin of safety because it does not collect and analyze the actual data on a national level to identify potentially systemic safety issues. Both of these voluntary reporting programs have the potential to provide valuable safety data, but FAA is not realizing their full benefits. We plan to issue the results of our review of the Aviation Safety Action Program later this year.

After the SWA incident, we conducted further reviews of safety directive compliance. Early indications show this problem is occurring at other carriers as well.

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<sup>8</sup> OIG Testimony Number CC-2008-046, "Actions Needed To Strengthen FAA's Safety Oversight and Use of Partnership Programs," April 3, 2008. OIG Testimony Number CC-2008-067, "Key Safety Challenges Facing the FAA," April 10, 2008. OIG Testimony Number CC-2008-070, "Key Safety and Modernization Challenges Facing the FAA," April 17, 2008.

Our review at SWA also identified concerns regarding FAA's failure to protect whistleblowers from retaliation. For example, after a whistleblower voiced concerns about SWA to FAA, an anonymous hotline complaint—which was never substantiated—was lodged against him. FAA then removed the whistleblower from duty for 5 months while he was under investigation. In 2007, our work at Northwest Airlines found a similar problem with FAA's handling of an inspector who reported safety concerns. As with the inspector in the SWA case, FAA managers restricted an experienced inspector from performing oversight on the carrier's premises after a complaint from the airline.

Our work at SWA and other carriers has also found weaknesses in FAA's national program for risk-based oversight, ATOS. At SWA, multiple missed ATOS inspections allowed safety directive compliance issues in SWA's maintenance program to go undetected for several years. At the time of the SWA incident, FAA inspectors had not completed 21 key inspections in at least 5 years.

As part of our ongoing ATOS review, we found that FAA oversight offices for seven other major air carriers also missed key ATOS inspections. For example, we found that critical maintenance inspection programs, such as Airworthiness Directive Management, Continuing Analysis and Surveillance (CAS) System, and the Engineering and Major Alterations Program, had been allowed to lapse beyond the 5-year inspection cycle.

Over the past 6 years, we have identified system-wide problems with ATOS, such as inconsistent inspection methods across FAA field offices and incomplete inspections. We recommended, among other things, that FAA strengthen its national oversight and accountability to ensure consistent and timely ATOS inspections. However, FAA still has not fully addressed this concern. We have recommended additional actions to help maintain public confidence in FAA's oversight of air carriers. FAA has agreed to some of these, such as creating a national review team to conduct quality assurance reviews of FAA's air carrier oversight and implementing a process to monitor field office ATOS inspections. However, FAA has not fully addressed other key recommendations, including the following:

- **Periodically rotating supervisory inspectors to ensure reliable and objective air carrier oversight.** FAA has stated that it is not financially feasible to rotate inspectors annually. Given budget constraints, FAA should consider other alternatives to ensure objective oversight. On February 5, FAA advised us that it plans to expand Flight Standards Evaluation Program audits to evaluate the safety culture of field offices and place special emphasis on those offices where the management team has been in place more than 3 years. FAA also stated that the Acting FAA Administrator has published a safety policy to reinforce management's commitment to safety. This policy emphasizes that the United



States public is the primary stakeholder and beneficiary of the FAA safety mission. We will continue monitoring FAA's progress in this area.

- **Establishing an independent organization to investigate safety issues identified by FAA employees.** On December 8, 2008, FAA created a new office within its Office of Chief Counsel to coordinate and provide independent quality control reviews of certain investigations. While this new office is independent from FAA's Aviation Safety line of business, it does not actually conduct investigations of safety issues identified by FAA employees. Rather, recommendations for resolutions of particular safety issues remain the responsibility of the applicable Aviation Safety office. The function of this office is to assess whether investigations and resolutions are fair and in compliance with established processes.

We will continue to monitor the progress and effectiveness of this office as part of our ongoing aviation safety work. Some of our recent work has shown that FAA continues to have problems performing effective, independent reviews of safety allegations. For example, we found that an independent review of FAA oversight activities at one carrier was not comprehensive. In addition, the review team provided the report to the regional office rather than the FAA field office responsible for resolving the problems. We will be reporting on this issue later this year.

Another challenge for FAA will be improving its oversight of new segments of the aircraft industry. A key change occurring in the industry—which is expected to continue over the next 2 decades—is the introduction of very light jets, or VLJs, into the National Airspace System. VLJs are small aircraft with advanced technologies that cost less than other business jets. In 2006, FAA certified the first VLJs, including the Eclipse EA-500. While the industry was generally excited about the introduction of this jet, some FAA employees were also concerned that it was pushed through the certification process too quickly.

A significant issue overshadowing FAA's certification of the EA-500 was the inherent risks associated with a new aircraft utilizing new technology, produced by a new manufacturer, and marketed with a new business model for its use. Because of these factors, FAA should have exercised heightened scrutiny in certifying the aircraft. Instead, our investigation results showed a combination of FAA actions and inactions indicating that the Agency expedited the certification processes for the EA-500 to meet a September 2006 deadline.

More importantly, because the EA-500 has advanced avionics and turbine engine technology typical of large transport aircraft combined with the light weight of smaller, private aircraft, it did not easily fit into FAA's existing certification framework. Therefore, FAA certified the EA-500 and other VLJs using certification requirements for general aviation aircraft rather than the more stringent certification

requirements for larger transport aircraft. However, in a post-design certification, “lessons-learned” internal review of the Eclipse project, ... FAA managers acknowledged that the general aviation certification requirements were “inadequate to address the advanced concepts introduced on the aircraft.” We understand that FAA is developing a Notice of Proposed Rulemaking (NPRM) to clarify certification requirements for VLJs. Given the issues surrounding the EA-500 certification, FAA should expedite the NPRM to allay future concerns with this expanding industry segment.

### **Following Through on Longstanding Commitments To Improve FAA Oversight of External Repair Facilities**

FAA continues to face challenges in identifying where critical aircraft maintenance is performed. A key issue is that FAA’s risk-based oversight system does not include critical repairs performed by non-certificated repair facilities. To address this issue, in April 2007, FAA issued guidance that required inspectors to evaluate air carriers’ contract maintenance providers and determine which ones performed critical maintenance and whether they were FAA-certificated repair stations. However, the guidance did not provide effective procedures for inspectors to identify which facilities were FAA-certificated or the type of maintenance each vendor performed for air carriers. Therefore, FAA is now trying to develop a new method to capture these data.

In addition, FAA established a system in FY 2007 for air carriers and repair stations to report the volume of outsourced repairs. However, in September 2008, we reported<sup>9</sup> that FAA’s system was inadequate because it did not require (1) mandatory air carrier reporting, (2) an inclusive air carrier listing of *all* repair stations performing repairs to critical components, or (3) FAA inspector validation of the information. Without this information, FAA cannot be assured that it has the information needed to determine where it should focus its inspections. FAA is reevaluating this system in response to our report and expects to implement system improvements by the end of March 2009.

Gathering adequate data to target inspections is important since FAA does not have a specific policy governing when inspectors should initially visit repair stations performing substantial maintenance for air carriers. Instead, FAA allows inspectors to rely on the air carriers’ initial audits as a basis for approving those facilities for air carrier use.

As a result, we found significant delays between FAA’s initial approval of repair stations and its first inspections at those locations. For example, during a 3-year period, FAA inspectors inspected only 4 of 15 substantial maintenance providers used by 1 air carrier. Among those uninspected was a major foreign engine repair facility

<sup>9</sup> OIG Report Number AV-2008-090, “Air Carriers’ Outsourcing of Aircraft Maintenance,” September 30, 2008.

that FAA inspectors did not visit until 5 years after it had received approval for carrier use—even though it had worked on 39 of the 53 engines repaired for the air carrier.

FAA needs to require its inspectors to conduct initial and follow-up on-site inspections, such as major airframe maintenance checks, at substantial maintenance providers to assess whether they are complying with air carriers' procedures. In addition to their own inspections, FAA inspectors must ensure that air carriers and repair stations have strong audit systems to correct identified deficiencies, as FAA relies heavily on air carriers' oversight. In response to our report, FAA is reviewing its procedures for opportunities to strengthen its guidance. However, it does not expect to complete these reviews until mid-2009.

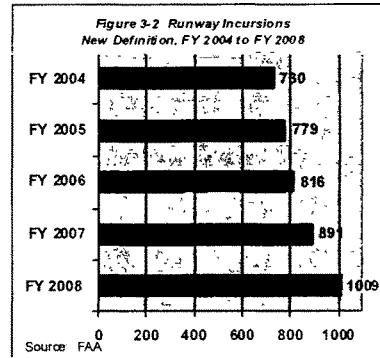
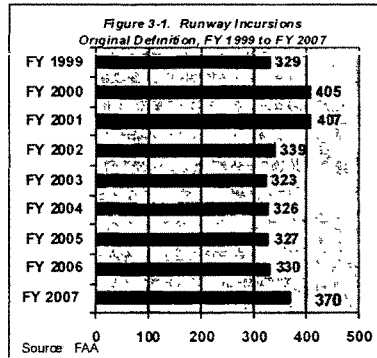
### **Improving Runway Safety by Implementing New Technologies, Making Airport-Specific Changes, and Reinvigorating FAA's National Initiatives**

Runway incidents continue to be a substantial threat to safety. The December 2008 accident at Denver International, when a Continental 737 veered off the runway into an adjacent field and caught fire during take-off, underscores the seriousness of these incidents. In fact, the last fatal commercial aircraft accident in the United States (in 2006) occurred because the pilots of Comair flight 5191 attempted to take off from the wrong runway.

A specific concern is runway incursions (any incident involving an unauthorized aircraft, vehicle, or person on a runway).<sup>10</sup> Since 2003, the number of runway incursions has begun climbing again, reaching a high of 370 in FY 2007, a 13-percent increase over FY 2004 (see figure 3-1 below). Under FAA's new definition for categorizing runway incursions, the number of runway incursions continues to rise even more dramatically, with a 38-percent increase since FY 2004 (see figure 3-2 below). During FY 2008, 25 serious runway incursions occurred (where a collision was barely avoided); this equates to about 1 serious runway incursion every 15 days.

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<sup>10</sup> Effective October 1, 2007, FAA began categorizing runway incursions using the International Civil Aviation Organization (ICAO) definition. The new definition of runway incursions includes incidents that were previously defined by FAA as "surface incidents" (where a potential conflict did not exist).



Many see new technology as a key runway safety solution. However, our reviews of three major FAA technologies<sup>11</sup> for improving runway safety disclosed serious concerns about what can be effectively deployed within the next several years. The uncertain timeline and emerging risks of FAA's runway safety technologies underscore the need for other near-term solutions.

In August 2007, FAA convened a task force that agreed on a short-term plan to improve runway safety. Actions planned include conducting safety reviews at airports based on runway incursion and wrong runway departure data, improving airport signage and markings at the 75 busiest, medium- to large-sized airports, and reviewing cockpit and air traffic clearance procedures. We are currently reviewing the effectiveness of the task force's actions to date.

FAA must also remain focused on reinvigorating national runway safety initiatives. In response to the surge in runway incursions between FY 1999 and FY 2001, FAA took national actions to prioritize runway safety, which resulted in a significant decrease in incidents between 2001 and 2003 (from 407 to 323). However, some national initiatives for promoting runway safety—such as publishing an annual national plan for runway safety with specific goals for each line of business—have subsequently waned as FAA met its overall goals for reducing runway incursions. FAA needs sustained commitment and executive-level attention to renew those types of important Agency initiatives.

As part of its efforts to improve runway safety, FAA also needs to continue to aggressively pursue improvements to Runway Safety Areas (RSA). FAA requires that airports have cleared space around runways to permit safe landings in the event that pilots veer off or undershoot the runway during landings. However, our recent

<sup>11</sup> These three technologies are ASDE-X, ADS-B, and Runway Status Lights.

work shows that 11 large U.S. airports have runways that do not have sufficient space because of major man-made, natural, and environmental challenges.

In addition, more than 40 percent of the RSAs we reviewed have navigational aids (e.g., airport lighting systems) that need to be either modified or relocated outside the RSA. Until these issues are fully addressed, aircraft will remain vulnerable to damage and, more importantly, their passengers will remain at risk of potential injury from accidents on runways with substandard RSAs. We plan on issuing our final results next month.

### **CHALLENGES FACING FAA IN MODERNIZING THE NATIONAL AIRSPACE SYSTEM AND TRANSITIONING TO NEXTGEN IN THE NEAR AND MID TERM**

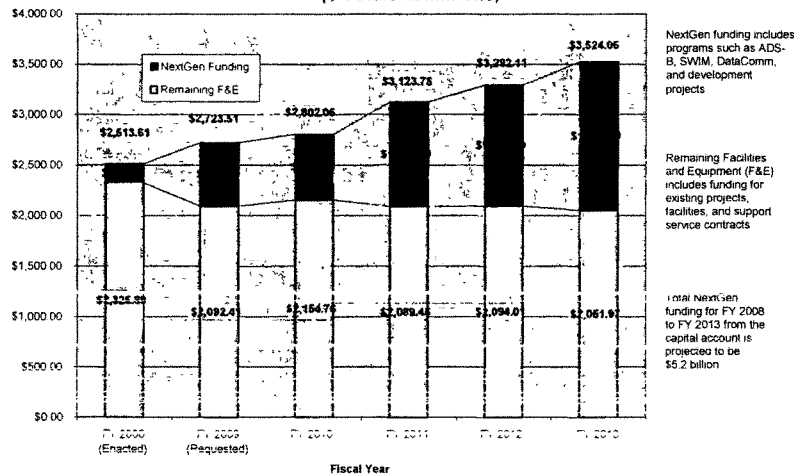
FAA will be challenged to keep ongoing projects on track, maintain aging facilities, and develop and implement NextGen initiatives. In 2009, FAA plans to spend \$2.7 billion for capital funding—an increase of 8 percent over last year’s enacted level. FAA is starting a new chapter in modernization with NextGen, and the Agency’s capital account is now being shaped by these initiatives. Between FY 2008 and FY 2013, FAA plans to spend \$18 billion for capital efforts, including \$5.2 billion specifically for NextGen. We note that much of the projected funding for NextGen will focus on developmental efforts, including demonstration projects.<sup>12</sup>

FAA plans to spend more than \$630 million in 2009 on NextGen-related programs, which include Automatic Dependent Surveillance-Broadcast (ADS-B) and System-Wide Information Management (SWIM). Figure 4 below illustrates FAA’s planned investments in ongoing projects and NextGen initiatives from FY 2008 to FY 2013.

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<sup>12</sup> Developmental efforts are funded through the Engineering, Development, Test, and Evaluation portion of the capital account. These efforts are projected to amount to \$2.4 billion through FY 2013, which is a significant portion of the amount dedicated to NextGen spending.

**Figure 4. FAA Capital Funding for FY 2008 to FY 2013**  
(\$ Totals in Millions)



Source: FAA

In addition to capital spending, FAA plans to spend \$362 million in research, engineering, and development funds through FY 2013 for NextGen. The projects include air-ground integration, wake turbulence, and environmental research.

### Progress and Problems with FAA Acquisitions

In April 2008, we reported on progress and problems with 18 major FAA acquisitions valued at \$17.5 billion. Overall, we are not seeing the significant cost growth and schedule slips with FAA major acquisitions that occurred in the past. This is because FAA has taken a more incremental approach to managing major acquisitions. When comparing revised baselines, only 2 of the 18 projects we reviewed have experienced additional cost growth (\$53 million) and delays (5 years) since our last report in 2005.<sup>13</sup> However, from program inception, six programs have experienced cost growth of nearly \$4.7 billion and schedule delays of 1 to 12 years.

While FAA's incremental approach may reduce risk in the near term, it has left several programs with no clear end-state and less visibility into how much they will ultimately cost. A case in point involves modernizing facilities that manage traffic in the vicinity of airports, which is commonly referred to as "terminal modernization."

<sup>13</sup> OIG Report Number AV-2005-061, "Status of FAA's Major Acquisitions: Cost Growth and Schedule Delays Continue To Stall Air Traffic Modernization," May 26, 2005.

We are concerned that there is no defined end-state for terminal modernization, and past problems with developing and deploying STARS leave FAA in a difficult position to begin introducing NextGen capabilities. Future terminal modernization costs will be shaped by (1) NextGen requirements, (2) the extent of FAA's terminal facilities consolidation, and (3) the need to replace or sustain existing (legacy) systems that have not been modernized.

### **Keeping Existing Systems on Track Is Important as Many Will Provide Platforms for NextGen**

According to FAA, approximately 30 existing capital programs will serve as "platforms" for NextGen. For example, the \$2.1 billion En Route Automation Modernization (ERAM) program, which provides new hardware and software for facilities that manage high-altitude traffic, is a linchpin for the NextGen system. Because ERAM is expected to serve as a foundation for NextGen, any schedule delays will affect the pace of introducing new capabilities. Currently, ERAM software requirements related to NextGen are still uncertain, but costs are expected to be in the billions of dollars.

Two years ago, in February 2007, we recommended that FAA examine existing projects to determine if they were still needed and, if so, what adjustments would be required.<sup>14</sup> FAA concurred with our recommendation and stated that it had begun this assessment. To date, however, FAA has not made major adjustments to modernization projects to accelerate NextGen.

Over the next 2 years, FAA must make more than 23 critical decisions about ongoing programs. These decisions have significant budget implications and will affect all major lines of the modernization effort with respect to automation, communications, navigation, and surveillance. For example, FAA will have to address what changes are needed to modernize its terminal facilities and whether it will pursue a common automation platform for terminal and en route environments in the future.

### **FAA Faces Significant Challenges with Key NextGen Programs**

FAA has established initial cost and schedule baselines for the first segments of two key NextGen initiatives: ADS-B and SWIM. Our work shows that both programs face considerable risks and require significant oversight.

**ADS-B:** In August 2007, FAA awarded a service-based contract for the ADS-B ground infrastructure worth \$1.8 billion (if all options are exercised). FAA estimates that ADS-B will cost about \$1.6 billion in capital costs for initial implementation segments through 2014, including a nationwide ground system for receiving and

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<sup>14</sup> OIG Report Number AV-2007-031, "Joint Planning and Development Office: Actions Needed To Reduce Risks With the Next Generation Air Transportation System," February 12, 2007.

broadcasting ADS-B signals. For FY 2009, FAA has requested \$300 million in capital costs for ADS-B, its largest acquisition program budget line item.

A key challenge facing FAA—and NextGen implementation—is realizing the full benefits of ADS-B. FAA plans to fully implement *ADS-B Out* in the 2020 timeframe, which will require aircraft to broadcast their position to ground systems. However, most capacity and safety benefits from the new system will come from *ADS-B In*, which will display information in the cockpit for pilots. FAA has not yet finalized requirements for *ADS-B In*.

Our work shows that FAA must address several risks to realize the benefits of ADS-B. These include: (1) gaining stakeholder acceptance and aircraft equipage, (2) addressing broadcast frequency congestion concerns, (3) integrating with existing systems, (4) implementing procedures for separating aircraft, (5) assessing potential security vulnerabilities, and (6) finalizing requirements for *ADS-B In* and new cockpit displays.

Given FAA's history with developing new technologies and its approach to ADS-B, in which the Government will not own the ground infrastructure, this program will require a significant level of oversight. We will report on ADS-B later this year.

**SWIM:** In June 2007, FAA baselined the first 2 years of segment 1 of SWIM (planned to occur between FY 2009 and FY 2010) for \$104 million. FAA's latest Capital Investment Plan cost estimate for SWIM is \$285 million. We are currently examining the overall status of SWIM and the risks facing a nationwide deployment.

Current challenges include determining requirements and interfaces with other FAA systems, including ERAM and Air Traffic Management programs. Moreover, FAA must integrate SWIM with other Federal agencies' operations to realize NextGen benefits and develop a robust cyber security strategy and design.

We found that FAA is pursuing SWIM in a decentralized way and providing other programs with funds to develop interfaces with the system. FAA still needs to establish the architecture, strategy, and overall design for SWIM. FAA has yet to determine additional segments and the cost to fully implement the program.

#### **FAA Must Refine the Mid-Term NextGen Architecture**

Last April, we recommended—and FAA concurred—that FAA conduct a “gap analysis” of the current National Airspace System and the vastly different NextGen system and develop an interim architecture for the 2015 timeframe. These actions would help highlight transition issues and establish requirements that could be used to develop reliable cost and schedule parameters for NextGen. FAA is focusing considerable attention on mid-term goals for NextGen, which are planned for the



2018 timeframe. However, we found that FAA needs to address fundamental issues with three key elements to achieve these goals.

- **NextGen Implementation Plan:** FAA's January 2009 plan<sup>15</sup> provides a framework for what NextGen will resemble in 2018 and reflects the need to link FAA and stakeholder investments. However, FAA and stakeholders point out that the plan does not yet reflect a consensus on how to move forward, and much work is required to set priorities, quantify expected benefits, address integration issues, and clarify time and location of equipment needs. In addition, the plan will need to illustrate the operational, regulatory, policy, and procedural issues that need to be resolved to implement NextGen capabilities. Also, stakeholders point out that the plan does not yet clearly assign responsibility, authority, or accountability for mid-term initiatives.
- **Gap Analysis of the Current and NextGen Systems:** This effort is important because FAA intends to rely on existing automation systems to provide the basis for NextGen through the mid-term phase of the effort. A key question focuses on the most cost-effective way to implement changes for displays and computers that controllers use to manage traffic in the vicinity of airports. FAA is conducting this gap analysis, and Agency officials expect to complete the effort this summer.
- **NextGen Mid-Term Architecture:** FAA has made progress in developing components of a general blueprint for the 2018 timeframe. It has also developed "road maps" for automation, communication, navigation, and surveillance efforts. FAA's current blueprint highlights more than 340 key decisions that FAA must make to reach the envisioned mid-point NextGen architecture. However, FAA has not yet established firm requirements that can be used to develop the cost and schedule estimates for modifications to existing programs or new acquisitions. FAA's documents caution that ground systems continue to be developed from the bottom up, which results in mission and performance gaps. Further, air and ground elements are not yet synchronized, and FAA must determine which trade-offs to make regarding which capabilities will reside in aircraft versus FAA ground systems. FAA officials told us they expect to complete these efforts later this summer.

To help chart a course for NextGen in 2018, FAA tasked RTCA (a joint Government/industry forum)<sup>16</sup> to forge a community-wide consensus on what should be implemented and what actions will be needed to realize benefits. The RTCA task force has an ambitious agenda; it is expected to make recommendations to FAA and help the Agency prioritize efforts, frame the business case for new systems (for FAA

<sup>15</sup> FAA's *NextGen Implementation Plan*, January 30, 2009.

<sup>16</sup> Organized in 1935 as the Radio Technical Commission for Aeronautics, RTCA, Inc. is a private, not-for-profit corporation that develops consensus-based recommendations regarding communications, navigation, surveillance, and air traffic management (CNS/ATM) system issues. It functions as a Federal Advisory Committee.

and airspace users), and define the necessary actions to achieve benefits in 2018. The task force plans to complete its work this summer.

### **NextGen Implementation Presents Congress with Important Policy Questions**

NextGen planning documents call for users to equip with a range of new avionics including ADS-B, data link for communications for controllers and pilots, and new navigation equipment. Stakeholders argued that \$4 billion of stimulus funds should be used to equip aircraft and accelerate NextGen efforts, including \$2 billion specifically for ADS-B.

As stakeholders point out, there is a precedent for helping airspace users equip specifically with ADS-B avionics. FAA purchased ADS-B avionics for operators in Alaska as part of the Capstone initiative.<sup>17</sup> This provided a base of properly equipped aircraft and allowed FAA to examine the costs and benefits of the new technology.

In a recent report<sup>18</sup> on implementing ADS-B, stakeholders noted that incentives for ADS-B deployment could take a number of forms. These include purchasing equipment for operators, an investment tax credit, an adjustment to current excise taxes for ADS-B-equipped aircraft, or research and development tax credits specifically for avionics manufacturers. However, FAA has never managed such a large effort to equip aircraft in the continental United States.

Whether or not such incentives should be used is clearly a policy decision for Congress. A clear understanding of exactly what the incentives would be used for is needed. This is important because FAA has not finalized the requirements for key capabilities, such as *ADS-B In*. In our opinion, a full consideration of the strengths and weaknesses of various incentives as well their timing and potential impact is important. Further, FAA could use incentives to demonstrate and refine NextGen capabilities and provide detailed information on how to certify equipment, such as new cockpit displays.

### **Sustaining FAA's Vast Network of Aging Facilities**

A key cost driver for NextGen is determining to what extent FAA realigns or consolidates air traffic control facilities. This has significant cost implications for the number of controller displays and related computer equipment needed to manage

<sup>17</sup> The Capstone Project was a joint industry and FAA research and development effort to improve aviation safety and efficiency in Alaska. Under Capstone, FAA provided avionics equipment for aircraft and the supporting ground infrastructure. The Capstone Project operated from 1999 to 2006, and its success in Alaska laid the groundwork for the nationwide deployment of ADS-B.

<sup>18</sup> Report from the ADS-B Aviation Rulemaking Committee to the Federal Aviation Administration, "Recommendations on Federal Aviation Administration Notice No. 7-15, *Automatic Dependent Surveillance--Broadcast (ADS-B) Out Performance Requirements to Support Air Traffic Control (ATC) Service*; Notice of Proposed Rulemaking," September 26, 2008.

traffic in the vicinity of airports. In our December 2008 report,<sup>19</sup> we found that many FAA air traffic control facilities have exceeded their useful lives, and their physical condition continues to deteriorate. In some cases, facilities deteriorated so badly that they required urgent and repeated actions. While the average facility has an expected useful life of approximately 25 to 30 years, 59 percent of FAA facilities are over 30 years old (see table 2).

**Table 2. Average Age of FAA Facilities**

Type of Facilities	Average Age
Air Traffic Control Towers	29 years
Terminal Radar Approach Control Facilities	26 years
En Route Control Centers	43 years

Source: FAA

FAA points out that flexible ground communication networks do not require facilities to be near the traffic they manage. FAA often cites its aging facilities and the related expense of maintaining such a large number of facilities to justify consolidating the air traffic control system into a smaller number of facilities. However, there are technical and security prerequisites for major consolidation, such as implementing new “voice switching” technology to allow for more flexible communication and enhanced automation. FAA’s 2007 reauthorization proposal called for a “Realignment and Consolidation of Aviation Facilities Commission” to conduct an independent review and make recommendations to the President. Last year, the House and Senate reauthorization proposals (H.R. 2881 and S. 1300) also recognized the issue of consolidation and the need for further examination.

FAA plans to spend \$17 million in FY 2009 to examine various alternatives for revamping its facilities. FAA should ensure that this analysis clearly addresses the technological and security prerequisites as well as key cost drivers, benefits, and logistical concerns associated with consolidations so decision makers in Congress and the Administration will know what can be reasonably accomplished. This is a critical action item because until key, strategic decisions are made regarding consolidations, FAA will be unable to define its long-term funding requirements for the management and maintenance of its air traffic control facilities.

#### **FAA Actions Needed To Help Focus Mid-Term NextGen Efforts and Shift from Planning to Implementation**

We have made numerous recommendations to FAA to help it move forward with NextGen. These include developing an interim architecture, assessing the skill mix with respect to necessary systems integration and contracting, and focusing human

<sup>19</sup> OIG Report Number AV-2009-012, “FAA’s Management and Maintenance of Air Traffic Control Facilities,” December 15, 2008.

factors research to ensure concepts can be safely implemented. At this time, FAA must move beyond planning and shift to implementation. To do so, FAA needs to take the following actions:

- **Complete the gap analysis of the current and NextGen systems as promised and refine the NextGen mid-term architecture.** These two efforts are important because FAA intends to rely on existing automation systems to provide the basis for NextGen through the mid-term phase of the effort. Until FAA establishes the detailed changes needed to transition to NextGen, it will be difficult to determine requirements that can be used to develop reliable cost and schedule estimates to achieve NextGen's mid-term goals.
- **Establish priorities and Agency commitments with stakeholders and reflect them in budget requests.** It remains difficult for decision makers to determine what to invest in first from the wide range of operational improvements in NextGen planning documents. Stakeholders have asked for a clear articulation of the timing, location, and assignment of responsibility for NextGen capabilities. This past year, FAA has worked to shape priorities. However, the Agency must do more and work with stakeholders to identify the proper sequencing of efforts. Also, stakeholders have asked FAA to clearly state mid-term Agency and operator commitments in its NextGen Implementation Plan. FAA should continually work to provide this Subcommittee with a clear understanding of its NextGen priorities and commitments and reflect them in budgets and plans.
- **Manage mid-term initiatives as portfolios and establish clear lines of responsibility, authority, and accountability for NextGen efforts.** FAA must manage NextGen capabilities as portfolios because several systems, new procedures, and airspace changes funded through different accounts will be required to deliver benefits. FAA is developing various portfolios and understands the need to manage them in an integrated fashion. However, as an FAA study points out, FAA's Acquisition Management System was not designed for managing NextGen investments.<sup>20</sup> Rather, FAA's system focuses on baselines and specific capital programs—not a collection of investments. FAA recognizes that it must modify its system to effectively manage NextGen efforts. FAA could also strengthen its NextGen Implementation Plan by clearly assigning responsibility, authority, and accountability for specific NextGen portfolios.
- **Focus attention on the relief that various NextGen technologies can provide to already congested airports in major metropolitan areas, like New York and Chicago.** An important metric for NextGen is to what extent FAA can improve *airport arrival rates* under various weather conditions. FAA recognizes the importance of this and is shifting resources to this issue. However, FAA's efforts to

<sup>20</sup> "Independent Assessment of FAA Acquisition Management System," April 22, 2008.

examine “high-density operations” are in the very early stages, and planning documents and budget requests thus far do not detail how individual NextGen systems can specifically boost airport capacity and reduce delays. Decision makers and stakeholders need to know what elements—ADS-B, new routes, and data link communications for controllers and pilots—are essential to improve capacity at already congested airports.

- **Acquire the necessary skill mix to effectively manage and execute NextGen.** In response to our February 2007 report, FAA commissioned the National Academy of Public Administration to assess the skill sets needed for NextGen. In a September 2008 report, the Academy identified 26 competencies where FAA lacks both capacity and capabilities to accomplish NextGen implementation.<sup>21</sup> These include experience in large-scale systems acquisition and integration. FAA has identified an additional 175 staff positions that it plans to fill in 2009 and another 162 positions for 2010 to address identified skill requirements.
- **Develop a realistic plan for implementing ADS-B and realizing the air-to-air benefits of the new technology.** FAA has a contract in place for ADS-B and has published an NPRM. The NPRM calls for users to equip with *ADS-B Out* in the 2020 timeframe. FAA has received comments from 177 organizations or individuals about the details of the NPRM. While most agree that ADS-B is an important part of the future, some raised concerns about requirements, the cost of equipage, and lack of clear benefits—all legitimate issues that will need to be resolved. To clarify these issues, FAA must expedite efforts to establish requirements for *ADS-B In* and cockpit displays.
- **Assess “implementation bandwidth” and develop transition benchmarks.** FAA’s ability to implement multiple capabilities in a given time period needs to be assessed. There are limits to what can be accomplished given the scope of change envisioned and ongoing efforts. For example, FAA has staggered key NextGen capabilities, such as data link communications, to wait for the completion of ERAM in the 2012 timeframe. Further, FAA and industry need realistic transition benchmarks that point to when new training (for controllers and pilots), equipment (new avionics and ground systems), and procedures need to be in place at specific locations.

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<sup>21</sup> Report by a panel of the National Academy of Public Administration, “Identifying the Workforce to Respond to a National Imperative - The Next Generation Air Transportation System (NextGen),” September 2008.

## BOLSTERING KEY FAA SAFETY WORKFORCES

FAA continues to face significant attrition in two of its most critical safety workforces: air traffic controllers and aviation safety inspectors. Over the next decade, FAA must maintain enough professionals with the right skill mix to ensure the safe and efficient operations of the National Airspace System. Key challenges for FAA include the following:

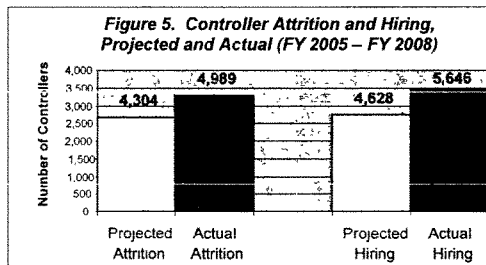
- Hiring and training the next generation of air traffic controllers.
- Addressing controller human factors.
- Ensuring a sufficient number of appropriately placed safety inspectors to address a divergent aviation environment.

### Hiring and Training the Next Generation of Air Traffic Controllers

Over the next decade, FAA plans to hire and train nearly 17,000 controllers to replace those who were hired after the 1981 strike and are now retiring. Ensuring there are enough certified controllers at FAA's more than 300 air traffic control facilities will remain a significant watch item for the Department and Congress. Since 2005, 4,989 controllers have left the workforce (2,657 of these were retirees). The total rate of attrition for FY 2005 through FY 2008 was 16 percent higher than FAA had projected.

However, we note that for FY 2008 retirements were below FAA's projection for the first time since FAA began projecting retirements in 2004 (781 actual versus 809 projected).

FAA has accelerated its hiring efforts to keep pace with attrition. Since 2005, FAA has hired 5,646 new controllers—22 percent more than projected (see figure 5).



With the surge in new hires over the last 4 years, FAA is facing a fundamental transformation in the composition of its controller workforce. While the overall size of the controller workforce remained relatively constant from April 2004 to September 2008, the number of controllers in training increased by nearly 72 percent, while the number of fully Certified Professional Controllers (CPC) decreased by nearly 11 percent (see table 3 below).

**Table 3. Controller Workforce Composition**

<b>Date</b>	<b>CPCs</b>	<b>Controllers in Training*</b>	<b>Total</b>
<b>April 2004</b>	12,328	2,209	14,537
<b>September 2008</b>	11,007	3,800	14,807
<b>Difference</b>	(-1,321)	+1,591	+270

\*We chose 2004 as a benchmark for comparison purposes since 2004 was the last year we audited this program and because 2004 was the year FAA first published its Controller Workforce Plan.

Controllers in training now represent nearly 26 percent of the workforce (up from 15 percent in 2004). However, that percentage can vary extensively by location—from as little as zero percent (e.g., Pittsburgh air traffic control tower) to as much as 47 percent (e.g., Orlando International air traffic control tower).

A major challenge in addressing controller attrition will be training new controllers to the CPC level at their assigned locations. In June 2008, we issued our second report on FAA's controller facility training program since 2004.<sup>22</sup> FAA is taking actions at the national level to get this important program on track. For example, FAA is adding more training simulators at towers and increasing use of contractor training support—from 53 facilities in 2004 to 190 facilities in 2007. Many of FAA's efforts, however, are still in the early stages.

Our June 2008 report identified problems that we also found in 2004—that the facility training program continues to be extremely decentralized and the efficiency and quality of the training varies extensively from one location to another. We recommended the following actions to FAA, and FAA concurred:

- Establish realistic standards for how many developmental controllers facilities can accommodate.
- Ensure the standards developed address individual facilities' training capacity.
- Continue to encourage veteran controllers to transfer to busier, higher-level facilities.
- Implement key initiatives FAA first proposed in 2004 to improve facility training.

In September 2008, FAA made a significant change to its training program by awarding a 10-year, \$437 million contract to the Raytheon Technical Services Company (Raytheon) to support the Agency's training of newly hired and existing air traffic controllers. The contract calls for Raytheon to provide training support at both

<sup>22</sup> OIG Report Number AV 2008-055, "Review of the Air Traffic Controller Facility Training Program," June 5, 2008.

the FAA Academy in Oklahoma City, Oklahoma, and at air traffic facilities nationwide.

According to the contractor, the new program, known as the Air Traffic Controller Optimum Training Solution (ATCOTS), will modernize the training process by utilizing up-to-date technologies to train controllers, adjusting the training curriculum, and introducing a modeling and simulation tool that will predict training and staffing bottlenecks, thus allowing FAA to be more proactive in solving workforce training issues.

Given the importance of this new contract, Chairman Costello has requested that we review the ATCOTS training program, including the financial and contractual aspects of the program. Specifically, we will examine how the training program will differ from what is currently provided to the controller workforce and whether adjustments to the program and contract during its early stages are warranted. We plan to begin this review next month.

#### **Addressing Controller Human Factors**

As attrition increases, FAA must also continue addressing controller human factor issues (fatigue and attention). Congress has expressed concerns regarding controller human factor issues since the influx of new controllers will need both technical and human factors training. For example, in April 2003, we reported that almost 90 percent of controller operational errors (when a controller allows two aircraft to get too close together either on the runway or in the air) were due to human factors issues rather than procedural or equipment deficiencies.<sup>23</sup> Since our review, FAA has made progress with a training program designed to sharpen and maintain controllers' mental skills most closely associated with visual attention and scanning: the National Air Traffic Professionalism Program.

However, FAA also needs to continue focusing on training controllers about fatigue. In its investigation of Comair flight 5191, the National Transportation Safety Board (NTSB) expressed concerns that the lone controller on duty at the time of the accident had only slept about 2 hours before his shift (although he had 8 hours off between shifts). As a result of its investigation, the NTSB added controller fatigue to its "Most Wanted List" in 2007.

At the request of Senator Durbin of Illinois, we are reviewing factors that could affect controller fatigue at Chicago O'Hare Tower, Chicago TRACON, and Chicago Center. So far, we have identified several potential fatigue factors. These include scheduling practices with minimal time between shifts, conducting on-the-job training, working 6-day weeks (overtime), and working an operational position for extended periods of time. We are working to determine the extent to which these factors are occurring

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<sup>23</sup> OIG Report Number AV-2003-040, "Operational Errors and Runway Incursions," April 3, 2003.



and what efforts FAA is taking to address them. We plan to issue our results this spring.

At the request of Chairman Costello, we are also reviewing the rate and causes of controller training failures (developmental controllers who fail training either at the FAA Academy or at their assigned facility). FAA reports that the overall training failure rate for FY 2007 was about 10 percent of all trainees. However, this rate includes both newly hired controllers as well as veteran controllers transferring to new locations. Given the huge surge in *new* controllers, those metrics should be tracked separately so FAA can measure its progress in training newly hired controllers. We also found that data used by FAA to compile the training failure rate were inaccurate, with some facilities not entering information into FAA's tracking system for months at a time. We plan to issue those results this spring as well.

#### **Ensuring a Sufficient Number of Appropriately Placed Safety Inspectors To Address a Divergent Aviation Environment**

Effective oversight by FAA safety inspectors is vital to ensuring that the industry continues its impressive safety record. As shown in table 4, this oversight covers a vast network of operators and functions, which make up the largest, most complex aviation system in the world (see table 4).

**Table 4. FAA Inspectors' Workload**

Major Air Carriers	116	Flight Instructors	92,207
Repair Stations	4,957	FAA Designee Representatives	6,100
Active Pilots	722,208	Aircraft	319,549
Approved Manufacturers	1,647	FAA licensed Mechanics and Repairmen	363,217

Source: FAA Aviation Safety Workforce Plan as of March 2008

FAA's approximately 4,100 inspectors must oversee both domestic and foreign aspects of these operations. This task is made more difficult by the rapidly changing aviation environment. One issue that warrants attention is FAA's ability to develop and implement a reliable staffing model to ensure it has a sufficient number of inspectors where they are most needed.

In past years, FAA has made at least two attempts to develop a staffing model to determine the number of inspectors needed and the best locations for placement. Neither model, however, provided FAA with an effective approach for allocating inspector resources.

At the direction of Congress, the National Research Council evaluated FAA's current methods for allocating inspector resources in September 2006.<sup>24</sup> This study reported similar concerns that we identified in past reports—that FAA's current method of allocating inspectors is antiquated and must be redesigned to effectively target inspectors to those areas of higher risk.

The Council also reported that the changing U.S. and global aviation environments will be key drivers of future inspector staffing needs. For example, airlines' outsourcing of aircraft maintenance, FAA's shift to a system safety oversight approach, and safety inspectors' attrition and retirement are all important factors that must be considered in determining staffing needs.

It has been over 2 years since the National Research Council study, and FAA has still not implemented the new staffing model. However, FAA is developing the new model and plans to begin using it by October 2009. Last year, FAA's hiring efforts kept pace with retirements, and FAA ended the year with 121 inspectors over its FY 2007 levels. However, nearly half of the workforce will be eligible to retire within the next 5 years. It is not reasonable to expect FAA to have an inspection workforce that is large enough to oversee every aspect of aviation operations; therefore, making measurable progress toward a new staffing model is a key watch item, and we will continue to monitor this important initiative.

## **FINANCING FUTURE AIRPORT DEVELOPMENT**

### **Delays in Airport Improvement Program Grants Could Impact Airports' Ability To Enhance Safety, Maintain Infrastructure, and Expand Capacity**

In the coming months, Congress and aviation stakeholders will discuss important questions about FAA's reauthorization. Because Vision 100 expired at the end of FY 2007, and a long-term reauthorization is not yet in place, funding targets do not exist for FY 2009 and beyond. Congress is now faced with the challenge of determining AIP funding levels for FY 2010.

The AIP supports the airport system by providing funds to primarily enhance safety and security, maintain the infrastructure, increase capacity, and mitigate airport noise in surrounding communities. AIP authorized funding has steadily increased over the last 9 years. Since 2001, the AIP has been authorized at \$3.2 billion or higher each year. In FY 2008, through a series of continuing resolutions, Congress provided FAA with \$3.5 billion in AIP funding. For FY 2009, as part of a continuing resolution, Congress provided FAA with \$1.5 billion in AIP funding but did not extend the AIP contract or obligation authority to issue new AIP grants beyond March 6, 2009. Unless further funding is provided before March 6, FAA will no longer have the contract authority to issue new AIP grants.

<sup>24</sup> National Research Council Study: *Staffing Standards for Aviation Safety Inspectors*, September 20, 2006.

Aviation congestion continues to be a top priority for the Secretary. However, it is increasingly difficult for airports and FAA to meet this challenge with no AIP authorization. The uncertainty of future AIP grant authority makes it difficult for the Nation's airports to determine when, or if, they will receive their AIP grants.

Smaller airports are more vulnerable because they have fewer revenue sources than large airports. Many smaller airports must suspend projects until they are assured of AIP grant funds. Lengthy delays in the release of AIP grants could prevent airports from taking full advantage of the construction season and delay important safety and capacity projects that could reduce congestion in the busy travel season ahead.

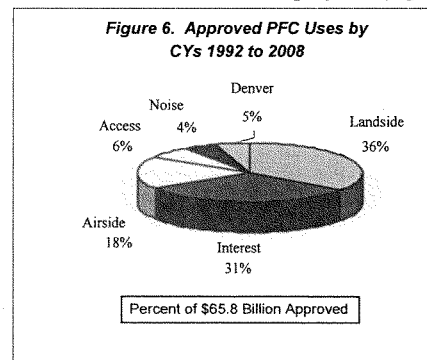
### Passenger Facility Charge Collections Are Declining

In addition to AIP funds, passenger facility charges (PFC) have become an important funding mechanism for airports. Between 1992 and 2008, FAA approved the collection of \$65.8 billion in PFCs. Of this amount, airports have collected an estimated \$27.6 billion, with another \$2.9 billion anticipated for 2009. In comparison, airports received about \$42.1 billion in AIP grants between 1992 and 2008.

Overall, airports anticipate using PFC collections to finance landside projects (e.g., terminals, security, and land), bond interest payments, airside projects (e.g., runways, taxiways, and equipment), access roadways, noise abatement, and the Denver International Airport (see figure 6).<sup>25</sup>

However, volatile fuel prices and a softening economy have led to airline service reductions and capacity cuts, which have caused declines in passenger traffic. This, in turn, has led to the decline in the stream of PFC revenues, which could inhibit future airport development.

Specifically, when airports experience reductions in passenger traffic, PFC collections automatically decline. PFCs are a source of funding that airports largely depend on to finance capital improvement projects that are generally ineligible to receive AIP funds (such as terminal improvements). For example, at one medium-hub airport we visited, PFCs declined by 22 percent (or about \$7.1 million) during 2008 when



<sup>25</sup> FAA tracks Denver's PFC separately due to its large size and because it was used to fund the new airport, not specific projects.

compared to the same period in 2007. This was due to airlines either going out of business or ceasing operations. Without a steady stream of PFCs or other revenue options to offset the loss of PFCs (e.g., increase airlines rates and charges), some airports will find it increasingly difficult to keep capital projects' milestones and costs on track.

Currently, PFCs are capped at \$4.50 per segment of flight (a maximum of \$18.00 on a round trip). The current cap on PFCs is an important matter for this Subcommittee and has significant implications for major airports' capital expenditure plans. In fact, Chicago O'Hare International Airport anticipates future increases in the cap as part of its financing plans for the O'Hare Modernization Program, a multi-year, multi-phased program with an estimated cost of \$6.6 billion (in 2001 dollars).

The FAA Reauthorization Act of 2007, as passed by the House (H. R. 2881), would have increased the PFC ceiling to \$7.00 per trip segment. Airport associations support this increase in the PFC ceiling. However, one airline association has stated its concern that approval for airport improvement projects, especially those funded through the PFC program, does not provide airlines with a meaningful role in those critical decisions. Determining how future airport projects are funded and what the levels of AIP funding and PFC charges should be are important issues as the Congress decides how best to finance FAA.

#### **Unstable Financial Markets Have Made It Difficult for Airports To Issue Airport Bonds**

Proceeds from issuing airport bonds are used to finance runways, taxiways, and other airport facilities that benefit airport users and the public. According to the Airports Council International, airport bonds represent the largest funding mechanism for airport development and many are backed in part by PFCs. Also, according to a major investors' service, debt backed solely by a pledge of PFCs is of particular concern, because the supporting revenues are directly tied to enplanement levels and cannot easily be adjusted by rate increases when volume falls.<sup>26</sup>

The unstable financial markets have made it difficult for airports to issue airport bonds. Consequently, airports are being forced to either postpone key development projects or find other sources of short-term financing as an interim fix to keep projects moving. One airport announced that its \$1.68 billion project to build a new international terminal could be suspended unless it is able to sell \$600 million in bonds.

#### **The Stimulus Package Presents Oversight Challenges for FAA**

The economic stimulus packages proposed in the House and Senate contain significant funding amounts for the AIP that will help to revitalize airport

<sup>26</sup> Moody's U.S. Public Finance, "2008 U.S. Airport Sector Outlook: Six Month Update," August 2008.

development this year and next year. However, such a large infusion of new funds could create significant oversight challenges for FAA. For example, there will be pressure to begin projects quickly, and FAA and the Department will have to balance this pressure against the need to continually emphasize safety. It is critical that FAA prepare for the potential risks involved and ensure steps are underway to mitigate them.

Mr. Chairman, as part of our recently announced Department-wide review of oversight challenges associated with economic stimulus funding for transportation projects, I can assure you that my office will be working with the Department to identify risks, oversight challenges, and best practices associated with the stimulus funding for the AIP.

That concludes my statement, Mr. Chairman. I would be happy to answer any questions you or other Members of the Subcommittee may have.

CC-2009-047



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**

**James L. Oberstar**  
**Chairman**

**Washington, DC 20515**

**John L. Mica**  
**Ranking Republican Member**

David Heymeheld, Chief of Staff  
Ward W. McCarragher, Chief Counsel

February 18, 2009

James W. Coon II, Republican Chief of Staff

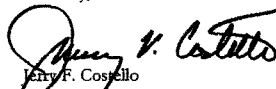
The Honorable Calvin L. Scovel, III  
Inspector General  
U.S. Department of Transportation – W70-300  
1200 New Jersey Avenue S.E.  
Washington, D.C. 20590

Dear Inspector General Scovel:

On February 11, 2009, the Subcommittee on Aviation held a hearing on the “FAA Reauthorization Act of 2009.”

Attached are questions to answer for the record. I would appreciate receiving your written response to these questions within 14 days so that they may be made a part of the hearing record.

Sincerely,

  
Jerry F. Costello  
Chairman  
Subcommittee on Aviation

JFC:gg/pk  
Attachment

**FEBRUARY 11, 2009  
SUBCOMMITTEE ON AVIATION  
HEARING ON**

**FAA REAUTHORIZATION ACT OF 2009**

**QUESTIONS FOR THE RECORD**

**To:**

**THE HONORABLE CALVIN L. SCOVEL, III  
INSPECTOR GENERAL  
U.S. DEPARTMENT OF TRANSPORTATION**

1. Mr. Scovel, what are your thoughts on the recently created RTCA Task Force on NextGen?
2. Mr. Scovel, what progress has FAA made in identifying and procuring the correct skill mix to manage the NextGen implementation effort?
3. Mr. Scovel, what are your views on incentives for airspace users to equip?
4. Mr. Scovel, in your written testimony you state that “human factors training is critical since almost 90 percent of controller operational errors (when a controller allows two aircraft to get too close together either on a runway or in the air) are due to human factors issues rather than procedural or equipment deficiencies.” Please provide us with some more detail on this and please define and distinguish “human factors issues” from “procedural or equipment deficiencies”
5. Mr. Scovel, in your written testimony you state that you are concerned “that there is no defined end-state for terminal modernization, and past problems with developing and deploying STARS leave FAA in a difficult position to begin introducing NextGen capabilities.” Please explain what has gone on with the FAA’s terminal automation program and how it may affect NextGen?
6. Mr. Scovel, in your written testimony you state that the “FAA must manage NextGen capabilities as portfolios because several systems, new procedures, and airspace changes funded through different accounts will be required to deliver benefits.” You also state that, “the FAA’s [current] system focuses on baselines and specific capital programs – not a collection of investments.” Please provide some more detail and some examples of how FAA should manage NextGen capabilities versus how it does today?

**IG Perspective on RTCA Task Force 5**

**Question 1:** What are your thoughts on the recently created RTCA Task Force on NextGen?

**Answer:** The work of the RTCA task force (known as “Task Force 5”) to review NextGen plans and make recommendations for the midterm is important to shape consensus between FAA and airspace users. Close collaboration with stakeholders is essential as the successful implementation of key NextGen technologies, such as data link and ADS-B, requires synchronized investments between FAA and airspace users. However, stakeholders have asked FAA for more clarity with respect to details for deliverables, timing, and deployment plans for NextGen initiatives.

The task force has proposed an ambitious agenda. Its objectives are to:

- forge consensus on prioritized capabilities;
- deliver benefits in 2018 and lay the foundation for 2025;
- frame the business case for FAA and operators;
- define the necessary actions to achieve benefits; and
- assign responsibility, authority, and accountability.

It will be important for the task force to complete its work this summer as planned.



**Progress on NextGen Skill Mix**

**Question 2:** Mr. Scovel, what progress has FAA made in identifying and procuring the correct skill mix to manage the NextGen implementation effort?

**Answer:** As stated in our prior reports and testimonies, NextGen implementation will be one of the largest and most complex undertakings FAA has ever attempted. This effort will require that FAA identify and obtain the correct skill mix of various disciplines needed to accomplish such an ambitious but much needed program.

Our work shows that FAA is making progress in identifying needed positions. For example, in response to our February 2007 recommendation, FAA commissioned the National Academy of Public Administration to assess the skill sets needed for NextGen.

In a September 2008 report, the Academy identified 26 competencies where the FAA lacks both the capacity and capabilities to execute and manage NextGen implementation. These include experience in large-scale systems acquisition and integration. We believe a robust contracting and contract oversight capability is also important.

FAA has identified an additional 175 positions that it plans to fill in 2009 and another 162 positions for 2010 to address some of its skill mix requirements. FAA officials told us these positions will be funded through the capital and operations accounts. FAA will have to clearly articulate its needs in budget requests and provide progress reports on obtaining various skill sets to this Subcommittee. We will continue to monitor this important issue.

**NextGen Equipage Incentive Issues**

**Question 3:** Mr. Scovel, what are your views on incentives for airspace users?

**Answer:** A key challenge for NextGen involves synchronizing FAA investment in new ground systems with airspace users' investments in new avionics. NextGen planning documents call for users to equip with a wide range of new avionics including ADS-B, data linking for communications for controllers and pilots, and new navigation equipment.

As we stated in our testimony, stakeholders argued that an infusion of \$4 billion of stimulus funds should be used to jump-start NextGen, including \$2 billion specifically for ADS-B. The Congress did not provide funding for aircraft equipage in the American Recovery and Reinvestment Act of 2009, but this issue will be central in the debate about how to move forward with NextGen.

Whether incentives should be offered to users for equipping is clearly a policy decision for Congress. Stakeholders have stated that incentives could take a number of forms. These include purchasing equipment for operators, an investment tax credit, an adjustment to current excise taxes for ADS-B-equipped aircraft, or research and development tax credits specifically for avionics manufacturers. In our view, incentives, if properly structured and implemented, could be helpful in advancing NextGen. There are, however, a number of points to consider.

- FAA has never managed such a large effort to equip aircraft in the continental United States.
- A clear understanding of exactly what the incentives would be used for is needed. This is important because the requirements for key capabilities, like ADS-B "In", have not been finalized.
- Cost sharing with the operator is important to help share risks.
- A full consideration of the strengths and weakness of various incentives as well their timing and potential impact is very important.

**Human Factors Issues in Relation to Operational Errors**

**Question 4:** Mr. Scovel, in your written testimony you state that "human factors training is critical since almost 90 percent of controller operational errors (when a controller allows two aircraft to get too close together either on a runway or in the air) are due to human factors issues rather than procedural or equipment deficiencies." Please provide us with some more detail on this and please define and distinguish "human factors issues" from "procedural or equipment deficiencies."

**Answer:**

In April 2003, we reported on FAA's actions taken or planned to reduce operational errors. As part of our review, we conducted an analysis of FAA's operational error data and found that approximately 90 percent of operational errors occurred when controllers made an error (i.e., a human factor issues), not because of flawed procedures or equipment deficiencies. We identified several examples, some of which are described below. The following provides examples of operational errors resulting from human factors, procedural, and equipment issues.

- **Human Factors:** A controller clears an aircraft to takeoff from a runway but "forgets" about the take-off clearance. The controller then clears another aircraft to cross the same runway in front of the departing aircraft.
- **Procedural:** A controller uses locally approved procedures to provide separation between aircraft. However, these procedures are later determined to be in violation of national guidelines and result in an operational error.
- **Equipment:** A loss of separation (the distance between aircraft) occurs when a controller cannot to communicate with the pilot because the radio equipment at the air traffic facility failed.

FAA is taking steps to address human factor issues related to operational errors. Since we issued our report in May 2007, FAA has initiated National Air Traffic Professional Program (NATPRO) training at terminal radar facilities in FY 2008 and plans to start this training at towers during FY 2009. FAA also trained 60 NATPRO cadre training instructors. This allows these individuals to facilitate NATPRO training at their individual facilities. We will continue to monitor these important efforts..

**Terminal Automation and NextGen**

**Question 5:** Mr. Scovel, in your written testimony you state that you are concerned “that there is not defined end-state for terminal modernization, and past problems with developing and deploying STARS leave FAA in a difficult position to begin introducing NextGen capabilities.” Please explain what has gone on with FAA’s terminal automation program and how it may affect NextGen?

**Answer:** FAA’s efforts to modernize systems controllers use at terminal facilities, which are facilities that manage traffic in the vicinity of airports, are a major risk to achieving NextGen goals for the midterm, which is now planned for 2018. Adjustments to terminal systems will be needed to accommodate more flexible routes, satellite-based surveillance technologies, and data link communications for pilots and controllers. Currently, there are two major automation systems that support terminal operations. Both of these will require upgrades or technology updates to support NextGen capabilities.

- First, the Standard Terminal Automation Replacement System (STARS). STARS was envisioned to become the premier, single terminal automation platform in the National Airspace System (NAS). After years of delays, performance issues, and large cost growth, STARS deployment was reduced from a planned 172 sites to just over 50 sites. According to FAA, the system is in need of a major technological update to both hardware and software, including displays, to accommodate new technologies such as ADS-B.
- Second, the Common Automated Radar Terminal System (CARTS) has been deployed in several versions at more than 100 locations. It was originally envisioned as an interim system when STARS fell behind schedule. However, CARTS systems have proved to be effective and are operating at the FAA’s largest terminal facilities, including Chicago and Denver. According to FAA, these systems will require some hardware and software upgrades and the addition of a color displays to accommodate new technologies.

Requirements and costs for terminal modernization remain uncertain. FAA has a study underway to determine what is needed to update the terminal systems in the NAS. The study is called the “Terminal Automation Modernization and Replacement Phase III.” An initial investment decision is planned for July 2009 and FAA expects to award a contract (or contracts) for the work in December 2010. Once FAA makes the decisions on how to move forward, modifying and updating the systems should be done in the most cost-effective manner.

**FAA Acquisition Management and NextGen**

**Question 6:** Mr. Scovel, in your written testimony you state that the “FAA must manage NextGen capabilities as portfolios because several systems, new procedures, and airspace changes funded through different accounts will be required to deliver benefits.” You also state that, “the FAA’s [current] system focuses on baselines and specific capital programs – not a collection of investments.” Please provide some more detail and some examples of how FAA should manage NextGen capabilities versus how it does today?

**Answer:** FAA will have to manage its investments in a much more integrated fashion than it has in the past. It is important to manage NextGen capabilities as portfolios because a number of systems, new procedures, and airspace changes will be required to deliver benefits. FAA plans describe various NextGen systems as “solution sets” to enhance capacity and reduce delays, but they must be managed and implemented in an integrated manner.

However, according to an April 2008 independent assessment commissioned by FAA the agency’s Acquisition Management System (AMS) is not designed for NextGen investments. Specifically, the AMS focuses on baselines and specific capital programs—not a collection of investments. Such a focus may hinder NextGen investments because their benefits are often cumulative and depend on multiple programs. The assessment also warned that there is a risk that key strategic alternatives may not be considered or funded due to a focus on individual standalone programs rather than a portfolio of programs.

FAA recognizes that it needs to modify its AMS system to effectively manage NextGen efforts. However, FAA has not established dates for when it expects to revamp AMS.

In making major NextGen investment decisions, FAA will have to factor in a number of important elements. For example, in moving forward with data link communications for controllers and pilots, FAA will have to examine what modifications are needed for existing automation systems and whether their schedules are synchronized. Also, FAA will have to coordinate budgets for controller training and airspace changes. Further, FAA must ensure that airspace users are positioned and equipped for a new capability.



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**  
**Washington, DC 20515**

**James L. Oberstar**  
**Chairman**

David Heynowald, Chief of Staff  
Ward W. McCarragher, Chief Counsel

February 23, 2009

**John L. Mica**  
**Ranking Republican Member**

James W. Coon II, Republican Chief of Staff

The Honorable Calvin L. Scovel, III  
Inspector General  
U.S. Department of Transportation – W70-300  
1200 New Jersey Avenue S.E.  
Washington, D.C. 20590

Dear Inspector General Scovel:

On February 11, 2009, the Subcommittee on Aviation held a hearing on the “FAA Reauthorization Act of 2009.”

Attached are questions to answer for the record. I would appreciate receiving your written response to these questions within 14 days so that they may be made a part of the hearing record.

Sincerely,

**Jerry F. Costello**  
**Chairman**  
**Subcommittee on Aviation**

JFC:gg/pk  
Attachment

**FEBRUARY 11, 2009  
SUBCOMMITTEE ON AVIATION  
HEARING ON**

**FAA REAUTHORIZATION ACT OF 2009**

**QUESTIONS FOR THE RECORD**

**To:**

**THE HONORABLE CALVIN L. SCOVEL, III  
INSPECTOR GENERAL  
U.S. DEPARTMENT OF TRANSPORTATION**

Mr. Scovel, in your written testimony you state that approximately 30 existing capital programs will serve as “platforms” for NextGen, and that over the next 2 years the FAA must make more than 23 critical decisions about ongoing programs. Please cite some examples of critical decisions for existing capital programs like ASDE-X and Traffic Flow Management and how these decisions relate to NextGen.

### Critical Decisions for Ongoing National Airspace System Programs

**Question:** Mr. Scovel, in your written testimony you state that approximately 30 existing capital programs will serve as “platforms” for NextGen and that over the next 2 years the FAA must make more than 23 critical decisions about ongoing programs. Please cite some examples of critical decisions for existing capital programs like ASDE-X and Traffic Flow Management and how these decisions relate to NextGen.

**Answer:** FAA decisions on ongoing capital programs will have significant budget implications and will have a direct bearing on FAA’s ability to meet NextGen mid- and long-term goals and capability requirements. The following provides examples of the key decisions:

- **Terminal Modernization:** FAA plans to make an initial investment decision on how to modernize displays and computers that controllers use to manage traffic in the vicinity of airports. This will be particularly important for busy and complex facilities like New York, Chicago, and Atlanta. FAA’s final investment decision leading to a contract award is expected in late 2010. Currently, costs are uncertain but estimated to be in more than \$600 million.
- **Surface and Tower Automation:** FAA is pursuing ways to improve the management of aircraft on the airport surface. The Airport Surface Detection Equipment - X (ASDE-X) system was originally considered as a safety system but is now viewed as a way to enhance efficiency and capacity. In 2009 and 2010, FAA will decide how to incorporate ASDE-X data (the location of aircraft on runways and taxiways) into other systems that are planned for airport towers as well as systems owned and operated by airlines and airports. FAA is demonstrating this capability at John F. Kennedy airport, but costs for a wider deployment are uncertain.
- **Satellite-Based Navigation and Landing Systems:** FAA plans to decide on restarting development of the Local Area Augmentation System (LAAS) in 2009. The costs to develop LAAS are estimated to be \$500 million. Also, FAA will decide in 2009 if additional enhancements will be needed for another satellite-based system, the Wide Area Augmentation System (WAAS). FAA planning documents we reviewed suggest that modifications to WAAS could potentially cost as much as \$1.5 billion.
- **Traffic Flow Management:** FAA relies on traffic flow management to manage air traffic system-wide and reduce the impacts of bad weather. This includes efforts to link FAA’s Command Center with airlines, which



are known as “collaborative air traffic management.” This fall, FAA plans to decide what additional capabilities will be incorporated into the system. FAA estimates this could cost nearly \$450 million.

- **En Route Automation:** In FY 2010, FAA plans decide on initial adjustments to the \$2.1 billion En Route Automation Modernization (ERAM) system. Controllers will rely on ERAM to manage high-altitude traffic. Costs remain uncertain but could be in the billions of dollars.

## Congress of the United States

Washington, DC 20515

February 11, 2009

The Honorable Ray LaHood  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Secretary LaHood,

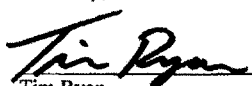
We are writing to seek your approval of Continental and United's application to enter into an alliance that promises wide ranging customer benefits. As you know, Continental and United have proposed a domestic alliance that will give each carrier's passengers, communities, corporate travel partners and employees the benefits of expanded flight and destination choices. In addition we support Continental's application to join an already immunized anti-trust relationship among United, Air Canada, Lufthansa and six other Star Alliance partners to create similar customer benefits on international routings.

As you may know, Continental Airlines maintains a hub at Cleveland Hopkins International Airport. From their Cleveland hub, they provide domestic service to 64 cities and also provide non-stop international service to Canada and London's Heathrow airport (seasonal) and they employ approximately 3000 people. They also provide domestic service at Dayton, Cincinnati and Columbus Airports.

With the spike in fuel prices and the onset of a recession, the previous year has posed significant challenges to the financial stability of the U.S. airline industry. In fact, the industry continues to witness a considerable decrease in domestic and global air service demand. We believe Continental and United's planned alliance will help both airlines maintain their financial viability while operating as independent competitors which is important for the airlines' shareholders, employees, suppliers and other service providers. We also strongly believe airline passengers stand to benefit from the proposal by such things as more flight options, more destination and fare class choices, quicker travel itineraries through coordinated flight scheduling and aligned airport check-in, re-booking and baggage transfer policies.

We believe that any delay imposed on the consideration of the alliance applications before you will have dramatic and negative consequences for Ohio, for the thousands of Ohio employees who work at these airlines in our state and for competition in the airline industry. We urge you to approve the Continental and United alliance without further delay.

Sincerely,




Tim Ryan  
Member of Congress

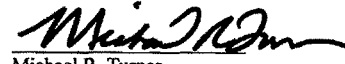



Steve C. LaTourette  
Member of Congress

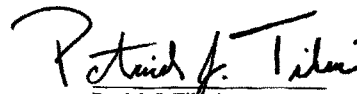
  
Dennis J. Kucinich  
Member of Congress

  
John A. Boehner  
Member of Congress

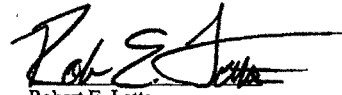
  
Betty Sutton  
Member of Congress

  
Michael R. Turner  
Member of Congress

  
Marcia L. Fudge  
Member of Congress

  
Patrick J. Tiberi  
Member of Congress

  
Steve Austria  
Member of Congress

  
Robert E. Latta  
Member of Congress

400

**United States Senate**

WASHINGTON, D.C. 20510

February 10, 2009

The Honorable Ray LaHood  
Secretary  
U.S. Department of Transportation  
400 Seventh Avenue, S.W.  
Washington, D.C. 20590

Dear Secretary LaHood:

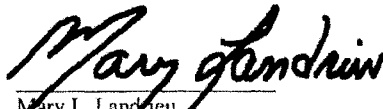
We are writing to request that you quickly finalize your review of the pending Star alliance application. We believe approving this request will generate significant consumer benefits by giving airline passengers more itinerary, flight and fare choices and access to a global airline network.

Louisiana benefits from Continental service to seven cities in the state. In a sense, Continental will be delivering Star alliance benefits statewide and for the first time to the smaller communities of Alexandria, Monroe and Lake Charles. Those benefits include frequent flier reciprocity and the alliance's special software programming and globally located "Connection Centers" that work to proactively rebook customers when a service disruption occurs.

The Star alliance application has been pending for some time now and while the U.S. Government's review is substantially complete, this process needs to be completed in order to prevent any further delay of the important consumer benefits the alliance promises to deliver. Please make it a priority to complete the review of the application quickly.

Thank you for considering this request. Please feel free to contact us should you need any additional information.

Sincerely,

  
Mary L. Landrau  
United States Senator

  
David Vitter  
United States Senator

## United States Senate

WASHINGTON, DC 20510

January 23, 2009

The Honorable Raymond H. LaHood  
Secretary  
U S Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

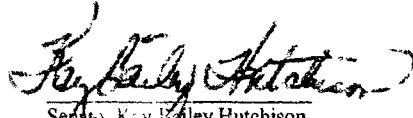
Dear Mr. Secretary:

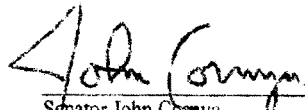
We are writing to share our interest and support for approval of the application of Continental Airlines and United Airlines to enter into an alliance relationship with each other and with other Star Alliance airlines. While these airlines are major employers in Texas and Illinois, Continental (along with Continental Express), whose headquarters are in Houston, Texas, is currently the 5<sup>th</sup> largest domestic airline, significantly smaller than the top three domestic carriers, based on domestic operations. Additionally, Continental represents only 2.7% of total worldwide capacity. Approval of the proposed CO/UA agreements will help ensure long term competitiveness both in the domestic airline industry and among the international carriers for both Continental and United.

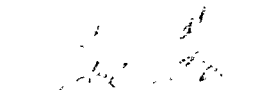
We are also writing to support your complete and prompt review of their applications. Any delay will have significant and negative impacts on the competitive landscape in the airline industry at a time when no company can afford to be in a non-competitive position, especially as a result of inaction by government. The competitive outlook of global aviation is changing. Earlier this year, the Departments of Transportation and Justice allowed the merger of Delta Airlines and Northwest Airlines to move forward. The new Delta is now the world's largest airline, and it has an antitrust-immunized global alliance with Air France-KLM, Europe's largest airline. In order to be able to compete effectively in this increasingly global marketplace, Continental and United have put forward a proposal for a marketing alliance that would allow the participating airlines to achieve additional network reach without moving forward with a potential full-scale merger.


We believe that any delay imposed on the consideration of the alliance applications before you will have dramatic and negative consequences for Texas, the cities served by these carriers, the employees who work at these airlines. We hope you will act quickly to approve the application, and we hope you agree that approval of this alliance is good for the industry, the economy, and the travelling public. Thank you for your consideration.


Sincerely,


  
 Senator Kay Bailey Hutchison  
 United States Senator


  
 Senator John Cornyn  
 United States Senator


  
 Hon. Gene Green  
 Member of Congress


  
 Hon. Ted Poe  
 Member of Congress


  
 Hon. Henry Cuellar  
 Member of Congress

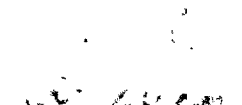
  
 Hon. Ron E. Paul  
 Member of Congress

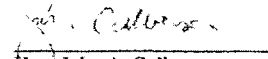
  
 Hon. Chet Edwards  
 Member of Congress

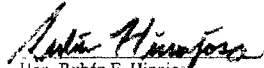
  
 Hon. Kevin P. Brady  
 Member of Congress

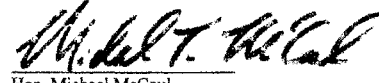
  
 Hon. Charles A. Gonzalez  
 Member of Congress


  
 Hon. John R. Carter  
 Member of Congress


  
 Hon. Al Green  
 Member of Congress

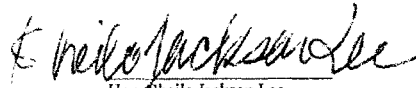
  
 Hon. John A. Culberson  
 Member of Congress


  
Hon. Rubén E. Hinojosa  
Member of Congress


  
Hon. Michael McCaul  
Member of Congress

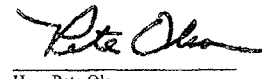
  
Hon. Eddie Bernice Johnson  
Member of Congress

  
Hon. Kenny Marchant  
Member of Congress

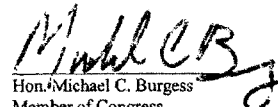
  
Hon. Sheila Jackson Lee  
Member of Congress


  
Hon. Pete Sessions  
Member of Congress

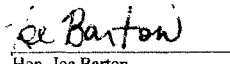
  
Hon. Solomon P. Ortiz  
Member of Congress

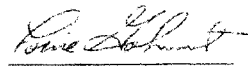
  
Hon. Pete Olson  
Member of Congress

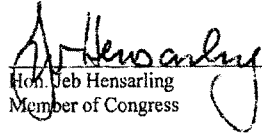
  
Hon. Silvestre Reyes  
Member of Congress


  
Hon. Michael C. Burgess  
Member of Congress

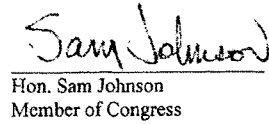
  
Hon. Ciro D. Rodriguez  
Member of Congress

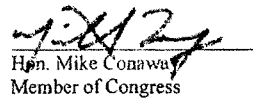
  
Hon. Joe Barton  
Member of Congress

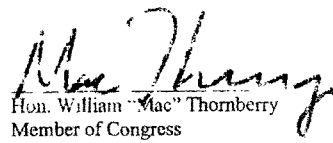
  
Hon. Louie Gohmert  
Member of Congress

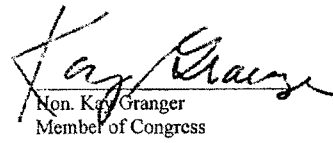
  
Hon. Jeb Hensarling  
Member of Congress

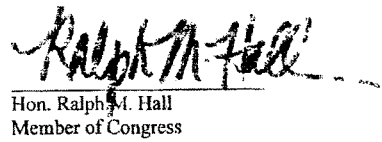
  
Hon. Randy Neugebauer  
Member of Congress

  
Hon. Sam Johnson  
Member of Congress

  
Hon. Mike Conaway  
Member of Congress

  
Hon. William "Mac" Thornberry  
Member of Congress

  
Hon. Kay Granger  
Member of Congress

  
Hon. Ralph M. Hall  
Member of Congress



**United States Senate**  
WASHINGTON, DC 20510

January 30, 2009

The Honorable Ray LaHood  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Secretary LaHood:

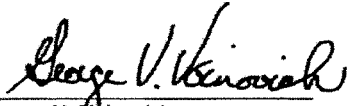
We are writing to seek your approval of Continental and United Airlines' application to enter into an alliance that promises wide ranging customer benefits. As you know, Continental and United have proposed a domestic alliance that will give each carrier's passengers, communities, corporate travel partners and employees the benefits of expanded flight and destination choices. In addition we support Continental's application to join United, Air Canada, Lufthansa and six other Star Alliance partners to create similar customer benefits on international routings.

As you may know, Continental Airlines maintains a hub at the Cleveland Hopkins International Airport. From its Cleveland hub, Continental provides domestic service to 64 cities and non-stop international service to Canada and London's Heathrow airport (seasonal). It also provides domestic service at Port Columbus International Airport, Cincinnati/Northern Kentucky International Airport, and James M. Cox Dayton International Airport. Continental employs approximately 3,000 people in the state of Ohio.

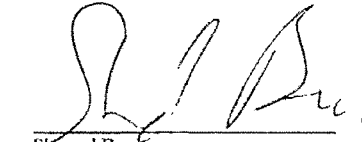
With the spike in fuel prices and the onset of a recession, last year posed significant challenges to the financial stability of the U.S. airline industry. In fact, the industry continues to witness a considerable decrease in domestic and global air service demand. We believe Continental and United's planned alliance will help both airlines maintain their financial viability while operating as independent competitors which is important for the airlines' shareholders, employees, suppliers and other service providers. We also strongly believe airline passengers stand to benefit from more flight options, more destination and fare class choices, quicker travel itineraries through coordinated flight scheduling and aligned airport check-in, re-booking and baggage transfer policies.

We urge you to give prompt consideration of the alliance applications before you. Unnecessary delay could have dramatic and negative consequences for Ohio, for the thousands of Ohio employees who work at these airlines in our state and for competition in the airline industry. Thank you for your consideration of our concerns. We look forward to your response.

Sincerely,



George V. Voinovich  
United States Senator



Sherrod Brown  
United States Senator

COMMITTEE ON ARMED SERVICES  
 CHAIRMAN  
 SUBCOMMITTEE ON STRATEGIC FORCES  
 SUBCOMMITTEE ON AIR AND LAND  
 SUBCOMMITTEE ON OVERSIGHT  
 AND INVESTIGATIONS  
 COMMITTEE ON  
 TRANSPORTATION AND INFRASTRUCTURE  
 SUBCOMMITTEE ON  
 HIGHWAYS AND TRANSIT  
 SUBCOMMITTEE ON  
 WATER, RESOURCES AND THE ENVIRONMENT  
 SUBCOMMITTEE ON AVIATION  
 CHAIR, NEW DEMOCRAT COALITION  
 NATO PARLIAMENTARY  
 ASSEMBLY, MEMBER  
 REGIONAL WHIP

**Ellen O. Tauscher**  
**Congress of the United States**  
**House of Representatives**  
**10th District, California**

2455 RAYBURN HOUSE OFFICE BUILDING  
 WASHINGTON DC 20515  
 TELEPHONE (202) 225-1880  
 FAX (202) 225-6914  
 2121 NORTH CALIFORNIA BOULEVARD  
 SUITE 350  
 WALNUT CREEK, CA 94596  
 TELEPHONE (925) 932-0800  
 FAX (925) 932-8158  
 3000 CALIFORNIA DRIVE  
 SUITE A  
 FAIRFIELD, CA 94533  
 TELEPHONE (707) 426-7727  
 FAX (707) 426-0623  
 430 WEST 2ND STREET  
 ANTIPOCA, CA 94509  
 TELEPHONE (925) 787-7187  
 FAX (925) 757-7016  
 www.tauscher.house.gov

February 13, 2009

The Honorable Raymond H. LaHood  
 United States Department of Transportation  
 1200 New Jersey Avenue, SE  
 Washington, D.C. 20590


Dear Secretary LaHood:

I am writing to ask that you immediately approve the application before the U.S. Department of Transportation (USDOT) to allow Continental Airlines to join an alliance with United Airlines and other Star Alliance carriers.

As you know, United Airlines is a major employer in the San Francisco Bay Area and an important contributor to the economy of California. Against the backdrop of the current economic crisis, we must allow the airlines to maintain a sustainable structure. The airlines need to pursue all opportunities to allow them and the communities they serve to stay competitive in an increasingly global marketplace.

In the past, USDOT has supported similar applications for alliances and antitrust immunity. I urge you to approve the pending United-Continental request.

Sincerely,

  
 Ellen O. Tauscher  
 Member of Congress



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**  
Washington, DC 20515

*James L. Oberstar*  
Chairman

*John L. Mica*  
Ranking Republican Member

David Heymsfield, Chief of Staff  
Ward W. McCarragher, Chief Counsel

February 10, 2009

James W. Coon II, Republican Chief of Staff

The Honorable Raymond H. LaHood  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

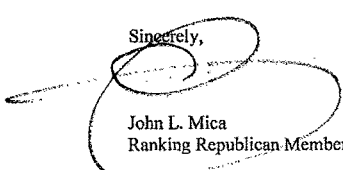
Dear Secretary LaHood:

It is my understanding that since November 2008, the Department of Transportation has declared the record closed in the application to allow Continental Airlines to join an alliance with United Airlines and other Star Alliance carriers and to extend antitrust immunity for greater international cooperation.

I would like to request that the Department move towards completion of the process and determination of the application in a fair and timely manner, and to notify the parties involved of the Department's decision as expeditiously as possible.

Thank you for your time and attention to this important aviation matter.

Sincerely,

  
John L. Mica  
Ranking Republican Member

**Congress of the United States**  
**Washington, DC 20515**

January 30, 2009

The Honorable Ray H. LaHood  
Secretary  
U.S. Department of Transportation  
1200 New Jersey Ave, SE  
Washington, DC 20590

Dear Secretary LaHood:

We are writing to share our support for approval of the application (submitted in July) of Continental Airlines and United Airlines to enter into an alliance relationship with each other and with other Star Alliance airlines. Continental Airlines has a major international hub in New Jersey which employs more than 14,000 people and provides originating and connecting passengers with worldwide access from the Garden State. Approval of their proposed alliance agreements will help ensure long term competitiveness both in the domestic airline industry and among international carriers.

We are also writing to urge you to complete your review of their various applications promptly. Any delay in the deliberations of this pending alliance will impose significant and negative impacts on the competitive landscape in the airline industry at a time when no company can afford to be in a non-competitive position, especially as a result of inaction by government.


As you know, this country is facing one of the worst recessions we have ever known. Like other core transportation industries in this country, airlines are taking all necessary actions to weather this recession and be in a position to compete in the global marketplace for decades to come.


The competitive landscape of global aviation is changing year to year. In 2008, the Department allowed the combination (merger) of Delta Airlines and Northwest Airlines to move forward. The new Delta is now the world's largest airline, and it has an antitrust-immunized global alliance with Air France-KLM, Europe's largest airline. In order to be able to compete effectively in this increasingly global marketplace, Continental and United have put forward a proposal for a marketing alliance rather than a full-scale merger.

Alliances allow participating airlines to achieve the benefits of additional network reach without the headaches and "change of culture" associated with merging. The proposed new alliance relationship between Continental and United will mean that their business and leisure customers (our constituents) will have access to more destinations and flight options worldwide than they enjoy today. Additionally, the employees who work at these airlines will have greater job security and will not have to face the uncertainty associated with the integration of two separate work forces into one. The benefits of this alliance will be achieved in a transaction far less complicated and sweeping than the already-approved Delta/Northwest merger.

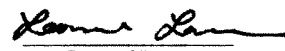
We believe that any delay imposed on the consideration of the alliance applications before you will have dramatic and negative consequences for New Jersey, for the thousands of New Jersey employees who work at these airlines in our state and for competition in the airline industry. We urge you to approve the Continental and United alliance without further delay.

Sincerely,

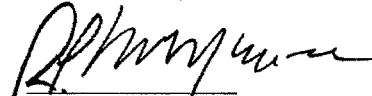
  
Bill Pascrell, Jr.  
Member of Congress

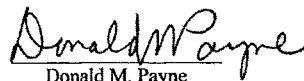
  
Frank A. LoBiondo  
Member of Congress


  
Steven R. Rothman  
Member of Congress


  
Leonard Lance  
Member of Congress

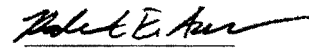
  
Albio Sires  
Member of Congress


  
Rodney P. Frelinghuysen  
Member of Congress

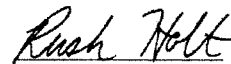
  
Donald M. Payne  
Member of Congress

  
Christopher M. Smith  
Member of Congress

  
John H. Adler  
Member of Congress

  
Robert E. Andrews  
Member of Congress

  
Frank Pallone, Jr.  
Member of Congress

  
Rush D. Holt  
Member of Congress

  
Scott Garrett  
Member of Congress



GOVERNOR ARNOLD SCHWARZENEGGER

February 11, 2009

The Honorable Raymond H. LaHood  
Secretary of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Mr. Secretary,

I am writing to encourage your approval of the application by Continental Airlines to join United Airlines in the Star Alliance.

Continental and United are major employers and, as such, vital players in California's economy. Approval of this application would allow Continental and United to compete more effectively with other international alliances and expand price and service options for California's businesses, visitors and residents.

I understand that the authority this application seeks is consistent with the Department of Transportation's policy and with past grants of immunity and that the Department has consistently supported alliances to enhance consumer welfare and competition. Your leadership in this matter will help ensure that potential benefits to consumers, airline employees and the airline industry are not delayed because of government inaction.

I urge you to approve the pending application.

Sincerely,

Arnold Schwarzenegger

/la



STATE OF NEW JERSEY  
OFFICE OF THE GOVERNOR  
P.O. Box 001  
TRENTON  
08646  
(609) 292-6000

JON S. CORZINE  
GOVERNOR

August 4, 2008

The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Secretary Peters:

This letter conveys my request as Governor of the State of New Jersey that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the New Jersey/New York economies and approval of its proposed agreements will help ensure Continental's long term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and I support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging; joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via codesharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that my constituents will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

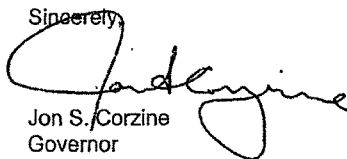


The Honorable Mary Peters  
August 4, 2008  
Page Two

As the only U.S. carrier operating a hub in the New Jersey/New York region with extensive international and domestic service, Continental will fill a void in the Star Alliance's network. Continental's presence in the Star Alliance will also balance the region's alliance make up with SkyTeam (via Delta) and oneworld (via American) at New York JFK and Star via Continental's hub at Newark Liberty.

Specifically, I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Corzine", written over the printed name and title.

Jon S. Corzine  
Governor



**TED STRICKLAND**  
GOVERNOR  
STATE OF OHIO

August 25, 2008

The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C.  
20590

Dear Secretary Peters,

This letter conveys my request that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the Ohio economy and approval of this proposed agreement will help ensure its long-term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces, and I support Continental's decision to remain an independent airline and to continue providing its service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer benefits via code-sharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that my constituents will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

Specifically, I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines.

Sincerely,

A handwritten signature in cursive script that reads "Ted Strickland".

Ted Strickland  
Governor

415



EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

February 6, 2009

The Honorable Raymond H. LaHood  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

Dear Secretary LaHood:

I am writing to ask that you approve the application to allow Continental Airlines to join an alliance with United Airlines and other Star Alliance carriers and to extend antitrust immunity for greater international cooperation.

United is a major employer and a vital part of Hawai'i's economy. Approval of this application would allow Continental and United to compete more effectively with other international alliances and expand price and service options to the businesses, visitors and residents of our islands.

I support competition and believe that expanding customer choices for air travel, especially today, is very important.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Lingle".  
LINDA LINGLE



ANTONIO R. VILLARAIGOSA  
MAYOR

February 11, 2009

The Honorable Raymond H. LaHood  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Dear Secretary LaHood:

I am writing to ask that you approve the application before the U.S. Department of Transportation (USDOT) to allow Continental Airlines to join an alliance with United Airlines and other Star Alliance carriers and to extend antitrust immunity for greater international cooperation. In November, the Department declared the record substantially complete with regard to this application and the applicants are now awaiting a decision.

United is a major employer and a vital part of the Los Angeles and California economies and approval of this proposed agreement will help enhance the airline industry's long term competitiveness. Against the backdrop of the global economic crisis, airlines must make fundamental changes to ensure a sustainable structure. Approval of this application would allow Continental and United to compete more effectively with other international alliances and expand price and service options to Los Angeles' businesses, visitors, and residents.

I believe that the present application is fully consistent with USDOT policy and past grants of immunity. USDOT has consistently supported international alliances that enhance consumer welfare and competition by permitting carriers to expand their networks and increase efficiency to otherwise-unattainable levels. Your support in this matter will ensure that the benefits of this application to consumers, competition and airline employees are not delayed.

I appreciate your consideration.

Very truly yours,

ANTONIO R. VILLARAIGOSA  
Mayor

ARV:jb

200 NORTH SPRING STREET • LOS ANGELES, CALIFORNIA 90012

PHONE: (213) 978-0600 • FAX: (213) 978-0750

EMAIL: MAYOR@LACITY.ORG



**Office of the Mayor**  
City & County of San Francisco



**Gavin Newsom**

January 30, 2009

The Honorable Raymond H. LaHood  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Dear Mr. Secretary:

On behalf of San Francisco and the Bay Area, let me congratulate you on your appointment to lead the Department of Transportation (DOT). We look forward to working with you on a host of critical issues affecting our community and the nation at large, and I personally hope to have an opportunity soon to welcome you to our community.

One of the most immediate and important issues is the pending request of United Airlines and Continental Airlines to join together in an alliance that would enhance price and service options for residents and businesses of our community and for millions of visitors to the Bay Area and California. I understand that the airlines are awaiting a decision on their completed application for antitrust immunity that would permit greater cooperation in international services, including immunized cooperation with other airlines in the Star Alliance. I urge you to act expeditiously on this matter.

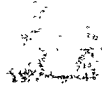
United is a vital part of the economic well-being of the Bay Area and of California generally. Maintaining and enhancing its long-term competitiveness in an extraordinarily challenging global economy is a matter of very high priority for us. This is especially true in the especially difficult competitive environment United and other U.S. airlines now confront, including the daunting competitive challenges posed by other expanded international alliances that already have the benefit of DOT antitrust immunity.

Your Department has in the past supported international airline alliances that enhance consumer welfare and competition by enabling airlines to expand their networks and their efficiencies. We urge you to apply these same policies to the pending United-Continental request. Prompt action on this request is clearly in the interest of the traveling public in our region and in the global air travel marketplace.

Sincerely,

Gavin Newsom  
Mayor

*Congratulations*



**CORY BOOKER**  
MAYOR  
NEWARK, NEW JERSEY  
07102

July 29, 2008

The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C.  
20590

Dear Secretary Peters,

This letter conveys my request as Mayor of Newark, New Jersey that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the New Jersey/New York area economies and approval of its proposed agreements will help ensure Continental's long term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and I support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via codesharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that my constituents will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

As the only U.S. carrier operating a hub in the New Jersey/New York region with extensive international and domestic service, Continental will fill a void in the Star Alliance's network. Continental's presence in the Star Alliance will also balance the region's alliance make up with SkyTeam (via Delta) and oneworld (via American) at New York JFK and Star via Continental's hub at Newark Liberty.

Specifically, I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines.

Sincerely,

A handwritten signature in black ink, appearing to read "Cory Booker", written over a horizontal line.



City of Cleveland  
Frank G. Jackson, Mayor

Office of the Mayor  
Cleveland City Hall  
601 Lakeside Avenue, Room 202  
Cleveland, Ohio 44114  
216/664-3990 • Fax 216/420-8766  
www.cleveland-oh.gov

July 29, 2008

The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Secretary Peters:

This letter conveys my request as the Mayor of Cleveland, Ohio that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental's presence in Cleveland as a hub carrier is a vital part of the Cleveland economy and approval of its proposed agreements will help ensure Continental's long-term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and I support Continental's decision to remain an independent airline and to continue providing its award-winning domestic and international service from its Cleveland gateway as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via code-sharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that my constituents will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

Continental's Cleveland hub today provides a regional competitive balance to Delta and Northwest, both of which operate hubs directly south and north of Cleveland in Cincinnati and Detroit. Continental's shift to the Star Alliance will help give this region a competitive alliance balance as well.

Specifically, I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines.

Sincerely,

Frank G. Jackson,  
Mayor



OFFICE OF THE MAYOR  
CITY OF HOUSTON  
TEXAS

January 28, 2009

The Honorable Raymond H. LaHood  
Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Mr. Secretary,

I am writing to join the Texas Senators Kay Bailey Hutchison and John Cornyn and 30 members of the Texas congressional delegation in urging your support for approval of the applications of Continental Airlines and United Airlines to enter into an alliance relationship with one another and cooperate along with other Star alliance airlines. I attach a copy of their letter, as well as one I sent previously to Secretary Peters.

The economic vitality of Continental is critical to Houston, its headquarters and largest hub. I agree with the congressional delegation that any delay in approval of the applications will have significant and negative impacts on the competitive landscape in the airline industry – an intolerable situation in this economic environment.

As the congressional delegation points out, the Departments of Justice and Transportation allowed the merger of Delta and Northwest airlines to move forward. The new Delta is now the world's largest airline and it operates in an anti-trust immunized global alliance with Air France/KLM, Europe's largest airline. Continental's and United's applications provide for a marketing alliance that allows participating airlines additional network reach without the integration, labor and community disruption that can occur with mergers.

I hope you will act quickly to approve the applications, as any delay will have a negative impact on the cities served and employees who work at these airlines. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Bill White".

Bill White  
Mayor





OFFICE OF THE MAYOR  
CITY OF HOUSTON  
TEXAS

July 30, 2008

The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Secretary Peters,

This letter conveys my request as Mayor of Houston, Texas that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the Houston and Texas economies and approval of its proposed agreements will help ensure Continental's long term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and I support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via codesharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that my constituents will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

Continental's significant Latin American presence accessed via the airline's Houston hub will give Star Alliance customers more flight and destination choices in this global region that they lack today. The Star Alliance is lacking a strong partner in Latin America to compete against Oneworld's regional presence (American Airlines) and SkyTeam's presence (Delta) and Continental will fill this service gap.

Letter to Secretary Peters  
July 30, 2008  
Page 2

Specifically, I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill White". The signature is fluid and cursive, with the first name "Bill" and last name "White" clearly distinguishable.

Bill White  
Mayor

*Office Of The Mayor*

CITY OF ELIZABETH, NEW JERSEY

J. CHRISTIAN BOLLWAGE  
Mayor

July 30, 2008

CITY HALL  
50 WINFIELD SCOTT PLAZA  
ELIZABETH, NEW JERSEY 07201-2482TEL. 908-820-4170  
FAX 908-820-0130The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C., 20590

Dear Secretary Peters,

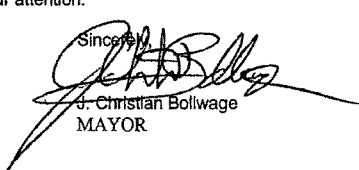
This letter conveys my request as Mayor of Elizabeth, New Jersey that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the New Jersey/New York area economies and approval of its proposed agreements will help ensure Continental's long-term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and I support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via code-sharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that my constituents will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

As the only U.S. carrier operating a hub in the New Jersey/New York region with extensive international and domestic service, Continental will fill a void in the Star Alliance's network. Continental's presence in the Star Alliance will also balance the region's alliance make up with SkyTeam (via Delta) and oneworld (via American) at New York JFK and Star via Continental's hub at Newark Liberty.

Specifically, I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines. Thank you for your attention.

Sincerely,

  
J. Christian Bollwage  
MAYOR



August 1, 2008

The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Secretary Peters:

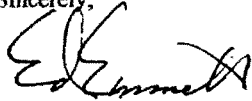
This letter conveys my request as County Judge of Harris County, Texas that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the Harris County and Texas economies and approval of its proposed agreements will help ensure Continental's long-term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and I support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa, and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via code-sharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that my constituents will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

Continental's significant Latin American presence accessed via the airline's Houston hub will give Star Alliance customers flight and destination choices in this global region that they lack today. The Star Alliance is lacking a strong partner in Latin America to compete against oneworld's regional presence (American Airlines) and SkyTeam's presence (Delta) and Continental will fill this service gap.

Specifically, I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines. Thank you for your attention

Sincerely,

A handwritten signature in black ink, appearing to read 'Ed Emmett', with a stylized flourish at the end.

Ed Emmett  
County Judge

EME/kc

cc: Nene Foxhall, Continental Airlines



■ 201 California Street, Suite 1400  
San Francisco, California 94111  
T: (415) 391-6600 F: (415) 391-6400  
www.bayareacouncil.org

■ EXECUTIVE COMMITTEE

Chairman 2007-2009  
LENNY MENDONÇA  
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President  
San Francisco Giants  
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President & CEO  
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PAULA E. DOWNEY  
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Regional Managing Partner  
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ANDREW G. GIACOMINI  
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Chairman & CEO  
Kaiser Foundation Health Plan, Inc.  
DAVID A. HOYT  
Senior Executive Vice President  
Wholesale Banking  
Wells Fargo & Company  
TIMOTHY E. KAHN  
President & CEO  
Dreyfus Global Inc. Group  
DONALD KNAUSS  
Chairman & CEO  
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RICHARD KRAMLICH  
General Partner/Co-Founder  
New Thought Associates  
JANET LAMKIN  
California State President  
Bank of America  
JIM LEVINE  
Managing Partner  
Mortenson Worldwide LLC  
PHILLIP L. LURCHIE, JR.  
Managing Director  
Aon Risk Services  
DUNCAN L. MATTESON  
Chairman  
The Matheson Companies  
NANCY McPADDEN  
Senior Vice President, Public Affairs  
Pacific Gas and Electric Company  
KENNETH MONTERLY  
President, AT&T California  
AT&T  
ALEXANDER R. MERRIAN  
President & CEO  
Sunset Development Company  
PETER J. ROBERTSON  
Vice Chairman of the Board  
Chevron Corporation  
JOSEPH W. SAUNDERS  
Chairman & CEO  
Vias Inc.  
L. STEPHEN SMITH  
Chairman & CEO  
The PMI Group, Inc.  
MASAARI TANAKA  
President & CEO  
Union Bank of California  
KENNETH WILCOX  
President & CEO  
Silicon Valley Bank Financial Group  
JANET L. YELLEN  
President & CEO  
Federal Reserve Bank of San Francisco  
in Orlan  
JIM WUNDERMAN  
President & CEO  
Bay Area Council

Founded in 1945, the Bay Area Council  
is a business-sponsored regional public  
policy organization that promotes  
economic prosperity and quality of life  
in the Bay Area.

February 12, 2009

The Honorable Raymond H. LaHood  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Dear Secretary LaHood:

On behalf of the business members of the Bay Area Council, I am writing to ask that you immediately approve the application before the U.S. Department of Transportation (USDOT) to allow Continental Airlines to join an alliance with United Airlines and other Star Alliance carriers and to extend antitrust immunity for greater international cooperation. As you know, in November 2008, the Department declared the record with regard to this application substantially complete and the applicants are now awaiting a decision.

United is a major employer and a vital part of the Bay Area and California economies. More importantly, the domestic and international air service that United provides is a major asset for the Bay Area, supporting and strengthening this region's valuable economic and cultural connections to other powerful regions around the globe. Against the backdrop of the global economic crisis, airlines must make fundamental changes to ensure a sustainable structure. Our airlines need to pursue all opportunities to allow them and the communities they serve to stay competitive in an increasingly global marketplace. Approval of this application would allow Continental and United to compete more effectively with other international alliances and to expand price and service options to the Bay Area's businesses, visitors, and residents.

The authority that the present application seeks is consistent with USDOT policy and past grants of immunity. USDOT has consistently supported international alliances that enhance consumer welfare and competition by permitting carriers to expand their networks and increase efficiency to otherwise-unattainable levels. Your leadership in this matter will ensure that the benefits of this application to consumers, competition and airline employees are not delayed because of government inaction.

Thank you for your attention to this important matter; the Bay Area Council urges you to approve the pending application without delay.

Regards,

Jim Wunderman  
President and CEO



July 31, 2008

The Honorable Mary Peters  
 Secretary  
 United States Department of Transportation  
 1200 New Jersey Avenue, SE  
 Washington, D.C. 20590

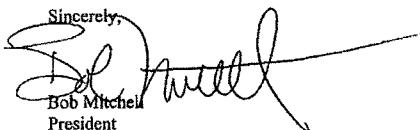
Dear Secretary Peters:

This letter conveys my request as President of the Bay Area Houston Economic Partnership that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the Houston economy and approval of its proposed agreements will help ensure Continental's long-term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and I support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via code-sharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that Houston's business interests and traveling public will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

Continental's significant Latin American presence accessed via the airline's Houston hub will give Star Alliance customers flight and destination choices in this global region that they lack today. The Star Alliance is lacking a strong partner in Latin America to compete against oneworld's regional presence (American Airlines) and SkyTeam's presence (Delta) and Continental will fill this service gap.

Specifically, I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance and to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines. Thank you for your attention.

Sincerely,  
  
 Bob Mitchell  
 President



Commerce and Industry Association of New Jersey

South 61 Paramus Road, Mack-Cali Centre IV, Paramus, New Jersey 07652  
201-368-2100 Fax 201-368-3438 www.cianj.org

July 29, 2008

The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Secretary Peters,

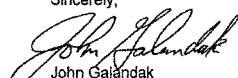
This letter conveys my request as president of Commerce and Industry Association of New Jersey that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the New Jersey/New York area economies and approval of its proposed agreements will help ensure Continental's long-term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and I support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via code-sharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that New Jersey's and New York's business interests and traveling public will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

As the only U.S. carrier operating a hub in the New Jersey/New York region with extensive international and domestic service, Continental will fill a void in the Star Alliance's network. Continental's presence in the Star Alliance will also balance the region's alliance make-up with SkyTeam (via Delta) and oneworld (via American) at New York JFK and Star via Continental's hub at Newark Liberty.

Specifically, I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines.

Sincerely,



John Galandak  
President

---

*New Jersey's business advocate for over 78 years.*



GREATER CLEVELAND  
partnership



July 30, 2008

The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C.  
20590

Dear Secretary Peters,

This letter conveys my request as President and CEO of the Greater Cleveland Partnership in Ohio that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the Ohio economy and approval of its proposed agreements will help ensure Continental's long-term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and I support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging; joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via code-sharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that Cleveland's business interests and traveling public will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

Continental's Cleveland hub today provides a regional competitive balance to Delta and Northwest, which operate hubs directly south and north of Cleveland in Cincinnati and Detroit, respectively. Continental's shift to the Star Alliance will help give this region a competitive alliance balance, as well.

Specifically, I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines. Thank you for your attention.

Sincerely,

Joseph D. Roman  
President & CEO



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Houston Northwest Chamber of  
Commerce

**Dave Walden**  
Continental Airlines

**Claudia Williamson**  
Lockwood, Andrews  
& Newnam, Inc.

January 28, 2009

The Honorable Ray LaHood  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

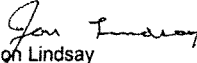
Dear Secretary LaHood,

First, congratulations on your appointment as Secretary. I know you must be busy with the many duties of this new role, however, I am seeking your attention today on an urgent matter: the applications of Continental Airlines and United Airlines to enter into an alliance relationship with one another and cooperate along with other Star alliance airlines. I attach a copy of a letter I sent previously to Secretary Peters, which conveys my strong support for DOT approval of the applications.

The economic vitality of Continental is critical to the Houston region, home of its largest hub and its corporate headquarters. Any delay in approval of the aforementioned applications will have significant and negative impacts on the competitive landscape in the airline industry – an intolerable situation in this economic environment; and one Houston and the State of Texas can ill afford. With the economy in a recession, Continental – which has already given notice to exit its existing SkyTeam alliance – could be placed at a severe competitive disadvantage without an alliance.

I hope you will act quickly to push for approval of Continental's and United's applications, as any delay will have a negative impact on the cities served and employees who work at these airlines. Thank you for your consideration.

Best regards,

  
Jon Lindsay  
President

16825 Northchase Drive, Suite 160, Houston, Texas 77060  
Phone: 281-875-0660, Fax: 281-875-0663  
[www.north-houston.com](http://www.north-houston.com)



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**Ray Laughter**  
Lone Star College System

**Renee' Leach**  
Hewlett-Packard Company

**David Millikan, PE**  
Wilbur Smith Associates

**Alan Potok, PE**  
TCB

**Eric Potts**  
Houston Airport System

**Neal Rackleff**  
Locke Lord Bissell & Liddell LLP

**Neil Thomas**  
Fulbright & Jaworski, L.L.P.

**Barbara Thomason**  
Houston Northwest Chamber of Commerce

**Dave Walden**  
Continental Airlines

**Claudia Williamson**  
Lockwood, Andrews  
& Newnam, Inc.

**Nick Wolda**  
The Woodlands Township

July 30, 2008

The Honorable Mary Peters  
Secretary, United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Secretary Peters,

This letter conveys my request as President of the North Houston Association that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the Houston economy and approval of its proposed agreements will help ensure Continental's long-term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and I support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via codesharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that Houston's business interests and traveling public will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

Continental's significant Latin American presence accessed via the airline's Houston hub will give Star Alliance customers flight and destination choices in this global region that they lack today. The Star Alliance is lacking a strong partner in Latin America to compete against oneworld's regional presence (American Airlines) and SkyTeam's presence (Delta) and Continental will fill this service gap.

Specifically, I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines. Thank you for your attention.

Sincerely,

Jon Lindsay  
President

16825 Northchase Drive, Suite 160, Houston, Texas 77060  
Phone: 281-875-0660, Fax: 281-875-0663  
[www.north-houston.com](http://www.north-houston.com)



August 4, 2008

The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Re: Continental's Application for Alliance Relationship

Dear Secretary Peters:

As President and CEO of the Greater Houston Partnership, I request that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United Airlines and with other members of the Star Alliance. Continental is a vital part of the Houston and Texas economies, and approval of its proposed agreements will help ensure Continental's long-term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces, and I support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental's proposal allows them to become a more global competitor and achieve additional network reach without merging – joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via code-sharing, frequent flyer and airport lounge reciprocity with United in the U.S. These new relationships will mean that Houston's and Texas' business interests and traveling public will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

Continental's significant Latin American presence accessed via the airline's Houston hub will give Star Alliance customers flight and destination choices in this global region that they lack today. The Star Alliance is lacking a strong partner in Latin America to compete against oneworld's regional presence (American Airlines) and SkyTeam's presence (Delta), and Continental will fill this service gap.

Greater Houston Partnership  
houston.org


1200 Smith, Suite 700 | Houston, TX 77002

Austin | Brazoria | Chambers | Fort Bend | Galveston | Harris | Liberty | Montgomery | San Jacinto | Waller

The Honorable Mary Peters  
August 4, 2008  
Re: Continental's Application for Alliance Relationship  
Page 2

Specifically, I ask that you approve Continental's application to participate in anti-trust immunity (previously granted to nine other carriers in the Alliance) to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines.

Onward,

A handwritten signature in black ink, appearing to read "Jeff Moseley". The signature is fluid and cursive, with the first name "Jeff" and last name "Moseley" clearly distinguishable.

Jeff Moseley

cc: Larry Kellner, Chairman and CEO, Continental Airlines  
Nene Foxhall, Sr. Vice President, International and State Affairs, Continental Airlines  
Dan Wolterman, Chairman, Greater Houston Partnership; President and CEO, Memorial Hermann  
Greater Houston Partnership Board of Directors

*P.S. The Greater Houston Partnership is the primary advocate for the Houston region's business community. We represent the 10-county Houston region's business interests to promote the growth of high-paying jobs, international trade and capital investment. Partnership Members include representatives of small and mid-sized businesses and Fortune 500 companies. The Partnership's board of directors oversees corporations that directly account for one in every 12 of the Houston metropolitan area's more than 2.5 million jobs. These corporations represent annual sales and receipts that, when combined, exceed \$1.9 trillion.*

New Jersey Business &amp; Industry Association



August 4, 2008

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Health & Legal Affairs

The Honorable Mary Peters  
Secretary - United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Secretary Peters:

On behalf of the 23,000 member companies of the New Jersey Business & Industry Association, I am writing to ask that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the New Jersey/New York area economies and approval of its proposed agreements will help ensure Continental's long-term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and I support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via code-sharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that New Jersey's business interests and traveling public will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

As the only U.S. carrier operating a hub in the New Jersey/New York region with extensive international and domestic service, Continental will fill a void in the Star Alliance's network. Continental's presence in the Star Alliance will also balance the region's alliance make-up with SkyTeam (via Delta) and oneworld (via American) at New York JFK and Star via Continental's hub at Newark Liberty.

Specifically, I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines. Thank you for your attention.

Sincerely,

Sara Bluhm

Assistant Vice President, Energy & Federal Affairs

REPRESENTING 23,000 NEW JERSEY BUSINESSES

102 West State Street, Trenton, NJ 08608-1199 • 609-393-7707 • [www.njbja.org](http://www.njbja.org)



August 4, 2008

The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Secretary Peters,

On behalf of the members of the Newark Regional Business Partnership, I ask that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the New Jersey/New York area economies and approval of its proposed agreements will help ensure Continental's, as well as the Newark region's, long-term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and I support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via code-sharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that New Jersey's and New York's business interests and traveling public will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

As the only U.S. carrier operating a hub in the New Jersey/New York region with extensive international and domestic service, Continental will fill a void in the Star Alliance's network. Continental's presence in the Star Alliance will also balance the region's alliance make-up with SkyTeam (via Delta) and oneworld (via American) at New York JFK and Star via Continental's hub at Newark Liberty.

I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines. Thank you for your attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Chip Hallock".

Chip Hallock  
President & CEO



August 5, 2008

The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Secretary Peters,

This letter conveys my request as president of Positively Cleveland in Ohio that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the Ohio economy and approval of its proposed agreements will help ensure Continental's long-term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and I support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via code-sharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that Cleveland's business interests and traveling public will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

Continental's Cleveland hub today provides a regional competitive balance to Delta and Northwest, both of which operate hubs directly south and north of Cleveland in Cincinnati and Detroit. Continental's shift to the Star Alliance will help give this region a competitive alliance balance, as well.

Specifically, I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines. Many thanks for your attention.

Sincerely,

*Dennis J. Roche*  
Dennis J. Roche  
President





New Jersey  
**ALLIANCE for ACTION INC.**

PHILIP K. BEACHEM  
*President*

P.O. Box 6438 • Raritan Plaza II • Edison, New Jersey 08818-6438  
 (732) 225-1180 • FAX (732) 225-4694  
[www.allianceforaction.com](http://www.allianceforaction.com)

GERALD T. KEENAN  
*Executive Vice President*  
 CLIFFORD HEATH  
*Senior Vice President*

July 30, 2008

The Honorable Mary Peters  
 Secretary  
 United States Department of Transportation  
 1200 New Jersey Avenue, SE  
 Washington, D.C.  
 20590

Dear Secretary Peters,

This letter conveys my request as president of the New Jersey Alliance for Action that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the New Jersey/New York area economy and approval of its proposed agreements will help ensure Continental's long-term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and I support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via code-sharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that New Jersey's and New York's business interests and traveling public will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

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Specifically, I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines. Thank you for your attention.

Sincerely,



Philip K. Beacham  
 President

PKB:las

COUNTY ALLIANCES

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## Central Houston

Central Houston, Inc.  
909 Fannin, Suite 1650  
Houston, Texas 77010  
(713) 650-1470  
FAX (713) 650-1484

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Secretary  
Mary B. Gibbs

Treasurer  
Michael O. Walker

August 1, 2008



The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Secretary Peters:

This letter conveys my request as President of Central Houston, Inc. that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the Houston economy and approval of its proposed agreements will help ensure Continental's long-term competitiveness.

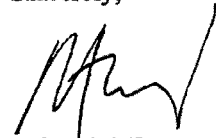
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Continental's significant Latin American presence accessed via the airline's Houston hub will give Star Alliance customers flight and destination choices in this global region that they lack today. The Star Alliance is lacking a strong partner in Latin America to compete against oneworld's regional presence (American Airlines) and SkyTeam's presence (Delta). Continental will fill this service gap.

**The Honorable Mary Peters**  
August 1, 2008  
Page 2

Specifically, I support your approval of Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines. Thank you for your attention to this matter of importance to our community.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Eury', with a stylized flourish at the end.

Robert M. Eury  
President



The Convention & Visitors Bureau  
100<sup>TH</sup> ANNIVERSARY

February 6, 2009

The Honorable Raymond H. LaHood  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Dear Secretary LaHood:

We are writing to ask that you immediately approve the application before the U.S. Department of Transportation (USDOT) to allow Continental Airlines to join an alliance with United Airlines and other Star Alliance carriers and to extend antitrust immunity for greater international cooperation. In November, the Department declared the record with regard to this application substantially complete and the applicants are now awaiting a decision.

United is a major employer and a vital part of the Denver and Colorado economies and approval of this proposed agreement will help enhance the airline industry's long term competitiveness. Against the backdrop of the global economic crisis, airlines must make fundamental changes to ensure a sustainable structure. Airlines need to pursue all opportunities to allow them and the communities they serve to stay competitive in an increasingly global marketplace. Approval of this application would allow Continental and United to compete more effectively with other international alliances and expand price and service options to Colorado's businesses, visitors, and residents.

We believe that the authority the present application seeks is fully consistent with USDOT policy and past grants of immunity. USDOT has consistently supported international alliances that enhance consumer welfare and competition by permitting carriers to expand their networks and increase efficiency to otherwise-unattainable levels. Your leadership in this matter will ensure that the benefits of this application to consumers, competition and airline employees are not delayed because of government inaction.

We look to your leadership to approve the pending application without delay.

Sincerely,

Richard W. Scharf  
President & CEO  
VISIT DENVER, the Convention & Visitors Bureau



1555 California Street, Suite 300, Denver, CO 80202-4264 | Main: 303.892.1112 | Fax: 303.892.1636



July 30, 2008

The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C.  
20590

Dear Secretary Peters,

This letter conveys my request as President of the Humble Area Chamber of Commerce that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the Houston economy and approval of its proposed agreements will help ensure Continental's long-term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and I support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via code-sharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that Houston's business interests and traveling public will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

Continental's significant Latin American presence accessed via the airline's Houston hub will give Star Alliance customers flight and destination choices in this global region that they lack today. The Star Alliance is lacking a strong partner in Latin America to compete against oneworld's regional presence (American Airlines) and SkyTeam's presence (Delta) and Continental will fill this service gap.

Specifically, I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines. Thank you for your attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mike Byers'.

Mike Byers  
President, Humble Area Chamber of Commerce



July 30, 2008

The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Secretary Peters:

This letter conveys my request as president of the Gateway Regional Chamber of Commerce in New Jersey that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the New Jersey/New York area economies and approval of its proposed agreements will help ensure Continental's long-term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and I support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via code-sharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that New Jersey's and New York's business interests and traveling public will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

As the only U.S. carrier operating a hub in the New Jersey/New York region with extensive international and domestic service, Continental will fill a void in the Star Alliance's network. Continental's presence in the Star Alliance will also balance the region's alliance make-up with SkyTeam (via Delta) and oneworld (via American) at New York JFK and Star via Continental's hub at Newark Liberty.

Specifically, I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines. Thank you for your attention.

Sincerely,

James R. Coyle  
President

**GATEWAY REGIONAL CHAMBER OF COMMERCE**  
135 Jefferson Avenue, Box 300, Elizabeth, New Jersey 07207  
908-352-0900 • Fax 908-352-0865

July 30, 2008

The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Secretary Peters,

This letter conveys my request as Executive Director of the **Greater Elizabeth Chamber of Commerce** in New Jersey that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance.

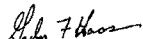
Continental is a vital part of the New Jersey/New York area economies and approval of its proposed agreements will help ensure Continental's long-term competitiveness.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces. Therefore, I support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to extend its network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via code-sharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that New Jersey's and New York's business interests and traveling public will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

As the only U.S. carrier operating a hub in the New Jersey/New York region with extensive international and domestic service, Continental will fill a void in the Star Alliance's network. Continental's presence in the Star Alliance will also balance the region's alliance make-up with SkyTeam (via Delta) and oneworld (via American) at New York JFK and Star via Continental's hub at Newark Liberty.

Specifically, I ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines. Thank you for your attention.

Sincerely,



Gordon F. Haas  
Executive Director  
Greater Elizabeth Chamber of Commerce



456 North Broad Street  
Elizabeth, NJ 07208  
Tel. 908 355-7600  
Fax 908 436-2054  
Email: [gecc@juno.com](mailto:gecc@juno.com)  
Web: [elizabethchamber.com](http://elizabethchamber.com)

Executive Director

Gordon F. Haas

Executive Committee

Marcy Metz, *President*  
Joseph Keenan, Jr., *Vice President*  
Denise Palazzo, *Vice President*  
William Holzapfel, *Secretary*  
Larry Wolgin, *Treasurer*  
Charles Mancuso, *Past President*

Board Members

Angel Cabrera  
Michael DeSanto  
Daniel Devaney  
Merritt Duffy  
Bo Farkas  
Adam Farrah  
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Carmine Liotta  
Albert Mauti, Jr.  
Steven Pearce, Sr.  
Theresa Pereira  
Tony Pugliese  
Therese Riehle  
Armando Rodriguez



## HOUSTON HISPANIC CHAMBER OF COMMERCE

*Chairman of the Board*  
GEORGE Y. GONZÁLEZ

*President & CEO*  
DR. LAURA G. MURILLO

*Immediate Past Chair*  
DR. EDGARDO E. COLÓN

*Chairman - Elect*  
IRMA DIAZ-GONZÁLEZ

*Treasurer*  
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*Secretary*  
SONNY FLORES

*Directors*  
ANA ABRAHAMS  
CARLOS ALVAREZ  
CARLOS de ALDECOA BUENO  
M. HELEN CAVAZOS  
JOHN M. ESQUIVEL  
BEATRICE GARZA  
ROSARIO GUZMÁN  
CARLOS J. LÓPEZ  
JUAN MITTERHOFER  
JACOB MONTY  
ROSANNA MORENO  
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GRACIE SAENZ  
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LEE VELA  
HECTOR VILLAREAL

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LUPE FRAGA  
MANUEL D. LEAL  
ALEX LÓPEZ NEGRETE  
J. ADÁN TREVINO  
MASSEY VILLARREAL

July 31, 2008

The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C.  
20590

Dear Secretary Peters,

This letter conveys our request on behalf of the Houston Hispanic Chamber of Commerce that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance.

In accordance with our mission, the Houston Hispanic Chamber of Commerce is the leading regional advocate for the economic and civic interests of the Hispanic business community. Our Chamber has over 2000 members, ranging in size from incubator companies to multi-national corporations. Continental has been a strong supporter of our Chamber and is a vital part of the Houston economy and approval of its proposed agreements will help ensure Continental's long-term competitiveness. The strength of a corporation like Continental is vital to many businesses in the greater Houston region but much more importantly to businesses that travel into Latin America and the Caribbean, of which many of our members are affected.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and we support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via code-sharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that Houston's business interests, including our Chamber members, and traveling public will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

As stated before, Continental's significant Latin American presence accessed via the airline's Houston hub will give Star Alliance customers flight and destination choices in this global region that they lack today. The Star Alliance is lacking a strong partner in Latin America to compete against One



world's regional presence (American Airlines) and SkyTeam's presence (Delta) and Continental will fill this service gap.

Specifically, we ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines. Thank you for your attention.

Sincerely,

A handwritten signature in black ink, reading "Laura Murillo". The signature is fluid and cursive, with the first name "Laura" being more prominent than the last name "Murillo".

Dr. Laura Murillo,  
President & CEO  
Houston Hispanic Chamber of Commerce

Cc: George Y. González, Chairman of the Board  
Graciela Saenz, Co-Chair, Advocacy Committee  
Dr. Adolfo Santos, Co-Chair, Advocacy Committee

July 31, 2008

The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C.  
20590

Dear Secretary Peters,

The purpose of this letter is to respectfully request on behalf of the Board of Directors of the Houston Northwest Chamber of Commerce that you support Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and with other members of the Star Alliance. Continental is a vital part of the Houston economy and approval of its proposed agreements will help ensure Continental's long-term competitiveness. This is a high priority for our Chamber of Commerce.

Fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces and we support Continental's decision to remain an independent airline and to continue providing service as a member of the Star Alliance. Continental proposes a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via codesharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that Houston's business interests and the traveling public will have access to more destinations worldwide, a greater inventory of seats, more route possibilities and more price options.

Continental's significant Latin American presence accessed via the airline's Houston hub will give Star Alliance customers flight and destination choices in this global region that they lack today. The Star Alliance is lacking a strong partner in Latin America to compete against oneworld's regional presence (American Airlines) and SkyTeam's presence (Delta) and Continental will fill this service gap.

Specifically, we ask that you approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines. Thank you for your attention.

Sincerely,

Barbara Thomason  
President

cc: Congressman Ted Poe, TX District 2

August 1, 2008

The Honorable Mary Peters  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, D.C.  
20590



230 EAST TOWN STREET  
P.O. BOX 15159  
COLUMBUS, OH 43215-0159  
614.228.4301 800.622.1093  
614.228.6403 FAX  
www.ohiochamber.com  
occ@ohiochamber.com

Dear Secretary Peters,

On behalf of the Ohio Chamber of Commerce and our over 4,000 statewide business members, we are writing in support of Continental Airlines' application to the Department of Transportation to enter into an alliance relationship with United and other members of the Star Alliance. Continental has been an integral part of the Ohio economy for many years and approval of these proposed agreements will help ensure Continental's long-term competitiveness and strengthen their presence in Ohio.

As I am sure you are aware, fundamental industry change is necessary due to the unprecedented financial crisis the airline industry faces, and we support Continental's decision to remain an independent airline and to continue providing its award-winning service as a member of the Star Alliance. What Continental wants is a way to become a more global competitor and to achieve additional network reach without merging: joining the Star Alliance's anti-trust immunity; seeking enhanced cooperation with Air Canada, Lufthansa and United with a trans-Atlantic joint venture; and offering the domestic consumer wide-ranging benefits via code sharing, frequent flyer and airport lounge reciprocity with United Airlines in the U.S. These new relationships will mean that Cleveland's businesses and traveling public will have better access to more destinations worldwide, a greater inventory of seats, more route possibilities and we believe even more price options.

Today Continental's Cleveland hub provides a regional competitive balance and a shift to the Star Alliance will help maintain this critical balance.

We urge you to approve Continental's application to participate in anti-trust immunity previously granted to nine other carriers in the Alliance; to develop a competitive joint venture with Air Canada, United and Lufthansa and to cooperate in the domestic market with United Airlines. Thank you for your attention to this critical matter.

Sincerely,

Andrew E. Doehrel  
President & CEO  
Ohio Chamber of Commerce

CHAIRMAN  
DALE W. FALLAT  
Vice President, Corporate Services  
The Andersons, Inc.  
Maumee

TREASURER  
DAVID L. SCHEFFLER  
Partner  
Pante & Moran, PLLC  
Columbus

PRESIDENT & CEO  
ANDREW E. DOEHREL  
President & Chief Executive Officer  
Ohio Chamber of Commerce  
Columbus



SAN FRANCISCO  
CHAMBER OF COMMERCE *Where smart business starts.*

Steven B. Falk  
President & CEO

January 30, 2009

The Honorable Raymond H. LaHood  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Dear Secretary LaHood:

We are writing to ask that you approve the application before the U.S. Department of Transportation (USDOT) to allow Continental Airlines to join an alliance with United Airlines and other Star Alliance carriers and to extend antitrust immunity for greater international cooperation. In November, the Department declared the record with regard to this application substantially complete and the applicants are now awaiting a decision.

United is a major employer and a vital part of the San Francisco and California economy and approval of this proposed agreement will help enhance the airline industry's long term competitiveness. Against the backdrop of the global economic crisis, airlines must make fundamental changes to ensure a sustainable structure. Our airlines need to pursue all opportunities to allow them and the communities they serve to stay competitive in an increasingly global marketplace. Approval of this application would allow Continental and United to compete more effectively with other international alliances and expand price and service options to San Francisco's businesses, visitors, and residents.

We believe that the authority the present application seeks is fully consistent with USDOT policy and past grants of immunity. USDOT has consistently supported international alliances that enhance consumer welfare and competition by permitting carriers to expand their networks and increase efficiency to otherwise-unattainable levels. Your leadership in this matter will ensure that the benefits of this application to consumers, competition and airline employees are not delayed because of government inaction.

Sincerely,

Steve Falk



February 3, 2009

The Honorable Raymond H. LaHood  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Dear Secretary LaHood:

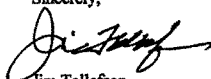
We are writing to ask that you immediately approve the application before the U.S. Department of Transportation (USDOT) to allow Continental Airlines to join an alliance with United Airlines and other Star Alliance carriers and to extend antitrust immunity for greater international cooperation. In November, the Department declared the record with regard to this application substantially complete and the applicants are now awaiting a decision.

United is a major employer and a vital part of the Hawaii economy and approval of this proposed agreement will help enhance the airline industry's long term competitiveness. Against the backdrop of the global economic crisis, airlines must make fundamental changes to ensure a sustainable structure. Our airlines need to pursue all opportunities to allow them and the communities they serve to stay competitive in an increasingly global marketplace. Approval of this application would allow Continental and United to compete more effectively with other international alliances and expand price and service options to the businesses, visitors, and residents of Hawaii.

We believe that the authority the present application seeks is fully consistent with USDOT policy and past grants of immunity. USDOT has consistently supported international alliances that enhance consumer welfare and competition by permitting carriers to expand their networks and increase efficiency to otherwise-unattainable levels. Your leadership in this matter will ensure that the benefits of this application to consumers, competition and airline employees are not delayed because of government inaction.

We look to your leadership to approve the pending application without delay.

Sincerely,



Jim Tollefson  
President & CEO



FEB-04-2009 WED 02:25 PM

FAX NO.

P. 02/03



February 4, 2009

The Honorable Raymond H. LaHood  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

CAPITOL CITY OFFICE  
215 E. Adams St.  
Springfield, IL 62701  
www.217.822.5512  
fax 217.822.5818  
www.ichamboc.org

Dear Secretary LaHood:

We are writing to ask that you immediately approve the application before the U.S. Department of Transportation (USDOT) to allow Continental Airlines to join an alliance with United Airlines and other Star Alliance carriers and to extend antitrust immunity for greater international cooperation. In November, the Department declared the record with regard to this application substantially complete and the applicants are now awaiting a decision.

United is a major employer and a vital part of the Chicago and Illinois economies and approval of this proposed agreement will help enhance the airline industry's long term competitiveness. Against the backdrop of the global economic crisis, airlines need to pursue all opportunities to allow them and the communities they serve to stay competitive in an increasingly global marketplace. Approval of this application would allow Continental and United to compete more effectively with other international alliances and expand price and service options to Chicago's businesses, visitors, and residents.

We believe that the authority the present application seeks is fully consistent with USDOT policy and past grants of immunity. USDOT has consistently supported international alliances that enhance consumer welfare and competition by permitting carriers to expand their networks and increase efficiency to otherwise-unattainable levels. Your leadership in this matter will ensure that the benefits of this application to consumers, competition and airline employees are not delayed because of government inaction.

We look to your leadership to approve the pending application without delay.

Sincerely,

Todd C. Maisch  
Vice President of Government Affairs

## CALIFORNIA CHAMBER of COMMERCE

ALLAN ZAREMBERG  
President and Chief Executive Officer



February 4, 2009

The Honorable Raymond H. LaHood  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Dear Secretary LaHood:

On behalf of the California Chamber of Commerce, I am writing in support of the application pending before the U.S. Department of Transportation to allow Continental Airlines to join with United Airlines and other Star Alliance carriers to extend antitrust immunity for greater international cooperation. It is my understanding that the Department declared this application substantially complete in November of last year.

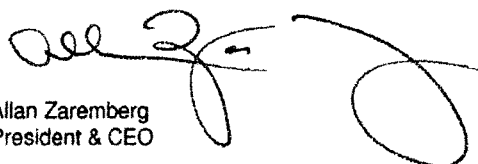
United is a major employer and a vital part of the California economy. Approval of this proposed agreement will help enhance the airline industry's long term competitiveness. Against the backdrop of the global economic crisis, airlines must make fundamental changes to ensure a sustainable structure. Our airlines need to pursue all opportunities to allow them and the communities they serve to stay competitive in an increasingly global marketplace. Approval of this application would allow Continental and United to compete more effectively with other international alliances and expand price and service options to California's businesses, visitors, and residents.

As you may know, the California Chamber is a broad-based nonprofit membership organization through which business, industry and agriculture join forces to work toward positive action on key issues affect California's economic climate.

The California Chamber supports expansion of international trade and investment, fair and equitable market access for California products abroad, and elimination of disincentives that impede the international competitiveness of California business.

The US Department of Transportation consistently has supported international alliances that enhance consumer welfare and competition by permitting carriers to expand their networks and increase efficiency to otherwise-unattainable levels. Your leadership in this matter will ensure that the benefits of this application to consumers, competition and airline employees are not delayed. Thank you for your consideration.

Sincerely,

  
Allan Zaremborg  
President & CEO



Los Angeles Area  
Chamber of Commerce

January 30, 2009

The Honorable Raymond H. LaHood  
Secretary  
United States Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Dear Secretary LaHood:

We are writing to ask that you immediately approve the application before the U.S. Department of Transportation (USDOT) to allow Continental Airlines to join an alliance with United Airlines and other Star Alliance carriers and to extend antitrust immunity for greater international cooperation. In November, the Department declared the record with regard to this application substantially complete and the applicants are now awaiting a decision.

United is a major employer and a vital part of the Los Angeles and California economies and approval of this proposed agreement will help enhance the airline industry's long term competitiveness. Against the backdrop of the global economic crisis, airlines must make fundamental changes to ensure a sustainable structure. Our airlines need to pursue all opportunities to allow them and the communities they serve to stay competitive in an increasingly global marketplace. Approval of this application would allow Continental and United to compete more effectively with other international alliances and expand price and service options to the businesses, visitors, and residents of Los Angeles.

We believe that the authority the present application seeks is fully consistent with USDOT policy and past grants of immunity. USDOT has consistently supported international alliances that enhance consumer welfare and competition by permitting carriers to expand their networks and increase efficiency to otherwise-unattainable levels. Your leadership in this matter will ensure that the benefits of this application to consumers, competition and airline employees are not delayed because of government inaction.

We look to your leadership to approve the pending application without delay.

Sincerely,

A handwritten signature in dark ink, reading "Gary Toebben". The signature is written in a cursive, flowing style with a prominent "G" and "T".

Gary Toebben  
President & CEO





The Honorable Raymond H. LaHood  
 Secretary  
 United States Department of Transportation  
 1200 New Jersey Avenue, S.E.  
 Washington, D.C. 20590

Dear Secretary LaHood:

We are writing to ask that you immediately approve the application before the U.S. Department of Transportation (USDOT) to allow Continental Airlines to join an alliance with United Airlines and other Star Alliance carriers and to extend antitrust immunity for greater international cooperation. In November, the Department declared the record with regard to this application substantially complete and the applicants are now awaiting a decision.

United is a major employer and a vital part of the Chicago and Illinois economies and approval of this proposed agreement will help enhance the airline industry's long term competitiveness. Against the backdrop of the global economic crisis, airlines must make fundamental changes to ensure a sustainable structure. Our airlines need to pursue all opportunities to allow them and the communities they serve to stay competitive in an increasingly global marketplace. Approval of this application would allow Continental and United to compete more effectively with other international alliances and expand price and service options to Chicago's businesses, visitors, and residents.

We believe that the authority the present application seeks is fully consistent with USDOT policy and past grants of immunity. USDOT has consistently supported international alliances that enhance consumer welfare and competition by permitting carriers to expand their networks and increase efficiency to otherwise-unattainable levels. Your leadership in this matter will ensure that the benefits of this application to consumers, competition and airline employees are not delayed because of government inaction.

We look to your leadership to approve the pending application without delay.

Sincerely,

Gerald J. Roper  
 President and CEO

*Very Congratulatory*  
*We look forward to working with you to move our country forward!*



The Honorable Raymond H. LaHood  
 Secretary  
 United States Department of Transportation  
 1200 New Jersey Avenue, S.E.  
 Washington, D.C. 20590

February 9, 2009

Dear Secretary LaHood:

The Denver Metro Chamber of Commerce has been supporting transportation issues for more than 125 years. We were a key collaborator in the building, bonding and FAA approval of Denver International Airport, and we are committed to the success of the airport and the airlines which serve that incredible facility. We are requesting that the U.S. Department of Transportation (USDOT) allow Continental Airlines to partner with United Airlines and other Star Alliance carriers and extend existing antitrust immunity to these entities for greater international cooperation.

United employs approximately 4,700 Coloradans and is a vital part of the Colorado economy. The Chamber understands that against the backdrop of today's economic challenges, airlines must make changes that ensure a sustainable organizational structure. Furthermore, U.S. airlines need to pursue any opportunities afforded them to stay competitive in the global marketplace. Approval of this application would allow Continental and United to compete more effectively with other international alliances and expand price and service options to Colorado's businesses, visitors, and residents.

The authority the present application seeks is consistent with current USDOT policy and past grants of immunity. USDOT has consistently supported international alliances that enhance consumer welfare and competition by permitting carriers to expand their networks and increase efficiency to otherwise unattainable levels.

Your leadership and the approval of this application will insure that the benefits of this alliance are delivered to consumers, competition and airline employees.

A handwritten signature in black ink, appearing to read "Joseph B. Blake".

Joseph B. Blake  
 President and CEO  
 Denver Metro Chamber of Commerce

Affiliate



1445 Market Street, Denver, CO 80202 • 303-534-8500 • fax 303-534-3200 • [www.denverchamber.org](http://www.denverchamber.org)



The Honorable Raymond H. LaHood  
 Secretary  
 United States Department of Transportation  
 1200 New Jersey Avenue, S.E.  
 Washington, D.C. 20590

Dear Secretary LaHood:

United Airlines is a key employer in Colorado, and a critical driver of the continued success of Denver International Airport. Their economic contribution is approximately \$537,000,000, and their contributions to the community are many and varied. Insuring their ability to remain competitive in today's airline market is of vital importance to us.

We ask that you expeditiously approve the application before the U.S. Department of Transportation (USDOT) to allow Continental Airlines to partner with United Airlines and other Star Alliance carriers and extend existing antitrust immunity for greater international cooperation.

In today's global economy airlines need to pursue new innovations and opportunities that allow them and the communities they serve to stay competitive. Approval of this application would allow Continental and United to compete more effectively with other international alliances and expand price and service options to Colorado's businesses, visitors, and residents.

We believe that the authority the present application seeks is fully consistent with USDOT policy and past grants of immunity. USDOT has consistently supported international alliances that enhance consumer welfare and competition by permitting carriers to expand their networks and increase efficiency to otherwise-unattainable levels.

We look forward to your approval of the pending application.

Tom Clark  
 Executive vice president  
 Denver Metro Chamber of Commerce

1445 Market Street  
 Denver, CO 80202  
 T 303.620.8092  
 F 303.534.3200  
[info@metrodenver.org](mailto:info@metrodenver.org)  
[www.metrodenver.org](http://www.metrodenver.org)  
[www.metrodenverGIS.org](http://www.metrodenverGIS.org)





121 North Henry Street  
Alexandria, VA 22314-2903  
T: 703 739 9543 F: 703 739 9488  
arsa@arsa.org www.arsa.org

February 25, 2009

The Honorable Jerry Costello, M.C.  
Chairman  
House Subcommittee on Aviation  
2251 Rayburn House Office Building  
Washington, DC 20515

The Honorable Thomas Petri, M.C.  
Ranking Member  
House Subcommittee on Aviation  
2251 Rayburn House Office Building  
Washington, DC 20515

**Re: Submission to Record for Feb. 11, 2009 Hearing on FAA Reauthorization Act of 2009**

Dear Chairman Costello and Ranking Member Petri:

We are writing to address the significant impact upon the international aviation industry that will be levied by the "Federal Aviation Administration (FAA) Reauthorization Act of 2009" (H.R. 915).

Specifically, Section 303, "Inspection of Foreign Repair Stations", and Section 310 "Non-certificated Maintenance Providers", will undermine industry capabilities and threaten American commerce without providing any benefit to the traveling public.

ARSA believes it is important that the leadership of the committee and subcommittee understand the facts regarding repair station safety and security, while also recognizing that aviation is a worldwide industry and American businesses, as members in global commerce, cannot afford to be shunned from international competitiveness.

Of particular importance is the threat of retaliatory trade measures by foreign aviation bodies, specifically the European Aviation Safety Agency (EASA). While there are approximately 700 FAA-certificated repair stations outside the United States, there are close to 1,236 EASA-certificated repair stations in the United States. This overwhelming trade advantage held by U.S. companies will be jeopardized by attempts to restrict the use of foreign repair stations.

**Foreign repair stations are integral to the vitality of international aviation.**

Aviation is truly an international industry. From private and corporate travel, to transport of passengers and cargo, air transportation is pivotal to commerce in every corner of the globe.

As such, foreign repair stations are a necessary part of the international aviation system. Any effort to restrict the use or number of such facilities will lead to retaliatory

trade actions by other countries. Ultimately, U.S. aerospace manufacturers, air carriers and the flying public would be harmed.

The Chicago Convention of 1944 and International Civil Aviation Organization (ICAO) standards require that the State of Registry (i.e., the country in which an aircraft is registered) oversee the maintenance performed on that aircraft and related components, regardless of where the work is performed.<sup>1</sup> Consequently, a U.S. registered aircraft requiring maintenance anywhere in the world **must** have that work performed by an FAA-certificated maintenance provider. Indeed, a foreign applicant for a repair station certificate must also demonstrate to the FAA that its services are needed to perform work on articles subject to FAA jurisdiction.

Similarly, when an aircraft of foreign registry requires maintenance, only a repair station certificated or validated by the relevant NAA may perform the work. For example, only an EASA-certificated repair station may perform maintenance on an aircraft of French registry within the U.S.

However, not all repair stations look alike and their capabilities vary significantly. Some provide line maintenance – the routine, day-to-day work necessary to keep an airline's fleet operating safely. Some perform substantial maintenance, which includes more comprehensive inspection and repairs on airframes and overhauls of aircraft engines and major components. Others offer specialized services for their customers such as welding, heat treating, and coating on a variety of aircraft parts. However, the vast majority of repair stations perform maintenance on components. Component maintenance usually occurs off the aircraft, typically away from an airport in industrial parks and similar facilities.

Regardless of the location of the repair facility, the regulatory requirements are the same. Each item goes through a series of checks required by FAA regulation, before being placed on an aircraft.

**Section 303 undermines American competitiveness and will produce no demonstrable safety gains.**

Section 303 of the "FAA Reauthorization Act of 2009" mandates two provisions that will undermine the international aviation industry and incite retaliatory trade measures from foreign aviation bodies. Firstly, the section requires that the FAA inspect each part 145 repair station based in a foreign country twice annually. Secondly, the section requires drug and alcohol testing at all foreign repair station safety sensitive personnel.

**Twice Annual FAA Inspections**

The ultimate aim in the aviation industry is safety. This commitment neither begins nor ends on the shores of the United States. The current period of unrivaled safety in air transportation is testament to this fact.

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<sup>1</sup> See, ICAO Annex 8, Airworthiness, § 4.2.1(b).

FAA-certificated repair stations located overseas must meet the same or equivalent safety standards as domestic facilities. Unlike their domestic counterparts, however, foreign repair stations must renew their certificate with the FAA annually or, at the discretion of the FAA, biannually, following a safety inspection. This ensures that the FAA evaluates the housing, facilities, equipment, personnel, and data of each repair station located outside the United States at least once every two years.

Part 145 repair stations, both within the borders of the United States and abroad, are certainly familiar with, and welcome, recurring inspections. Government regulators, customers, other third-parties, and the repair station's own quality assurance personnel all conduct audits of repair station safety standards. Repair stations are, therefore, not adverse to the idea of multiple inspections; rather the method of inspection outlined in Section 303 creates major difficulties.

*Impact on the Bilateral Aviation Safety Agreement*

Section 303 requires that the inspections be completed by FAA personnel and not representatives of foreign civil aviation authorities. Put simply, this undermines the entire bilateral aviation safety agreement (BASA) process with the European Union and other nations. In addition, the FAA will not be provided the resources to complete such an endeavor and the agency's inability to inspect will become a punishment for the industry.

The BASA is a bilateral agreement aiming to facilitate the airworthiness certification of new and used products imported and exported from the participating countries. Bilateral agreements are not a "one size fits all" proposition; they must be tailored to the specific oversight systems and capabilities of the respective authorities. While the final structuring of the U.S./EU BASA has taken over a decade, the United States and certain European countries have operated under reciprocating maintenance agreements for over 35 years.

Under the BASA, the FAA is able to accept inspections of part 145 certificate holders in specific EASA countries undertaken by that body's representatives. In return, EASA is able to accept inspections of its approval holders in the United States by FAA representatives. The relationship that the BASA creates is pivotal to the sustained growth of the U.S. aviation maintenance sector. In addition to the reciprocating inspections, U.S.-based EASA approval holders also enjoy lower fees for initial approval and approval renewal.

EU representatives have clearly stated that the adoption of the language in Section 303 will force the abandonment of the BASA. The damage to American businesses by this decision will be severe. In addition to paying higher fees to gain EASA approval, U.S.-based EASA approval holders will be forced to pay for EASA representatives to travel and inspect facilities. Currently, an EASA part 145 approval holder pays roughly \$950 USD for an approval renewal. Without the BASA, an American business will be facing charges of well over \$30,000 USD for that same renewal.

The overwhelming majority of EASA part 145 approval holders in the United States are small businesses. A review of the FAA database shows that of the 1,236 U.S.-based EASA approved part 145 repairs stations, 997 (80.6%) employ less than 100 technicians; in fact, 852 (68.9%) of these repair stations employ less than 50 technicians. These businesses cannot readily absorb such a major financial burden; the increase of over 3000% in fees will force many to abandon the European market. The result is the cessation of the favorable balance of trade, the failure of American businesses to remain powerful in the international market, and lost jobs and income during a period of great economic strain.

In addition to the damage wrought upon American businesses, the twice annual FAA inspections proscribed in Section 303 simply are not achievable given FAA's resources.

Aviation safety does not begin and end with the FAA or any other regulatory body. Government inspectors will never be able to oversee each technician at every facility all the time. The industry has the ultimate obligation to ensure that the civil aviation system is safe. All evidence suggests that it is fulfilling that responsibility despite the FAA's limited oversight resources.

In reports published in 2003, 2005, and 2008, the Office of the Inspector General of the Department of Transportation (DOT IG) expressed concerns about the FAA's oversight of the contract maintenance industry stating that the agency's oversight is currently insufficient for the amount of work independent repair stations perform for airlines.<sup>2</sup> The FAA has responded to these findings by introducing a risk-based inspection program that identifies those repair stations doing the most work for airlines and monitoring their operations more closely. ARSA has continuously supported efforts to better utilize FAA resources to ensure the continued quality of contract maintenance here and abroad, and to demonstrate to policymakers and the public that our aviation system remains safe.

Thus, safety is not just the FAA's responsibility, but that of every aviation maintenance employee performing work on behalf of a certificated repair station, air carrier or other aviation business. It is the FAA's role to ensure that repair stations have the procedures in place to ensure the quality of the work performed and to ensure that procedures are followed. Indeed, FAA regulations treat repair stations as extensions of an air carrier's maintenance organization. This means that the maintenance provider, regardless of their location, must perform the work in accordance with the carrier's maintenance program and the applicable portions of its manual. It also requires the airlines to provide a level of oversight to make certain these standards are met.

This holds true whether the work is being performed at an FAA certificated facility in Florida or France.

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<sup>2</sup> See, Department of Transportation Office of Inspector General, Rep. No. AV-2003-047, *Review of Air Carriers' Use of Aircraft Repair Stations*, at 1 (July 8, 2003); Department of Transportation Office of Inspector General, Rep. No. AV-2005-062, *Safety Oversight of an Air Carrier Industry in Transition*, at 1 (June 3, 2005).

*Drug and Alcohol Testing*

Section 303 mandates drug and alcohol testing for all aviation maintenance workers if they work on articles subject to FAA jurisdiction. Several practical and legal issues arise based on the fact that many of the affected individuals are citizens of another country. Indeed, the FAA proposed drug and alcohol testing outside the U.S. in 1994 but withdrew it in 2000 preferring to develop a multilateral solution through ICAO.<sup>3</sup> Currently, drug and alcohol testing is an ICAO recommended practice; the FAA continues to support making it a standard and thus mandatory for all ICAO members.<sup>4</sup> In addition, a related ICAO standard prohibits individuals from performing safety-critical functions while under the influence of any psychoactive substance.<sup>5</sup>

Mandating drug testing overseas creates several problems. First and foremost, EU has stated that the inclusion of the drug testing requirement will force the abandonment of the U.S.-EU BASA, with harmful repercussions previously analyzed. Second, the mandate fails to provide an outline for completion of this complicated task. In order to comply with the Department of Transportation (DOT) drug testing procedure, all samples must be analyzed at a DOT testing center. Therefore, if an individual is tested overseas, his or her sample would have to be transported thousands of miles back to the United States for analysis. The cost and logistics of such an endeavor require vast resources not currently available.

Finally, the enactment of this measure by foreign repair stations would violate the sovereignty of foreign states and, in several cases, breach constitutional protections in these countries. This provision would therefore require many of the current foreign repair stations to cease performing work on U.S. registered aircraft. Considering the fact that work on U.S. registered aircraft must be performed by persons certificated by the FAA, this provision would limit the locations to which U.S. citizens, companies and cargo could be transported using American-registered aircraft.

It is also ironic to note that the current anti-drug and alcohol prevention programs do not apply to American workers performing safety sensitive functions outside the United States. Therefore, the provision would create a situation where U.S. workers would not be subject to the same requirements as foreign workers performing the same functions.

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<sup>3</sup> FAA Docket No. 27066; Notice 92-18, effective January 13, 2000.

<sup>4</sup> ICAO Annex 1, Personnel Licensing, § 1.2.7.3 and ICAO Document 9654-AN/945, Manual on Prevention of Problematic Use of Substances in the Aviation Workplace (1995).

<sup>5</sup> ICAO Annex 1, § 1.2.7.1.



**Section 310**

Section 310 "Noncertificated Maintenance Providers" as drafted will have the unintended consequence of dramatically reducing the capabilities of airlines and repair stations to have certain critical work performed by individuals working at non-certificated facilities. For example, the amendment would make it difficult, if not impossible for repair stations to use qualified non-certificated facilities such as original equipment manufacturers or other companies. These facilities perform a variety of highly-specialized maintenance functions (i.e., application of unique coatings, electron beam welding, heat-treating and precision machining) under the direct control (but not supervision as stated in § 312(b)(4)(B)) of a part 145 repair station. Also, airlines and repair stations have a long and successful history in using qualified individuals under the oversight of the certified organization. We do not believe the Committee intended to impose this restriction.

**Conclusion: Although the location of work may differ, quality does not.**

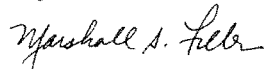
The aviation maintenance industry is a global enterprise; thus, action taken domestically affects companies worldwide. A restriction on the use of foreign repair stations will ultimately hurt American companies, making them less profitable and competitive.

The FAA's list of foreign repair stations reveals that there are approximately 80 foreign repair facilities owned by U.S. aerospace companies, including Nordam, Pratt & Whitney, Hamilton Sundstrand and Honeywell.<sup>6</sup> Additionally, international companies have repair stations located within our borders, such as Lufthansa Technik, Dassault, and BAE systems.

Section 303 must be modified in order to protect American businesses and the thousands they employ. Put simply, the small businesses that comprise the backbone of the aviation maintenance industry in the United States cannot afford the end of the U.S. – EU BASA and the numerous benefits it entails. In addition, Section 310 must be modified in order to address the realities of the industry, while not creating unintended consequences that will negatively affect the maintenance community.

Should you have any questions or require additional information, do not hesitate to contact me.

Regards,



Marshall S. Filler  
Managing Director and General Counsel

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<sup>6</sup> Based on FAA Listing of Foreign Repair stations from Air Agency Data, June 10, 2007.

Statement of the  
 Airport Minority Advisory Council (AMAC)  
 for the Hearing on the FAA Reauthorization Act of 2009  
 February 11, 2009  
 Before the Subcommittee on Aviation of the  
 U.S. House Committee on Transportation and Infrastructure

Mr. Chairman and Members of the Subcommittee on Aviation, my name is Gene Roth and I serve as the Executive Director of the Airport Minority Advisory Council (AMAC). On behalf of AMAC, I am submitting this statement for the record on H.R. 915, the Federal Aviation Administration (FAA) Reauthorization Act of 2009 (FAA Reauthorization Bill). AMAC appreciates this opportunity and we thank you for your consideration of our views.

I. Introduction

AMAC is the only national, non-profit organization dedicated to promoting the full participation of minority and women-owned businesses in airport contracting and concessions, as well as the inclusion of minorities and women in employment within the airport industry. AMAC and its collaborative partners represent thousands of businesses nationwide, including minority and women business owners, corporations, airport operators, and government officials. AMAC is devoted to addressing the discrimination that minority- and women-owned businesses continue to face in the airport contracting and concessions businesses and to increasing the awareness of the tangible economic benefits these businesses can bring to the airports and communities in which they operate.

Unfortunately, minority and women-owned businesses continue to experience discrimination in all aspects of airport contracting and concessions programs. Consequently, there continues to be a need for a robust disadvantaged business enterprise (DBE) program and Airport Concessions DBE (ACDBE) program to remedy discrimination in these arenas. To that

end, my testimony will highlight the impact of discrimination on DBE contracting and concession businesses and will address certain governmental policies that we believe should be adopted as part of FAA Reauthorization.

## II. The Airport Disadvantaged Business Enterprise Program

As this Subcommittee is aware, the Airport Improvement Program (AIP) includes a codified small disadvantaged business program known as the airport Disadvantaged Business Enterprise (DBE) program.<sup>1</sup> The primary purpose of the airport DBE program is to remedy the long history of pervasive and continuing discrimination that studies show minorities and women still encounter in today's airport related industries.

Congress has established a national ten percent (10%) aspirational participation goal for firms certified as DBEs with respect to an airport's federally assisted contracting (i.e., procurement, construction, or professional services contracts) and for airport concessions. The goals are aspirational – quotas are not permitted. There are no penalties for not meeting goals as long as good faith efforts are made. All primary airports must develop and implement an FAA-approved DBE program plan with overall participation goals for their concessions and contracting. A firm (and its minority and women owners) seeking certification as a DBE must meet (1) an ownership and control test, (2) a personal net worth test, and (3) a size standard.

The general rules and guidelines for the airport DBE program are found in the Code of Federal Regulations (C.F.R.), in Title 49, Parts 23 and 26.<sup>2</sup> Except for certain DOT rules that uniquely apply to airport concessions, the airport DBE program regulations are synonymous to those that apply to federally-assisted surface transportation programs (e.g., the rules regarding

<sup>1</sup> 49 U.S.C. 47107(e) (2009).

<sup>2</sup> DOT and FAA have joint responsibility for the airport DBE program. FAA's Office of Civil Rights has primary oversight responsibility for the program and for airport compliance. DOT has primary responsibility for developing rules and guidelines for the national DBE program and for considering appeals from state or local certification decisions.

goal setting or eligibility). Both of these sets of rules were comprehensively reviewed and in certain areas completely rewritten following the Supreme Court's 2005 ruling in Adarand v. Peña<sup>3</sup> in order to ensure that the DBE program complies with strict constitutional scrutiny. Every circuit court that has considered the constitutionality of the DBE program since the rules were rewritten has upheld the program against facial challenges.

### III. Discrimination Continues to Be a Problem in the Airport Industry

Although the airport DBE contracting and concessions programs have helped to begin the process of leveling the playing field, discrimination against minorities and women business owners continues to be pervasive. The evidence is abundant and compelling that there is a continuing need for the airport DBE contracting and concessions programs to address both current discrimination and the effects of past discrimination against minority and women owned businesses.

Research, including disparity studies, from all over the country detail statistical and anecdotal evidence of considerable ongoing discrimination against women and minority owned firms. With my testimony today, I have provided a number of recent statistical analyses demonstrating discrimination against minority and women owned businesses and I ask that they be included in the record. These studies include analyses of the contracting and concessions business of airports such as the Memphis-Shelby County Airport Authority. And they also include analyses of large jurisdictions that own airports (such as the City of Austin, Texas and the State of Maryland) as well as studies from other public agencies and jurisdictions that have responsibility for some aviation related activities and/or do business with firms in the very same

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<sup>3</sup> 515 U.S. 200 (1995).

industries as those that do business with airports (e.g. professional services, heavy construction, etc.) such as the Commonwealth of Kentucky and the State of Minnesota.<sup>4</sup>

Although these studies are quite long and complex, they are comprehensive and we encourage the Committee to review them in detail. Moreover, it should be noted that each of these studies contain statistically significant quantitative evidence of discrimination against minority and women owned businesses in industries in which airport related businesses operate. Specifically, while each study is different, all of the studies present at least one of the types of statistical evidence below and most of the studies present several of these types of evidence:

- Significant statistical disparities in the expenditure of public sector funds in airport related industries when comparing minority and women owned companies to their majority-owned counterparts.
- Evidence of discrimination is affecting firm formation and business earnings for minority and women owned firms.
- Evidence of discrimination against women and minorities in the credit and capital markets for small businesses.

We ask that the Committee note that the studies we are submitting today represent just a fraction of the considerable number of disparity studies that quantitatively and qualitatively demonstrate the prevalence of discrimination against women and minorities in airport related industries. For example, earlier this year on behalf of AMAC, I submitted a statement for the record for the Transportation and Infrastructure Committee's hearing on the stimulus plan. With

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<sup>4</sup> *Race, Sex and Business Enterprise: Evidence from Memphis, Tennessee*, Prepared for the Memphis-Shelby County Airport Authority, NERA Economic Consulting December 18, 2008; *Race, Sex and Business Enterprise: Evidence from the State of Minnesota*, NERA Economic Consulting and Colette Holt and Associates, September 27, 2005; *Disparity Study for the Commonwealth of Kentucky*, Griffin and Strong, P.C., March, 2003; *Race, Sex, and Business Enterprise: Evidence from the City of Austin: Final Report Prepared for the City of Austin, Texas*, NERA Economic Consulting, May 15, 2008; *The Utilization of Minority Business Enterprises by The State of Maryland*, NERA Economic Consulting, January 8, 2001.

my testimony, I included a number of recent studies of discrimination from seven additional states representing many geographic regions of the country, including Alaska, Illinois, Maryland, Missouri, New Jersey, North Carolina, and Washington.<sup>5</sup> Those studies included data from both large and small airports, as well as other transportation agencies which do business in many of the very same industries as airports. A copy of my statement at that hearing is attached to this testimony as Attachment 1.

In addition to the studies submitted at the stimulus hearing this year, Congress received additional studies in both the House and the Senate at the end of the 110<sup>th</sup> Congress, including six additional studies from Arizona, Colorado, Florida, Maryland, Tennessee, and Texas that were submitted by AMAC.<sup>6</sup> Specifically, on September 11, 2008, Don O'Bannon, Chair of AMAC's Board of Directors and an executive with the Dallas/Ft. Worth International Airport, submitted these studies to the record during his testimony before the Senate Committee on Small Business and Entrepreneurship as part of the Committee's hearing on the effects of discrimination with respect to access to capital for DBE firms. A copy of Mr. O'Bannon's

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<sup>5</sup> *Final Report: Alaska Disadvantaged Business Enterprise Study – Availability and Disparity*, D. Wilson Consulting Group, LLC, June 6, 2008; *Disadvantaged Business Enterprise Availability Study*, prepared for the Missouri Department of Transportation, NERA, November 26, 2004; *Disadvantaged Business Enterprise Availability Study*, prepared for the Maryland Department of Transportation, NERA, separate studies for: Maryland Aviation Administration, Maryland Transit Administration, and State Highway Administration, November 2, 2006; *Disadvantaged Business Enterprise Availability Study*, prepared for the Illinois Department of Transportation, NERA, August 16, 2004; NJ, *State of New Jersey Disparity Study of Procurement of Professional Services, Other Services, Goods and Commodities*; MGT, June 13, 2005; *Race, Sex and Business Enterprise: Evidence from the State of Washington*, Prepared for Washington State Department of Transportation, October 20, 2005, NERA and companion study: *Anecdotal Evidence of Race and Sex Disparities in the Washington State Department of Transportation's Contracting Market Place*, Colette Holt & Associates. (July 2006); and *North Carolina Department of Transportation Second Generation Disparity Study: Final Report*, MGT of America, Inc., March 30, 2004.

<sup>6</sup> *Race, Sex and Business Enterprise: Evidence from Denver, CO*, NERA Economic Consulting, May 5, 2006; *Race, Sex and Business Enterprise: Evidence from the State of Maryland*, NERA Economic Consulting, March 8, 2006; *The City of Phoenix, Minority-Women-Owned and Small Business Enterprise Program Update Study*: Final Report, MGT of America, April 21, 2005; *Broward County Small Disadvantaged Business Enterprise (SDBE) Disparity Study*, MGT of America, Inc., April 3, 2001; *Final Report for Development and Revision of Small, Minority and Women Business Enterprise Program, Nashville International Airport, (BNA)*, Griffin and Strong, PC, September 19, 2007 and *Dallas /Fort Worth International Airport Board Disparity Study Final Report*, MGT of America, October 17, 2000.

written statement is attached to this statement as Attachment 2. On September 24, 2008, Anthony Brown, the Chair of AMAC's Government Affairs Committee, submitted these same six studies to the record during his testimony before the House Subcommittee on Information Policy, Census and National Archives. A copy of Mr. Brown's testimony is attached to this statement as Attachment 3. These studies all demonstrate that the discrimination faced by women and minority groups, including—but not limited to—African-Americans, Hispanic Americans, Asian Americans, Subcontinent Asian Americans, and Native Americans, comes in a variety of different forms and is ubiquitous in all parts of the country.

Certainly these statistical analyses present extremely compelling quantitative analysis demonstrating the existence of discrimination in both public and private markets and in airport related industries. But most of these studies go well beyond that and also present very compelling anecdotal evidence of discrimination as well. For instance, most of the studies present:

- Personal anecdotes from businesses describing the ongoing problem of discrimination against minority and women owned firms in various parts of the contracting and concessions process.
- Information about ways in which airport policies and procedures could be improved to reduce barriers to participation by minority and women owned firms.
- Personal accounts detailing how discrimination in the private sector continues to place severe constraints on the ability of minority and women owned businesses to grow and succeed.

Many of our AMAC members report confronting all of these types of discrimination on an ongoing basis. Their experiences put a face on the statistics and demonstrate that

discriminatory conduct is present and affects many aspects of business operations. The accounts of our members cover the gambit of possible scenarios, including bullying and prejudicial attitudes, higher charges for supplies and services, and extraordinary difficulty in obtaining access to capital. Here are just a few examples:

- A large prime contractor recently informed a Hispanic-owned construction subcontractor that they would subcontract a portion of a contract to him in order to fulfill a contract goal. Subsequently, after significant effort and expenditure of resources by the AMAC subcontractor, the contractor “shopped” the subcontractor’s bid and awarded the subcontract to a majority-owned subcontractor instead. The Hispanic subcontractor believes his removal from the contract was a result of significant racial animus against minority-owned firms, especially Hispanic-American firms.
- A white, female AMAC member has confronted gender bias repeatedly. In addition to being coerced into going along with whatever the male primes told her to do and being relegated to playing a silent, passive role, she was instructed to trust that they would “take care of her like a little sister.” That often meant her male counterparts thought of her as a “necessary evil,” and, although they invited her to participate in bids, they bullied and intimidated her into “taking what she could get” and forced her to play by their rules or face retribution.
- An African American business person provides services in the travel and transportation industry and is based in the Midwest. The business owner recently learned that the firm was being charged 50 percent more for a certain product than a majority-owned company in the same industry. Disguising his voice, he later called the same supplier and was given a lower price.



- A minority female, who owns an airport concessions business, has been subjected to gender-based discrimination that started after a leasing dispute was resolved in her favor. Representatives from the losing company initiated a whisper campaign telling vendors, associates, and airport representatives that she was abandoning her business to "stay home and raise her babies." Airport industry officials repeatedly informed her that she was not considered for opportunities to expand her business because they were led to believe she wanted to spend more time at home being a mother instead of running her company.

Real life accounts like these give life to the statistical analyses and illustrate the bias that makes it difficult for minorities and women to start their business and, ultimately, to *stay* in business.

AMAC strongly believes that the research — the statistical analysis, as well as the anecdotal accounts — demonstrate a strong basis in evidence that there is a continuing need for a strong and sound airport DBE program. This body of evidence underscores the need for Congress to continue to investigate the extent and nature of race and gender discrimination against entrepreneurs in airport-related industries and to continue to address the problem by expanding and improving the DBE program. AMAC stands ready to work with the Subcommittee in this regard.

#### IV. Needed Program Improvements

Mr. Chairman, AMAC also would offer several suggestions that we believe will improve the airport DBE program both for DBEs and for the airport officials that implement it. First, we would like to acknowledge and thank Chairman Oberstar and you for including in H.R. 915 certain provisions regarding DBE program certification and training of persons who are involved in making DBE certification determinations. Section 135 of the bill would direct DOT to

establish a mandatory certification training program and require those involved persons who are responsible for DBE eligibility and certification to complete the training. The current DBE eligibility and certification process is unnecessarily cumbersome and although the program is governed by a single set of rules, far too often the rules are not interpreted or applied uniformly. We believe that when enacted and implemented, Section 135 will go a long way to rectifying this problem.

Another aspect of DBE program eligibility is the personal net worth (PNW) standard contained in DOT regulations. A firm (and its minority and women owners) seeking certification as a DBE must meet (1) an ownership and control test, (2) a personal net worth test, and (3) a size standard. To be regarded as economically disadvantaged for program eligibility purposes, the minority or woman owner(s) of the firm must have a PNW that does not exceed \$750,000—excluding the equity in the individual's primary residence and the value of their ownership interest in the firm seeking certification. Individuals seeking an ACDBE certification also may exclude assets that they can document are needed to obtain financing for the ACDBE business—up to a cap of \$3 million. The \$750,000 PNW standard in the airport DBE program regulations was essentially borrowed from a contracting program of the U.S. Small Business Administration. The SBA has not adjusted the standard for inflation since it first adopted it by regulation in 1989;<sup>7</sup> and neither has the DOT. AMAC believes that modernizing the PNW cap is fundamentally a matter of fairness and of economic common sense. We urge Congress to make clear that the inflationary adjustment should both correct the erosion in purchasing power that has occurred over the past twenty (20) years and should contain a mechanism for automatic

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<sup>7</sup> Minority Small Business and Capital Development Program, Small Business Administration, 54 FR 34692 (August 21, 1989).

periodic inflationary adjustment going forward. Included with this statement, as Attachment 4, is a brief history of the PNW.

V. Passenger Facility Charges and the Transportation Security Administration

When airports expend AIP funds, they are required to have a DBE program to address the problem of discrimination in airport related business. There is no requirement, however, for a DBE program for projects funded with Passenger Facility Charges (PFC) or through the Transportation Security Administration (TSA). Despite this, the need for a level playing field for minority and women owned businesses is no less acute in projects funded with PFCs or through TSA than it is in programs funded with AIP funds. Discrimination poses barriers to minority and women-owned firms regardless of the source of funds.

We understand that part of the challenge in addressing this discrepancy is the way in which the airport community views PFCs in particular. Some airport trade associations argue that PFC funds are “local” or “non-federal” because they are collected by the airports based on ticket segments. As such, they argue that it would be inappropriate to attach federal requirements to these funds. On the other hand, others have noted that airports need congressional authorization to establish and collect PFCs which certainly undercuts the argument and/or the description of these funds as purely “local.”

AMAC seeks to ensure that discrimination against minority and women-owned businesses is vigorously addressed regardless of the funding source or its classification. Experience demonstrates that without DBE-type programs, minority and women business owners will be left out and left behind. AMAC urges Congress to consider policy mechanisms to address this problem. One alternative would be to simply apply the existing (and court-tested) DBE program to PFC funded projects and TSA funds that flow through airports. Another

alternative for the PFC context might be to allow airports to choose one of two options: either 1) apply their existing airport DBE program or 2) apply a meaningful and enforceable local minority and women business program that contains provisions that are similar to the airport DBE program but that is not federally defined. AMAC's chief concern is the fight against discrimination and to ensure a level playing field for minority and women owned businesses—and that goal requires both diligence and a robust minority and women business program regardless of whether the programs are federal or local in nature.

#### VI. Other Matters

AMAC also closely follows other important aviation and airport policy matters. As you know, AIP is an important source of funding for airport capital projects, especially for smaller airports that have less ready access to private capital markets. For this reason, AMAC strongly urges Congress to ensure that sufficient AIP funding is authorized and appropriated to meet critical airport infrastructure needs.

Finally, the multiple, short-term extensions that have been enacted over the last 18 months are burdensome and disruptive, and do not permit the planning and execution that is necessary for important airport infrastructure programs. As such, AMAC would like to urge Congress to act on H.R. 915 quickly.

#### VII. Conclusion

AMAC is grateful for the opportunity to present its views to the Subcommittee on Aviation. We also appreciate this panel's leadership on issues of diversity and inclusion in the airport industry. We respectfully ask that you fully consider our comments and suggestions and we look forward to working with you.



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**The Testimony of Anthony W. Brown**

**Chairman of the Government Affairs Committee  
of the  
Airport Minority Advisory Council (AMAC)**

**before the**

**Information Policy, Census and National Archives  
Subcommittee of the U.S. House of Representatives  
Committee on Oversight and Government Reform**

**Wm. Lacy Clay  
Chairman**

**September 24, 2008  
2:00pm  
2154 Rayburn House Office Building**

Good afternoon, Chairman Clay and members of the Subcommittee. My name is Anthony Brown. I am a Board Member of the Airport Minority Advisory Council (AMAC), and I also serve as Chairperson of AMAC's Government Affairs Committee. AMAC is the nation's only national, non-profit trade association dedicated to promoting the full participation of minority-owned, women-owned and disadvantaged business enterprises (M/W/DBEs) in airport contracting. I am also a Senior Associate Partner in the state and local government division of MGT of America. MGT is a public sector consulting firm that specializes in providing high quality services, including disparity studies, to state and local government. And finally, before I joined MGT I was previously Vice President for Business Diversity Development and Government Affairs at the Memphis-Shelby County Airport Authority. I thank you for your invitation to speak to the Committee today on behalf of AMAC and its nationwide membership.

In all of the jobs I mentioned, I regularly witnessed the impact of discrimination. Let's be clear, the aviation business world can be a tough one for minorities and women. Just to provide context, recently there was a lawsuit filed by the EEOC involving outrageous hostile environment claims against a fuel supplier that operates at a very large Texas airport. The plaintiffs in the case asserted that they were subjected to racial slurs, threats of violence and disparate treatment in promotions and disciplinary actions. Use of the N-word was common in speech and in graffiti. And there were displays of nooses and racially offensive cartoons. There was even graffiti detailing a "Nigger Hit List" posted on a bathroom wall and one white supervisor reportedly stated "I am going to get all of you niggers fired."

These things happened in a facility on the airport grounds. The case was settled for almost two million dollars, and was the largest race and national origin employment discrimination case resolved by the Dallas District Office of the EEOC. When announcing the settlement, one of the supervising attorneys working on the case made clear that the case was especially repulsive because the management of Allied Aviation acquiesced in the discrimination against the African-American and Hispanic employees.<sup>1</sup> While these were not actions taken against minority business owners, they do demonstrate the persistence of racism in the aviation-related marketplace and the environment in which some minority and women-owned entrepreneurs must work.

I know that we have a big job to do to address discrimination. I know how hard airport executives work to level the playing field through programs to assist minority and women owned businesses. Business assistance programs and contract goals help, but it is never easy. Unfortunately, even when airports conscientiously work to set goals on contracts based on solid statistical evidence of the relative availability and utilization of minority and women owned firms, prime contractors still regularly come back and say "we just can't meet the goal." Sadly, the truth often is that the prime contractors either don't know where to find minority and women business owners – or they just haven't tried. Once airport staff step in to help make connections, the prime contractors are always able to meet the goal. In my nearly ten years as an airport executive, I had very few situations in which minority and women owned firms were simply

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<sup>1</sup> *EEOC v Allied Aviation Services, Inc.*, complaint, US District Court for the Northern District of Texas, Dallas Division, Civil Action No. 3:05-CV-1379-L, filed July 6, 2006; EEOC Press Release, March 11, 2008, *Allied Aviation to Pay Almost \$2 Million for Harassment of Black and Hispanic Workers*, at <http://www.eeoc.gov/press/3-11-08.html>.

unavailable, and those cases usually related to something like the purchase of advanced avionics. In nearly every case we were able to link prime contractors with qualified minority or women owned businesses. More important than meeting any goal, however, is the fact that, through this process, new business alliances were established.

This is the essence of leveling the playing field: helping majority firms move beyond their established networks to give previously excluded businesses the opportunity to prove themselves. But I can tell you, it doesn't happen by accident and it doesn't happen without help. Changing long-established patterns of business behavior which excludes the participation of minority and women owned business is hard. The well entrenched psyche of exclusion (which operates with no sense of conscious or excuse), and can exist in contractors and internal airport department heads and purchasing agents alike, works as a one-two punch and can result in a knock-out for minority and women owned firms in the aviation field. This "old boy network" didn't develop overnight – and opening up that network to new firms won't happen overnight either. The Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs help us ensure that airports across this country provide business opportunities to all qualified businesses – to the full community, not just the segment which has always gotten the work in the past due to systemic exclusion.

In my work with MGT of America, one of the things that I do is to oversee the completion of disparity studies. These complex statistical and social research projects evaluate the evidence related to minority and women owned firms and attempt to determine whether or not racial or gender bias is present. I can tell you, based upon the many disparity studies that have been completed across the country, that discrimination is still a serious problem. While the results of each study are different, when we examine them together a clear picture emerges: discrimination against business owners of every racial minority group is still a problem in every region of the country. I have with me today six examples of the many recent airport-related studies that have been conducted by MGT and other disparity study research firms. I would like to ask that these be included in the record. These studies come from all across our nation -- Denver, Colorado; the State of Maryland; Phoenix, Arizona; Broward County, Florida; Nashville, Tennessee and Dallas, Texas<sup>2</sup> -- they all present compelling evidence of discrimination in the public and private sectors. It is important to note that these are just a small fraction of the studies in which discrimination has been found that have been conducted by airports and many other public entities such as state departments of transportation, jointly funded studies which include state administrative departments and state-wide university systems, and city and county governments including local transit agencies. To say that the statistical evidence of the ongoing underutilization of minority and women owned businesses is overwhelming is not hyperbole.

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<sup>2</sup> Dallas /Fort Worth International Airport Board Disparity Study Final Report, MGT of America, October 17, 2000. Final Report: Broward County Small Disadvantaged Business Enterprise (SDBE) Disparity Study, MGT of America, Inc., April 3, 2001; The City of Phoenix, Minority-, Women-Owned and Small Business Enterprise Program Update Study: Final Report, MGT of America, April 21, 2005; Race, Sex and Business Enterprise: Evidence from the State of Maryland, NERA Economic Consulting, March 8, 2006; Race, Sex and Business Enterprise: Evidence from Denver, CO, NERA Economic Consulting, May 5, 2006; and Final Report for Development and Revision of Small, Minority and Women Business Enterprise Program, Nashville International Airport, (BNA), Griffin and Strong, PC, September 19, 2007.

But don't just take my word for it. It is important to hear the stories of the men and women who struggle each and every day to overcome discrimination as they seek to build their businesses, support their families and contribute to our national economy. Many businesses fear retaliation and have requested that we use their stories anonymously.

- An African American business man in the travel and transportation industry in the Midwest has run up against the old boys' network his whole life. He has been the subject of racial slurs, discriminatory attitudes and recently found that he was being charged almost 50% more for tires for his buses than a majority firm owner in the same industry. When this business owner disguised his voice and called the same distributor that had previously given him the higher price he was given the lower price.
- A Hispanic construction subcontractor working on the East coast was recently told by a large majority owned prime contractor that they would use him on a job to fulfill a contract goal. After that, they "shopped" his bid to a much larger majority subcontractor and removed him from the contract. With 25 years of experience in the industry, this business owner feels strongly that there is significant racial animus against Hispanic owned companies.
- A white woman business owner has experienced patronizing, bullying and discriminatory attitudes from the men she deals with in other companies and even among airport staff. She told us that she has been referred to behind her back as a "bitch" and "the necessary evil." She also explained that she sometimes sends male employees to make the company's pitch because she feels it is more likely to result in a winning bid in some cases.
- Another African-American AMAC member, based in the Southeast with many years of experience in airport concessions, attempted to obtain venture capital from a fund specifically established for underserved communities. Even in that context this business owner was asked to meet extraordinary conditions that would not have been required of majority owned businesses. This was true despite the business owner's own sterling business, educational and financial qualifications. Because of the denial of venture capital, the deal, which would have involved five franchises with a Fortune 100 company, ultimately fell through.

Simply put, this discrimination causes real and lasting harm to minority and women entrepreneurs, who, unlike many of their competitors are often first generation business owners. In case after case all across this country the experience clearly shows that this type of inexcusable bias, for them, translates at best into higher costs and foreclosed opportunities, and at worst, failed businesses. It's like the addition of a race-based tax that makes them have to work twice as hard while making half the profit.

In closing, discrimination against minority and women contractors in America is abundant and devastating. All of this makes it imperative that we maintain and expand important programs like the DBE and ACDBE programs. We expect that this week the Congress will finalize a new extension of the FAA programs to which the DBE and ACDBE programs attach. We also hope



that in the months ahead, Congress will consider ways to strengthen these programs by making certification training more uniform, providing for national certification reciprocity, and adjusting the personal net worth cap for inflation – just to name a few of AMAC’s legislative priorities.

Given this subcommittee’s jurisdiction, and my work with disparity studies at MGT, I would also like to add a plea that you do whatever you can to strengthen the Census Bureau’s data collection on minority and women owned businesses. We need this committee to provide more resources and direction for more and better data collection. Your help in improving the timeliness and detail of the publicly available federal data could lower the costs of research and ultimately make more research possible. This in turn will make it easier for all of us who are working to level the playing field.

Thank you for the opportunity to appear here today. I look forward to answering any questions you might have.

## A HISTORY OF THE PERSONAL NET WORTH CAP

**Initiation of Small Disadvantaged Business Programs.** Although the Capital Ownership Development Program (the 8(a) program) was created within the Small Business Administration soon after the SBA was created, it was not until the early 1970s that the SBA dedicated the 8(a) program to the interests of minority businesses. In fact, program focus only shifted to minority businesses after President Nixon issued executive orders stressing the development of businesses that had endured social or economic disadvantage.

**Congress Leaves the Definition of Economic Disadvantage to the SBA.** In 1978, Congressman Parren Mitchell, Jr., Chairman of the House Small Business Committee and proponent of minority development programs, spearheaded amendment of the Small Business Act (Act) to address the issue of barriers to participation in federal contracting by minorities. Amendment of the Act resulted in the codification of Section 8(a) of the Act as a program for disadvantaged business enterprises. Congress tasked the SBA with “develop[ing] [economic] standards, along industry lines, which recognize the historic past discrimination of minorities in their efforts to participate in the free enterprise system[.]” Congress added that the SBA should consider the “subtle discrimination” that manifests itself in many ways throughout the business community.<sup>1</sup>

**The \$750,000 Personal Net Worth Cap Appears in SBA Guidance.** In 1979, the SBA took on Congress’ charge to define economic disadvantage. In the Code of Federal Regulations, the SBA defined economically disadvantaged persons as “socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area who are not socially disadvantaged.”<sup>2</sup> Soon thereafter the SBA’s Standard Operating Procedures (SOP) expanded on the definition and created the personal net worth (PNW) standard as a rebuttable presumption that businesses would have to overcome. The SOP stated that a business could not enter the program if they had a PNW above \$250,000 and could not remain in the program if they built a net worth above \$750,000. Because the SBA did not articulate the reasons for choosing the arbitrary numbers of \$250,000 and \$750,000, many business owners were left with little guidance on what factors SBA considered in the PNW analysis.

**Congress Addresses the PNW Cap.** In 1988, Congress passed legislation allowing certain assets to be included in the PNW cap calculation, such as contingent liabilities, retirement accounts and transfers to immediate family members within two years.<sup>3</sup> However, Congress took the important step of providing that specific assets, such as equity in one’s primary residence and an ownership interest in the applicant business, should be excluded.

**SBA codifies the \$750,000 Personal Net Worth Cap.** Following Congress’ exclusion of certain assets from the PNW cap determination, the SBA promulgated a rule in 1989 codifying their practice of instituting a \$250,000 PNW entry cap and a \$750,000 PNW retention cap as the test for 8(a) economic disadvantage.<sup>4</sup> The SBA also codified a \$750,000 entry and retention cap for a similar program, the Small Disadvantaged Business program.

**DOT Adopts SBA Personal Net Worth Cap.** In 1999 when the Department of Transportation overhauled its Disadvantaged Business Enterprise (DBE) Program in the wake of the Supreme Court’s decision in *Adarand v. Peña* (1995), DOT imposed the \$750,000 cap on the DBE program.<sup>5</sup> In 2005, DOT imposed the same cap on the Airport Concessions DBE program.<sup>6</sup> In the airport concessions context, DOT also allowed for a \$3 million exemption for certain funds necessary to secure financing or a franchise agreement, or for the initiation or expansion of the airport concessions business.

**Personal Net Worth Cap Never Adjusted for Inflation.** Throughout this history, the PNW Cap has never been adjusted for inflation. The result has been severe hardship for disadvantaged businesses, airports, and other entities charged with operating the DOT disadvantaged business programs.

<sup>1</sup> Amending the Small Business Act and the Small Business Investment Act of 1958, H.R. Rep. No. 95-949, at 10 (1978).

<sup>2</sup> Small Business Administration, 44 Fed. Reg. 30674 (May 29, 1979) (*to be codified as* 13 C.F.R. Part 124.1-1(4)(i)).

<sup>3</sup> Business Opportunity Development Reform Act, Conference Report, H.R. Rep. 100-1070, 58 (1988); Standard Operating Procedures No. 80-05, Small Business Administration, 52-53 (*continually revised through* 2004).

<sup>4</sup> Minority Small Business and Capital Development Program, Small Business Administration, 54 FR 34692 (August 21, 1989).

<sup>5</sup> 49 CFR 26.67(b).

<sup>6</sup> 49 CFR 23.3.



**AIRPORT MINORITY ADVISORY COUNCIL**

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The Testimony of Don T. O'Bannon, Esq.  
Chairman of the Airport Minority Advisory Council (AMAC)

at the hearing  
"Business Start Up Hurdles in Under-served Communities:  
Access to Venture Capital and Entrepreneurship Training"

Before the U.S. Senate Committee on Small Business  
and Entrepreneurship

Senator John F. Kerry, Chairman  
Senator Olympia J. Snowe, Ranking Chair

September 11, 2008 -- 10am  
428A Russell Senate Office Building

Good Morning, Chairman Kerry and members of the Committee, my name is Don O'Bannon and I am currently serving as vice president of the Business Diversity and Development Department at the Dallas/Fort Worth International Airport and I am also the Chair of the Airport Minority Advisory Council (AMAC). AMAC is the nation's only national, non-profit trade association dedicated to promoting the full participation of minority, women-owned and disadvantaged business enterprises in airport contracting.

In my roles at AMAC and DFW, I routinely see the impact of discrimination - especially discrimination in access to capital. Now, I am not a banker and I don't hold myself out as an expert in capital markets - but I am a small minority business owner myself and have spent most of my career working for access and opportunity for minority and women owned businesses. My expertise comes from practical experience and I can say that after more than 10 years working in the field, access to capital is the biggest barrier to the success of minority and women owned firms.

It is undeniable that capital is the lifeblood of business. That is no less true for minority businesses than it is for majority owned businesses. The problem is that in case after case, we see that minority owned businesses are starved for capital and are repeatedly forced, by discrimination and lack of access, to forego opportunities or rely on higher cost capital to fuel their businesses, cutting into (and sometimes eliminating) their profits and their ability to survive and grow.

Certainly, venture capital is very attractive to entrepreneurs and business owners seeking to expand their businesses simply because it tends to cost less and carry less risk. Venture capital often allows an entrepreneur to get an infusion of cash based on a great idea and a promise of future returns. The entrepreneur shares the risk and the return for that capital with the investors by providing an ownership stake in the business in return for capital. If the business succeeds then everyone benefits. If the business fails, the investors take the hit along with the entrepreneur. Debt capital is different: if the business fails the entrepreneur loses his or her collateral and still owes the bank, only compounding the loss of a business by leaving the owner without revenue to pay the note. Moreover, the interest rates for conventional financing for business start-ups and expansions that involve any real risk - and most of them do - are often more expensive, only adding another obstacle to minority business owners.

What I have seen is that as many minority businesses face persistent discrimination and have so few established connections in either the venture capital or debt capital worlds that they are forced into more risky and more expensive markets for capital. Unfortunately, many minority businesses must rely upon alternative financing approaches like "factoring." This involves borrowing capital against the return on specific invoices or receivables. This is almost like payday lending in a business context and the minority business pays a premium for this type of working capital loan. This practice cuts immediately

into an entrepreneurs profits, costs them more and does not provide the type of capital foundation that fosters the growth of their businesses.

All of this explains why so many entrepreneurs, of every race and gender, would like to get venture capital and low cost debt capital. But this is where discrimination comes in. As the research presented here today makes clear, there are also very few majority owned venture capital firms and banks willing to take a risk on minority entrepreneurs. This puts minority entrepreneurs at a significant disadvantage.

But don't just take my word for it. Listen to the stories of the individuals who face this problem as they seek to build their businesses, support their families and contribute to our national economy. Some business owners fear retaliation for speaking out on these issues. They have requested that we use their stories anonymously.

- One African-American AMAC member, based in the Southeast, with many years of experience in airport concessions, attempted to obtain venture capital from a fund specifically established for underserved communities. Even in that context, this business owner was asked to meet extraordinary requirements that would not have been required of majority owned businesses. This was true despite the business owner's sterling business, educational and financial qualifications. Because of the denial of venture capital the deal, which would have involved 5 franchises with a Fortune 100 firm, ultimately fell through.
- Another, minority airport concession owner, with 15 years of experience in the airport market nationally has tried many different approaches to obtaining capital – and has continually faced the barrier of discrimination. He has attempted to get venture capital help but has found that, as a minority business owner, he is expected to cede majority control of his business in order to get even moderate amounts of capital. Of course, if he were to do that, he would make himself ineligible for many other minority business opportunity programs. In the debt capital arena, he recently put together a long term plan to obtain conventional debt capital at a commercial bank. He maintained a personal account at the bank with which he wanted to do business with a balance of \$100,000 for over a year. He then proposed a plan to expand his business to two new locations by investing \$200,000 of his own equity and financing another \$600,000 by the bank where he had maintained the personal account. Even though he knows that majority businesses have been able to obtain financing under similar circumstances, he was told by this bank that it would be a "waste of his time and the loan officer's time" to submit an application for the loan. Despite this, he ultimately was able to secure such a loan from another bank but only because he knew one of the bank's board of directors and he obtained an SBA loan guarantee.

- Even in the conventional loan context, minority owned firms often face hurdles that majority competitors do not. The experts who will testify today, will state discrimination permeates the conventional capital markets. One AMAC member we spoke to recently explained that even now, after more than 20 years in business and a very successful record, he is always asked to give a personal guarantee. This business owner has real questions about whether majority businesses with similar experience and records of success are also required to provide such guarantees.

These stories illustrate the real and lasting harm that discrimination imposes on entrepreneurs. The disparity studies that have been completed across the country show that these real life examples are backed up by the statistics. While the results of each study are different, a clear picture emerges: discrimination in access to capital is a problem for business owners in every racial minority group in every region of the country. I have brought six examples of recent airport-related studies that have been conducted. I would like to ask that these be included in the record. These studies come from all across our nation – the State of Maryland; Denver, Colorado; Phoenix, Arizona; Broward County, Florida; Nashville, Tennessee and Dallas, Texas<sup>1</sup> – but they all present compelling evidence of discrimination in the public and private sectors and many of them present direct statistical and/or anecdotal evidence of discrimination in access to capital. It is important to note that these are just a small fraction of the studies that have been conducted.

In closing, discrimination in access to capital against minority and women entrepreneurs is continuing and has devastating results. This makes it imperative that we maintain and expand programs that seek to make more capital available and the programs that seek to provide real business opportunities for minority and women owned businesses. In the end, as long as minority and women owned businesses access to capital is restricted so also will be their opportunity to participate in the economic mainstream.

Thank you for the opportunity to appear here today. I look forward to answering any questions from the committee member

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<sup>1</sup> *Dallas /Fort Worth International Airport Board Disparity Study Final Report*, MGT of America, October 17, 2000. *Final Report: Broward County Small Disadvantaged Business Enterprise (SDBE) Disparity Study*, MGT of America, Inc., April 3, 2001; *The City of Phoenix, Minority-, Women-Owned and Small Business Enterprise Program Update Study: Final Report*, MGT of America, April 21, 2005; *Race, Sex and Business Enterprise: Evidence from the State of Maryland*, NERA Economic Consulting, March 8, 2006; *Race, Sex and Business Enterprise: Evidence from Denver, CO*, NERA Economic Consulting, May 5, 2006; and *Final Report for Development and Revision of Small, Minority and Women Business Enterprise Program, Nashville International Airport, (BNA)*, Griffin and Strong, PC, September 19, 2007



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**The Testimony of Gene Roth**

**Executive Director of the  
Airport Minority Advisory Council (AMAC)**

**before the**

**Committee on Transportation and Infrastructure  
of the  
United States House of Representatives**

**“Infrastructure Investment: Ensuring an Effective  
Economic Recovery Package”**

**James L. Oberstar  
Chairman**

**January 22, 2009**

**2167 Rayburn House Office Building**

My name is Gene Roth. I am the Executive Director of the Airport Minority Advisory Council (AMAC). AMAC is the nation's only national, non-profit trade association dedicated to promoting the full participation of minority-owned, women-owned and disadvantaged business enterprises (M/W/DBEs) in airport contracting. While I am currently the Executive Director of AMAC, I also worked on issues of business diversity in my previous position as Director of Corporate Purchasing and Supplier Diversity at Enterprise Rent-a-Car and I have extensive training in business and finance issues having received my MBA from American InterContinental University in 2007. I thank you for your invitation to provide this testimony on the proposed economic stimulus package on behalf of AMAC and its nationwide membership.

AMAC is a strong supporter of a robust stimulus package which includes a very significant investment in our nation's airport infrastructure. The bill proposed by the Speaker, which includes three billion dollars over one year, is a good start, but we believe that the nation's airport related businesses can actually do even more to help get our nation's economy back on track. We are especially supportive of Chairman Oberstar's proposal recommending over five billion dollars in airport related investments. We also support channeling the stimulus funds through the Airport Improvement Program (AIP). The Airport Improvement Program (AIP) is an excellent, well-established program and there are a large number of immensely important, ready to execute, infrastructure projects already in the pipeline. AMAC's members are ready to ensure that those dollars are spent quickly, efficiently and fairly so that we can do our part to get our economy back on its feet. We also encourage the Committee to waive the non-federal matching requirements for the stimulus package to preclude any delays in getting these projects up and running as quickly as possible.

One of AMAC's primary objectives is to foster the full and fair economic development of minority and women entrepreneurs in airport related sectors. As this committee is all too aware, racial and gender discrimination continues to be a problem in our nation. Minority and women business owners have faced discrimination in contracting, credit, bonding, insurance, and the purchase of supplies. In many instances these small business owners have found it difficult if not impossible to overcome all the barriers and discrimination inherent in the bidding process itself. Both public and private entities continue to create barriers to the participation of minority and women owned businesses and minority and women owned companies that have managed to obtain contracts often experience discrimination in the performance of those contracts.

Even in the face of good programs, such as the Department of Transportation's Disadvantaged Business Enterprise Program (DBE program) which encourages participation of minority and women business owners, many prime contractors and local recipients of federal funds nevertheless actively attempt to circumvent the program and avoid doing business with minority and women contractors. In effect, discrimination persists even though progress is being achieved through implementation of USDOT's DBE program and the SBA's small and disadvantaged business programs. The discrimination occurs in every region of our nation and it happens to African-American, Hispanic American, Asian American, Native American and women business owners.

Today we are submitting with our testimony copies of seven recent statistical studies drawn from every corner of our nation covering a diverse range of industries that are crucial to building and



maintaining our nation's transportation infrastructure. These analyses include studies from Alaska, Missouri, Maryland, Illinois, New Jersey, Washington, and North Carolina.<sup>1</sup> We urge the Committee to consider these studies along with six completely different studies from Colorado, Maryland, Arizona, Florida, Tennessee and Texas<sup>2</sup> that we previously submitted to the House of Representatives in a hearing before the Information Policy, Census and National Archives Subcommittee of the U.S. House of Representatives Committee on Oversight and Government Reform on September 24, 2009. All of these studies deal with recent strong and compelling evidence of discrimination in transportation related industries, including airports, and further bolster the case that discrimination against minority and women contractors in airport related businesses and other transportation fields remains a problem in every relevant industry for every minority group and for women. To say that the statistical evidence of the ongoing underutilization of minority and women owned businesses is overwhelming is an understatement.

Each of these studies presents powerful statistical evidence of the tremendous barriers imposed by bias and discrimination. Many of these studies also present extensive anecdotal evidence of discrimination which gives life to the dry statistics and helps make clear how discrimination actually works and how it specifically impacts minority and women owned businesses at every stage of the process. Both sources of data reveal that despite the progress that has been made, there is still a very significant need for affirmative efforts to assist minority and women business owners.

Of course, the most important assistance AMAC members and other businesses need are programs like the DBE program which seek to level the playing field in the award of federally-assisted contracts. But the fact is that other assistance is also needed. We need to do more to open credit and bonding markets to women and minority business owners. All business owners face hurdles in today's difficult credit markets – but the sad truth is that even before the current credit freeze, minorities and women confronted special difficulties in accessing credit. In this regard, I would specifically direct your attention to the comprehensive analysis of discrimination

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<sup>1</sup> Final Report: Alaska Disadvantaged Business Enterprise Study – Availability and Disparity, D. Wilson Consulting Group, LLC, June 6, 2008; Disadvantaged Business Enterprise Availability Study, prepared for the Missouri Department of Transportation, NERA, November 26, 2004; Disadvantaged Business Enterprise Availability Study, prepared for the Maryland Department of Transportation, NERA, separate studies for: Maryland Aviation Administration, Maryland Transit Administration, and State Highway Administration, November 2, 2006; Disadvantaged Business Enterprise Availability Study, prepared for the Illinois Department of Transportation, NERA, August 16, 2004; NJ, *State of New Jersey Disparity Study of Procurement of Professional Services, Other Services, Goods and Commodities*; MGT, June 13, 2005; State of Washington, Prepared for Washington State Department of Transportation, October 20, 2005, NERA and companion study: *Anecdotal Evidence of Race and Sex Disparities in the Washington State Department of Transportation's Contracting Market Place*, Colette Holt & Associates, (July 2006); and *North Carolina Department of Transportation Second Generation Disparity Study: Final Report*, MGT of America, Inc., March 30, 2004.

<sup>2</sup> Evidence from Denver, CO, NERA Economic Consulting, May 5, 2006; Race, Sex and Business Enterprise: Evidence from the State of Maryland, NERA Economic Consulting, March 8, 2006; The City of Phoenix, Minority-Women-Owned and Small Business Enterprise Program Update Study: Final Report, MGT of America, April 21, 2005; Broward County Small Disadvantaged Business Enterprise (SDBE) Disparity Study, MGT of America, Inc., April 3, 2001; Final Report for Development and Revision of Small, Minority and Women Business Enterprise Program, Nashville International Airport, (BNA), Griffin and Strong, PC, September 19, 2007 and Dallas /Fort Worth International Airport Board Disparity Study Final Report, MGT of America, October 17, 2000.

in credit that was conducted in the NERA study for Denver Colorado submitted to the record before Chairman Clay's Census and Information Policy Subcommittee on September 24, 2008. That analysis makes clear just how serious the barriers to credit are for minority and women owned businesses. And finally, we must do more to provide training and other technical assistance to minority and women business owners. In addition, we need to adjust the PNW cap for inflation so that DBEs are not eliminated from consideration just when they are finally becoming large enough to compete for larger contracts. We also need to ensure better certification training for those who certify DBEs and we need to make certification reciprocity easier to accomplish.

Minority and women owned businesses are ready, willing, able and eager to assist in our nation's economic recovery – but it is terribly important that we not overlook the fact that they face unique and considerable barriers. Due to past discrimination, some minority and women owned businesses are smaller and have had fewer opportunities to prove themselves than their majority competitors. These smaller businesses are neither incapable nor unwilling to contribute to our nation's economic growth, but they face many more challenges than larger, more-established majority owned companies – challenges that are ultimately due to discrimination. It is also important to remember that many minority and women entrepreneurs face such daunting barriers that their businesses never get off the ground at all. Each of these failed businesses or abandoned start-ups represents an opportunity lost for the minority or woman entrepreneur, their employees, their community and the nation. It is imperative that we do everything we can to truly level the playing field in contracting, credit, bonding, training and access to business opportunities so that we remove the stain of past discrimination and ensure that every business owner and entrepreneur that is capable of assisting in our recovery has the opportunity to do so.

In closing, I would like to say that it is important to understand that race and gender discrimination are not just morally wrong and unjust, they also have a negative impact on our nation's economic well-being. The fact of the matter is that this type of discrimination *hurts* our economy. We are all accustomed to the private sector and some politicians decrying “regulation” and “interference” in the marketplace. Well, the fact of the matter is that discrimination is the worst kind of market interference – an externality that is both corrosive to our society and inefficient for the operation of markets. As noted free market advocate and former Fed Chair Alan Greenspan has said:

“Discrimination is against the interests of business--yet business people too often practice it. To the extent that market participants discriminate, they erect barriers to the free flow of capital and labor to their most profitable employment, and the distribution of output is distorted. In the end, costs are higher, less real output is produced, and national wealth accumulation is slowed. By removing the non-economic distortions that arise as a result of discrimination, we can generate higher returns to both human and physical capital.”<sup>3</sup>

Simply put, discrimination causes real and lasting harm to minority and women entrepreneurs and to our national economy. With programs like the DBE program, Congress has begun the

<sup>3</sup> Remarks by Chairman Alan Greenspan, Economic Challenges in the New Century, before the Annual Conference of the National Reinvestment Coalition, March 22, 2000, <http://www.federalreserve.gov/BoardDocs/Speeches/2000/20000322.htm>

process of remedying the current day effects of past discrimination and seeking to eliminate current discrimination. There remains a great deal of work to do, but if we invest the time, resources and creativity into eradicating discrimination we will be able to harness vast additional resources, in the form of the ingenuity and commitment of our nation's minority and women business owners, to meet the considerable challenges that confront us today.

Thank you for the opportunity to provide testimony today. Please let us know if there are any questions we can answer or any additional studies or information that we can provide to the committee.

May 15, 2008

**Race, Sex, and Business Enterprise:  
Evidence from the City of Austin**

Final Report Prepared for the City of Austin, Texas



**NERA**  
Economic Consulting

## Introduction and Executive Summary

### I. Introduction and Executive Summary

#### A. Introduction

Like many local governments, the City of Austin has a long record of commitment to including minority-owned and women-owned business enterprises (“M/WBEs”) in its construction and construction-related contracting and procurement activities. As will be documented in this Study, the City has continued to be a significant source of demand for the products and services produced by M/WBEs—demand that, in general, is found to be lacking in the private sector of the Austin and surrounding Texas economy.

The courts have made it clear, however, that in order to implement a race- and gender-based program that is effective, enforceable, and legally defensible, Austin must meet the judicial test of constitutional “strict scrutiny” to determine the legality of such initiatives. Strict scrutiny requires current “strong evidence” of the persistence of discrimination, and any remedies adopted must be “narrowly tailored” to that discrimination.

#### B. History of Austin’s Affirmative Action Contracting Programs

The City of Austin has implemented a contracting affirmative action program for many years. The Minority- and Women-Owned Business Enterprise Program has been regularly reviewed and updated to reflect new evidence and evolving legal standards.

In 1987, the City’s Economic Development Commission reviewed the City’s policies and experiences relating to contracting opportunities for M/WBEs with the City and suggested revised policies and procedures it determined necessary. The Commission’s Small Business and Minority Entrepreneurship Committee held meetings with representatives of various City departments as well as with interested individuals and organizations, conducted a public hearing and took statements from numerous members of the public. The Commission found significant disparities between the number of MBEs and WBEs and City Contracts awarded to, or subcontracted to, MBEs and WBEs. The City Council found that these disparities resulted from discriminatory practices, thereby impairing the competitive position of M/WBEs with the City. As a result, in 1987 the City Council passed an affirmative action program to address the City’s role in perpetuating the disparities found in the pattern of contract and subcontract awards to M/WBEs.

In 1989, the U.S. Supreme Court’s plurality opinion *City of Richmond v. J.A. Croson Co.*<sup>1</sup> held that a local government may redress race discrimination in its contracting activities if it can demonstrate through relevant evidence a compelling governmental interest sought to be remedied, and that the remedies adopted are narrowly tailored to promote that interest.

In response to *Croson*, in 1992 the City Council engaged a consultant to study the City’s history and contracting practices, the availability of M/WBEs in the Austin marketplace, and any disparities in the City’s utilization of such businesses. The study, completed in 1993, revealed a

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<sup>1</sup> 488 U.S. 469 (1989).

## Introduction and Executive Summary

history in the Austin area of *de jure* and continuing de facto racial and gender discrimination in the Austin marketplace. Further, disparities were found between ready, willing, and able M/WBEs and the value of contracts they received from the City.

After receipt of the study, the City conducted a series of public hearings at which additional statistical and other evidence of discriminatory practices and acts against M/WBEs was presented. The City Council appointed a community-based Disparity Study Ordinance Committee to review the studies and the law, and to draft programmatic changes to the current ordinance. The Committee met over several months and recommended certain changes to the current ordinance.

Based on the evidence provided, the City Council determined that prior to the adoption of the 1987 ordinance, there were disparities between the number of qualified M/WBEs ready, willing, and able to perform services on City contracts and the number of such businesses actually engaged by the City or the City's prime contractors. Despite the implementation of the 1987 ordinance, disparities in the utilization of M/WBEs on City contracts continued to exist. Although the City has undertaken since 1990 a variety of race- and gender-neutral technical assistance, insurance and bonding programs, race- and gender-neutral programs alone have not been sufficient to remedy the effects of discrimination. The evidence continued to demonstrate that M/WBEs have been underutilized in contracting opportunities on City contracts as a result of private sector discrimination. The existence of an exclusionary network in public contracting and other systemic barriers have excluded otherwise qualified M/WBEs from receipt of contracts. Although the City had made substantial progress in eliminating discrimination in its own contracting practices, discrimination exists in private companies that contract on public projects. As a result of this discrimination, the Council found that the City has been in the past a passive participant in a system of discrimination and, in the absence of programs to eliminate disparity in utilization, would continue to be a passive participant in such a system. The Council reviewed and revised the M/WBE ordinance to reflect these conclusions.

In 2003, the City engaged a consultant to conduct an updated study of availability of minority and women-owned firms within the metropolitan statistical area of the City. The 2003 study indicated that there continued to be M/WBEs available to perform the work of City contracts and sub-contracts. The City also examined various availability and disparity studies conducted for Texas governments. These studies found that M/WBEs suffer discrimination in access to opportunities in the State of Texas. These efforts produced a revised M/WBE ordinance based upon the new evidence and recent court rulings.

The City retained outside experts in 2005 to gather and evaluate additional statistical and anecdotal evidence of discrimination. Again, while progress towards a level playing field had been made, significant barriers to full and fair participation in City prime contracts and subcontracts remained. In response, the City amended the ordinance in 2006.

In 2007, the City engaged NERA Economic Consulting to conduct this updated availability analysis and other statistical investigations regarding the presence of disparities in the City's marketplace. The 2005 anecdotal findings are also contained herein.

## Introduction and Executive Summary

### C. The Current Study

To further ensure continuing compliance with constitutional mandates and M/WBE best practices, the City commissioned Colette Holt & Associates (CHA) in late 2005 and NERA in late 2006 to examine the past and current status of M/WBEs in the City's geographic and product markets for construction and construction-related professional services. The results of these two Studies, consolidated here and summarized below (hereafter, the "Study"), provide the evidentiary record necessary to implement renewed M/WBE policies that comply with the requirements of the courts and to assess the extent to which previous policies have assisted M/WBEs to participate on a fair basis in the City's contracting and procurement activity.

The Study also found both statistical and anecdotal evidence of business discrimination against M/WBEs in the private sector of the Austin marketplace. As a check on our statistical findings, we surveyed the contracting experiences and credit access experiences of M/WBEs and non-M/WBEs in the Austin marketplace and conducted a series of in-depth personal interviews with Austin business enterprises, both M/WBE and non-M/WBE. Statistical analyses of Austin public sector contracting behavior are contained in Chapters III, IV, and VII.

The Study is presented in nine chapters. Chapter I contains a brief history of contracting affirmative action in and past evidence of discrimination in Austin and an executive summary of the current Study. Chapter II provides a detailed overview of the current legal standards regarding public sector affirmative action programs. The remaining Chapters address the following questions:

- Chapter III: What is the relevant geographic market for the City of Austin and how is it defined? What are the relevant product markets for the City of Austin and how are they defined?
- Chapter IV: What percentage of all businesses in Austin's relevant markets are owned by minorities and/or women? How are these availability estimates constructed?
- Chapter V: Do minority and/or female wage and salary earners earn less than similarly situated White males? Do minority and/or female business owners earn less from their businesses than similarly situated White males? Are minorities and/or women in Austin less likely to be self-employed than similarly situated Whites males? How do the findings in Austin differ from the national findings on these questions? How have these findings changed over time?
- Chapter VI: Do minorities and/or women face discrimination in the market for commercial capital and credit compared to similarly-situated White males? How, if at all, do findings locally differ from findings nationally?
- Chapter VII: During the last five years, to what extent have M/WBEs been utilized by Austin, and how does this utilization compare to the availability of M/WBEs in the relevant marketplace?

## Introduction and Executive Summary

Chapter VIII: How many M/WBEs report disparate treatment in the last five years? What types of discriminatory experiences are most frequently encountered by M/WBEs? How do the experiences of M/WBEs differ from those of similar non-M/WBEs regarding the difficulty of obtaining contracts?

Chapter IX: What race-neutral and gender-neutral activities are currently being undertaken by the City? How does the City's Minority-Owned and Women-Owned Business Enterprise (M/WBE) Procurement Program operate? What were some of the most frequently encountered comments from M/WBEs and non-M/WBEs concerning M/WBE Procurement Program operations?

In assessing these questions, we present in Chapters IV through VIII a series of quantitative and qualitative analyses that compare minority and/or female outcomes to non-minority male outcomes in all of these business-related areas. The remainder of this Executive Summary provides a brief overview of each Chapter and its key findings and conclusions, where applicable.

### 1. Legal Standards for Government Affirmative Action Contracting Programs

Chapter II provides a detailed and up-to-date overview of current constitutional standards and case law on strict scrutiny of race-conscious government efforts in public contracting. The elements of Austin's compelling interest in remedying identified discrimination and the narrow tailoring of its programs to address that important government concern are delineated, and particular judicial decisions, orders, statutes, regulations, etc. are discussed as relevant, with emphasis on critical issues and evidentiary concerns. Examples include the proper tests for examining discrimination and the role of disparities; the applicability of private sector evidence; and the City's responsibility for narrowly tailoring its M/WBE Procurement Program.

### 2. Defining the Relevant Markets

Chapter III describes how the relevant geographic and product markets were defined for this Study. More than five years of prime contract and subcontract records were analyzed to determine the geographic radius around the City that accounts for at least 75 percent of aggregate contract and subcontract spending. These records were also analyzed to determine those detailed industry categories that collectively account for approximately 99 percent of contract and subcontract spending in the relevant procurement categories. The relevant geographic and product markets were then used to focus and frame the quantitative and qualitative analyses in the remainder of the Study.

The City's relevant geographic market was determined to be the Austin-Round Rock, Texas Metropolitan Statistical Area.



## D. Statistical Evidence

The *Croson* decision and most of its progeny have held that statistical evidence of disparities in business enterprise activity is a requirement for any state or local entity that desires to establish or maintain race-conscious, ethnicity-conscious, or gender-conscious M/WBE remedies. Chapter IV estimates current availability levels in the Austin area for M/WBEs in various industry groups. Chapters V and VI document in considerable detail the extent of disparities facing M/WBEs in the private sector, where contracting and procurement activities are rarely subject to M/WBE requirements. Chapter VII examines whether there is statistical evidence of disparities in the contracting and subcontracting activities of the City of Austin itself. This evidence is also relevant to the City's responsibility to narrowly tailor its MWBE and DBE Programs.

### 1. M/WBE Availability in the City of Austin's Marketplace

Chapter IV estimates the percentage of firms in the City of Austin's relevant marketplace that are owned by minorities and/or women. For each industry category, M/WBE availability is defined as the number of M/WBEs divided by the total number of businesses in the City's contracting market area. Determining the total number of businesses in the relevant markets is more straightforward than determining the number of minority-owned or women-owned businesses in those markets. The latter task has three main parts: (1) identify all listed M/WBEs in the relevant market; (2) verify the ownership status of listed M/WBEs; and (3) estimate the number of unlisted M/WBEs in the relevant market.

We used Dun & Bradstreet's *MarketPlace* database to determine the total number of businesses operating in the relevant geographic and product markets. *MarketPlace* is the most comprehensive and objective available database of U.S. businesses. *MarketPlace* contains over 13 million records, is updated continuously, and revised each quarter. We used the *MarketPlace* database to identify the total number of businesses in each three-, four-, and six-digit North American Industrial Classification (NAICS) code to which we assigned a product market weight. Industry weights reflect the City's prime contracts and associated subcontracts active between July 2002 and the March 2006.

While extensive, *MarketPlace* does not sufficiently identify all businesses owned by minorities or women. Although many such businesses are correctly identified in *MarketPlace*, experience has demonstrated that many more are missed. For this reason, several additional steps were required to identify the appropriate percentage of M/WBEs in the relevant market. First, NERA completed an intensive regional search for information on minority-owned and woman-owned businesses in Austin and the surrounding area. Beyond the information already in *MarketPlace*, NERA collected listings of M/WBEs from the City's own certification listings as well as from numerous other public and private entities in and around the Austin area. The M/WBE businesses identified in this manner are referred to as "listed" M/WBEs.

If the listed M/WBEs we identified are *all* in fact M/WBEs and are the *only* M/WBEs among all the businesses identified, then an estimate of "listed" M/WBE availability is simply the number of listed M/WBEs divided by the total number of businesses in the relevant market. However, neither of these two conditions holds true in practice and therefore this is not an adequate method for measuring M/WBE availability for two reasons. First, it is likely that some proportion of the

**Introduction and Executive Summary**

M/WBEs listed in the tables are not actually minority-owned or woman-owned. Second, it is likely that there are additional “unlisted” M/WBEs among all the businesses included in our baseline business population. Such businesses do not appear in any of the directories we gathered, and are therefore not included as “listed” M/WBEs.

To account for this, we conducted a supplementary telephone survey on a stratified random sample of firms in our baseline business population that asked them directly about the race and sex of the firm’s primary owner(s). We used the results of this survey to statistically adjust our estimates of M/WBE availability for misclassification by race and sex. The resulting estimates of M/WBE availability are presented at the end of Chapter IV. These estimates were used in Chapter VII for disparity testing on the City’s own contracting and subcontracting activity during the study period. These availability figures have also been averaged together (using dollar-based contracting weights) to provide guidance to the City’s policy makers on overall goal setting.

Tables A.1 and A.2 below provide a top-level summary of the current M/WBE availability estimates derived in this Study. Table A.1 reflects availability for all City of Austin Construction contracting and Architecture, Engineering, and Construction-Related Professional Services (“A&E”) contracting. Table A.2 reflects only federally-funded Construction and A&E contracting, which is relevant to the City’s federal DBE Program at Austin-Bergstrom International Airport (ABIA).

## Introduction and Executive Summary

Table A.1. Estimated M/WBE Availability

Detailed Industry	African-American	Hispanic	Asian	Native American	White female	M/WBE	Non-M/WBE
CONSTRUCTION (AWARDS)	1.7	9.8	1.2	1.1	13.8	27.6	72.4
CONSTRUCTION (PAYMENTS)	1.8	9.6	1.2	1.1	13.8	27.5	72.5
CONSTRUCTION (AVERAGE)	1.7	9.7	1.2	1.1	13.8	27.6	72.4
A&E (AWARDS)	1.9	8.9	4.5	0.6	15.7	31.5	68.5
A&E (PAYMENTS)	2.0	9.1	4.2	0.6	15.9	31.8	68.2
A&E (AVERAGE)	1.9	9.0	4.3	0.6	15.8	31.6	68.4
OVERALL (AWARDS)	1.8	9.6	2.0	1.0	14.2	28.6	71.5
OVERALL (PAYMENTS)	1.8	9.5	1.9	1.0	14.3	28.5	71.5
OVERALL (AVERAGE)	1.8	9.6	1.9	1.0	14.3	28.5	71.5

Source: Table 4.15.

## Introduction and Executive Summary

**Table A.2. Estimated M/WBE Availability (Federally-Funded Only)**

Detailed Industry	African-American	Hispanic	Asian	Native American	White female	M/WBE	Non-M/WBE
<i>CONSTRUCTION AND A&amp;E COMBINED (AWARDS)</i>	1.52	9.28	2.00	1.06	14.68	28.54	71.46
<i>CONSTRUCTION AND A&amp;E COMBINED (PAYMENT)</i>	1.50	9.50	2.04	1.10	14.43	28.57	71.43
<i>CONSTRUCTION AND A&amp;E COMBINED (AVERAGE)</i>	1.51	9.39	2.02	1.08	14.56	28.56	71.44

Source: Table 4.16.

## 2. Statistical Disparities in Minority and Female Business Formation and Business Owner Earnings

Chapter V demonstrates that current M/WBE availability levels in the Austin area economy, as measured in Chapter IV, are substantially and statistically significantly lower than those that we would expect to observe if commercial markets operated in a race- and sex-neutral manner.<sup>2</sup> This suggests that minorities and women are substantially and significantly less likely to own their own businesses as the result of marketplace discrimination than would be expected based upon their observable characteristics, including age, education, geographic location, and industry. We find that these groups also suffer substantial and significant earnings disadvantages relative to comparable White males, whether they work as employees or entrepreneurs.

Data from the Current Population Survey (CPS) and the Five Percent Public Use Microdata Samples (PUMS) from the 2000 Decennial Census are used to examine the incidence of minority and female business ownership (self-employment) and the earnings of minority and female business owners across the U.S. and within the Austin area. The 2000 PUMS contains observations representing five percent of all U.S. housing units and the persons in them (approximately 14 million records), and provides the full range of population and housing information collected in the most recent census. Business ownership status is identified through the “class of worker” variable, which allows us to construct a detailed cross-sectional sample of individual business owners and their associated earnings. The CPS is the source of official government statistics on employment and unemployment and has been conducted monthly for over 40 years by the U.S. Census Bureau and the U.S. Department of Labor. Currently, about

<sup>2</sup> Typically, for a given disparity statistic to be considered “statistically significant” there must be a substantial probability that the value of that statistic is unlikely to be due to chance alone. *See also fn. 126.*

## Introduction and Executive Summary

56,500 households are interviewed monthly. Households are scientifically selected on the basis of residence to represent the nation as a whole, individual states, and large metropolitan areas.

Using the PUMS and the CPS, we found that annual average wages for Blacks (both sexes) in 2000, both economy-wide and nationwide, were 30 percent lower than for White males who were otherwise similar in terms of geographic location, industry, age, and education. These differences are large and statistically significant. Large, negative, and statistically significant wage disparities were also observed for Hispanics, Asians, Native Americans, and White women. These disparities are consistent with the presence of market-wide discrimination. Observed disparities for these groups ranged from a low of -17 percent for Hispanics to a high of -36 percent for White women. Similar results were observed when the analysis was restricted to the Construction and A&E sector. That is, large, negative, and statistically significant wage disparities were observed for all minority groups and for White women. All wage and salary disparity analyses were then repeated using interaction terms designed to test whether observed disparities in the Austin MSA were different enough from elsewhere in the country or the economy to alter any of the basic conclusions regarding wage and salary disparity. They were not.

This analysis demonstrates that minorities and women earn substantially and significantly less from their labor than their White male counterparts. Such disparities are symptoms of discrimination in the labor force that, in addition to its direct effect on workers, reduce the future availability of M/WBEs by stifling opportunities for minorities and women to progress through precisely those internal labor markets and occupational hierarchies that are most likely to lead to entrepreneurial opportunities. These disparities reflect more than mere “societal discrimination” because they demonstrate the nexus between discrimination in the job market and reduced entrepreneurial opportunities for minorities and women. Other things equal, these reduced entrepreneurial opportunities in turn lead to lower M/WBE availability levels than would be observed in a race- and gender-neutral marketplace.

Next, we analyzed race and sex disparities in business owner earnings. We observed large, negative, and statistically significant business owner earnings disparities for Blacks, Hispanics, Asians, Native Americans, and White women consistent with the presence of discrimination in these markets. Large, negative, and statistically significant business owner earnings disparities were observed overall as well as in the Construction and A&E sector. As with the wage and salary disparity analysis, we enhanced our basic statistical model to test whether minority and female business owners in the Austin area differed significantly enough from business owners elsewhere in the U.S. economy to alter any of our basic conclusions regarding disparity. They did not.

As was the case for wage and salary earners, minority and female entrepreneurs earned substantially and significantly less from their efforts than similarly situated White male entrepreneurs. These disparities are a symptom of discrimination in commercial markets that directly and adversely affects M/W/DBEs. Other things equal, if minorities and women cannot earn remuneration from their entrepreneurial efforts comparable to that of White males, growth rates will slow, business failure rates will increase, and as demonstrated in this Chapter, business formation rates will decrease. Combined, these phenomena result in lower M/WBE availability levels than would otherwise be observed in a race- and sex-neutral marketplace.

## Introduction and Executive Summary

Next, we analyzed race and sex disparities in business formation. As with earnings, in almost every case we observed large, negative, and statistically significant disparities consistent with the presence of discrimination in these markets. In almost every instance, business formation rates for Blacks, Hispanics, Asians, Native Americans, and White females were substantially and statistically significantly lower than the corresponding White male business formation rate.

As a further check on the statistical findings in this Chapter, we examined evidence from the Census Bureau's *Survey of Business Owners and Self-Employed Persons* (SBO), formerly known as the *Surveys of Minority- and Women-Owned Business Enterprises* (SMWOBE). The SBO collects and disseminates data on the number, sales, employment, and payrolls of businesses owned by women and members of racial and ethnic minority groups, and has been conducted every five years since 1972. Using the SBO data, we calculated the percentage of firms in the U.S. as a whole, in the State of Texas, and in the Austin MSA that were minority-owned or female-owned and compared this to their corresponding share of sales and receipts in that year. We divided the latter by the former and multiplied the product by 100 to create a disparity ratio.

Disparity ratios of 80 percent or less indicate disparate impact consistent with business discrimination against minority-owned and female-owned firms. In the Austin area, disparity ratios fell beneath the 80 percent threshold in virtually every case examined. In most cases, particularly for Blacks, Hispanics, and Native Americans, disparity ratios were extremely low.

### 3. Statistical Disparities in Capital Markets

In Chapter VI, we analyze data from the National Survey of Small Business Finances (NSSBF) conducted by the Federal Reserve Board and the U.S. Small Business Administration, along with data from surveys NERA has conducted throughout the U.S. over the last eight years. The survey examined whether discrimination exists in the small business credit market. Discrimination in the credit market against minority-owned small businesses can have an important effect on the likelihood that such firms will succeed. Moreover, discrimination in the credit market might even prevent businesses from opening in the first place. This analysis has been held by the courts to be probative of an entity's compelling interest in remedying discrimination. We provide qualitative and quantitative evidence supporting the view that minority-owned firms, particularly African-American-owned firms, suffer discrimination in this market.

The results are as follows:

- Minority-owned firms were particularly likely to report that they did not apply for a loan over the preceding three years because they feared the loan would be denied.
- When minority-owned firms did apply for a loan, their requests were substantially more likely to be denied than other groups, even after accounting for differences in factors like size and credit history.
- When minority-owned firms did receive a loan, they paid higher interest rates than comparable White-owned firms.

## Introduction and Executive Summary

- Far more minority-owned firms report that credit market conditions are a serious concern than is the case for White-owned firms.
- A greater share of minority-owned firms believe that the availability of credit is the most important issue likely to confront the firm in the next 12 months.
- Judging from the analysis done using data from the NSSBF, there is no reason to believe that evidence of discrimination in the market for credit is different in Austin than in the nation as a whole. The evidence from NERA's own credit surveys in a variety of states and metropolitan areas across the country is entirely consistent with the results from the NSSBF.

We conclude that there is evidence of discrimination against M/WBEs in the small business credit market. This discrimination is particularly acute for Black-owned firms.

### **4. M/WBE Public Sector Utilization and Disparity in the City of Austin's Contracting and Procurement Markets**

Chapter VII presents the results of an analysis of the City of Austin's Construction and A&E spending, including associated first-tier subcontractors, subconsultants, and suppliers, awarded between July 2002 and March 2006.

With assistance from the City of Austin's Controller's Office and its Department of Small and Minority Business Resources, NERA collected Construction and A&E prime contract price agreements and purchase orders and associated subcontractor, subconsultant, and supplier data for the study period. For each prime contract obtained we recorded the procurement type, contractor name and address, contractor number, project description, contract number, contractor gender and ethnicity, contract start and end dates, final contract amount, and final amount paid. For subcontractors, we recorded the subcontractor name and address, subcontractor gender and ethnicity, final award amount, and final amount paid.

The final Master Contract/Subcontract Database included 1,702 prime contracts and 3,173 associated subcontracts, with a total value of \$791,924,314. Construction contracting and subcontracting accounted for \$698,091,025, or 88.2 percent of the total. Architecture, engineering, and other construction-related professional services accounted for the remainder—\$93,833,289 or 11.8 percent of the total.

Tables B.1 and B.2 provide top-level summaries of M/WBE utilization findings for the Study.

## Introduction and Executive Summary

**Table B.1. M/WBE Utilization in City of Austin Construction and A&E Contracting and Subcontracting (Awards)**

M/WBE Type	Procurement Category		
	Construction (%)	A&E (%)	Overall (%)
African-American	2.74	3.65	2.85
Hispanic	17.73	11.95	17.05
Asian	0.95	2.26	1.10
Native American	0.46	0.07	0.41
Minority total	21.88	17.92	21.41
White females	11.23	8.11	10.86
M/W/DBE Total	33.11	26.03	32.27
Non-M/W/DBE Total	66.89	73.97	67.73
Total (%)	100.00	100.00	100.00
Total (\$)	698,091,025	93,833,289	791,924,314

Source: Table 7.1.

**Table B.2. M/WBE Utilization in City of Austin Construction and A&E Contracting and Subcontracting (Payments)**

M/WBE Type	Procurement Category		
	Construction (%)	A&E (%)	Overall (%)
African-American	2.20	5.48	2.58
Hispanic	14.81	16.98	15.06
Asian	1.11	4.53	1.50
Native American	0.52	0.07	0.46
Minority total	18.63	27.05	19.61
White females	11.19	12.34	11.33
M/W/DBE Total	29.83	39.39	30.93
Non-M/W/DBE Total	70.17	60.61	69.07
Total (%)	100.00	100.00	100.00
Total (\$)	572,995,049	74,790,289	647,785,337

Source: Table 7.2.

Next we compared the City's and its prime contractors' use of M/WBEs to our measure of M/WBE availability levels in the relevant marketplace. If M/WBE utilization is statistically significantly lower than measured availability in a given category we report this result as a disparity. Tables C.1 and C.2 provide top-level summaries of our disparity findings for the Study. With some exceptions, we find strong evidence of disparity in the City of Austin's own



## Introduction and Executive Summary

contracting activity for Asian-owned firms, Native American-owned firms, and White female-owned firms, despite the presence of its M/WBE Procurement Program.

Table C.1. Overall Disparity Results (Awards)

Procurement Category / M/WBE Type	Utilization	Availability	Disparity Index	
<b>All Procurement</b>				
African-American	2.85	1.77		
Hispanic	17.05	9.59		
Asian	1.10	1.98	55.8	***
Native American	0.41	0.97	42.3	***
Minority total	21.41	14.31		
White female	10.86	14.24	76.3	***
M/WBE total	32.27	28.55		
<b>Construction</b>				
African-American	2.74	1.74		
Hispanic	17.73	9.81		
Asian	0.95	1.20	79.3	***
Native American	0.46	1.11	41.3	***
Minority total	21.88	13.85		
White female	11.23	13.80	81.4	***
M/WBE total	33.11	27.64		
<b>A&amp;E</b>				
African-American	3.65	1.86		
Hispanic	11.95	8.90		
Asian	2.26	4.46	50.7	***
Native American	0.07	0.55	12.6	***
Minority total	17.92	15.77		
White female	8.11	15.70	51.6	***
M/WBE total	26.03	31.47	82.7	***

Source: Table 7.11.

## Introduction and Executive Summary

Table C.2. Overall Disparity Results (Payments)

Procurement Category / M/WBE Type	Utilization	Availability	Disparity Index	
<b>All Procurement</b>				
African-American:	2.58	1.81		
Hispanic	15.06	9.52		
Asian	1.50	1.87	80.5	***
Native American	0.46	0.99	47.1	***
Minority total	19.61	14.18		
White female	11.33	14.27	79.4	***
M/WBE total	30.93	28.45		
<b>Construction</b>				
African-American:	2.20	1.75		
Hispanic	14.81	9.64		
Asian	1.11	1.20	92.4	***
Native American	0.52	1.11	46.7	***
Minority total	18.63	13.7		
White female	11.19	13.85	80.8	***
M/WBE total	29.83	27.54		
<b>A&amp;E</b>				
African-American:	5.48	2.02		
Hispanic	16.98	9.09		
Asian	4.53	4.24		
Native American	0.07	0.56	11.8	***
Minority total	27.05	15.91		
White female	12.34	15.88	77.7	***
M/WBE total	39.39	31.79		

Source: Table 7.12.

## 5. Expected M/WBE Availability

If no disparity is present in the relevant marketplace, then the disparity ratio will be equal to 100 and expected M/WBE availability rate (the M/WBE availability level that would be observed in a non-discriminatory marketplace) will be equivalent to current M/WBE availability. In cases where adverse disparities *are* present in the relevant marketplace, however, as documented in Chapters V and VI of this Study, then the disparity ratio will be less than 100, and, consequently, expected availability rates will exceed current availability rates. Expected availability levels for Austin's overall Construction and A&E contracting are presented below in Table D.

## Introduction and Executive Summary

Table D. Overall Expected Availability—All Procurement Categories Combined

Procurement Category / M/WBE Type	Current Availability	Expected Availability
<b>All Procurement</b>		
African-American:	1.79	2.77
Hispanic	9.56	16.29
Asian	1.92	2.50
Native American	0.98	1.17
Minority total	14.25	22.73
White female	14.25	29.50
M/WBE total	28.50	49.83
<b>Construction</b>		
African-American:	1.74	2.69
Hispanic	9.73	16.58
Asian	1.20	1.56
Native American	1.11	1.32
Minority total	13.77	22.15
White female	13.82	28.61
M/WBE total	27.59	48.23
<b>A&amp;E</b>		
African-American	1.94	3.00
Hispanic	8.99	15.32
Asian	4.35	5.66
Native American	0.56	0.67
Minority total	15.84	24.65
White female	15.79	32.69
M/WBE total	31.63	55.30

Source: Table 7.17.

**E. Anecdotal Evidence****1. Anecdotal Evidence of Disparities in the City of Austin's Marketplace**

The first section of Chapter VIII presents the results of a large scale mail survey we conducted of both M/WBEs and non-M/WBEs about their experiences and difficulties involved in obtaining contracts. The purpose of this survey was to quantify and compare anecdotal evidence on the experiences of M/WBEs and non-M/WBEs as a method to examine whether any differences might be due to discrimination.

We mailed M/WBE and non-M/WBE questionnaires to a random sample of firms in the City of Austin's geographic market area. We asked about bid requirements and other factors (bonding and insurance requirements, etc.) affecting their ability to obtain contracts. The questionnaires also asked for characteristics of the firms and the owners, such as the number of years the firm has been in business, the number of employees, firm revenues, and the education level of the primary owner. The M/WBE questionnaire also asked firms whether they experienced disparate treatment in various business dealings (such as commercial loan applications and obtaining price

## Introduction and Executive Summary

quotes from suppliers or subcontractors) in the past five years due to their race or gender and how often prime contractors who use them as subcontractors on public-sector projects with M/WBE goals also solicit or use them on public-sector or private-sector projects without such goals.

Many survey respondents had done business or attempted to do business with the City of Austin, the State of Texas, or other public entities in the Austin area in the past five years.

We found that M/WBEs in the City's markets report suffering business-related discrimination in large numbers and with statistically significantly greater frequency than non-M/WBEs. These differences remain statistically significant when firm size and owner characteristics are held constant. We also find that M/WBEs in these markets are more likely than similarly situated non-M/WBEs to report that specific aspects of the regular business environment make it harder for them to conduct their businesses, less likely than similarly situated non-M/WBEs to report that specific aspects of the regular business environment make it easier for them to conduct their businesses, and that these differences are statistically significant in many cases. Additionally, we find that M/WBE firms that have been hired in the past by non-M/WBE prime contractors to work on public sector contracts with M/WBE goals are rarely hired—or even solicited—by these prime contractors to work on projects without M/WBE goals. The relative lack of M/WBE hiring and, even more tellingly, the relative lack of solicitation of M/WBEs in the absence of affirmative efforts by the City of Austin and other public entities in the Austin area shows that business discrimination continues to fetter M/WBE business opportunities in Austin's relevant markets. We conclude that the statistical evidence presented in this report is consistent with these anecdotal accounts of contemporary business discrimination.

## 2. Business Owner Interviews

The second half of Chapter VIII presents the results from a series of in-depth personal interviews conducted with M/WBE and non-M/WBE business owners in the Austin area. The purpose of these interviews was much the same as the mail surveys: to explore additional anecdotal evidence of possible discrimination against minorities and women in Austin's marketplace for construction and construction-related professional services contracts. Colette Holt & Associates conducted six sessions of interviews with groups of minority, women, and majority business owners about their experiences in seeking and performing contracts in Austin's marketplace. A session was also held with the City's Minority-Owned and Women-Owned Business Enterprise and Small Business Enterprise Procurement Program Advisory Committee (MBE/WBE and SBE Advisory Committee).

The longer interview length and more intimate interview setting were designed to allow for more in-depth responses from business owners. Similar to the survey responses, the interviews suggest that M/WBEs — particularly Black-owned and Hispanic-owned firms — continue to suffer discriminatory barriers to full and fair access to City of Austin, other public sector, and private sector contracts. Participants reported perceptions of M/WBE incompetence and being subject to higher performance standards; discrimination in access to commercial loans and surety bonds; paying higher prices for supplies than non-M/WBEs; inability to obtain public sector prime contracts; difficulties in receiving fair treatment in obtaining public sector subcontracts; and

### Introduction and Executive Summary

virtual exclusion from private sector opportunities to perform as either prime contractors or subcontractors.

Participants reported they still experience discrimination and barriers to full and fair opportunities to compete for the City's prime contracts and subcontracts. In particular, they discussed:

- Stereotypes and unprofessional conduct
- Diminished growth opportunities
- Restrictive contract specifications
- Discrimination complaints
- Barriers to obtaining private sector contracts
- Discrimination in access to capital

We also explored interviewees' experiences with the City's M/WBE Procurement Program. Topics covered certification; bidding and performing contracts; the Program's impact on M/WBEs and non-M/WBEs; good faith efforts to meet contract goals; and substitutions of subcontractors.

In general, interviews were supportive of the City's Program and several suggestions were made for its improvement.

This section concludes with an overview of prior evidence considered by the City regarding discrimination in its contracting marketplace.

While not definitive proof that the City of Austin has a compelling interest in implementing race- and gender-conscious remedies for these impediments, the results of the surveys and the personal interviews are the types of anecdotal evidence that, especially in conjunction with the Study's extensive statistical evidence, the courts have found to be highly probative of whether, without affirmative interventions, the City would be a passive participant in a discriminatory local marketplace. It is also highly relevant for narrowly tailoring M/WBE goals for locally funded contracts and DBE goals under 49 CFR Part 26.

## I. LEGAL ANALYSIS

### A. Background and Introduction

The purpose of this disparity study is to evaluate the need and basis for the enactment of a Minority/Women Business Enterprise program by the Commonwealth of Kentucky (hereinafter "Kentucky" or "the Commonwealth"). In order to ensure that public contracting opportunities are equally available to minorities and women, Kentucky has dedicated itself to creating a program that will not only address the needs of willing and capable minority and women business owners, but also render a more diverse and equitable business environment that will benefit all its citizens.

State initiatives which seek to employ "race conscious" measures of ensuring equal opportunity must satisfy the most exacting standards, in order to comply with constitutional requirements. These standards and principles of law were applied and closely examined by the Supreme Court in City of Richmond v. J.A. Croson Company, 488 U.S. 469 (1989), 709 S.Ct. 706, and Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 115 S.Ct. 2097 (1995). The Croson decision represents the definitive legal precedent which established "strict scrutiny" as the standard of review by which state and local programs that grant or limit government opportunities based on race are evaluated. The Adarand decision subsequently extended the "strict scrutiny" standard of review to race conscious programs enacted by the federal government.

In rendering the Croson decision in January 1989, the U.S. Supreme Court held that the City of Richmond's minority business enterprise ordinance--which mandated that majority-owned prime contractors to whom the City of Richmond had awarded contracts, subcontract 30% of their construction dollars to minority-owned subcontractors--violated the equal protection clause of the fourteenth amendment to the United States Constitution. In a six-to-three majority decision, the Court held that state and local programs which allocate, or "set aside," a portion of public contracting exclusively to minority-owned businesses must be able to meet a "strict scrutiny" standard of review if race, a suspect classification, is considered.

The strict scrutiny test requires race or ethnicity-based programs to be based upon a compelling governmental interest and that they must be narrowly tailored to achieve

that interest. See also Engineering Contractors Assoc. of South Florida, Inc. v. Metropolitan Dade County, 122 F.3d 895 (11<sup>th</sup> Circuit 1997); Associated General Contractors v. Drabik, 214 F.3d (6<sup>th</sup> Circuit 2000). The strict scrutiny test further requires a "searching judicial inquiry into the justification" for the preferences to determine whether the classifications are remedial or "in fact, motivated by the illegitimate notions of social inferiority or simple social politics".<sup>1</sup>

It is important to note that the "strict scrutiny" standard of review represents the highest level of judicial scrutiny, and is used to test the legality of all state programs which consider race as a determining factor. Conversely, some lower courts, in subsequent decisions, have applied an "intermediate" level of scrutiny to state programs that use gender as a determining factor, and assist women-owned businesses.

Kentucky has confronted the issue of "affirmative action" in the Sixth Circuit Court of Appeals and the District Court for the Western Division on several occasions. Generally, the decisions have been consistent with the analysis and principles of law set forth in Croson. However, there are anomalies among some of the more recent opinions, which present judicial modification and expansion of the principles of law in Croson, with regard to data collection and other evidentiary matters. These cases are of particular importance to Kentucky. This legal analysis includes an extended discussion of public contracting, Kentucky Constitution, Equal Protection Clause, and Equal Employment Opportunity Commission (hereinafter "EEOC") cases from these courts, which have had a direct impact on the methodology employed by Griffin & Strong, in conducting our disparity study for Kentucky. We will discuss the legal principles outlined by the Supreme Court and lower courts in setting forth the specific requirements that governments must follow in forming affirmative actions plans.

### **The Croson Decision**

In its Croson decision, the Supreme Court ruled that the City of Richmond's Minority Business Enterprise (hereinafter "MBE") program failed to satisfy both prongs of the strict scrutiny standard.<sup>2</sup> The City failed to show that its minority set-aside program was "necessary" to remedy the effects of discrimination in the marketplace. The City of

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<sup>1</sup> 488 U.S. at 493

<sup>2</sup> *Id.* at 469, 507

Richmond had not demonstrated the necessary discrimination. The Court reasoned that a mere statistical disparity between the overall minority population in Richmond (50 percent African-American) and awards of prime contracts to minority-owned firms (0.67 percent to African-American firms) was an irrelevant statistical comparison and insufficient to raise an inference of discrimination. Regarding the evidence that Richmond provided to support its goal program, the Court emphasized the distinction between "societal discrimination", which it found as an inappropriate and inadequate basis for social classification, and the type of identified discrimination that can support and define the scope of race-based relief. The Court noted that a generalized assertion that there has been past discrimination in an entire industry provided no guidance to determine the present scope of the injury it seeks to remedy. The Court emphasized, "there was no direct evidence of race discrimination on the part of the City in letting contracts or any evidence that the City's prime contractors had discriminated against minority-owned subcontractors." *Id* at 480.

In short, the Court concluded there was no *prima facie* case of a constitutional or statutory violation by anyone in the construction industry. Justice O'Connor did opine, however, what evidence might indicate a proper statistical comparison: "where there is a significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality's prime contractors, an inference of discriminatory exclusion could arise".<sup>3</sup> In other words, the statistical comparison would be one between the percentage of MBEs in the market qualified to do contracting work (including prime contractors and subcontractors) and the percentage of total City contracting dollars awarded to minority firms. The relevant question among lower federal courts has been how to determine this particular comparison. See discussion of statistical comparison *infra*.

Additionally, the Court stated that identified anecdotal accounts of past discrimination could also provide the basis to establish a compelling interest for local governments to enact race-conscious remedies. However, conclusory claims of discrimination by City officials would not suffice. In addition, the Court held that Richmond's MBE program was not remedial in nature because it provided preferential treatment to minorities such as Eskimos and Aleuts, groups for which there was no

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<sup>3</sup> *Id* at 509



evidence of discrimination in Richmond. In order to uphold a race or ethnicity based program, there must be a determination that a strong basis in evidence exists to support the conclusion that the remedial use of race is necessary. A strong basis in evidence cannot rest on an amorphous claim of societal discrimination, on simple legislative assurances of good intention or congressional findings of discrimination in the national economy.

Regarding the second prong of the strict scrutiny test, the Court ruled that Richmond's MBE program was not narrowly tailored to redress the effects of discrimination. First, the program extended to a long list of ethnic minorities (e.g. Aleuts) for which the City had established no evidence of discrimination. Thus, the scope of the City's program was too broad. Second, the Court ruled that the thirty percent (30%) goal for MBE participation in the Richmond program was a rigid quota not related to identified discrimination. Specifically, the City was criticized for its lack of inquiry into whether a particular minority business, seeking racial preferences, had suffered from the effects of past discrimination. Third, the Court expressed disappointment that the City failed to consider race-neutral alternatives to remedy the under-representation of minorities in contract awards. Finally, the City's MBE program contained no sunset provisions for a periodic review process whose function is to assess the continued need for the program.<sup>4</sup>

Thus, in order for states, municipalities, and other local governments to satisfy the narrow tailoring prong, the Croson Court suggested analyzing the following factors:

- Whether the MBE program covers minorities or women for which there is evidence of discrimination (i.e. statistical disparity, anecdotal evidence, etc.);
- Whether the size of the MBE participation goal is flexible and contains waiver provisions for prime contractors who make a "good faith" effort to satisfy MBE utilization goals, but are unsuccessful in finding any qualified, willing and able MBEs;
- Whether there was a reasonable relationship between the numerical goals set and the relevant labor pool of MBEs capable of performing the work in the marketplace;

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<sup>4</sup> Id at 500

- Whether race-neutral alternatives were considered before race-conscious remedies were enacted; and
- Whether the MBE program contains sunset provisions or mechanisms for periodic review to assess the program's continued need.

## **B. Procedural Posture, Permissible Evidence and Burdens of Proof**

This section is a review of the methodology upon which courts rely in reviewing legal challenges to M/WBE programs. First, we will discuss the standing requirements for a plaintiff to maintain a suit against a M/WBE program; secondly, an analysis of the standard of review of equal protection that governs the courts' analyses; thirdly, we will review the evidentiary requirements courts utilize to determine proof of discrimination; and lastly, the burden of production and proof the courts require of the parties in these cases.

### ***1. Standing***

As a result of the Croson decision, numerous legal challenges to MBE set-aside programs have come before the courts. There has been a flurry of legal challenges to state and local affirmative action programs. Standing is important because it is usually pivotal in determining a party's relevance in a lawsuit. Thus, if a MBE program is properly constructed and administered, there should be no legitimate claims of reverse discrimination by majority contractors resulting in a lawsuit. Under the traditional standing analysis, in order to satisfy the "injury in fact" requirement, plaintiffs must establish a causal connection between the injury, the ordinance, and the likelihood that the injury will be redressed by a favorable decision. Moreover, the Courts may not tolerate a lawsuit unless the plaintiff shows some "concrete and particularized" injury that is in fact imminent, and which amounts to something more than "conjectural or hypothetical" injury.<sup>3</sup>

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<sup>3</sup> See Cone Corp. v. Hillsborough County, 1994 WL 371368; Cone Corp., 1994 WL 526019 (M.D. Fla. 1994) (Court imposed Rule 11 sanctions based on plaintiffs' complaint which failed to establish injury in fact). See also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).

Nevertheless, Justice Thomas' opinion in Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville, Florida, et al., 508 U.S. 656, 113 S.Ct. 2297, (1993), has modified the traditional standing requirement for contractors challenging local and state government minority preference schemes. The Court relaxed the injury in fact requirements by holding that so long as the non-minority contractor can show that they were "able and qualified to bid" on a contract subject to the City's ordinance, the "injury in fact" arises from an inability to compete with M/WBEs on an equal footing due to the ordinance's "discriminatory policy."<sup>6</sup> Specifically, the Court stated:

When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. The "injury in fact" in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit. And in the context of a challenge to a set-aside program, the "injury in fact" is the inability to compete on an equal footing in the bidding process, not the loss of a contract. To establish standing, therefore, a party challenging a set-aside program...need only demonstrate that it is able and ready to bid on contracts and that a discriminatory policy prevents it from doing so on an equal footing. 508 U.S. at 666.

More recently, in Associated General Contractors of America v. City of Columbus, 172 F.3d 411 (6<sup>th</sup> Cir. 1999), the United States Court of Appeals for the Sixth Circuit issued a decision which addressed the injury in fact element of the standing requirement. In Associated General Contractors, a contractors association brought an action challenging the constitutionality of the City of Columbus' minority business set aside ordinance. The Federal District Court for the Southern District of Ohio struck down the ordinance and the City moved for relief from judgment, *inter alia*, after enacting a new set-aside ordinance. The Court of Appeals held, in pertinent part, that the contractors association could not demonstrate the injury in fact required to establish standing to challenge the constitutionality of the second minority business set-aside ordinance that was enacted by the City, but had not yet been put into effect. The Court

<sup>6</sup> See Contractors Assn. of Eastern Pennsylvania v. City of Philadelphia, 6 F.3d 990, 995 (3rd Cir. 1993); Concrete Works of Colorado v. City and County of Denver, 36 F.3d 1513, 1518 (10th Cir. 1994); (concrete works submitted and the ordinance prevented it from competing on an equal basis.); Webster Greenthumb v. Fulton County, 51 F.Supp. 2d 1354 (Plaintiff Greenthumb demonstrated that it was able to bid on contracts and a discriminatory policy prevented it.)

further stated that any injury foreseen as a result of the ordinance could not be other than hypothetical or conjectural until the ordinance was put into effect.

The Sixth Circuit explained:

Once the set-aside program was gone, the constitutional violation was gone, and no condition requiring repair remained. The remedy was complete. The agreed order, however...enjoined the City from enacting any new set-aside legislation without first obtaining District Court approval—thus, the decree aimed at eliminating a condition that did not yet exist, a condition that, at most, might violate the Constitution, if that condition should in fact materialize. 172 F.3d at 418.

Lastly, in Adarand, the Supreme Court continues to find standing in cases in which the challenging party makes "an adequate showing that sometime in the relatively near future it will bid on another government contract." That is, if the challenging party is very likely to bid on future contracts, and must compete for such contracts against MBEs, then that contractor has standing to bring a lawsuit.

## **2. Equal Protection Clause Standards**

The second preliminary matter that courts address is the standard of equal protection review that governs their analysis. The Fourteenth Amendment provides that "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."<sup>7</sup>

### *a. Judicial Standards of Review*

Courts determine the appropriate standard of equal protection review by examining the protected classes embodied in the statute. The courts apply *strict scrutiny* to review an ordinance's race-based preference scheme and inquire whether the law is narrowly tailored to achieve a compelling governmental interest. Conversely, gender-based classifications are evaluated under the *intermediate scrutiny* rubric, which provides

<sup>7</sup> Adarand, 515 U.S. 200, 211, 115 S.Ct. 2097, 2105.

<sup>8</sup> U.S. Const. amend. XIV, § 1.

that the statute must be substantially related to an important governmental objective.<sup>9</sup> Therefore, race-conscious affirmative action is subject to a much higher standard of judicial review than gender-conscious affirmative action.

### 1) Strict Scrutiny

In order for a local governmental entity to constitutionally enact a M/WBE ordinance which awards contracts it must show a *compelling governmental interest*. This compelling interest must be proven by demonstrating particularized findings of past discrimination. The strict scrutiny test ensures that the means used to address the compelling goal of remedying past discrimination "fit" so closely that there is little likelihood that the motive for the racial classification is illegitimate racial prejudice or stereotype.<sup>10</sup> After legislative or administrative findings of constitutional or statutory violations, local governments have a compelling interest in remedying past discrimination.

The Courts have also ruled that general societal discrimination is not a compelling interest which justifies the use of race-based measures.<sup>11</sup> Rather, there must be some showing of prior discrimination by the governmental actor involved, either as an "active" or "passive" participant.<sup>12</sup> The governmental entity must point to an identified discrimination in the area, and in the industry to which the plan applies. A *prima facie* case of intentional discrimination is deemed sufficient to support a local government's affirmative action plan. However, generalized assertions that there has been past discrimination in an entire industry provides no guidance for a legislative body to determine the precise scope of the injury it seeks to redress.<sup>13</sup>

Since all racial classifications are viewed as legally suspect, the governing body must show a "sound basis in the evidence" of discrimination in order to justify any enactment of race conscious legislation. Merely stating a "benign" or "remedial" purpose does not constitute a "strong basis in evidence" that the remedial plan is necessary, nor

<sup>9</sup> *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724, 102 S.Ct. 3331, 3335. See *Engineering Contractors Association of South Florida, Inc., et al v. Metropolitan Dade County, et al*, 122 F.3d 895 (11<sup>th</sup> Cir. 1997) (Eleventh Circuit explaining U.S. v. Virginia, and the appropriate gender-based affirmative action equal protection analysis).

<sup>10</sup> *Crosby*, 488 U.S. 469, 493, 109 S.Ct. 706, 721. See also, *Adarand*, 515 U.S. 200, 235, 115 S. Ct. 2097, 2117; *Hopwood v. State of Texas*, 78 F.3d 932, 951 (5<sup>th</sup> Cir. 1996).

<sup>11</sup> *Id.* at 496-97, 723. See *Miller v. Johnson*, 515 U.S. 900, 922, 115 S.Ct. 2475, 2491 (1995).

<sup>12</sup> *Id.* at 498, 724.

<sup>13</sup> *Id.* at 498-99, 724. See *Miller*, 515 U.S. 900, 921, 115 S.Ct. 2475, 2491.

does it establish a *prima facie* case of discrimination. Thus, the local government must identify the discrimination it seeks to redress.<sup>14</sup> Particularized findings of discrimination are required under Croson. Although Croson places the burden on the government to demonstrate a "strong basis in evidence", the Fourteenth Amendment does not require a court to make an ultimate judicial finding of discrimination before the government may take affirmative steps to eradicate discrimination.

In Concrete Works I, 36 F.3d 1513 (10<sup>th</sup> Cir. 1994), the Tenth Circuit Court of Appeals reversed the District Court's granting of summary judgment for the City of Denver, which had determined that Denver's factual showing of past race and gender discrimination justified its compelling government interest in remedying the discrimination. In reversing, the Tenth Circuit held that factual issues of dispute existed about the accuracy of Denver's public and private discrimination data, but noted that Denver had shown evidence of discrimination in both the award of public contracts and within the Denver MSA that was particularized and geographically based. On remand, Denver needed only to come forward with evidence that its ordinance was narrowly based, whereupon it became Concrete Works' burden to show that there was no such strong basis.

The types of evidence routinely presented to show the existence of a compelling interest include statistical and anecdotal evidence.<sup>15</sup> Where gross statistical disparities exist, they alone may constitute *prima facie* proof of a pattern or practice of discrimination. Anecdotal evidence, such as testimony from minority contractors, is most useful as a supplement to strong statistical evidence.<sup>16</sup> Nevertheless, anecdotal evidence is rarely so dominant that it can, by itself, establish discrimination under Croson. The "combination of anecdotal and statistical evidence," however, is viewed by the courts as "potent."<sup>17</sup>

If there is a strong basis in evidence to justify a race or ethnic program, the next step of the strict scrutiny test is whether the M/WBE program is narrowly tailored to

<sup>14</sup> *Id.* at 500-501, 725.

<sup>15</sup> *Id.* at 501, 725-26. See, United Black Firefighters Assn. v. City of Akron, 976 F.2d 999, 1009 (6th Cir. 1992). See also, Engineering Contractors, 122 F.3d 895 (11<sup>th</sup> Cir. 1997).

<sup>16</sup> Concrete Works, 36 F.3d 1513, 1520. (10<sup>th</sup> Cir. 1994). See Engineering Contractors, 122 F.3d 895, 125-26 (11<sup>th</sup> Cir. 1997); Ensley Branch v. Seibels, 31 F.3d 1548, 1565 (11<sup>th</sup> Cir. 1994).

<sup>17</sup> Coral Construction Co. v. King County, 941 F.2d 910, 920 (9th Cir. 1991).

redress the effects of discrimination. Racial and ethnic preferences must be a remedy of last resort. See Engineers at 926. In Croson, the Court considered four factors:

- (1) whether the city has first considered race-neutral measures, but found them to be ineffective;
- (2) the basis offered for the goals selected;
- (3) whether the program provides for waivers; and,
- (4) whether the program applies only to MBEs who operate in the geographic jurisdiction covered by the program.

Other considerations include the flexibility and duration of the program, that is, whether the program contains a sunset provision or other mechanisms for periodic review of its effectiveness. These mechanisms ensure that the program does not last longer than its intended remedial purpose, and, furthermore, keeps the relationship of numerical goals to the relevant labor market pure, as well as the impact of the relief on the rights of third parties.<sup>18</sup> In Ensley Branch NAACP v. Seibels, 31 F.3d 1548 (11<sup>th</sup> Cir. 1994), the Eleventh Circuit U.S. Court of Appeals also held that four factors should be taken into account when evaluating whether a race or ethnicity-conscious affirmative action program is narrowly tailored:

- (1) the necessity for the relief and the efficacy of alternative remedies;
- (2) the flexibility and duration of the relief, including the availability of waiver provisions;
- (3) the relationship of the numerical goals to the relevant labor market; and
- (4) the impact of the relief on the rights of innocent third parties.<sup>19</sup>

## 2) Intermediate Scrutiny

The Croson decision failed to evaluate women-owned business ("WBE") programs. As such, subsequent federal appellate courts have addressed and set forth guidelines for evaluating gender based affirmative action programs. Most of these courts have adopted the intermediate scrutiny analysis, rather than the strict scrutiny analysis which is applied to race conscious programs. However, as demonstrated by the analysis

<sup>18</sup> Adarand, 515 U.S. 200, 238, 115 S. Ct. 2097, 2118.

<sup>19</sup> Ensley Branch, 31 F.3d 1548, 1569 (11<sup>th</sup> Cir. 1994); Webster v. Fulton County, GA at 1362.

below, it remains unclear how the review of evidence of discrimination for an intermediate level of scrutiny differs from strict scrutiny.

In Coral Construction Company v. King County, 941 F.2d 910 (9<sup>th</sup> Cir. 1991), cert. denied, 502 U.S. 1033, 122 S.Ct. 875, 116 L.Ed. 2d. 780 (1992), the Ninth Circuit Court of Appeals applied an intermediate scrutiny standard in reviewing the WBE section of the county's ordinance. In addition, the Third Circuit U.S. Court of Appeals applied an intermediate level of review in its ruling in Contractors Association of Eastern Pennsylvania, Inc. v. City of Philadelphia, 6 F.3d 990 (3<sup>rd</sup> Cir. 1993). However, the Court opined that it is unclear whether statistical evidence as well as anecdotal evidence is required to establish the standard of discrimination necessary to satisfy the intermediate scrutiny standard; and if so, how much statistical evidence is necessary. Nonetheless, the Court struck down the WBE portion of Philadelphia's programs finding that the City had no statistical evidence and insufficient anecdotal evidence for women-owned construction firms.

The Eleventh Circuit Court of Appeals in Ensley Branch NAACP v. Seibels, addressed the issue in a Title VII action.<sup>20</sup> In this decision, the Eleventh Circuit rejected the argument that, based on Croson, the Supreme Court intended strict scrutiny to apply to gender-conscious programs challenged under the Equal Protection Clause. Since Ensley, the Supreme Court decided United States v. Virginia, 518 U.S. 515, 116 S.Ct. 2264, 135 L.Ed.2d 735 (1996), thereby invalidating Virginia's maintenance of the single sex Virginia Military Institution (VMI). Rather than deciding the constitutionality of the VMI program under intermediate scrutiny, the Court held that "parties who seek to defend gender-based government action must demonstrate an 'exceedingly persuasive justification' for that action."<sup>21</sup> The Court then applied this "exceedingly persuasive justification" standard in invalidating the VMI program. Justice Rehnquist concurred only in the judgment, noting that "the Court . . . introduces an element of uncertainty respecting the appropriate test."<sup>22</sup> Justice Scalia dissented, suggesting that the majority had effectively adopted a strict scrutiny standard to judge the constitutionality of classifications that deny individuals opportunity on the basis of sex.<sup>23</sup> The majority however, neither denied nor affirmed Justice Scalia's analysis.

<sup>20</sup> 31 F.3d 1548, 1579 (11<sup>th</sup> Cir. 1994).

<sup>21</sup> U.S. v. Virginia at 529, 2274.

<sup>22</sup> Id. at 559, 2288.

<sup>23</sup> Id. at 571, 2294.



It is not certain whether the Supreme Court intended the VMI decision to signal a heightening in scrutiny of gender-based classifications. Nevertheless, recent federal district courts cases, as in Engineering Contractors Assn. of South Florida, Inc. v. Metropolitan Dade County, 122 F.3d 895 (11<sup>th</sup> Cir. 1997), continue to confine their analysis of WBE programs to traditional intermediate scrutiny.<sup>24</sup> Here the court noted, however, that the measure of evidence required for a gender classification is less clear. The court agreed with the third circuit's holding that intermediate scrutiny requires that evidence be probative, but here the court added that probative must be "sufficient as well." 122 F.3d 895.

#### **b. Passive Participation**

Strict scrutiny requires a strong basis in evidence of either active participation by the government in prior discrimination or passive participation by the government in discrimination by the local industry.<sup>25</sup> Here the court noted, however, that the measure of evidence required for a gender classification is less clear. The court agreed with the third circuit's holding that intermediate scrutiny requires that evidence be probative but here the court added that probative must be "sufficient as well." 122 F.3d at 895. The Supreme Court in Croson opined that municipalities have a compelling interest in ensuring that public funds do not serve to finance private discrimination. Local governments may be able to take remedial action when they possess evidence that their own spending practices are exacerbating a pattern of private discrimination. Croson at 502.

Subsequent lower court rulings have provided more guidance on passive participation by local governments. In Concrete Works of Colorado Inc. v. The City and County of Denver, 36 F. 3<sup>rd</sup> 1513 (10<sup>th</sup> Cir. 1994), the Tenth Circuit held that it was sufficient for the local government to demonstrate that it was engaging in passive participation in discrimination rather than showing that it actively participated in the discrimination. Thus, the desire for a government entity to prevent the infusion of public funds into a discriminatory industry is enough to satisfy the requirement. As such, if there is evidence that the Commonwealth of Kentucky is infusing public funds into a

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<sup>24</sup> 122 F.3d 895, 907-08 (11<sup>th</sup> Cir. 1997).

<sup>25</sup> Croson, 488 U.S. at 491-92, 109 S.Ct. at 537-38.

discriminatory industry, this entity has a compelling interest in remedying the effects of such discrimination. However, there must be evidence of exclusion or discriminatory practices by the contractors themselves.

The court in *Concrete Works* stated "neither *Croson* nor its progeny clearly state whether private discrimination that is in no way funded with public tax dollars can, by itself, provide the requisite strong basis in evidence necessary to justify a municipality's affirmative action program... Although we do not read *Croson* as requiring the municipality to identify an exact linkage between its award of public contracts and private discrimination, such evidence would at least enhance the municipality's factual predicate for a racial gender conscious program." 36 F.3d 1529.

In *Adarand Construction v. Slater* (Adarand VI) 228 F.3d 1147 (10<sup>th</sup> Cir. 2000), the Tenth Circuit U.S. Court of Appeals addressed the constitutionality of the use in a federal translation program of a subcontractor compensation clause which employed race-conscious presumptions in favor of minority and disadvantaged business enterprises. In addressing the federal government's evidentiary basis to support its findings of discrimination against minorities in the public funded and private construction industry, the court did not read *Croson* as requiring that the municipality identify the exact linkage between its award of public contracts and private discrimination. The Tenth Circuit noted that the earlier *Concrete Works* had not demonstrated the necessary finding of discrimination:

Unlike *Concrete Works*, the evidence presented by the government in the present case demonstrates the existence of two kinds of discriminatory barriers to minority subcontracting enterprises, both of which show a strong link between racial disparities in the federal government's disbursements of public funds for construction contracts and the channeling of those funds due to private discrimination. The first discriminatory barriers are to the formation of qualified minority subcontracting enterprises due to private discrimination, precluding from the outset competition for public construction contracts by minority enterprises. The second discriminatory barriers are to fair competition between minority and non-minority subcontracting enterprises, again due to private discrimination, precluding existing minority firms from effectively competing for public construction contracts. The government also presents further evidence in the form of local disparity studies of

minority subcontracting and studies of local subcontracting markets after the removal of affirmative action programs.” Concrete Works at 1529

The federal government's evidence consisted of numerous congressional investigations, hearings, local disparity studies and anecdotal evidence demonstrating discrimination by prime contractors, unions and financial lenders in the private market place. The Court of Appeals concluded that the government's evidence had demonstrated as a matter of law that there was a strong basis in evidence for taking remedial action to remedy the effects of prior and present discrimination. The Court found that Adarand had not met its burden of proof to refute the government's evidence.<sup>27</sup>

Although the federal government has a compelling interest in not perpetuating the effects of racial discrimination in its own distribution of public funds, the same interest applies to states as well. (“It is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.”)<sup>28</sup>

The standard evidence of review of strict scrutiny and the benchmark of strong basis in evidence for the government’s conclusion that the evils of racial prejudice need remedying, applies to the federal as well as the state government.

#### **c. Permissible Evidence**

In Croson, the Court concluded that state and local governments have a compelling interest to remedy identified past and present discrimination within their jurisdiction. Thus, courts have to assess whether a public entity has the requisite factual support for its M/WBE program in order to satisfy the particularized showing of discrimination required by Croson. This factual support can be developed from statistical and anecdotal evidence.

<sup>26</sup> 228 F.3d 1147 (Emphasis Added)

<sup>27</sup> *Id.* at 1147, 1176

<sup>28</sup> See Croson 488 U.S. at 492 (citing Norwood v. Harrison 413 U.S. 455)

#### d. Anecdotal Evidence

The majority decision in Croson impliedly endorsed the inclusion of personal accounts of discrimination.<sup>29</sup> However, according to the Croson standard, selective anecdotal evidence about MBE experiences alone would not provide a sufficient and strong enough basis in evidence to demonstrate public or private discrimination in a municipality's construction industry.<sup>30</sup> Nonetheless, personal accounts of actual discrimination or the effects of discriminatory practices may complement empirical evidence. In addition, anecdotal evidence of a governmental entity's institutional practices that provoke discriminatory market conditions are particularly probative. Thus, courts have required the inclusion of anecdotal evidence of past or present discrimination.<sup>31</sup>

In Coral Construction Company v. King County, the Ninth Circuit U.S. Court of Appeals concluded that "the combination of convincing anecdotal and statistical evidence" was potent.<sup>32</sup> Also, the Third Circuit suggested that a combination of empirical and anecdotal evidence was necessary for establishing a prima facie case of discrimination.<sup>33</sup> In addition, the Ninth Circuit approved the combination of statistical and anecdotal evidence used by the City of San Francisco in enacting its M/WBE ordinances.<sup>34</sup>

On the other hand, neither empirical evidence alone, nor selected anecdotal evidence alone provides a strong enough basis in evidence to demonstrate public or private discrimination in a municipality's construction industry to meet the Croson standard.<sup>35</sup> For example, in O'Donnell Construction v. District of Columbia, 963 F.2d 420 (D.C. Cir. 1992), the court reversed the denial of a preliminary injunction for the plaintiff

<sup>29</sup> Croson, 488 U.S. at 480, 109 S.Ct. at 714-15 (noting as a weakness in the City's case that the Richmond City Council heard "no direct evidence of race conscious discrimination on the part of the city in letting contracts or any evidence that the City's prime contractors had discriminated against minority-owned subcontractors").

<sup>30</sup> See Concrete Works, 36 F. 3<sup>rd</sup> 1513 (10<sup>th</sup> Cir. 1994).

<sup>31</sup> See Contractors Assn., 6 F.3d 990, 1002-03 (3<sup>rd</sup> Cir. 1993) (weighing Philadelphia's anecdotal evidence); Coral Construction Co. v. King County, 941 F.2d 910, 919 (9<sup>th</sup> Cir. 1991) ("[The combination of convincing anecdotal and statistical evidence is potent]"); Cone Corp. v. Hillsborough County, 908 F.2d 908, 916 (11<sup>th</sup> Cir. 1990) (supplementing Hillsborough County's statistical evidence with testimony from MBEs who filed complaints to the County about prime contractors' discriminatory practices), *cert. denied*, 498 U.S. 983, 111 S.Ct. 516, 112 L.Ed.2d 528 (1990); Engineering Contractors, 122 F.3d at 925-26.

<sup>32</sup> 941 F.2d at 919.

<sup>33</sup> Eastern Contractors, 6 F. 3<sup>rd</sup> 990, 1003 (3<sup>rd</sup> Cir. 1993).

<sup>34</sup> Associated General Contractors of California, Inc. v. Coalition for Economic Equity, et al, 950 F.2d 1401 (9<sup>th</sup> Cir. 1991), *cert. denied* 503 U.S. 985, 112 S.Ct. 1670, 118 L.Ed. 2d 390 (1992).

<sup>35</sup> Concrete Works, 36 F. 3<sup>rd</sup> 1513.

because the District of Columbia failed to prove a "strong basis in evidence" for its MBE program. The Court held in favor of the plaintiff because much of the evidence the District offered in support of its program was anecdotal. The Court opined that "anecdotal evidence is most useful as a supplement to strong statistical evidence--which the Council did not produce in this case".<sup>36</sup>

In Associated General Contractors of America v. City of Columbus, 936 F. Supp 1363 (S.D. Ohio 1996) vacated on other grounds 172 F.3d 411 (6<sup>th</sup> Cir. 1999), the district court stated that the City's investigation was poorly executed for several reasons. According to the Court, no efforts were made to verify reports of discrimination, there was no attempt to determine whether similarly situated majority-owned firms were treated more favorably than M/WBE firms, and political pressures may have clouded the fact finding process. The Court concluded that the anecdotal evidence in that case fell short of proof of pervasive discrimination.

Legally, plaintiffs are entitled to have a government's anecdotal evidence subjected to the test of trial before the court determines whether it actually supports a sound basis in the evidence of discrimination. Associated General Contractors v. the City of Columbus at 1428. Additionally, in Engineering Contractors, the federal district court held that, "we have found that kind of evidence [anecdotal] to be helpful in the past, but only when it was combined with and reinforced by sufficiently probative statistical evidence."<sup>37</sup>

Accordingly, a combination of statistical disparities in the utilization of M/WBEs and particularized anecdotal accounts of discrimination are required to satisfy the factual predicate. Thus, this study has included anecdotal evidence of past and present discrimination in order to establish the factual predicate by these guidelines.

#### **e. Statistical Data**

Croson additionally held that an inference of discrimination may be made with empirical evidence that demonstrates "a significant statistical disparity between the number of qualified minority contractors . . . and the number of such contractors actually

<sup>36</sup> O'Donnell, 963 F.2d 420, 427 (D.C. Cir. 1992).

<sup>37</sup> 122 F. 3<sup>rd</sup> at 925 (11<sup>th</sup> Cir. 1997).

engaged by the locality or the locality's prime contractors."<sup>38</sup> A governmental action must therefore demonstrate that gross statistical disparities exist between the proportion of MBEs awarded government contracts and the proportion of MBEs in the local industry "willing and able to do the work," in order to justify its use of race conscious contract measures.<sup>39</sup> In order to adequately assess statistical evidence, there must be evidence identifying the basic qualifications of minority contractors "willing and able to do the job" and the Court must determine, based upon these qualifications, the relevant statistical pool with which to make the appropriate statistical comparisons.<sup>40</sup> Subsequent lower court decisions have provided considerable guidelines for statistical analyses sufficient for satisfying the Croson factual predicate. Qualified, willing and able are the pillars of the Croson case. "The relevant question is how to determine who are qualified, willing and able."

Webster v. Fulton County, 51 F. Supp. 2d 1354 (N.D. Ga. 1999), presents a different method in terms of the statistical pool from which quantitative data is collected. In this case, a white male and female plaintiff, owners of a landscaping and tree removal service, the Webster Greenthumb Company, brought suit against the Fulton County's 1994 MFBE Program. The Court analyzed the statistical factual predicate which was developed by Fulton County relying heavily on Croson, and a more recent Eleventh Circuit opinion, Engineering Contractors Association v. Metropolitan Dade County, 122 F.3d. 895 (11<sup>th</sup> Cir. 1997). In Webster the Court indicated that it favored census availability data; however, other courts have made it clear that they believe that the most relevant data is bidder data, that is, data which determines availability based on the number of minority bidders in contrast to the number of majority bidders. The judge also suggests that bid data be analyzed, that is, the total number of bids submitted by all parties divided by the total number of bids submitted by minority firms. See also, George LaNoue, Who Counts? Determining the Availability of Minority Businesses for Public Contracting 21 Harv.3.L. & Pub. Pol. 793. LaNoue writes that although this problem has consumed an enormous volume of resources, no consensus has evolved among scholars or practitioners. "Measuring availability is the key issue in performing a disparity analysis. Despite substantial efforts made by consultants thus far, they have achieved no consensus *above this* measurement."<sup>39</sup>

<sup>38</sup> Croson, 488 U.S. 469, 509, 109 S.Ct. 706, 730.

<sup>39</sup> Ensley Branch, NAACP 31 F3d 1548, 1565 (11<sup>th</sup> Cir. 1994).

<sup>40</sup> 122 F. 3<sup>rd</sup> at 925 (11<sup>th</sup> Cir. 1997).

<sup>39</sup> *Id* at 833

### 1) Availability

The method of calculating M/WBE availability has varied from case to case. In Contractors Association of Eastern Pennsylvania v. City of Philadelphia, 6 F.3d 990 (3<sup>rd</sup> Cir. 1993), the Court stated that available and qualified minority owned businesses comprise the "relevant statistical pool" for purposes of determining availability. The Court permitted availability to be based on the metropolitan statistical area ("MSA") and local list of the Office of Minority Opportunity; for non-M/WBE's, census data. In Associated General Contractors of America v. City of Columbus, 936 F. Supp 1363 (1996), the City's consultants collected data on the number of M/WBE firms in the Columbus MSA, in order to calculate the percentage of available M/WBE firms. This is referred to as the rate of availability. Three sources were considered to determine the number of M/WBEs "ready willing and able" to perform construction work for the city. None of the measures of availability purported to measure the number of M/WBEs who were qualified and willing to bid as a prime on city construction projects.

The issue of availability was also examined by the Court in Contractors Association of South Florida, Inc., et al v. Metropolitan Dade County, et al, 122 F.3d 895 (11<sup>th</sup> Cir. 1997). Here, the Court opined that when reliance is made upon statistical disparity, and special qualifications are necessary to undertake a particular task, the relevant statistical pool must include only those minorities qualified to provide the requested services. Moreover, these minority firms must be qualified, willing and able to provide the requested services. If the statistical analysis includes the proper pool of eligible minorities, any resulting disparity, in a proper case, may constitute prima facie proof of a pattern or practice of discrimination.

In a recent opinion by the Sixth Circuit in Associated General Contractors v. Drabik, 214 F.3d 730 (6<sup>th</sup> Circuit 2000), the Court of Appeals ruled that the state of Ohio failed to satisfy the strict scrutiny standard to justify the state's minority business enterprise act, by relying on statistical evidence that did not account for which firms were qualified, willing and able to perform on construction contracts. The court stated that "although Ohio's most compelling statistical evidence compares the percentage of contracts awarded to minorities to the percentage of minority-owned businesses...the problem is that the percentage of minority-owned businesses in Ohio (7% of 1978) did not take into account which were construction firms and those who were qualified, willing and able to perform on state construction contracts." Id at 736. Although this

was more data than was submitted in Croson, it was still insufficient under strict scrutiny, according to the court. *Id.*

## **2) Utilization**

Utilization is a natural corollary of availability, in terms of statistical calculation. In City of Columbus, the City's consultants calculated the percentage of City contracting dollars that were paid to M/WBE construction firms. This is referred to as the rate of utilization.

## **3) Disparity Index and Croson**

To demonstrate the under-utilization of M/WBEs in a particular area, parties can employ a statistical device known as the "disparity index".<sup>40</sup> The disparity index is calculated by dividing the percentage of M/WBE participation in government contracts by the percentage of M/WBEs in the relevant population of local firms. A disparity index of one (1) demonstrates full M/WBE participation, whereas the closer the index is to zero, the greater the M/WBE under-utilization. Some courts multiply the disparity index by 100, thereby creating a scale between 0 and 100, with 100 representing full M/WBE utilization.

## **4) Standard Deviation**

The number calculated via the disparity index is then tested for its validity through the application of a standard deviation analysis. Standard deviation analysis measures the probability that a result is a random deviation from the predicted result (the more standard deviations, the lower the probability the result is a random one). Social scientists consider a finding of two standard deviations significant, meaning that there is about one chance in 20 that the explanation for the deviation could be random and the deviation must be accounted for by some factor. The Eleventh Circuit has directed that "where the difference between the expected value and the observed number is greater than

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<sup>40</sup> See Contractors Assn., 6 F.3d 990, 1005 (3<sup>rd</sup> Cir. 1993) (Third Circuit joining the First, Ninth, and Eleventh Circuits in relying on disparity indices to determine whether a municipality satisfies Croson's evidentiary burden).



two or three standard deviations', then the hypothesis that [employees] were hired without regard to race would be suspect."<sup>41</sup>

### 5) Statistical Regression Analysis

Another issue that arose in the Webster case was that of the statistical significance tests. The court indicated that the test employed in the Engineering Contractors case should be used, wherein two standard deviations or any disparity ratio that was higher than .80 which is insignificant, should be used. The Webster court criticized the Fulton County expert for failing to use a regression analysis to determine the cause of the disparity. The court likewise discredited the post-disparity study for failing to use regression analysis to determine if underutilization was due to firm size or inability to obtain bonding and financing.

The Webster court noted that the court of appeals in Engineering Contractors affirmed the District Court's conclusion that the disparities offered by Dade County's experts in that case were better explained by firm size than discrimination. Dade County had conducted a regression analysis to control for firm size after calculating disparity indices with regard to the utilization of BBEs, HBEs and WBEs in the Dade County market, by comparing the amount of contracts awarded to the amount each group would be expected to receive based on the group's bidding activity and the awardee success rate. Although there were a few unexplained disparities that remained after controlling for firm size, the District Court concluded and the Court of Appeals affirmed that there was no strong basis in evidence for discrimination for BBEs and HBEs and it did not sufficiently demonstrate the existence of discrimination against WBEs in the relevant economic sector. 122 F3d 917. The court noted that finding a single explained negative disparity against BBEs for the years 1989-1991 for a single SIC code was not enough to show discrimination.

The Webster court noted that the Court of Appeals in Engineering Contractors affirmed the District Court's conclusion that the disparities offered by Dade County's experts in that case were better explained by firm size rather than discrimination. Dade County had conducted a regression analysis to control for firm size after calculating

<sup>41</sup> Feichtal II 26 F.3d 1545, 1556 (11<sup>th</sup> Cir. 1994), quoting Hazelwood, 433 US at 308 n.13, 97 S.Ct. 2742 n.13 quoting Castaneda v. Partida, 430 U.S.482, 497,n.17, 97 S.Ct.1272, 1281 n.17, 51LEd 2d 498 (1977).

disparity indexes with regard to the utilization of BBEs, HBEs and WBEs in the Dade County market, by comparing the amount of contracts awarded to the amount it would be expected to receive based on the groups' bidding activity and the awardee success rate. Although there were a few unexplained disparities that remained after controlling for firm size, the District Court concluded and the Court of Appeals affirmed, that there was no strong basis in evidence for discrimination for BBEs and HBEs, and did not sufficiently demonstrate the existence of discrimination against WBEs in the relevant economic sector. 122 F.3d at 917. The court noted that finding a single unexplained negative disparity against BBEs for the years 1989-1991 for a single SIC code was not enough.

Courts have used these M/WBE disparity indices to apply the "strong basis in evidence" standard in Croson. For instance, the Eleventh Circuit held that a 0.11 disparity "clearly constitutes a prima facie case of discrimination indicating that the racial classifications in the County plan were necessary" under Croson.<sup>42</sup> Based on a disparity index of 0.22, the Ninth Circuit upheld the denial of a preliminary injunction to a challenger of the City of San Francisco's MBE plan based upon an equal protection claim.<sup>43</sup> Accordingly, the Third Circuit held that a disparity of 0.04 was "probative of discrimination in City contracting in the Philadelphia construction industry."<sup>44</sup>

#### **f. Geographic Scope of the Data**

The Croson Court observed that because discrimination varies across market areas, state and local governments cannot rely on national statistics of discrimination in the disputed industry to draw conclusions about prevailing market conditions in their respective regions.<sup>45</sup> However, to confine the permissible data to a governmental entity's strict geographical borders would ignore the economic reality that contracts are often awarded to firms located in adjacent areas. Thus, courts closely scrutinize pertinent data related to the jurisdictional area of the state or municipality.

Generally, the scope of the statistical analyses pertains to the geographic market area from which the governmental entity makes most of its purchases. It has been deemed appropriate to examine the existence of discrimination against M/WBEs even

<sup>42</sup> Cone Corp., 908 F.2d 908, 916 (11<sup>th</sup> Cir. 1990).

<sup>43</sup> AGC v. Coalition for Economic Equity, 950 F.2d 1401, 1414 (9<sup>th</sup> Cir. 1991).

<sup>44</sup> Contractors Assn., 6 F.3d 990, 1005 (3<sup>rd</sup> Cir. 1993).

<sup>45</sup> Croson, 488 U.S. 469, 504, 109 S.Ct. 706, 727.

when these areas go beyond the political boundaries of the local jurisdictions. In addition, disparities concerning utilization, employment size and formation are also relevant in determining discrimination in a marketplace.

Court decisions have allowed jurisdictions to utilize evidence of discrimination from nearby public entities and from within the relevant private marketplace. Nevertheless, extra-jurisdictional evidence must still pertain to the operation of an industry within geographic boundaries of the jurisdiction.

Accordingly, it can be inferred that the most appropriate and legally defensible scope of empirical data for the Commonwealth of Kentucky is the Commonwealth of Kentucky and multi-state metropolitan areas which include areas that are within the Commonwealth of Kentucky.

**g. Post-Enactment Evidence**

In Croson, the Court stated that a state or local government "must identify that discrimination . . . with some specificity before they may use race-conscious relief."<sup>46</sup> However, the Court declined to require that all relevant evidence of such discrimination be gathered prior to the enactment of the program. Pre-enactment evidence refers to evidence developed prior to a governmental entity enacting a M/WBE program, and could tentatively have been relied upon by the governmental entity in adopting the affirmative action program. Absent any pre-enactment evidence of discrimination, a state or local government would be unable to satisfy Croson. On the other hand, post-enactment evidence is that which has been developed since the affirmative action program was enacted and therefore was not specifically relied upon as a rationale for the government's race and gender conscious efforts. As such, most subsequent rulings have interpreted Croson's evidentiary requirement to include post-enactment evidence.

An exception is West Tennessee Chapter of Associated Builders and Contractors v. Board of Education of the Memphis City Schools, 64 F.Supp.2d 714 (W.D. Tenn 1999). In that case the District Court was faced with the issue of whether "post enactment evidence" is sufficient to establish a strong basis upon which a race conscious program can be supported. The late Judge Jerome Turner opined that although the court

<sup>46</sup> Croson, 488 U.S. 469, 504, 109 S.Ct. 706, 727.

in Croson was not faced with the issue of post enactment evidence, much of the language in the opinion suggests that the Court meant to require the governmental entity to develop the evidence before enacting a plan. Furthermore, when evidence of remedial need is not developed until after a racial preference plan is enacted, that evidence provides no insight into the motive of the legislative or administrative body.

The Court concluded that admitting post enactment evidence is contrary to Supreme Court precedent as developed in Wygant, Croson, and Shaw. The Court held that post enactment evidence may not be used to demonstrate that the government's interest in remedying prior discrimination was compelling. It is important to note that this opinion is not representative of the majority of case law on this issue, although it reflects a possible trend that warrants discussion and consideration. It has additional significance because the State of Tennessee is within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as is the Commonwealth of Kentucky.

Associated General Contractors of Ohio v. Sandra Drabik, 50 F.Supp.2d. 741 (1999) is another recent opinion wherein the District Court for the Eastern Division of Ohio stated that in order to support a compelling state interest for race-based preferences, challenged on equal protection grounds, evidence of past discrimination must be reasonably current.

Moreover, the Court ruled that evidence of purported racial discrimination that was more than twenty (20) years old was too remote to form the basis for a compelling governmental interest justifying the enactment of a race-based affirmative action program. This line of reasoning, in terms of the currency of statistical and anecdotal evidence, was fully considered by Griffin & Strong, P.C. while formulating the methodology employed in conducting Kentucky's disparity study.

Early post-Croson decisions permitted the use of post-enactment evidence to determine whether an M/WBE program complies with Croson.<sup>47</sup> In Ensley, the Eleventh Circuit explicitly held that post-enactment evidence is properly introduced in the record and relied upon by district courts in determining the constitutionality of government race and gender-conscious programs:

<sup>47</sup> See, e.g. Contractors Assn., 6 F.3d , 990, 1003-04 (3<sup>rd</sup> Cir. 1993); Harrison & Burrows Bridge Constructors, Inc. v. Cuomo, 981 F.2d 50, 60 (2d Cir. 1992); Coral Constr., 941 F.2d 910, 921 (9<sup>th</sup> Cir. 1991).

Although Croson requires that a public employer show strong evidence of discrimination when defending an affirmative action plan, the Supreme Court has never required that, before implementing affirmative action, the employer not have proved that it has discriminated. On the contrary, further finding of discrimination need neither precede nor accompany the adoption of affirmative action.<sup>48</sup>

Therefore, a race and gender-conscious program implemented by the Commonwealth of Kentucky may be supported by post-enactment evidence of discrimination. Moreover, post-enactment evidence is necessary to determine the program's success for narrow tailoring and continued need after the program's initial term has expired. See Associated General Utility Contractors of MD v. Mayor of Baltimore, F Supp. 2d 613, 620 (Post Enactment evidence admissible on the issue of narrow tailoring and the use of race neutral alternatives).<sup>49</sup>

#### **h. Remedies— Narrowly Tailored**

Under the Croson framework, any affirmative action plan must be narrowly tailored to ameliorate the effects of past discrimination found to justify the use of a race - conscious remedy. Cases subsequent to Croson cases have provided significant guidance on how remedies should be narrowly tailored. The Eleventh Circuit has set forth four considerations in determining whether a plan is narrowly tailored:

- (1) consideration of race neutral alternatives,
- (2) flexibility of plan,
- (3) relationship of plan's numerical goals to relevant market, and
- (4) effect of plan on third parties.<sup>50</sup>

Post-Croson cases have followed the general guidelines listed below in construing the elements of the narrow tailoring prong:

1. Relief is limited to minority groups for which there is identified discrimination;

<sup>48</sup> Ensley Branch, NAACP, 31 F.3d 1548, 1565 (11<sup>th</sup> Cir. 1994).

<sup>49</sup> 91 F. 3d at 606

<sup>50</sup> Feightal II, 940 F.2d 1394, 1406 (11<sup>th</sup> Cir. 1991). See also Engineering Contractors, 122 F3rd 895, 927 (citing Ensley Branch NAACP at 31 F.3<sup>rd</sup> 1548,1569).

2. Remedies are limited to redressing the discrimination within the boundaries of the enacting jurisdiction;
3. The goals of the programs should be flexible and provide waiver provisions;
4. Race and/or gender neutral measures should be considered; and
5. The program should include provisions or mechanisms for periodic review and sunset.

M/WBE programs must be designed so that the benefits of the programs are directed toward those firms that faced discrimination in the local marketplace. To withstand a challenge, relief must extend to those minority groups for which there is evidence of discrimination. M/WBE firms from outside the local market must show that they have unsuccessfully attempted to do business within the local marketplace in order to benefit from the program.

The Sixth Circuit Court of Appeals in Associated General Contractors v. Drabik affirmed the district court's finding that the State of Ohio's minority business enterprise statute "MBEA" was not narrowly tailored to remedy past discrimination. The court found the statute lacked narrow tailoring because (1) the MBEA suffered from under inclusiveness and over inclusiveness, (lumping together racial and ethnic groups without identified discrimination); (2) lack of a sunset date and thirdly, there was no evidence that Ohio had ever considered race neutral alternatives before adopting the plan to increase minority participation. 214 F.3d 739.

Croson requires that there not only be a strong basis in evidence for a conclusion that there has been discrimination, but also for a conclusion that the particular remedy is made necessary by the discrimination. In other words, there must be a "fit". The Third Circuit, in Contractors Association of Eastern Pennsylvania, approved the District Court's finding that the subcontracting goal program was not narrowly tailored. There was no firm evidentiary basis for believing that non-minority contractors would not hire black subcontractors. Much of the evidence found on the discrimination by the City of Philadelphia was against black "prime contractors" who were capable of bidding on City prime contracts.<sup>51</sup>

<sup>51</sup> Contractor's Association of Eastern PA, Inc. v. City of Philadelphia, 91F.3d 586, (3d Cir. 1996)

Court rulings have held that neutral measures must be considered, but not necessarily exhausted, in order for M/WBE programs to be enacted. Moreover, some courts have held that such measures could be enacted concurrently rather than enacted before race or gender-conscious measures. Cases such as Concrete Works, suggest the kinds of neutral measures considered by the courts.

Inherent in the above statements is the notion that M/WBE programs must provide flexibility. Courts have suggested project-by-project goal setting and waiver provisions. Additionally, some courts have indicated that goals need not directly correspond to current availability if there are findings that availability has been adversely affected by past discrimination. Lastly, "review" or "sunset" provisions are necessary components to guarantee that remedies do not out-live their intended remedial purpose.

#### **i. Burdens of Production and Proof**

The Croson court struck down the City of Richmond's minority set-aside program because the City failed to provide an adequate evidentiary showing of past and present discrimination.<sup>52</sup> Since the Fourteenth Amendment only allows race-conscious programs that narrowly seek to remedy particularized discrimination, the Court held that state and local governments "must identify that discrimination . . . with some specificity before they may use race-conscious relief." The Court's rationale for judging the sufficiency of the City's factual predicate for affirmative action legislation was whether there existed a "strong basis in evidence for its [government's] conclusion that remedial action was necessary."<sup>53</sup>

Croson places the initial burden of production on the state or local governmental actor to demonstrate a "strong basis in evidence" that its race and gender-conscious contract program is aimed at remedying identified past or present discrimination. A state or local affirmative action program that responds to discrimination is sustainable against an equal protection challenge so long as it is based upon strong evidence of discrimination. An inference of discrimination may be made by the locality using empirical evidence that proves a significant statistical disparity between the number of qualified M/WBEs, the number of M/WBE contractors actually contracted by the

<sup>52</sup> Croson, 488 U.S. at 498-506, 109 S.Ct. at 723-28.

<sup>53</sup> Id. at 500, 725 (quoting Wygant v. Jackson Bd. of Educ., 476 U.S. 267, 277, 106 S.Ct. 1842, 1849, 90 L.Ed.2d 260 (1986)).

government, or the entity's prime contractors. Furthermore, the quantum of evidence required for the entity must be determined on a case-by-case basis and in the context and breadth of the M/WBE program it advanced.<sup>54</sup> If the local government is able to do this, then the burden shifts to the challenging party to rebut the municipality's showing.<sup>55</sup>

Once the governmental entity has shown acceptable proof of a compelling interest in remedying past discrimination and illustrated that its plan is narrowly tailored to achieve this goal, the party challenging the affirmative action plan bears the ultimate burden of proving that the plan is unconstitutional.<sup>56</sup>

### C. Conclusion

Despite the eleven years of litigation following the Croson decision, the law in the area of race conscious remedies used to ameliorate inequities concerning M/WBE utilization in the area of public contracting, is far from settled. Clearly, the law requires that such programs be reviewed periodically. What remains unclear is the applicable standard used to determine whether a race and gender conscious program has achieved its intended goal of eliminating identified discrimination, thereby negating the need for the continued use of race and gender conscious remedies. In this study, the Griffin & Strong P.C. team analyzed the statistical data as extensively as possible given the limitations of the data maintained by the Commonwealth. We analyzed the data using the more conservative interpretations of availability which have been proffered by the most recent Court opinions. We buttress the quantitative data with an extensive historical analysis and detailed and varied anecdotal evidence. Our findings are presented in the pages which follow.

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<sup>54</sup> See Concrete Works, 36 F.3d 1513 (10<sup>th</sup> Cir. 1994).

<sup>55</sup> See Contractors v. Philadelphia, 6 F.3d 990, 1007.

<sup>56</sup> Mazeske v. City of Chicago 218 F.3d 820 (7<sup>th</sup> Cir. 2000)



**THE UTILIZATION OF MINORITY BUSINESS ENTERPRISES BY THE  
STATE OF MARYLAND**

*Prepared for*

**THE STATE OF MARYLAND DEPARTMENT OF TRANSPORTATION**

*By*

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AUSTIN, TEXAS**

**JANUARY 8, 2001**



## EXECUTIVE SUMMARY

### A. Introduction

The State of Maryland (hereafter, the “State”) has long been committed to including businesses owned by minorities and women in its contracting and procurement activities. The State originally instituted its Minority Business Enterprise (MBE) Program in 1978.<sup>1</sup> In recent years, however, affirmative action policies such as the State’s have been carefully scrutinized by federal courts, beginning with *City of Richmond v. J. A. Croson*, 488 U.S. 469 (1989). In that case, the U.S. Supreme Court ruled that race-conscious state or local affirmative action policies intended assist minority-owned businesses must meet the highest constitutional test of “strict scrutiny.”<sup>2</sup> Affirmative action must be “narrowly tailored” to remedy “compelling” evidence of public or private discrimination in the geographic and product markets that are relevant to the state or local government in question.<sup>3</sup> In 1995, the Supreme Court expanded the scope of strict scrutiny to include the federal government as well as state and local governments.<sup>4</sup> The State’s “compelling” governmental interest can be established through a combination of statistical and anecdotal evidence. In order to continue an effective, enforceable and legally defensible race-conscious and gender-conscious program, the State must assess whether statistical and anecdotal evidence shows past and/or continuing discrimination against MBEs. If so, it may implement carefully crafted measures to remedy the effects of that discrimination.

To assist in this assessment, the State commissioned National Economic Research Associates, Inc. (NERA) to examine the past and current status of MBEs in the State’s geographic and product markets. The results of NERA’s study, summarized below, provide an important part of the record necessary to determine whether the State’s existing MBE Program

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<sup>1</sup> In accordance with Maryland law, we use the acronym “MBE” to refer to minority *and* woman-owned businesses.

<sup>2</sup> Currently, the Supreme Court appears to impose a less stringent standard of review on affirmative action for women. See Chapter One.

<sup>3</sup> *City of Richmond v. J. A. Croson*, 488 U.S. 469, 109 S.Ct. 706 (1989).

<sup>4</sup> *Adarand v. Peña*, 515 U.S. 200, 115 S.Ct. 2097, 132 L.Ed. 2d 158 (1995).

complies with the requirements of the courts and the extent to which the program has assisted MBEs in participating in state contracting and procurement activity.

We found both statistical and anecdotal evidence of discrimination against MBEs. We found evidence of MBE underutilization in all major State of Maryland procurement categories and for all types of MBEs. To assess whether such underutilization is a consequence of discrimination, and to assess whether MBE utilization would be less in the absence of the State's MBE program, we also analyzed private sector market behavior (these analyses appear in Chapters 3 and 4) and surveyed the contracting experiences of MBE and non-MBE firms in the relevant geographic and product markets.

The study is presented in six chapters and two appendices. The first chapter provides an overview of the current legal environment regarding public sector affirmative action. The remaining chapters address the following questions:

- Chapter 2: How are goods and services contracted for and/or procured under state law and regulation? How does this differ among the state agencies and/or departments included in the study?
- Chapter 3: Are minorities and/or women in the Maryland region less likely to be self-employed than similarly situated Whites Males? Do minority and/or female business owners earn less from their businesses than similarly situated White Males? How do the Maryland region findings differ from the national findings on these two questions? How have these findings changed over time?
- Chapter 4: Are minorities and/or women discriminated against in the market for small business credit? How do findings for the Maryland region in this area differ from findings nationally?
- Chapter 5: How are MBEs utilized by the State of Maryland, and how does this utilization compare to the availability of MBEs in the relevant marketplace?
- Chapter 6: How do the experiences of MBEs differ from those of non-MBEs regarding the difficulty of obtaining contracts? How many MBEs report

being discriminated against in the last five years? What types of discriminatory experiences are most frequently encountered by MBEs?

In assessing these questions, we undertake in Chapters 3 through 6 a series of statistical analyses that compare minority and/or female outcomes to non-minority male outcomes in all of these business-related areas. The remainder of this Executive Summary provides a brief overview of each chapter and its key findings and conclusions, where applicable.

### **1. Chapter One**

Chapter One provides a detailed and up-to-date overview of current constitutional standards and case law on strict scrutiny of race-conscious government efforts in public contracting. This area of constitutional law is complex and constantly shifting. The elements of the State's compelling interest in remedying identified discrimination and the narrow tailoring of its programs to address that important government concern are delineated, and particular judicial decisions, orders, statutes, etc. are discussed as relevant, with emphasis on unresolved issues and evidentiary concerns. Examples include the proper tests for examining discrimination and the role of disparities, the applicability of private sector evidence, and the State's responsibility to tailor its program narrowly.

### **2. Chapter Two**

Chapter Two describes Maryland's current procurement statutes, regulations, policies and procedures. A general overview is provided, followed by the particulars of the procurement categories of construction, architectural and engineering (A/E) services, professional and other services, and commodities purchasing. A brief history of the State's MBE contracting programs is also provided. This Chapter next focuses on Maryland's race-neutral and gender-neutral measures to assist small and emerging businesses. It closes with a description of the State's current MBE Program.

## **B. Statistical Evidence**

The *Croson* decision and most of its progeny have held that statistical evidence of race-based, ethnicity-based, or gender-based disparities in business enterprise activity is a requirement for any state or local entity that desires to establish or maintain race-conscious,

ethnicity-conscious, or gender-conscious requirements for MBE participation in contracting and procurement. Chapters Three and Four document in considerable detail the extent of disparity facing MBEs in the private sector, where contracting and procurement activities are rarely subject to MBE requirements. Chapter Five examines whether there is statistical evidence of disparity in the contracting and procurement activities of the State of Maryland itself. An examination of the extent of discrimination in the private sector is important because the State of Maryland has had in existence for over 20 years an affirmative action program in contracting and procurement. The existence of the MBE Program may make State data on public contracting most useful for examining the effectiveness of the State MBE Program, but less useful for determining the extent of racial, ethnic, or gender disparities.

### **1. Chapter Three**

Data from the Current Population Survey (CPS) are used to examine the incidence of minority business ownership (self-employment) and the earnings of minority business owners across the U.S. and within the Maryland region.<sup>5</sup> The CPS is the source of official Government statistics on employment and unemployment, and has been conducted monthly for over 40 years by the U.S. Census Bureau and the U.S. Department of Labor. Currently, about 56,500 households are interviewed monthly, scientifically selected on the basis of area of residence to represent the Nation as a whole, individual States, and other specified areas. We found:

- African Americans were 3 percent less likely to be self-employed than Whites over the period 1979-1999, both in the United States as a whole as well as in the Maryland region. There is also evidence that Hispanics had 2 percent lower probability of being self-employed than Whites. "Other Races" had 1 percent lower probability than Whites.
- African Americans have significantly lower self-employment earnings than Whites, holding constant a number of personal characteristics (age, education, gender, etc). The extent of this difference has increased dramatically over time. The relative

<sup>5</sup> In order to ensure sufficiently large sample sizes, the "Maryland region," as defined in Chapters 3 and 4, includes Maryland, Virginia, the District of Columbia, Delaware, and Pennsylvania.

decline in the relative earnings of the African American self-employed is especially pronounced in the Maryland region.

- The difference between the earnings of African Americans and Whites is much greater for the self-employed than it is for those employed by others, and especially so in the Maryland region.
- African American employees have lower hourly earnings than do White employees. The gap increased somewhat in the 1980s but has remained roughly constant at around 10 percent in the 1990s. Employee earnings are considerably lower for African Americans in Construction than in either Commodities or in Other Services, both nationally and in the Maryland region.
- The size of the earnings disparity for African Americans and Hispanics compared with Whites has always been lower in the Maryland region compared to the national findings. For example, in 1999 African Americans earned nearly 10 percent less than Whites nationally while Hispanics had 7 percent lower earnings—compared to 7 percent and 5 percent less, respectively, in the Maryland region.
- The relative earnings of minorities who are employees are higher in the Maryland region than nationally. However, there is some evidence that the relative earnings of African Americans in the Maryland region are worsening in all industry sectors, especially in Construction. For example, over the 1979-1991 period earnings of African Americans in the Maryland region were 11 percent lower than Whites but between 1992-1999 were 15 percent lower—even though the national numbers were unchanged.

## **2. Chapter Four**

In Chapter Four we analyze data from the National Survey of Small Business Finances (NSSBF) conducted by the Federal Reserve Board and the U.S. Small Business Administration, along with data from a survey we conducted in the Maryland region, to examine whether discrimination exists in the small business credit market. Discrimination in the credit market against minority-owned small businesses can have an important effect on the likelihood that that business will succeed. Moreover, discrimination in the credit market might even prevent

the business from opening in the first place. We provide qualitative and quantitative evidence supporting the view that minority-owned firms, particularly African Americans, are discriminated against in this market.

Additional evidence supports the finding that minority-owned firms are discriminated against in the market for credit. The results may be summarized as follows:

- Minority-owned firms were particularly likely to report that they did not apply for a loan over the preceding three years because they feared the loan would be denied.
- When minority-owned firms did apply for a loan their loan requests were substantially more likely to be denied than other groups, even after accounting for differences in factors like size and credit history.
- When minority-owned firms did receive a loan they would have to pay higher interest rates on the loan than was true of comparable White-owned firms.
- Far more minority-owned firms report that credit market conditions are a serious concern than is the case for White-owned firms.
- A greater share of minority-owned firms believe that the availability of credit is the most important issue likely to confront the firm in the next 12 months.
- Judging from the analysis done using data from the NSSBF, there is no reason to believe that evidence of discrimination in the market for credit is different in Maryland, the South Atlantic region, or in the construction industries than it is in the nation as a whole.
- We further conclude that the evidence from our study of the State's geographic market area, taken from the Maryland Credit Survey that we conducted, is entirely consistent with the results obtained earlier using data from the NSSBF.

We conclude that there is evidence of discrimination in Maryland in the small business credit market, particularly to firms owned by African Americans. We find little or no evidence that White Females are discriminated against in this market.

### 3. Chapter Five

The statistical evidence reported in Chapter Five describes:

- The geographic area where the State spends its contracting and procurement dollars;
- The types of goods and services the State typically purchases;
- The percentage of all firms in these geographic and product markets that are MBEs;
- The extent to which the State has utilized MBEs in its contracting, subcontracting, and procurement opportunities between FY1997 and the middle of FY2000;
- Whether MBEs have been utilized by the State to the extent that they are presently available in the relevant marketplace.

To determine whether MBEs have been underutilized in the public sector we would ideally examine public expenditures that were *not* subject to affirmative action requirements. However, the State of Maryland has implemented an affirmative action program in contracting and procurement for over 20 years. Given the existence of the MBE Program, the State's own data might not show evidence of underutilization, even if such underutilization exists in the private sector. Instead, the State's data may be most useful for examining the effectiveness of the State's MBE policies during the relevant time period. Of course, if actual State MBE utilization still turns out to be significantly less than MBE availability, then the State's data will still provide evidence of underutilization.

Information on the State's contracting and procurement activity and its utilization of MBEs was derived by combining data from a number of distinct sources, reflecting the various levels of procurement authority delegation found under Maryland law. In addition, since the State's contract and procurement data include little information regarding subcontractors, we undertook to survey a large sample of prime contracts to learn about their associated subcontracting activity. The resulting database contains almost 10,000 distinct prime contracts and subcontracts representing \$4.107 billion in awards made by the State between July 1, 1996 and December 31, 1999.

From this database, we determined that more than 75 percent of the State's contract and procurement spending takes place with firms that have establishments located in the State of



Maryland, the District of Columbia, or the Virginia suburbs of the District of Columbia. Additionally, we identified 74 key industries that collectively account for 95 percent of all the State's contract and procurement spending.

Information on the relative availability of MBEs was assembled by combining data from Dun & Bradstreet's *MarketPlace*, which is probably the most comprehensive source of business establishment microdata available, with data from the State's certified MBE directory and numerous MBE directories from throughout the region. The resulting database was restricted to the State's own geographic and product markets as determined from the State's contracting and procurement data. Also, steps were taken with both the utilization and the availability data to correct for the possibility of race and gender misclassification in the source data. The resulting database identified 99,484 establishments in the State's geographic and product markets.

Eleven state agencies were included in the scope of our analysis. Collectively, these agencies accounted for 95 percent of all State contracting and procurement activity during the time period examined. This period extended from July 1, 1996 to December 31, 1999.

We found evidence of MBE underutilization in all major State of Maryland procurement categories and for all types of MBEs. Underutilization was particularly pronounced in prime contracting and in procurement areas other than Construction.

**Table A. Comparison of MBE Utilization to MBE Availability: Prime Contracting and Subcontracting Combined**

Procurement Category / MBE Type	Utilization	Availability	Disparity Index
<b>Overall:</b>			
African American	4.49	7.09	63.33 **
Hispanic	1.79	2.13	84.04 *
Asian	3.07	4.27	71.90 **
Native American	0.07	0.66	10.61 **
Minority total	9.42	14.15	66.57 **
White Female	7.66	12.74	60.13 **
MBE total	17.08	26.90	63.49 **
Non-MBE total	82.92	73.10	113.43 **
<b>Construction:</b>			
African American	6.68	6.30	106.03
Hispanic	2.16	2.03	106.40 *
Asian	2.40	1.52	157.89 **
Native American	0.13	0.52	25.00 *
Minority total	11.37	10.37	109.64
White Female	8.31	11.29	73.60 **
MBE total	19.68	21.67	90.82 *
Non-MBE total	80.32	78.33	102.54 *
<b>A/E Services:</b>			
African American	1.45	7.04	20.60 **
Hispanic	1.78	2.42	73.55 **
Asian	8.37	6.01	139.27 *
Native American	0.03	0.15	20.00 **
Minority total	11.63	15.62	74.46 **
White Female	5.13	9.20	55.76 **
MBE total	16.76	24.85	67.44 **
Non-MBE total	83.24	75.15	110.77 **
<b>Commodities:</b>			
African American	2.15	4.29	50.12 **
Hispanic	2.75	1.05	261.90 **
Asian	2.70	2.35	114.89
Native American	0.07	0.60	11.67 **
Minority total	7.67	8.28	92.63
White Female	5.38	12.51	43.01 **
MBE total	13.05	20.79	62.77 **
Non-MBE total	86.95	79.21	109.77 **
<b>Other Services:</b>			
African American	4.80	8.09	59.33 **
Hispanic	0.93	1.64	56.71 **
Asian	1.74	3.33	52.25 **
Native American	0.02	1.93	1.04 **
Minority total	7.49	15.00	49.93 **
White Female	9.24	21.92	42.15 **
MBE total	16.73	36.92	45.31 **
Non-MBE total	83.27	63.08	132.01 **

Note: "\*\*\*" indicates the disparity is statistically significant at the 1 percent level or better, meaning the probability this disparity (or a larger one) would be observed due to chance is at most 1-in-100. "\*\*" indicates a 5 percent level, corresponding to a chance of 1-in-20. See page 137 for additional explanation of how to interpret statistical significance levels. Source: see Table 43.

**Table B. Comparison of MBE Utilization to MBE Availability: Prime Contracting Only**

Procurement Category / MBE Type	Utilization	Availability	Disparity Index	
<b>Overall:</b>				
African American	2.23	7.09	31.45	**
Hispanic	1.14	2.13	53.52	**
Asian	1.55	4.27	36.30	**
Native American	0.04	0.66	6.06	**
Minority total	4.96	14.15	35.05	**
White Female	5.24	12.74	41.13	**
MBE total	10.20	26.90	37.92	**
Non-MBE total	89.80	73.10	122.85	**
<b>Construction:</b>				
African American	3.62	6.30	57.46	**
Hispanic	0.88	2.03	43.35	**
Asian	2.01	1.52	132.24	
Native American	0.03	0.52	5.77	**
Minority total	6.54	10.37	63.07	**
White Female	5.31	11.29	47.03	**
MBE total	11.84	21.67	54.64	**
Non-MBE total	88.16	78.33	112.55	**
<b>A/E Services:</b>				
African American	0.46	7.04	6.53	**
Hispanic	1.69	2.42	69.83	**
Asian	3.66	6.01	60.90	*
Native American	0.04	0.15	26.67	**
Minority total	5.84	15.62	37.39	**
White Female	1.66	9.23	18.04	**
MBE total	7.50	24.85	30.18	**
Non-MBE total	92.50	75.15	123.09	**
<b>Commodities:</b>				
African American	*0.47	4.29	10.96	**
Hispanic	2.50	1.05	238.10	**
Asian	1.16	2.35	49.36	**
Native American	0.09	0.60	15.00	**
Minority total	4.21	8.28	50.85	**
White Female	2.29	12.51	18.31	**
MBE total	6.51	20.79	31.31	**
Non-MBE total	93.49	79.21	118.03	**
<b>Other Services:</b>				
African American	2.67	8.09	33.00	**
Hispanic	0.49	1.64	29.88	**
Asian	0.63	3.33	18.92	**
Native American	0.02	1.93	1.04	**
Minority total	3.81	15.00	25.40	**
White Female	7.89	21.92	35.99	**
MBE total	11.70	36.92	31.69	**
Non-MBE total	88.30	63.08	139.98	**

Note. "\*\*\*\*" indicates the disparity is statistically significant at the 1 percent level or better, meaning the probability this disparity (or a larger one) would be observed due to chance is at most 1-in-100. "\*\*\*\*" indicates a 5 percent level, corresponding to a chance of 1-in-20. See page 137 for additional explanation of how to interpret statistical significance levels. Source: see Table 44.

Tables A and B present the key findings from Chapter Five. Table A compares MBE availability to MBE utilization on prime contract awards. Table B compares MBE availability to MBE utilization on prime contract and subcontract awards taken together. The “disparity index” is formed by dividing the availability percentage into the utilization percentage, and multiplying the result by 100. A disparity index of 100 indicates perfect parity between utilization and availability. The smaller the index, the greater the disparity.

As these two tables show, we found evidence of substantial MBE underutilization. Underutilization was observed for all MBE types and in all major procurement categories, especially in prime contracting and especially in procurement areas other than Construction.

These tables also show that MBE business availability levels are much lower than corresponding labor force shares. For example, African Americans, Hispanics, and White Females comprised 28.8 percent, 4.2 percent, and 31.4 percent of the civilian labor force in Maryland in 1999. In the District of Columbia, the corresponding figures are 55.7 percent, 7.4 percent, and 20.2 percent. In Virginia, the corresponding figures are 20.0 percent for African Americans and 34.4 percent for White Females.<sup>6</sup>

## C. Anecdotal Evidence

### 1. Chapter Six

Chapter Six presents the results of a large scale mail survey we conducted of both MBEs and non-MBEs about their experiences and difficulties involved in obtaining contracts. The purpose of these surveys was to quantify and compare anecdotal evidence on the experiences of MBEs and non-MBEs.

We mailed MBE and non-MBE questionnaires to a random sample of firms in the State’s geographic market area. We asked about bid requirements and other factors (bonding and insurance requirements, etc.) affecting their ability to obtain contracts. The questionnaires also asked for characteristics of the firms and the owners such as the number of years the firm

<sup>6</sup> Figures for Asians or for American Indians are not available. Figures for Hispanics were not available for Virginia. Bureau of Labor Statistics. *Employment Status of the Civilian Noninstitutional Population in States by Sex, Race, and Hispanic Origin, 1999 Annual Averages*. INTERNET: <http://stats.bls.gov/laus/laustdem.pdf>.

has been in business, the number of employees, revenue, and the education level of the primary owner. The MBE questionnaire also asked firms whether they experienced disparate treatment in various business dealings (such as commercial loan applications and obtaining price quotes from suppliers or subcontractors) in the past five years due to their race or gender and how often prime contractors who use them as subcontractors on public-sector projects with MBE requirements also use them on public-sector or private-sector projects without such goals or requirements.

Of the 4,495 businesses that received the MBE questionnaire, 493 (11 percent) responded to the survey, and of the 4,489 businesses that received the non-MBE questionnaire, 580 (13 percent) responded to the survey. The results show that a large proportion of MBE respondents reported that they had been treated less favorably in various business dealings in the last five years. Moreover, in most categories, a larger fraction of MBEs than non-MBEs reported that various bid requirements and other factors made it harder or impossible to obtain contracts.

## **D. Conclusions and Recommendations**

### **1. Conclusions**

This Executive Summary has presented the major findings of the State of Maryland MBE Utilization Study and summarized the evidence upon which those findings are based. The study has found that marketplace discrimination makes it harder of MBEs to compete for business from the State and from other buyers, either as prime contractors or subcontractors. Under reasonable interpretations of current affirmative action law, the State may have sufficient evidence to show that it has a compelling interest to pursue affirmative action in order to help remedy the effects of discrimination on MBEs in its relevant markets. The State's current MBE program appears to have been carefully tailored in response to past findings concerning the disadvantages faced by MBEs in the Maryland region. A careful review of the State's existing program—in light of the findings in the present study and other relevant information—would serve the State well if it chooses to consider continuing the MBE program in the future.

## **2. Recommendations**

To narrowly tailor its MBE policies to the greatest extent possible, Maryland should consider increasing its race- and gender-neutral initiatives. In particular, the State should consider:

- Reviewing existing race- and gender-neutral programs that provide technical advice, loans, bonding and other assistance to MBEs and other small and disadvantaged businesses for participation by MBEs as well as for effectiveness in reaching their objectives;
- Utilizing informal bids as much as practicable;
- Continuing and improving efforts to insure prompt payment of prime contractors by the State and prompt payment of subcontractors by the State's prime contractors;
- Additional provision of owner-controlled insurance policies for large projects;
- Additional reduction or elimination of bonding requirements, where appropriate;
- Provide group bonding for subcontractors on major projects;
- Creating a Linked Deposit Program whereby the State's depository institutions would make loans to its prime contractors secured by the contract with the State;
- Providing adequate and well-publicized administrative processes for addressing complaints of discrimination by State personnel, State contractors, and private sector contractors, suppliers, customers, financial institutions, surety providers, and others;
- Improving contracting and procurement data collection procedures to facilitate future monitoring of MBE activity;
- Formalizing a Small Business Enterprise (SBE) Program that includes:
  - Industry-tailored revenue and employment criteria for eligibility;
  - Bid preferences for SBEs bidding as primes;
  - Solicitations segmented and set aside for bidding solely by SBE primes;
  - Mobilization funds for SBE primes;
  - Mandatory SBE subcontracting by large primes.

In response to the Study's findings of race and sex discrimination, the State should:

- Consider continuing the MBE Program of annual procurement targets and contract specific subcontracting goals;
- Consider holding managers accountable in their performance reviews for meeting MBE Program goals and objectives;
- Consider reviewing MBE Program eligibility criteria to ensure they are narrowly tailored, including size, graduation standards, and possible conditions for certifying non-minority males as MBEs (similar to the U.S. Department of Transportation's Disadvantaged Business Enterprise Program regulations);
- Consider implementing a mentor-protege program that matches MBEs with successful large primes. Consider whether to credit participation towards making good faith efforts to meet subcontracting goals; and
- Consider awarding credit towards good faith efforts for affirmative action achievement in the prime's employment or private-sector projects without affirmative action requirements.

December 18, 2008

**Race, Sex, and Business Enterprise:  
Evidence from Memphis, Tennessee**

Prepared for the Memphis-Shelby County Airport  
Authority



**NERA**  
Economic Consulting



## Introduction and Executive Summary

### I. Introduction and Executive Summary

#### A. Introduction

Like many local governments, the Memphis-Shelby County Airport Authority (“MSCAA” or “Airport Authority”) has a long record of commitment to including minority-owned and women-owned and disadvantaged business enterprises (“M/W/DBEs”) in its contracting and procurement activities. As will be documented in this Study, from 2000-2005 the Authority has continued to be a significant source of demand in the Memphis economy for the products and services provided by M/W/DBEs—demand that, in general, is found to be lacking in the private sector of the Memphis area economy.

MSCAA implements three contracting affirmative action programs. The Disadvantaged Business Enterprise (DBE) Program is mandated as a condition of the receipt of United States Department of Transportation (USDOT) funds for airport improvements.<sup>1</sup> The Airport is also required to administer the Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) Program for its concession operations.<sup>2</sup> For its locally funded contracts, the Airport implements its Business Diversity Development (BDD) Program.

The Authority commissioned this Study to meet its constitutional and federal regulatory responsibilities. To be effective, enforceable, and legally defensible, MSCAA’s race- and gender-based programs must meet the judicial test of constitutional “strict scrutiny.” Strict scrutiny requires current “strong evidence” of the persistence of discrimination, and any remedies adopted must be “narrowly tailored” to that discrimination.

#### B. History of MSCAA’s Affirmative Action Contracting Programs

MSCAA is obligated by statute to implement a DBE Program for its federally funded projects and an ACDBE Program for its concession opportunities.<sup>3</sup> These mandates have been in place, with revisions, since 1983 and 1987, respectively. The Authority has continuously administered its approved Programs since that time, and has responded to regulatory changes and USDOT guidance to ensure that its efforts meet constitutional and regulatory standards.

MSCAA entered into a consortium with other Memphis area governments in 1993 to conduct a disparity study (“1994 Study”).<sup>4</sup> The Airport’s Business Diversity Development Program for non-federally funded projects was based on the 1994 Disparity Study, which has also served as the goal setting basis for the Airport’s DBE Program.

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<sup>1</sup> 49 C.F.R Part 26.

<sup>2</sup> 49 C.F.R Part 23.

<sup>3</sup> 49 U.S.C. 4701, *et seq*; see also 49 CFR § 26.(a)(3) and 49 CFR § 23.5.

<sup>4</sup> “Disparity Study for Memphis/Shelby County Intergovernmental Consortium,” D J. Miller & Associates, October, 1994. The consortium consisted of Shelby County ; the City of Memphis; Memphis Light, Gas & Water Division; Memphis Area Transit Authority; MSCAA; Memphis Board of Education; Shelby County School Board; Memphis/Shelby County Port Commission; and the Regional Medical Center.

## Introduction and Executive Summary

The Study provided the following information:

- Historical conditions affecting M/WBE utilization;
- Economic analysis of M/WBE availability and marketplace discrimination;
- Procurement policies, procedures and practices and their impact on M/WBE utilization;
- Analysis of the availability and utilization of M/WBEs;
- Anecdotal evidence of discrimination in Memphis/Shelby County; and
- Alternatives to race-conscious goals programs.

The 1994 Study concluded that the Consortium members had actively discriminated against M/WBEs in the past; perpetuated the effects of past discrimination; and passively participated in present day prime and subcontractor discrimination against minorities and women. General race-neutral recommendations included implementing contract data management systems; conducting performance reviews and training for buyers; investigating discrimination complaints; providing assistance with bonding and financing; “unbundling” contracts; prompt payment; and outreach to M/WBEs. No race-conscious goal was presented, but rather a discussion about the factors that might affect goal setting, should the agencies choose to implement a race-conscious program.

In 2004, MSCAA entered into a settlement agreement with the Mechanical Contractors of Memphis, Inc, regarding a challenge to the constitutionality of MSCAA Business Diversity Development Program. The Airport agreed to undertake a new disparity study, upon which the plaintiff will have the opportunity to comment. It further agreed to administer the BDDP consistent with 49 CFR Part 26, especially the good faith efforts provisions, and to adopt the DBE Program’s personal net worth test for BDD Program eligibility.<sup>5</sup>

### C. The Current Study

To further ensure continuing compliance with constitutional mandates and M/W/DBE best practices, MSCAA commissioned NERA to examine the past and current status of M/W/DBEs in the Authority’s geographic and product markets for contracting and procurement. The results of NERA’s Study (hereinafter the “2008 Study”), summarized below, provide the evidentiary record necessary to implement renewed M/W/DBE policies that comply with the requirements of the courts and to assess the extent to which previous efforts have assisted M/W/DBEs to participate on a fair basis in the Authority’s contracting and procurement activity.

The 2008 Study also found both statistical and anecdotal evidence of business discrimination against M/W/DBEs in the private sector of the Memphis area marketplace. As part of our statistical findings, we surveyed the contracting experiences and credit access experiences of M/W/DBEs and non-M/W/DBEs in the Memphis area marketplace and conducted a series of in-

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<sup>5</sup> See Appendix A to Part 26 and § 26.67.

### Introduction and Executive Summary

depth personal interviews with Memphis area business enterprises, both M/W/DBE and non-M/W/DBE. Statistical analyses of MSCAA's public sector contracting behavior are contained in Chapters III, IV and VII.

The Study is presented in 10 chapters, and is designed to answer the following questions:

- Chapter I: Executive Summary
- Chapter II: A detailed and up-to-date overview of current constitutional standards and case law on strict scrutiny review of race- and gender-conscious government efforts in public contracting.
- Chapter III: What is the relevant geographic market for MSCAA and how is it defined? What are the relevant product markets for MSCAA and how are they defined?
- Chapter IV: What percentage of all businesses in MSCAA's relevant markets are owned by minorities and/or women? How are these availability estimates constructed?
- Chapter V: Do minority and/or female wage and salary earners earn less than similarly situated non-minority males? Do minority and/or female business owners earn less from their businesses than similarly situated non-minority males? Are minorities and/or women in the Memphis area less likely to be self-employed than similarly situated non-minority males? How do the findings in the Memphis area differ from the national findings on these questions? How have these findings changed over time?
- Chapter VI: Do minorities and/or women face discrimination in the market for commercial capital and credit compared to similarly-situated non-minority males? How, if at all, do findings locally differ from findings nationally?
- Chapter VII: To what extent have M/W/DBEs been utilized by MSCAA between 2000-2005, and how does this utilization compare to the availability of M/W/DBEs in the relevant marketplace?
- Chapter VIII: How many M/W/DBEs experienced disparate treatment in the study period? What types of discriminatory experiences are most frequently encountered by M/W/DBEs? How do the experiences of M/W/DBEs differ from those of similar non-M/W/DBEs regarding the difficulty of obtaining prime contracts and subcontracts?
- Chapter IX: What general policies and procedures govern Authority procurement activities? How do the Airport's DBE Program, ACDBE Program, and BDD Program for local contracts operate? What were some of the most frequently encountered comments from M/W/DBEs and non-M/W/DBEs concerning MSCAA's contracting operations and affirmative action programs?

## Introduction and Executive Summary

Chapter X: What are NERA's recommendations for MSCAA based on the findings of the Study in Chapters II-IX?

In assessing these questions, we present in Chapters III through VIII a series of quantitative and qualitative analyses that compare minority and/or female outcomes to non-minority male outcomes in all of these business-related areas. The remainder of this Executive Summary provides a brief overview of our key findings and conclusions, where applicable.

### D. Legal Standards for Government Affirmative Action Contracting Programs

Chapter II provides a detailed and up-to-date overview of current constitutional standards and case law on strict scrutiny of race-conscious government efforts in public contracting. The elements of MSCAA's compelling interest in remedying identified discrimination and the narrow tailoring of its programs to address that important government concern are delineated, and particular judicial decisions, orders, statutes, regulations, etc. are discussed as relevant, with emphasis on critical issues and evidentiary concerns. Examples include the proper tests for examining discrimination and the role of disparities; the applicability of private sector evidence; and MSCAA's responsibility for narrowly tailoring its DBE Program, ACDBE Program, and BDD Program.

### E. Defining the Relevant Markets

Chapter III describes how the relevant geographic and product markets were defined for this Study. Six years of prime contract and subcontract records were analyzed to determine the geographic radius around MSCAA that accounts for at least 75 percent of aggregate contract and subcontract spending. These records were also analyzed to determine those detailed industry categories that collectively account for over 99 percent of contract and subcontract spending in excess of \$10,000 in the relevant procurement categories. Special circumstances influencing Airport Concessions markets are reviewed as well. The relevant geographic and product markets were then used to focus and frame the quantitative and qualitative analyses in the remainder of the Study.

MSCAA's relevant geographic market was determined to be the Memphis, TN-MS-AR Metropolitan Statistical Area.

### F. Statistical Evidence

The *Croson* decision and most of its progeny have held that statistical evidence of disparities in business enterprise activity is a requirement for any state or local entity that desires to establish or maintain race-conscious, ethnicity-conscious, or gender-conscious M/W/DBE remedies. Chapter IV estimates current availability levels in the Memphis area for M/W/DBEs in various industry groups. Chapters V and VI document in considerable detail the extent of disparities facing M/W/DBEs in the private sector, where contracting and procurement activities are rarely subject to M/W/DBE requirements. Chapter VII examines whether there is statistical evidence of disparities in the contracting and subcontracting activities of MSCAA itself. This evidence is

## Introduction and Executive Summary

also relevant to the Authority's responsibility to narrowly tailor its DBE, ACDBE, and BDD Programs.

## 1. M/W/DBE Availability in MSCAA's Marketplace

### a. Findings

Tables A1 and A2 below provide an executive level summary of the current M/W/DBE availability estimates derived in this Study. Table A1 covers all MSCAA contracting and procurement. Table A2 includes federally-funded Construction and Architecture, Engineering, and Construction-Related Professional Services ("A&E") contracting only.

**Table A1. Overall Current Availability—By Major Procurement Category and Overall (All Funds)**

Detailed Industry	Black	Hispanic	Asian	Native American	White Female	M/W/DBE	Non-M/W/DBE
CONSTRUCTION	10.51	0.81	0.94	0.93	14.80	27.99	72.01
A&E	14.25	1.22	4.23	1.03	13.59	34.32	65.68
SERVICES	22.40	1.98	3.91	0.48	16.54	45.31	54.69
COMMODITIES	11.29	2.10	3.34	0.18	15.40	32.31	67.69
TOTAL (EXCLUDING CONCESSIONS)	14.30	1.21	2.47	0.84	14.94	33.76	66.24
CONCESSIONS	9.21	2.12	4.16	0.00	12.82	28.33	71.67

Source: Table 4.20.

Notes: For this study, "Black" or "African American" refers to a person having origins in any of the Black racial groups of Africa; "Hispanic" refers to a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race; "Asian" refers to a person having origins in any of the original peoples of the Far East, Southeast Asia, India, or the Pacific Islands; "Native American" refers to a person having origins in any of the original peoples of North and South America (including Central America), and who maintains cultural identification through tribal affiliation or community recognition; and "White" or "non-minority" means a non-Hispanic person having origins in Europe, North Africa, or the Middle East.

## Introduction and Executive Summary

**Table A2. Overall Current Availability—By Major Procurement Category and Overall (Federally Funded Only)**

Detailed Industry	Black	Hispanic	Asian	Native American	White Female	M/W/DBE	Non-M/W/DBE
CONSTRUCTION	10.46	0.69	0.78	0.95	15.20	28.07	71.93
A&E	14.33	1.22	4.24	1.03	13.63	34.45	65.55
TOTAL	11.61	0.85	1.81	0.97	14.73	29.97	70.03

Source: Table 4.21.

### b. Data and Methods

Chapter IV estimates the percentage of firms in MSCAA's relevant marketplace that are owned by minorities and/or women. For each industry category, M/W/DBE availability is defined as the number of M/W/DBEs divided by the total number of businesses in MSCAA's contracting market area. Determining the total number of businesses in the relevant markets is more straightforward than determining the number of minority-owned or women-owned businesses in those markets. The latter task has three main parts: (1) identifying all listed M/W/DBEs in the relevant market; (2) verifying the ownership status of listed M/W/DBEs; and (3) estimating the number of unlisted M/W/DBEs in the relevant market.

We used Dun & Bradstreet's *MarketPlace* database to determine the total number of businesses operating in the relevant geographic and product markets. *MarketPlace* is one of, if not the most comprehensive and objective available database of U.S. businesses. *MarketPlace* contains over 13 million records, is updated continuously, and revised each quarter. We used the *MarketPlace* database to identify the total number of businesses in each three- four- and six-digit North American Industrial Classification (NAICS) code to which we assigned a product market, or industry, weight. These weights represent the portion of all contract and subcontract dollars (or concession revenues) attributed to a particular industry. NAICS is the standard governmental system used to classify business establishments by industry. The study included MSCAA's prime contracts and associated subcontracts active between January 1999 and December 2005 and its Airport Concessionaires' gross revenues between January 2000 and December 2005.

While extensive, *MarketPlace* does not sufficiently identify all businesses owned by minorities or women. Although many such businesses are correctly identified in *MarketPlace*, experience has demonstrated that many more are missed. For this reason, several additional steps were required to identify the appropriate percentage of M/W/DBEs in the relevant market. First, NERA completed an intensive regional search for information on minority-owned and woman-owned businesses in Memphis and surrounding area. Beyond the information already in *MarketPlace*, NERA collected listings of M/W/DBEs from the Mid-South Minority Business

## Introduction and Executive Summary

Council (the Memphis area Uniform Certification Agency) as well as from numerous other public and private entities in and around the Airport. The M/W/DBE businesses identified in this manner are referred to as “listed” M/W/DBEs.

If the listed M/W/DBEs we identified are *all* in fact M/W/DBEs and are the *only* M/W/DBEs among all the businesses identified, then an estimate of “listed” M/W/DBE availability is simply the number of listed M/W/DBEs divided by the total number of businesses in the relevant market. However, neither of these two conditions holds true in practice and therefore this is not an adequate method for measuring M/W/DBE availability for two reasons. First, it is likely that some proportion of the M/W/DBEs listed in the tables are not actually minority-owned or woman-owned. Second, it is likely that there are additional “unlisted” M/W/DBEs among all the businesses included in our baseline business population. Such businesses do not appear in any of the directories we gathered, and are therefore not included as “listed” M/W/DBEs.

To account for this, we conducted a supplementary telephone survey on a stratified random sample of firms in our baseline business population that asked them directly about the race and sex of the firm’s primary owner(s). We used the results of this survey to statistically adjust our estimates of M/W/DBE availability for misclassification by race and sex. The resulting estimates of M/W/DBE availability are presented at the end of Chapter IV. These estimates were used in Chapter VII for disparity testing on MSCAA’s own contracting and subcontracting activity during FFY 2000-2005. These availability figures have also be averaged together (using dollar-based contracting or concessions weights) to provide guidance to MSCAA policy makers on overall goal setting.

## 2. Statistical Disparities in Minority and Female Business Formation and Business Owner Earnings

### a. Findings

Chapter V demonstrates that **current M/W/DBE availability levels in the Memphis area economy, as measured in Chapter IV, are substantially lower than those that we would expect to observe if commercial markets operated in a race- and sex-neutral manner and that these levels are statistically significant.**<sup>6</sup> In other words, minorities and women are substantially and significantly less likely to own their own businesses as the result of marketplace discrimination than would be expected based upon their observable characteristics, including age, education, geographic location, and industry. We find that these groups also suffer substantial and significant earnings disadvantages relative to comparable non-minority males, whether they work as employees or entrepreneurs.

In particular, we found that annual average wages for Blacks (both sexes) in 2000, both economy-wide and nationwide, were 30 percent lower than for non-minority males who were otherwise similar in terms of geographic location, industry, age, and education. These differences are large and statistically significant. Large, adverse, and statistically significant wage disparities were also observed for Hispanics, Asians, Native Americans, and non-minority women. These

<sup>6</sup> Typically, for a given disparity statistic to be considered “statistically significant” there must be a substantial probability that the value of that statistic is unlikely to be due to chance alone. *See also fn. 101.*

## Introduction and Executive Summary

disparities are consistent with the presence of market-wide discrimination. Observed disparities for these groups ranged from a low of -17 percent for Hispanics to a high of -36 percent for White women. Similar results were observed when the analysis was restricted to the Construction and A&E sector. That is, large, adverse, and statistically significant wage disparities were observed for all minority groups and for White women. All wage and salary disparity analyses were then repeated to test whether observed disparities in the Memphis MSA were different enough from elsewhere in the country or the economy to alter any of the basic conclusions regarding wage and salary disparity. They were not.

This analysis demonstrates that minorities and women earn substantially and significantly less than their non-minority male counterparts. Such disparities are symptoms of discrimination in the labor force that, in addition to its direct effect on workers, reduce the future availability of M/W/DBEs by stifling opportunities for minorities and women to progress through precisely those internal labor markets and occupational hierarchies that are most likely to lead to entrepreneurial opportunities. These disparities reflect more than mere “societal discrimination” because they demonstrate the nexus between discrimination in the job market and reduced entrepreneurial opportunities for minorities and women. Other things equal, these reduced entrepreneurial opportunities in turn lead to lower M/W/DBE availability levels than would be observed in a race- and gender-neutral marketplace.

Next, we analyzed race and sex disparities in business owner earnings. We observed large, adverse, and statistically significant business owner earnings disparities for Blacks, Hispanics, Asians, Native Americans, and non-minority women consistent with the presence of discrimination in these markets. Large, adverse, and statistically significant business owner earnings disparities were observed overall as well as in the Construction and A&E sector. As with the wage and salary disparity analysis, we enhanced our basic statistical model to test whether minority and female business owners in the Memphis area differed significantly enough from business owners elsewhere in the U.S. economy to alter any of our basic conclusions regarding disparity. They did not.

As was the case for wage and salary earners, minority and female entrepreneurs earned substantially and significantly less from their efforts than similarly situated non-minority male entrepreneurs. These disparities are a symptom of discrimination in commercial markets that directly and adversely affects M/W/DBEs. Other things equal, if minorities and women cannot earn remuneration from their entrepreneurial efforts comparable to that of non-minority males, growth rates will slow, business failure rates will increase, and as demonstrated in this Chapter, business formation rates will decrease. Combined, these phenomena result in lower M/W/DBE availability levels than would otherwise be observed in a race- and sex-neutral marketplace.

Next, we analyzed race and sex disparities in business formation. As with earnings, in almost every case we observed large, adverse, and statistically significant disparities consistent with the presence of discrimination in these markets in the overall economy, in the Construction and A&E sector, and in the Services & Commodities sector.<sup>7</sup> In almost every instance, business formation rates for Blacks, Hispanics, Asians, Native Americans, and females were substantially

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<sup>7</sup> The Construction and A&E sector were combined for the analyses in Chapter V, as were the Services & Commodities sector. Elsewhere in the study they are analyzed separately



## Introduction and Executive Summary

and statistically significantly lower than the corresponding non minority male business formation rate.

Finally, as a further check on the statistical findings in this Chapter, we examined evidence from the Census Bureau's *Survey of Business Owners and Self-Employed Persons* (SBO).<sup>8</sup> These data show large, adverse, and statistically significant disparities between M/W/DBEs' share of overall revenues and their share of overall firms in the U.S. as a whole, in the state of Tennessee, and in the Memphis, TN-MS-AR MSA. The size of the disparities facing minority and female-owned firms in the Memphis MSA is striking. For example, although Blacks comprise 19.4 percent of all firms in the Memphis MSA, they earn only 0.84 percent of all sales and receipts. Black employer firms are 5.4 percent of the total but earn only 0.53 percent of sales and receipts. Disparities for women and for other minority groups are also extremely large in the Memphis MSA.

### b. Data and Methods

Data from the Current Population Survey (CPS) and the Five Percent Public Use Microdata Samples (PUMS) from the 2000 Decennial Census are used to examine the incidence of minority and female business ownership (self-employment) and the earnings of minority and female business owners across the U.S. and within the Memphis area. The 2000 PUMS contains observations representing five percent of all U.S. housing units and the persons in them (approximately 14 million records), and provides the full range of population and housing information collected in the most recent census. Business ownership status is identified through the "class of worker" variable, which allows us to construct a detailed cross-sectional sample of individual business owners and their associated earnings. The CPS is the source of official government statistics on employment and unemployment and has been conducted monthly for over 40 years by the U.S. Census Bureau and the U.S. Department of Labor. Currently, about 56,500 households are interviewed monthly. Households are scientifically selected on the basis of residence to represent the nation as a whole, individual states, and large metropolitan areas.

The SBO collects and disseminates data on the number, sales, employment, and payrolls of businesses owned by women and members of racial and ethnic minority groups, and has been conducted every five years since 1972. Using the SBO data, we calculated the percentage of firms in the US as a whole, in the State of Tennessee, and in the Memphis MSA that were minority-owned or female-owned and compared this to their corresponding share of sales and receipts in that year. We divided the latter by the former and multiplied the product by 100 to create a disparity ratio. Disparity ratios of 80 percent or less indicate disparate impact consistent with business discrimination against minority-owned and female-owned firms. In the Memphis area, disparity ratios fell beneath the 80 percent threshold in virtually every case examined.

### 3. Statistical Disparities in Credit/Capital Markets

In Chapter VI, we analyze current and historical data from the Survey of Small Business Finances, conducted by the Federal Reserve Board and the U.S. Small Business Administration, along with data from a customized and matching mail survey we conducted in the Memphis area.

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<sup>8</sup> Formerly known as the *Surveys of Minority- and Women-Owned Business Enterprises* (SMWOBE).

## Introduction and Executive Summary

This data examines whether discrimination exists in the small business credit market. Credit market discrimination can have an important effect on the likelihood that M/W/DBEs will succeed. Moreover, discrimination in the credit market might even prevent such businesses from opening in the first place. This analysis has been held by the courts to be probative of a public entity's compelling interest in remedying discrimination. We provide qualitative and quantitative evidence supporting the view that M/W/DBE firms, particularly Black-owned firms, suffer discrimination in this market.

The results are as follows:

- Minority-owned firms were particularly likely to report that they did not apply for a loan over the preceding three years because they feared the loan would be denied.
- When minority-owned firms did apply for a loan, their requests were substantially more likely to be denied than other groups, even after accounting for differences in factors like size and credit history.
- When minority-owned firms did receive a loan, they paid higher interest rates than comparable White-owned firms.
- Far more minority-owned firms report that credit market conditions are a serious concern than is the case for White-owned firms.
- A greater share of minority-owned firms believes that the availability of credit is the most important issue likely to confront the firm in the next 12 months.
- The evidence from our analysis of MSCAA's geographic market area, taken from our customized credit survey, is strongly consistent with the results from the SSBF.

We conclude that there is evidence of discrimination against M/W/DBEs in the Memphis area in the small business credit market. This discrimination is particularly acute for Black-owned firms.

### **4. M/W/DBE Public Sector Utilization v. Availability in MSCAA's Contracting and Procurement Markets, FFY 2000–2005**

#### **a. Findings**

Table B provides an executive level summary of utilization findings for the Study by industry category and M/W/DBE type.

## Introduction and Executive Summary

Table B. M/W/DBE Utilization in MSCAA Contracting and Procurement

M/W/DBE Type	Procurement Category					
	Construction (%)	A&E (%)	Services (%)	Commodities (%)	Overall (%)	Concessions (%)
Black	6.84	5.76	14.15	6.24	7.92	11.52
Hispanic	0.64	0.00	0.01	0.00	0.41	0.00
Asian	0.42	6.21	0.00	0.00	1.33	0.04
Native American	0.38	0.00	0.00	0.00	0.24	0.00
Minority total	8.28	11.97	14.16	6.24	9.90	11.56
Non-min. Females	10.40	1.91	1.42	0.28	7.17	2.15
M/W/DBE Total	18.69	13.88	15.58	6.53	17.07	13.71
Non-M/W/DBE Total	81.31	86.12	84.42	93.47	82.93	86.29
Total (%)	100.00	100.00	100.008	100.00	100.00	100.00
Total (\$)	269,944,698	73,026,814	73,989,426	10,105,865	427,066,804	486,048,282

Source: Table 7.1

A comparable analysis is presented for Airport Concessions covering the period between January 2000 and December 2005.

Next we compared MSCAA's and its prime contractors' and concessionaires' use of or collaboration with M/W/DBEs to our measure of M/W/DBE availability levels in the relevant marketplaces. If M/W/DBE utilization is statistically significantly lower than measured availability in a given category we report this result as a disparity. Table C1 provides a top-level summary of our disparity findings for the Study for Construction, A&E, Services, and Commodities. Table C2 provides comparable information for Airport Concessions. **We find significant evidence of disparity in MSCAA's contracting and procurement and Airport Concessions activity, despite the presence of the DBE, BDD, and ACDBE Programs.**

## Introduction and Executive Summary

Table C1. Overall Disparity Results-Construction, A&amp;E, Services, and Commodities

Procurement Category / M/W/DBE Type	Utilization	Availability	Disparity Ratio
All Procurement			
Black:	7.92	14.30	55.4 ***
Hispanic	0.41	1.21	33.9 ***
Asian	1.33	2.47	53.8 ***
Native American	0.24	0.84	28.6 ***
Minority total	9.90	18.82	52.6 ***
White female	7.17	14.94	48.0 ***
M/W/DBE total	17.07	33.76	50.6 ***
Construction			
Black:	6.84	10.51	65.1 ***
Hispanic	0.64	0.81	78.7 ***
Asian	0.42	0.94	44.9 ***
Native American	0.38	0.93	41.4 ***
Minority total	8.28	13.19	62.8 ***
White female	10.40	14.80	70.3 ***
M/W/DBE total	18.69	27.99	66.8 ***
A&E			
Black:	5.76	14.25	40.4 ***
Hispanic	0.00	1.22	0.0 ***
Asian	6.21	4.23	
Native American	0.00	1.03	0.0 ***
Minority total	11.97	20.73	57.8 ***
White female	1.91	13.59	14.1 ***
M/W/DBE total	13.88	34.32	40.5 ***
Services			
Black:	14.15	22.40	63.2 ***
Hispanic	0.01	1.98	0.5 ***
Asian	0.00	3.91	0.0 ***
Native American	0.00	0.48	0.0 ***
Minority total	14.16	28.77	49.2 ***
White female	1.42	16.54	8.6 ***
M/W/DBE total	15.58	45.31	34.4 ***
Commodities			
Black:	6.24	11.29	55.3 ***
Hispanic	0.00	2.10	0.0 ***
Asian	0.00	3.34	0.0 ***
Native American	0.00	0.18	0.0 ***
Minority total	6.24	16.92	36.9 ***
White female	0.28	15.40	1.9 ***
M/W/DBE total	6.53	32.31	20.2 ***

Source: Table 7.12.

Note: “\*” indicates an adverse disparity that is statistically significant at the 10% level or better. “\*\*\*” indicates the disparity is significant at a 5% level or better. “\*\*\*\*” indicates significance at a 1% level or better. An empty cell in the Disparity ratio column indicates that no adverse disparity was observed for that category.

## Introduction and Executive Summary

Table C2 Overall Disparity Results—Concessions

Procurement Category / M/W/DBE Type	Utilization	Availability	Disparity Ratio
Concessions			
Black:	11.51	9.21	
Hispanic	0.00	2.12	0.0 ***
Asian	0.04	4.16	0.9 ***
Native American	0.00	0.01	0.0 ***
Minority total	11.55	15.51	74.0 ***
White female	2.15	12.82	17.0 ***
M/W/DBE total	13.70	28.33	48.0 ***

Source: Table 7.13.

Note: “\*” indicates an adverse disparity that is statistically significant at the 10% level or better. “\*\*” indicates the disparity is significant at a 5% level or better. “\*\*\*” indicates significance at a 1% level or better. An empty cell in the Disparity Ratio column indicates that no adverse disparity was observed for that category.

## b. Data and Methods

As a part of this study, NERA collected prime contract and associated M/W/DBE and non-M/W/DBE subcontractor, subconsultant, and supplier (collectively “subcontractor”) and airport concessionaire revenue data. Data was collected in the categories of (1) Construction, (2) A&E, (3) Services, and (4) Commodities. Comparable data was collected covering airport concessionaire revenues.

The information was then tabulated and compiled along with the existing M/W/DBE subcontract information. Next, the prime contract and associated subcontract data was keypunched, collated, cross-referenced, and consolidated to form the Master Contract/Subcontract Database for this Study. Industry codes were assigned at the most detailed level available. The final Master Contract/Subcontract Database included 399 prime contracts and 848 associated subcontracts, with a total overall dollar value of \$426.4 million. For Airport Concessions, the final Master Concessions Database captured a total of \$486.0 million in revenues.

## 5. Expected M/W/DBE Business Formation

If there is perfect parity in the relevant marketplace, then the disparity ratio will equal 100 because the expected M/W/DBE availability rate (that is, the M/W/DBE availability level that would be observed in a non-discriminatory marketplace) will be equivalent to the current M/W/DBE availability rate. In cases where adverse disparities *are* present in the relevant marketplace, however, as documented in Chapters V and VI of this Study, then the disparity ratio will be less than 100 because expected availability rates will exceed current availability rates. Expected availability levels for MSCAA’s overall contracting and procurement and Airport Concessions categories are presented below in Table D.

## Introduction and Executive Summary

Table D. Overall Expected Availability—All Procurement Categories Combined

Procurement Category	M/W/DBE Type	Current Availability	Expected Availability
<b>All</b>	Black:	14.30	26.98
	Hispanic	1.21	1.62
	Asian	2.47	3.08
	Native American	0.84	1.27
	Minority total	18.82	35.11
	White female	14.94	21.94
	M/W/DBE total	33.76	62.99
<b>Construction</b>	Black:	10.51	17.49
	Hispanic	0.81	1.30
	Asian	0.94	—
	Native American	0.93	1.18
	Minority total	13.19	20.35
	White female	14.80	20.61
	M/W/DBE total	27.99	43.19
<b>A&amp;E</b>	Black:	14.25	23.71
	Hispanic	1.22	1.96
	Asian	4.23	—
	Native American	1.03	1.30
	Minority total	20.73	31.99
	White female	13.59	18.93
	M/W/DBE total	34.32	52.96
<b>Services</b>	Black:	22.40	44.80
	Hispanic	1.98	2.67
	Asian	3.91	5.26
	Native American	0.48	—
	Minority total	28.77	46.25
	White female	16.54	23.97
	M/W/DBE total	45.31	72.85
<b>Commodities</b>	Black:	11.29	22.58
	Hispanic	2.10	2.83
	Asian	3.34	4.49
	Native American	0.18	—
	Minority total	16.92	27.20
	White female	15.40	22.32
	M/W/DBE total	32.31	51.95
<b>Concessions</b>	Black:	9.21	18.42
	Hispanic	2.12	2.86
	Asian	4.16	5.59
	Native American	0.00	—
	Minority total	15.49	24.90
	White female	12.82	18.58
	M/W/DBE total	28.33	45.55

Source: Table 7.19.

## **G. Anecdotal Evidence**

### **1. Survey Evidence of Disparities in MSCAA's Marketplace**

#### **a. Findings**

Chapter VIII presents the results of a large scale mail survey we conducted of both M/W/DBEs and non-M/W/DBEs about their experiences and difficulties involved in obtaining contracts. The purpose of this survey was to quantify and compare anecdotal evidence on the experiences of M/W/DBEs and non-M/W/DBEs as a method to examine whether any differences might be due to discrimination.

We found that M/W/DBE firms that have been hired in the past by non-M/W/DBE prime contractors to work on public sector contracts with M/W/DBE goals are rarely hired—or even solicited—by these prime contractors to work on projects without M/W/DBE goals. The relative lack of M/W/DBE hiring and, even more tellingly, the relative lack of solicitation of M/W/DBEs in the absence of affirmative efforts by MSCAA and other public entities in the Memphis area shows that business discrimination continues to fetter M/W/DBE business opportunities in MSCAA's relevant markets.

We found that M/W/DBEs in MSCAA's markets report suffering business-related discrimination in large numbers and with statistically significantly greater frequency than non-M/W/DBEs. These differences remain statistically significant when firm size and owner characteristics are held constant. We also find that M/W/DBEs in these markets are more likely than similarly situated non-M/W/DBEs to report that specific aspects of the regular business environment make it harder for them to conduct their businesses, less likely than similarly situated non-M/W/DBEs to report that specific aspects of the regular business environment make it easier for them to conduct their businesses, and that these differences are statistically significant in many cases.

**We conclude that the statistical evidence presented in this report is consistent with these anecdotal accounts of contemporary business discrimination.**

#### **b. Data and Methods**

We mailed M/W/DBE and non-M/W/DBE questionnaires to a random sample of firms in MSCAA's geographic market area. We asked about bid requirements and other factors (bonding and insurance requirements, etc.) affecting their ability to obtain contracts. The questionnaires also asked for characteristics of the firms and the owners, such as the number of years the firm has been in business, the number of employees, firm revenues, and the education level of the primary owner. The M/W/DBE questionnaire also asked firms whether they experienced disparate treatment in various business dealings (such as commercial loan applications and obtaining price quotes from suppliers or subcontractors) in the past five years due to their race or gender and how often prime contractors who use them as subcontractors on public-sector projects with M/W/DBE goals also solicit or use them on public-sector or private-sector projects without such goals.

## **Introduction and Executive Summary**

Many survey respondents had done business or attempted to do business with MSCAA, the State, or other public entities in Tennessee, Mississippi, or Arkansas in the past five years.

### **2. Interview Evidence of Disparities in MSCAA's Marketplace**

#### **a. Findings**

Chapter VIII also presents the results from a series of in-depth personal interviews conducted with M/W/DBE and non-M/W/DBE business owners in the Memphis area. Similar to the survey responses, the interviews strongly suggest that M/W/DBEs continue to suffer discriminatory barriers to full and fair access to MSCAA, other public sector, and private sector contracts. Participants reported perceptions of M/W/DBE incompetence and being subject to higher performance standards; discrimination in access to commercial loans and surety bonds; paying higher prices for supplies than non-M/W/DBEs; inability to obtain public sector prime contracts; difficulties in receiving fair treatment in obtaining public sector subcontracts; and virtual exclusion from private sector opportunities to perform as either prime contractors as subcontractors.

While not definitive proof that MSCAA has a compelling interest in implementing race- and gender-conscious remedies for these impediments, the results of the surveys and the personal interviews are the types of anecdotal evidence that, especially in conjunction with the Study's extensive statistical evidence, the courts have found to be highly probative of whether, without affirmative interventions, MSCAA would be a passive participant in a discriminatory local marketplace. It is also highly relevant for narrowly tailoring its DBE goals under 49 CFR Part 26, its ACDBE goals under 49 CFR Part 23, and its M/W/DBE goals for its locally funded contracts.

#### **b. Data and Methods**

Seven group sessions were conducted with a total of 50 M/W/DBE and 31 non-M/W/DBE business owners. The purpose of these interviews was much the same as the mail surveys. However, the longer interview length and more intimate interview setting were designed to allow for more in-depth responses from business owners.

### **H. M/W/DBE Program Analysis and Feedback Interviews**

Chapter IX provides a description of MSCAA's DBE, ACDBE, and BDD Programs and a discussion of the operations of the current efforts. We interviewed 81 business owners to solicit their feedback regarding these Programs.

Chapter IX presents a summary of our interviews, which covered the following subjects:

- MSCAA's commitment to inclusion

In general, DBEs reported that being certified created opportunities that otherwise would not have presented themselves. The Authority's affirmative action programs were seen as vital to the continuing viability of their companies



## Introduction and Executive Summary

- Outreach to DBEs

The Airport routinely holds pre-bid conferences for individual solicitations. Some DBEs reported that these meetings resulted in their entering into subcontracts with prime firms or with other organizations.

- Certification standards and processes

Several firms expressed concerns about “front” firms owned by white females, that is, enterprises that were not legitimately woman-owned, managed and controlled. In general, few criticisms were voiced of the certification process.

- Meeting M/WBE goals

Many general contractors and consultants stated that MSCAA should set goals more closely tailored to the actual subcontracting opportunities on the project. Engineers and architects found it more difficult to meet goals than did construction firms. Despite the challenges of meeting DBE goals on Airport contracts, most prime firms reported that the DBEs performed at or above expectations.

- Contract solicitations

DBEs found it difficult to obtain prime work at the Airport, despite efforts by MSCAA staff. The requirements of public sector bonds, insurance and experience were often an impediment. “Unbundling” of contracts would also assist small firms to obtain prime contracts. There was also significant support for a small business setaside program

- Contract performance

More monitoring of prime contractors’ contractual commitments and M/WBE subcontractor performance, including substitutions, and payment was needed. There were few reports of slow payment by the Airport, or slow payment by prime firms to subcontractors.

- Race- and gender-neutral remedies

Interviewees generally supported the increased use of such approaches. Examples included “unbundling” contracts and small business set asides to increase opportunities for DBEs and other small firms to perform as prime contractors.

- Airport Concessionaire Disadvantaged Business Enterprise Program

In general, ACDBEs reported that the Program was well managed. Some ACDBEs chafed at having to operate as a subcontractor to the prime concessionaire. They seek to become prime firms. Non-ACDBEs reported that finding qualified firms was sometimes a challenge, especially in the food and beverage and car rental industries.

## Introduction and Executive Summary

### I. Recommendations

Chapter X presents our principal recommendations for the consideration of MSCAA policy makers, based on the present state of the case law and the Study's findings. While all of these recommendations should be carefully considered, we are in no way suggesting that all must be implemented to operate an effective and constitutional program.

Virtually all of the large variety of statistical evidence points to the past and continuing presence of business discrimination in MSCAA's principal geographic and product markets for contracting and procurement. Statistical findings of disparities for Blacks, Hispanics, Asians, Native Americans and non-minority females were made from a number of primary data sources and high quality secondary data sources. Statistical findings of the Study are buttressed by numerous reports of disparate treatment and other barriers to M/W/DBE participation in business enterprise opportunities in the Memphis area. Based upon our results, we make the following recommendations.

#### 1. Utilize Race- and Gender-Neutral Initiatives

- Increase contract "unbundling"
- Review surety bonding and insurance requirements
- Adopt a Small Business Enterprise Program
- Increase community initiatives to promote the aviation construction and design industries
- Increase certification outreach
- Adopt a Guaranteed Surety Bonding and Contract Financing Program for small construction firms
- Require disclosure of all subcontractor quotes and bids
- Improve contracting and procurement data collection and retention procedures

#### 2. Race- and Gender-Conscious Remedies

- Narrowly tailor federally mandated programs
  - Use the study to set overall DBE and ACDBE goals
  - Continue to set DBE contract goals under 49 CFR Part 26
- Adopt a revised Business Diversity Development Program

**Introduction and Executive Summary**

- Model the DBE Program's eligibility standards
  - Adopt an overall, annual DBE goal for locally funded contracts.
  - Continue to set contract specific goals for locally funded contracts
  - Develop performance measures for Program success
  - Mandate Program review and sunset

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**RACE, SEX AND BUSINESS ENTERPRISE: EVIDENCE  
FROM THE STATE OF MINNESOTA**

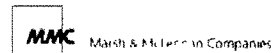
**Prepared for the Minnesota Department of Transportation**

by

**NERA Economic Consulting  
and**

**Colette Holt & Associates**

**FINAL REPORT—September 27, 2005**



**NERA**Economic Consulting

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**I. INTRODUCTION**

The Minnesota State Department of Transportation (Mn/DOT) commissioned NERA Economic Consulting to perform this study in compliance with United States Department of Transportation (USDOT) regulations.

Mn/DOT was created to provide a balanced transportation system for the state. Minnesota's transportation system includes aeronautics, highways, motor carriers, ports, public transit, railroads and pipelines. Mn/DOT spends more than \$500 million annually on federally-assisted capital projects to maintain and improve a statewide system of roadways that will provide safe, reliable, affordable and efficient services for the State of Minnesota.

Each federal fiscal year, the Federal Highway Administration (FHWA) and the other modal agencies of USDOT provide significant levels of federal funding to Mn/DOT to support its construction and preservation activities. Between Federal Fiscal Year (FFY) 2000 and FFY 2004, for example, Mn/DOT received more than \$1.9 billion from the FHWA. As a recipient of such funds, Mn/DOT is required to comply with the regulations pertaining to the USDOT's Disadvantaged Business Enterprise (DBE) Program.<sup>1</sup> The primary concern of the DBE Program is to create a level playing field for the utilization of businesses owned by socially and economically disadvantaged persons, including members of certain minority groups and women, on contracts that are funded in part or in whole by USDOT.

In 1999, USDOT adopted a comprehensive revision of the DBE Program.<sup>2</sup> Mn/DOT must set an overall, annual aspirational percentage goal for DBE participation on its USDOT-assisted contracts that are narrowly tailored to Mn/DOT's particular circumstances and based on demonstrable evidence of availability—*i.e.*, the percentage of relevant businesses owned by minorities or women in Mn/DOT's geographic market area.<sup>3</sup>

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<sup>1</sup> 49 Code of Federal Regulations (CFR), part 26

<sup>2</sup> *Id.*

<sup>3</sup> 49 CFR § 26.45

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The process for determining availability is twofold.<sup>4</sup> First, Mn/DOT must make a determination of the baseline percentage of firms in its relevant market area that are or could become certified as DBEs. Second, Mn/DOT must consider other relevant information and make a determination about whether, and if so by how much, the baseline figure should be adjusted upward or downward in order to set an overall goal that is consistent with what would be expected in a market that is race- and sex- neutral, *i.e.*, DBE availability “but for” discrimination.<sup>5</sup> This two-step method requires Mn/DOT to set a DBE goal that prevents under-utilization of DBEs and over-utilization of DBEs to the exclusion of non-DBEs. Under the regulations, if an agency exceeds its overall goal for two consecutive years through the use of contract-specific DBE participation goals, it must proportionately reduce its use of contract-specific goals in the following year.<sup>6</sup>

For this study, NERA used minority-owned and women-owned business (MWBE) availability as a proxy for DBE availability. The MWBE and DBE populations have a very high degree of correlation and overlap. There are two differences worth noting, however.

First, to be certified as a DBE under Part 26 a business owner’s personal net worth, excluding equity in the owner’s primary residence and in the business seeking certification, cannot exceed \$750,000.<sup>7</sup> Hence, not all MWBEs are eligible for certification as DBEs. In practice, however, very few households—especially minority households—have net worth levels in excess of \$750,000, especially when home equity and business equity are excluded from the measure.<sup>8</sup> Second, it is possible for businesses owned by non-minority males, such

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<sup>4</sup> *Id*

<sup>5</sup> *Ibid*

<sup>6</sup> 49 C.F.R. § 26.51(f)

<sup>7</sup> 49 CFR § 26.67

<sup>8</sup> According to the Federal Reserve’s 1993 *National Survey of Small Business Finances*, about 6 percent of White-male-owned small businesses, 2.6 percent of White-female-owned small businesses, and 3 percent of non-White-owned small businesses have business equity in excess of \$750,000. Further, Census Bureau data show that the median net worth of Black and Hispanic households is much less than the median for White households. Very few Black or Hispanic households have net worth above even \$500,000. Only 0.2 percent of Black households and 0.5 percent of Hispanic households have a net worth greater than \$500,000—compared to a figure of 4 percent for White households. Overall, the median net worth for White households is approximately seven times higher than that of Black or Hispanic households. (See U.S. Census Bureau, “Percent Distribution of Household Net Worth, by Amount of Net Worth and Selected Characteristics 1995,” INTERNET (continued. .))

as businesses owned by disabled persons, to become certified as DBEs if they can establish that they meet the regulatory criteria to be considered socially and economically disadvantaged.<sup>9</sup> Hence, not all DBEs are necessarily MWBEs. In practice, however, since so few MWBEs have net worth levels in excess of \$750,000 and a substantial number of businesses owned by socially and economically disadvantaged non-minority males could potentially seek DBE certification NERA's method may understate DBE availability to a small degree.<sup>10</sup>

NERA's approach to availability measurement reflects USDOT's compliance advice. According to the USDOT's guidance, "... if you have data about the number of minority and women-owned businesses (regardless of whether they are certified as DBEs) in your market area, or DBEs in your market area that are in other recipients' Directories but not yours, you can supplement your Directory data with this information. *Doing so may provide a more complete picture of the availability of firms to work on your contracts than the data in your Directory alone.*"<sup>11</sup>

The remainder of this report is organized as follows. Section II describes the assembly of the contract and subcontracting database and how the definition of the relevant markets. Section III describes the methods employed to estimate baseline DBE availability and Section IV presents a summary of these methods and the principal results of the availability analysis (step 1). Section V describes the compelling interest evidence

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( continued)

<http://www.census.gov/hhes/www/wealth/1995/wlth95-4.html> and U.S. Census Bureau, "Median Value of Assets for Households, by Type of Asset Owned and Selected Characteristics: 1995," INTERNET: <http://www.census.gov/hhes/www/wealth/1995/wlth95-1.html>) More recent Federal Reserve Board data also document that the net worth of White households is much greater than that of Black or Hispanic households. The Federal Reserve's 1998 *Survey of Consumer Finances* found that the median net worth of non-minority households was \$94,900 and the mean net worth was \$334,400. For minority households, the median net worth was \$16,400 and the mean net worth was \$101,700 (See Kennickell, Arthur B., Starr-McCluer, Martha, and Surette, Brian J., "Recent Changes in U.S. Family Finances: Results from the 1998 Survey of Consumer Finances," Federal Reserve Bulletin, January 2000)

<sup>9</sup> 49 CFR § 26.67 and Appendix E

<sup>10</sup> For ease of exposition we shall use the term DBE throughout the remainder of the report

<sup>11</sup> See INTERNET: <http://usdot.dot.gov/business/dbe/hottips.cfm> (emphasis added) This information was released as official guidance by USDOT. See 49 CFR §26.9

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considered concerning a possible Step 2 adjustment of the baseline availability figures. At Mn/DOT's request, we report estimates of DBE availability for contract, subcontract, and supplier opportunities in construction and in architectural/engineering design and other professional construction-related consulting.



**Before the U.S House of Representatives  
Committee on Transportation and Infrastructure  
Subcommittee on Aviation**

**“Accelerating Air Traffic Control Transformation”**

**Written Submission of Kevin Brown  
Vice President, Air Traffic Management  
The Boeing Company  
February 11, 2009**

**Before the House of Representatives  
Committee on Transportation and Infrastructure  
Subcommittee on Aviation**

**“Accelerating Air Traffic Control Transformation”  
Submitted By Kevin Brown  
Vice President, Boeing Air Traffic Management  
February 11, 2009**

Boeing appreciates the opportunity to submit written comments for the hearing entitled “FAA Reauthorization.” We are pleased to see the House is prepared to act quickly to pass this important legislation. This bill could not come at a more opportune time. Despite the immediate economic challenges, The Boeing Company continues to project strong demand for large commercial aircraft over the next two decades. In fact, Boeing currently predicts that airlines will need an additional 29,000 new aircraft between now and 2028. That amounts to approximately \$3.2 trillion (yes trillion) worth of manufacturing activity. While Boeing and Airbus may not agree on many things, the two competitors share this robust outlook for total aircraft demand. Boeing is concerned that our existing air traffic control system will place limitations on the ability of the aviation sector to grow as the economy improves and demand for air travel returns to projected levels.

Given the importance of aviation to the overall U.S. and global economies, we hope that this Committee and the entire Congress, in conjunction with the Obama Administration, will commit itself to making this transformation a national priority. Millions of aerospace manufacturing, airline, airport, supply chain and travel industry-related jobs depend on it today and in the future. The FAA Reauthorization act you are considering is a perfect vehicle for the Congress to take a leadership role by authorizing programs that will move NextGen from a concept to an operational reality.

**NextGen: The Vision:** Approximately five years ago, the U.S. Government and the aviation industry came to a consensus that the world’s air traffic control systems were beginning to constrain growth and seriously impact the efficiency of flying. The system needed a complete transformation in technology, operational concepts, procedures, and capacity (not just new equipment) in order to efficiently and safely accommodate expected growth. Additional pressures - such as security post 9/11, climate change, and removing inefficiencies due to the troubled economy - now make transformation of the air traffic control system imperative.

The overall transformation, now branded as NextGen, was to provide a vision for the air traffic management and control system for the year 2025. The planning effort also recognized the key roles played by the Departments of Defense and Homeland Security in the future system. This planning, as well as ample consideration within the aviation industry has resulted in a broad vision of that future system. Today’s system, rooted in ground-based radar and command and

control through voice communications, would evolve into a system that would rely on extraordinarily accurate position information from aircraft based on satellite signals, digital communications, and networked, common information systems. By having common information available to all stakeholders, capacity can be maintained, even as weather and congestion issues develop. In short, our air traffic control system will evolve into an information based system using the concepts and approaches most other industries already rely on in the 21<sup>st</sup> century.

**A Vision, But Little Real Progress:** While the FAA's planning effort has resulted in a good future concept of operations, it has been overly process-oriented and slow to organize. Efforts have also lacked a goal or mission to actually achieve the vision or results. As the years have rolled by, political leaders citing growth and ever-deteriorating system performance have pointed to the NextGen program as the path forward. Stakeholders and users virtually all agree. However, as in many endeavors, the program has been smaller than the words. Only in the President's 2008 proposed budget did the beginnings of an actual program start to roll out. Most technical and organizational experts in the field view these first steps as meager compared to what is required now.

While air traffic has been temporarily reduced, it will return to overwhelm the current system. Given the current status of continuously discussing rather than implementing NextGen, this transformation may never catch up to the issues it is supposed to address. As a result, the economy will underperform because of the high direct and indirect costs of an underperforming air transportation infrastructure; the environment will not be as clean as it could be because of inefficient fuel usage; and the travelling public will be subjected to ever increasing delays, congestion and higher transportation costs.

**Fortunately, This Need Not Be The Only Future Before Us.** Boeing believes that real, tangible near-term results that improve air traffic control, reduce delays and financial costs, save fuel and reduce emissions can be achieved. Today's NextGen technology, products that are "on the shelf" and currently being used, can deliver greater efficiencies. By taking advantage of existing airplane positioning capabilities combined with some focused developments by the FAA, a great deal of progress can be achieved by all stakeholders (including the passenger) *within just a few years* without breaking the FAA's budget. We merely need sound leadership and direction to start this process – direction the Congress can provide.

**Program Management.** First, FAA needs to establish and empower a NextGen organization that clearly defines the budget, schedule, project organization, leadership and the specific transition/implementation steps planned to make NextGen a reality. Second, The FAA should establish a set of progress metrics so that the Administration, the Congress and the public can understand how much operational improvement is actually being achieved in the program. Third, the FAA should take aggressive steps to ensure that the NextGen program is interoperable and compatible with similar transformational efforts in other parts of the world. Without global interoperability, progress will be halted and investment wasted. America needs to retain its leadership position in aviation and air navigation capabilities. The best way to do that is to ensure the system we are constructing is a model that is compatible with the rest of the world.

Fourth, the FAA must take steps to ensure NextGen's success by bringing the FAA workforce into the planning and implementation picture to a far greater degree than it has so far.

Beyond these common-sense program design and management steps, the FAA can actually deliver, in the near-term, significant operational benefits that would otherwise come only with full NextGen implementation.

Here are some examples of operational implementation programs that could be rolled out *with existing technology and for minimal investment*:

**Tailored Arrival Procedures at all Major Airports.** The FAA should rapidly accelerate implementation of fuel saving (and noise and emission reductions) Tailored Arrival procedures beyond the single-shot demonstrations currently underway. Tailored arrivals have proven to save over 500 pounds of fuel and over 1500 pounds of CO<sub>2</sub> for each individual flight. Congress and the FAA should redirect approximately \$40 million per year over the coming five years to 1) enable current ground automation systems to accept Tailored Arrival route requests from equipped aircraft, and 2) implement the required procedures at each airport. First implementation could take place at five large airports in 2010 with 10 additional airports per year for the three years thereafter.

**Required Navigation Performance (RNP) in all Terminal Areas.** The FAA should rapidly accelerate the operational implementation and use of RNP operations in all terminal areas. RNP operations take advantage of the precision navigation capability of modern aircraft and allow shorter, more fuel efficient, and extremely repeatable arrival and departure trajectories in all terminal areas. The Congress and the FAA should redirect \$25 million per year for the next five years to implement RNP terminal operations. The FAA should track and report on the use of RNP operations in the terminal areas to be certain that available RNP routes are fully utilized.

**GPS Landing Systems (GLS).** Future high capacity all-weather approach and surface operations need the precision navigation and guidance capability of GPS-based landing systems. Modern aircraft are already being equipped for GLS operations, but ground system implementation is lagging. The FAA should allocate \$25M per year to begin GLS Category I operations in key terminal areas and rapidly certify Category 2/3 system designs. First implementation could take place at five large airports in 2010 with 10 additional airports per year for the three years thereafter.

**SWIM and NEO.** The most important infrastructure change needed for a 21<sup>st</sup> Century ATM system is a cross-FAA, cross-Government, cross-stakeholder information network architecture. System-wide information management would eliminate stand-alone, silo systems and allow any authorized user instant access to needed data. The FAA SWIM program and the multi-agency Network-Enabled Operations (NEO) program should be top-priority investments with aggressive implementation schedules.

In addition to navigational and operational benefits, accelerated implementation of NextGen would bring immediate environmental benefits. As mentioned above with regard to Tailored Arrivals, huge fuel saving improvements can be recognized through enhanced air traffic capabilities. In fact, The International Air Transportation Association (IATA) estimates that these improvements could improve fuel efficiency and reduce CO2 emissions by up to 12 percent. Boeing is doing its part through improved airframe design and the introduction of new aircraft, like the fuel efficient 787 Dreamliner. Boeing will continue to improve the fuel efficiency and environmental performance of its products.

We talk about transformation to NextGen as an evolution versus a revolution. Some of the best engineering minds in the world have been toiling for years about how to make this transformation a reality. Boeing and many other interested stakeholders applaud their efforts and believe they have taken this concept to the point of implementation. It is now time for government and industry to work together to build a system that can transform our outdated and over-stressed 20<sup>th</sup> century air traffic problems to a system of 21<sup>st</sup> century aviation opportunity. Safe, efficient and environmentally progressive technology exists to begin this evolution. We transformed ground transportation in this country through the establishment of the interstate highway system in the 1950s. It should be a national priority to do the same for our airways in the coming years.

Thank you for the opportunity to submit these comments on behalf of Boeing.

578

**STATEMENT  
OF  
CONTINENTAL AIRLINES, INC.**

**BEFORE THE  
SUBCOMMITTEE ON AVIATION OF THE  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
U.S. HOUSE OF REPRESENTATIVES**

**CONCERNING**

**FAA REAUTHORIZATION ACT OF 2009**

**WASHINGTON, D.C.  
FEBRUARY 11, 2009**

Continental Airlines, Inc. (Continental) appreciates the Subcommittee's invitation to provide a written statement in conjunction with this hearing regarding H.R. 831, introduced on February 3, 2009, directing a study by the Comptroller General of the effects airline alliances and antitrust immunity (ATI) have on consumers. Any change in established U.S. aviation policy regarding ATI alliances should be considered only with the benefit of a detailed and comprehensive economic study regarding the impact of ATI alliances on competition and customer service. In the interim, it would be anticompetitive and harmful to consumers to leave the recently expanded SkyTeam ATI alliance involving Delta/Northwest, the world's largest carrier, and Air France/KLM, the largest European carrier, without effective competition.

For over two decades, the Department of Transportation (DOT) policies of open skies and ATI, working in tandem, have produced substantial benefits for consumers, U.S. carriers and our nation's air transportation service balance of trade. The U.S. now has 94 open skies agreements, including the U.S.-EU open skies agreement which became effective on March 30, 2008. Simultaneously, DOT has promoted effective expansion of U.S. carrier networks worldwide through international ATI approvals on over 25 occasions. DOT reports in 1999 and 2000 documented profound benefits of multinational ATI alliances in open skies markets, including: pro-competitive changes in industry structure; stimulated demand; consumer benefits in the form of improved service and price reductions; and important consequences for local and national economies.<sup>1/</sup> DOT's 2000 report identified not only a correlation but actual causation between immunized alliances and lower fares, concluding that "broad-based strategic alliances . . . are the principal driving force behind transatlantic price reductions and traffic gains."<sup>2/</sup> In a 2004 report, GAO concluded "open skies agreements have benefited airlines and consumers. Airlines benefited by being able to create integrated alliances with foreign airlines.... Consumers benefited by being able to reach more destinations with 'on-line' service, and from additional competition and lower prices."<sup>3/</sup> Independent economists also have found that ATI alliances generate valuable price

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<sup>1/</sup> See International Aviation Developments: Transatlantic Deregulation, The Alliance Network Effect ("DOT Second Report"), U.S. Department of Transportation, Office of the Secretary (Oct. 2000), at 2-3, 5; International Aviation Developments: Global Deregulation Takes Off ("DOT First Report"), U.S. Department of Transportation, Office of the Secretary (Dec. 1999), at 14-15.

<sup>2/</sup> DOT Second Report, at 5. See also *Remarks of Susan McDermott, Deputy Assistant Secretary For Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, to the International Air Cargo Association Conference*, Washington, D.C., Sept. 29, 2000 ("multinational airline alliances have [s]timulated demand, [l]ed to pro competitive changes in industry structure, [and p]rovided consumers the benefits of improved services and substantially lower prices.").

<sup>3/</sup> US Government Accountability Office, *Transatlantic Aviation: Effects of Easing Restrictions on US-European Markets* (2004).

and service benefits for consumers through expansion of carrier networks.<sup>4/</sup> To the extent contrary conclusions have been proffered, they have been by opponents in specific ATI proceedings. Competition authorities routinely consider complaints by competitors as strong evidence of the pro-competitive nature of a transaction. Notably, Delta launched its opposition to the Continental/Star ATI alliance application only one day after DOJ cleared the Delta/Northwest merger, thereby extending global ATI to the SkyTeam Alliance involving Delta/Northwest and Air France/KLM. Delta's opposition to Continental/Star ATI, and indeed the timing of such opposition, speaks volumes for the pro-competitive nature of the Continental/Star ATI application and highlights the importance of strong competing alliances and a level playing field.

Continental's addition to the existing global Star ATI alliance will enhance Star's ability to compete effectively with Delta, Air France and their SkyTeam ATI partners on a global basis. Continental's application to join the Star ATI alliance is highly pro-competitive and will enhance consumer choice because Continental's network is complementary to the alliance networks of the existing Star ATI carriers. There's not a single nonstop overlap between Continental and United on international routes and minimal global overlap among Continental and all of the Star ATI carriers. Continental's international service is concentrated at its New York/Newark and Houston hubs, while United's international service is concentrated at its Chicago, Los Angeles, San Francisco, and Washington hubs. United's international hubs serve primarily the west coast, midwest and mid-Atlantic regions, while Continental's international hubs serve primarily the southwestern and northeastern regions. Because of their different geographic presences, Continental serves 126 airports not served by United, and United serves 96 airports not served by Continental. The addition of Continental will provide the Star ATI alliance with a hub in the highly competitive New Jersey/New York region enabling Star to more effectively compete with SkyTeam and oneworld, which both have existing international gateway hubs at JFK. Continental also will give the Star ATI alliance a southern gateway at Houston to compete with SkyTeam at Atlanta and oneworld at Miami and Dallas/Ft. Worth.

Joining the Star ATI alliance is critical to Continental's ability to compete independently but effectively on a global basis. While Delta/Northwest would

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<sup>4/</sup> See Jan K. Brueckner, Evaluation of the Latest Applications for Antitrust Immunity, Aug. 16, 2006; Jan K. Brueckner, An Evaluation of the SkyWings Antitrust Immunity Application, June 24, 2005; Jan K. Brueckner, International Airfares in the Age of Alliances: The Effects of Codesharing and Antitrust Immunity, *The Review of Economics and Statistics* 85, (Feb. 2003); Jan K. Brueckner, The Benefits of Codesharing and Antitrust Immunity for International Passengers, with an Application to the Star Alliance, *Journal of Air Transport Management*, Sept. 2003; Jan K. Brueckner, The Economics of International Codesharing: An Analysis of Airline Alliances, *International Journal of Industrial Organization* 19 (2001); J. Padilla & M. Bennett, Analysis of the Consumer Benefits of an Expanded SkyTeam Antitrust Immunity, June 28, 2007.



prefer to hobble Continental's ability to compete, the travelling public would be ill-served if Continental is not promptly given the global ATI requested. Continental is a small global carrier, representing only 2.7% of total worldwide capacity, compared to the combined Delta/Northwest at 6.8%. Continental currently is the 5<sup>th</sup> largest U.S. domestic airline, trailing Delta/Northwest, now not only the largest U.S. domestic airline but the world's largest airline as a result of their recent merger. Adding Continental to the Star ATI alliance will not substantially reduce competition, but rather greatly enhance competition. There are three global branded alliances, Star, Skyteam and oneworld, and competition among the three and independent carriers is intense. Continental's joining the Star ATI alliance will not affect the number of global alliances. It will, however, further enhance inter-alliance competition while also enhancing Continental's ability to maximize the consumer benefits and operational efficiencies it can achieve for its own customers as a member of the Star Alliance.

After adding Continental to the Star ATI alliance, 97% of U.S.-International O&D markets, accounting for over 99% of U.S.-International passengers, will continue to have at least three competitors. A total of 89% of U.S.-International O&D city pairs will have five or more competitors and 93% of city pairs will have four or more competitors. Again, this is due to the highly complementary nature of the Continental and United networks. If the two carriers had pursued a merger, as Delta and Northwest did, it likely would have been approved by the Department of Justice on an expedited basis. But Continental chose to respond to market conditions, increasing its network and efficiencies, by joining the Star ATI alliance rather than merging, a decision Continental's employees and the communities Continental serves strongly support. Significantly, Continental's addition to the existing global Star ATI alliance will not reduce competition in U.S. domestic markets. On the contrary, Continental will continue to compete vigorously and at arm's length with United in domestic markets because ATI only applies to foreign air transportation. Continental and United have conferred extensively with DOJ and developed Guidelines for Antitrust Compliance to ensure an appropriate separation of coordinated international activities from competitive domestic activities.

The U.S.-Europe market is intensely competitive, with a large number of market participants and where no single carrier or alliance holds a dominant market share. The U.S.-EU open skies agreement ensures that U.S. carriers and EU carriers from any EU member state may introduce new or increased service on any U.S.-EU route (on a nonstop or connecting-service basis) at any time. In this highly competitive market environment, the mere threat of such new entry or increased competition is sufficient to ensure that no carrier or alliance has market power to increase prices to supra-competitive levels without the risk of provoking a swift, price-disciplining competitive response. A total of 40 international carriers, including all six of the major U.S. network carriers, operate scheduled nonstop service between 32 points in the U.S. and 47 points in Europe. Linking existing

U.S. and foreign networks and flowing passengers between them is not only an efficient alternative for a U.S. airline to serve most international markets, it is often the only way it can serve hundreds of markets. Small communities are the biggest beneficiaries of ATI alliances and networks. With the advantage of a truly integrated global network, small communities are better served and get more economic benefit globally, which attracts business and passengers. It doesn't take many extra passengers to make a substantial impact on the bottom line economics of service to a small community. It is only by linking these small markets to a broader network that they become cost effective to serve.

The Continental/Star ATI application has received overwhelming support by members of Congress, state and local elected officials and the communities Continental and United serve. (See attached). For example, several Ohio Congressional delegation members submitted a letter in support of the application on the very same day as this hearing:

We are writing to seek your approval of Continental's and United's application to enter into an alliance that promises wide ranging benefits.... We believe Continental's and United's planned alliance will help both airlines maintain their financial viability while operating as independent competitors which is important for the airlines' shareholders, employees, suppliers and other service providers. We also strongly believe airline passengers stand to benefit from the proposal by such things as more flight options, more destination and fare class choices, quicker travel itineraries through coordinated flight scheduling and aligned airport check-in, re-booking and baggage transfer policies. We believe that any delay imposed on the consideration of the alliance application before you will have dramatic and negative consequences for Ohio, for the thousands of Ohio employees who work at these airlines in our state and for competition in the airline industry.

Strong community support should not be surprising. A George Mason University study a few years ago suggested the addition of a single new direct air service from a U.S. city to Europe creates anywhere from 440 to 2,900 jobs, depending on the amount of service already enjoyed by the U.S. gateway. Other studies have suggested that when a U.S. city gains daily access to a new international market, the city experiences an economic increase of \$265-\$720 million per year from the direct spending caused by the flight and the new air travelers. Clearly the potential benefits to U.S. communities, carriers and consumers from adding Continental's complementary network to the Star ATI alliance are substantial.

Approval of the Continental/Star ATI application is consistent with the recent agreement between the U.S. and the EU (on behalf of 27 EU member states), and indeed the agreement explicitly underscores the importance of ATI approval as a matter of aviation policy. In response to a question from the EU delegation, the U.S. delegation confirmed by Memorandum of Consultation that “the competent U.S. authorities will provide fair and expeditious consideration of complete applications for antitrust immunity of commercial cooperation agreements, including revised agreements.”<sup>5/</sup> The proposed expansion of the alliance among the Star ATI carriers is exactly the type of arrangement to which the U.S. and EU delegations were referring.

Absent prompt action on Continental’s request to join the Star ATI alliance by DOT, Continental, its customers, employees and the communities it serves, will be gravely disadvantaged and the current Star ATI carriers will be unable to plan effectively for integrating their networks with Continental’s. Until they know for certain that the required approvals and ATI will be forthcoming, the parties cannot make the investments necessary for Continental to participate effectively in an alliance among the Star ATI carriers – with the result that achievement of the efficiencies contemplated by the proposed alliance will be delayed at a time when achieving such efficiencies is critical for financially beleaguered airlines. passengers. The uncertain economic conditions faced by the airline industry, like many other industries, must not be disregarded. In the fourth quarter of 2008, ATA members cut capacity by 7%. Passenger demand in the same period declined system wide by 8%. Traffic and capacity are projected to decline for the balance of 2009. In particular, international traffic appears to be in sharp decline as the economic recession has traveled the globe. This economic downturn has taken a heavy toll not only on airlines and passengers, but also U.S. aviation industry jobs.

Continental is confident that DOT, guided by established ATI alliance policy and legal precedent, will approve Continental’s application to join the Star ATI alliance. Continental looks forward to participating in any future studies of the impact of open skies and ATI alliances on consumers to demonstrate, based on actual operating results of the Continental/Star ATI alliance, the benefits of Continental’s participation in the Star ATI alliance for Continental’s passengers, shippers, and employees and the communities it serves. To secure the pro-competitive benefits of Continental’s participation in the Star ATI alliance, prompt approval is required.

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<sup>5/</sup> U.S.-EU Air Transport Agreement, Memorandum of Consultations, Paragraph 48. The U.S.-EU Open Skies Agreement itself requires “timely notifications . . . [regarding] proceedings for review of applications [for] approval of . . . cooperative arrangements involving international air transportation, in particular for antitrust immunity involving airlines organized under the laws of the United States and the European Community”. See U.S.-EU Air Transport Agreement, article 4, § 4(a).

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February 10, 2009

Honorable Jerry Costello  
U.S. House of Representatives  
2408 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Costello:

Our law firm represents over 200 of the 1,900 former federal Air Traffic Controllers wrongfully fired by the Federal Aviation Administration in 2005 because they were deemed an "aging workforce."<sup>1</sup> These Controllers not only lost their federal employment but also their ATC retirement benefits.<sup>2</sup> We are urging you to support restoration of lost ATC retirement credits to the Controllers and a set aside of \$100 million in the FAA budget to pay claims of age discrimination in the case of Breen v. LaHood, C.A. 05-0654 (RWR) (D.D.C.).

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<sup>1</sup>The FAA terminated this aging workforce from federal service in the largest Reduction-in-Force (RIF) in U.S. government history. Many of the fired Controllers were within a few years of retirement when the FAA contracted out their jobs to Lockheed Martin, which did not give them any retirement credit. The FAA's RIF and contracting out to Lockheed Martin eliminated the ATC retirements of nearly 2,000 long-time government employees.

<sup>2</sup>The Congress's previous attempt to address this issue in 2005, the Snowe Amendment, P.L. No. 109-115 (S.AMDT. 2150 to H.R. 3058), provided limited relief to almost 100 Controllers, but also set a precedent for allowing Controllers to accrue federal retirement benefits while working at Lockheed Martin.

Hon. Jerry Costello  
February 10, 2009  
Page 2

Our expert economic analysis, by the former Chair of the Economics Department of Georgetown University, estimates that a judgment against the FAA would total at least \$85 million, and most likely more in light of recent Controller layoffs by Lockheed Martin.

The fired FAA Controllers have been working closely with Congress to fashion a bill to restore lost ATC retirement credits and provide reemployment opportunities for the Controllers, much needed measures to address the devastating loss of employment and retirement benefits by the Controllers and one which we hope you will support.

We request that this letter be placed in the record and that you take up this issue with your colleagues. Please feel free to contact me if you need any further information.

Sincerely,

Joseph D. Gebhardt

cc: Randy Lueders  
Frank Eastman

Letter Sent to:  
All Aviation Subcommittee Members

02-11-'09 17:14 FROM-HAI

703-683-4745

T-063 P002/003 F-202



1635 Prince Street, Alexandria, Virginia 22314-2898 Telephone: (703) 683-4646 Fax: (703) 683-4745

February 11, 2009

The Honorable Jerry F. Costello  
 Chairman  
 House Aviation Subcommittee  
 Committee on Transportation & Infrastructure  
 U.S. House of Representatives  
 Washington, D. C. 20515

Dear Chairman Costello:

It has been my honor and privilege to appear before your committee to represent the helicopter industry during previous considerations of an FAA Reauthorization Bill in the 110th Congress.

Helicopter Association International (HAI) hereby submits the following statement for the record concerning H.R. 915, the FAA Reauthorization Act of 2009. This statement is being provided to the House Aviation Subcommittee to become a part of the hearing record for the subcommittee hearing held on Wednesday February 11, 2009.

HAI represents the commercial helicopter industry and is a not-for-profit, professional trade association of over 2,600 members, inclusive of 1,400 companies and organizations. HAI members safely and professionally operate in excess of 5,000 helicopters, and fly more than two million flight hours per year.

Member companies include helicopter and heliport operators, and unlike many other trade associations, operations conducted by HAI members are not limited to one type of specific flying or purpose. HAI members operate helicopters across a wide spectrum of uses, such as offshore oil and gas support in the Gulf of Mexico, on-demand charter, utility services, public service, law enforcement, emergency medical services, agricultural, as well as private use.

Section 103, FAA Operations, on page 11 of H. R. 915 as presently drafted, amends Authorized Expenditures Section 106(k) (2) by striking subparagraphs (A), (B), and (C). This deletion of authorization language from AIR 21 represents a significant safety concern for our industry and will have a detrimental effect upon helicopter operations in the United States, particularly as the FAA embarks upon the Next Generation Transportation System (NextGen).

Maintaining continued FAA support for infrastructure systems development for both general aviation and the vertical flight industry is essential, including certification and recertification of Instrument Flight Rule (IFR) Global Positioning System (GPS) point in space approaches to such destinations as hospital heliports.

*Dedicated to the advancement of the international helicopter community*  
[www.rotor.com](http://www.rotor.com)

02-11-'09 17:14 FROM-HAI

703-683-4745

T-063 P003/003 F-202

As our national airspace systems transitions to NextGen, it is essential that the FAA develop a dedicated low altitude IFR helicopter route structure and ensure through periodic flight review, the certification, inspection, and recertification of the helicopter approaches noted above to support such operations as all-weather, emergency services in the public interest and for the greater good and security of our nation.

Enhanced helicopter capabilities are necessary to enhance safety in the industry, while also having the resultant effect of relieving congestion within the national airspace system (NAS) and terminal airport operations.

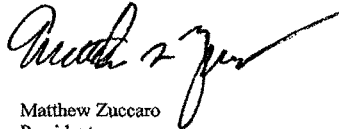
The Automated Dependent Surveillance Broadcast (ADS-B) system currently being implemented in the U.S. will require enhanced weather reporting, communications, and flight tracking, and it is essential that the FAA support an infrastructure that will facilitate increased helicopter IFR operations, inclusive of instrument approaches to heliports and points in space, as well as enhancing the safety and efficiency of Visual Flight Rule (VFR) helicopter operations.

As I am sure the committee is aware, last week the National Transportation Safety Board (NTSB) completed four days of safety hearings on the subject of helicopter emergency medical services (HEMS); and our industry has been instrumental in working closely with the FAA and the NTSB to improve the safety of these operations. HAI was a designated party to the NTSB hearing and continues to serve as a major contributor to the NTSB and FAA effort to enhance safety in HEMS operations.

Your support in preserving and further enhancing this vital legislative language in H.R. 915 is critical. If you or a member of your staff would like to discuss this matter with HAI, please contact Ann Carroll, HAI's Vice President for Legislative Affairs at 703-683-4646 or by email at [ann.carroll@rotor.com](mailto:ann.carroll@rotor.com).

Thank you for your consideration of this important safety issue that holds the potential to affect many citizens across our nation.

Sincerely,



Matthew Zuccaro  
President  
Helicopter Association International

**Statement for the Record  
of the  
National Air Transportation Association**

**before the  
Subcommittee on Aviation  
Committee on Transportation and Infrastructure  
U.S. House of Representatives**

**Hearing on  
Federal Aviation Administration Reauthorization Act  
of 2009**

**February 11, 2009**

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Chairman Costello and Ranking Member Petri, the National Air Transportation Association (NATA) appreciates the opportunity to submit the following statement to be included in the record for the Subcommittee's February 11, 2009 hearing regarding the Federal Aviation Administration Reauthorization Act of 2009.

NATA, the voice of aviation business, is the public policy group representing the interests of aviation businesses before Congress, federal agencies and state governments. NATA's 2,000 member companies own, operate and service aircraft. These companies provide for the needs of the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air taxi, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation, and the military.

NATA strongly believes that modernizing the nation's air traffic control system is an absolute necessity. With air traffic reaching record levels in both the commercial airline and general aviation sector, it is imperative that Congress and the Federal Aviation Administration (FAA) work together to create a vision that will accommodate all facets of the industry. Additionally, the economy is having a tremendous effect on the aviation industry and NATA is hopeful that the increase in funding for the Airport Improvement Program and FAA Facilities and Equipment provided in the bill will benefit aviation infrastructure while creating jobs.

Below are a number of key issue areas affecting NATA member companies that should be addressed in this important legislation.

#### **Repeal the Fuel Fraud Provision**

A provision to repeal the fuel fraud tax that was contained in the House and Senate versions of the FAA reauthorization bills from the 110<sup>th</sup> Congress should once again be included in the final bill in the 111<sup>th</sup> Congress. The purpose of the fuel fraud tax was to counter potential fuel fraud from highway truck drivers buying aviation jet fuel and mixing it with another substance to make it operable in highway trucks to avoid higher taxes. The tax resulted in an increase in funds to the Highway Trust Fund that would have otherwise been deposited into the Airport and Airways Trust Fund. The new fuel tax collection procedures posed a problem for aviation operators because they are required to submit additional paperwork for tax refunds. In the event that an operator or fuel provider does not apply for the refund, the aviation trust fund receives no revenue from the legitimate sale of the aviation jet fuel.

Removal of untaxed, undyed jet fuel from the terminal rack creates tax evasion incentives and opportunities that may result in the loss of not only federal aviation taxes but, more importantly, also federal and state diesel fuel excise taxes because jet fuel can be used in on-road diesel trucks. The repeal of this provision is justified because the large tax increases for aviation kerosene included in FAA reauthorization legislation remove the incentive for fraud.

### **No User Fees on General Aviation**

A common misconception is that general aviation does not contribute to the Airport and Airway Trust Fund. Currently, general aviation operators pay into the Airport and Airway Trust Fund through a fuel tax of 21.9 cents per gallon for aviation jet fuel and 19.4 cents per gallon for aviation gasoline. Furthermore, on-demand air charter operators pay the same ticket and fuel taxes as scheduled airlines due to their classification as commercial operators. NATA has long argued that the fuel tax for non-commercial general aviation is the best method for paying into the Airport and Airway Trust Fund because it guarantees a consistent and efficient stream of funding by using a streamlined tax imposition and collection structure.

User fees would be detrimental to general aviation businesses in the United States for the following reasons:

- ❖ **Safety implications:** If aircraft operators are assessed special fees for using air traffic control services or certain airports, general aviation pilots may attempt to lower costs and choose not to use all available resources for flying safely. User fees would have a negative impact on safety.
- ❖ **Increased cost to non-scheduled operators:** Airline advocates have argued that all eligible operations should pay the same fee because air traffic control does not differentiate between types of aircraft and therefore each aircraft that uses air traffic control services should be classified the same. This argument fails to account for the fact that airline travel is what drives the cost of air traffic control services.
- ❖ **Less general aviation activity:** User fees would undoubtedly result in many operators flying on a much less frequent basis due to the increased costs of using the aviation system. Less activity will have a large ripple effect throughout the industry, with many businesses suffering due to decreased fuel sales, maintenance projects, and other services.
- ❖ **A tremendous administrative burden and new bureaucracy:** Virtually all countries that have implemented a user fee system have adopted a method of billing users of the system for the air traffic services used after their particular flight. None of these countries, however, have the significant level of general aviation activity found in the United States. A system of “after the fact” bills would result in a massive administrative burden for all general aviation pilots and the creation of a mammoth new bureaucracy to oversee a system for tracking fee-triggering activities, identification of the proper entity to bill, verifying that payments are received and resolving disputes. Meanwhile, users will have to dedicate significant resources for verifying the bills’ accuracy. The current fuel tax ensures that the Airport and Airway Trust Fund will receive the appropriate contribution as the fuel is purchased, without having to wait weeks and possibly even months for payment.

### **FAA Standardization of Regulatory Interpretations**

One of the biggest burdens confronting the general aviation industry is the varying interpretation of the FAA regulations by the agency’s Regional, Aircraft Certification (ACOs) and Flight Standards District Offices (FSDOs). Currently, there are 9 FAA regions, 10 ACOs and more than 80 FSDOs that each issue approvals on a wide range of

maintenance and operational requests made by regulated entities such as Part 135 on-demand charter operators, Part 145 repair stations, and Part 141 and 61 flight training facilities. These regulated entities are constantly challenged by regulatory interpretations that vary from one inspector within one FSDO or ACO to another and are estimated to cost general aviation businesses hundreds of millions of dollars annually when previously approved actions are subject to “re-interpretation.” Inconsistent and varying interpretations of compliance also demonstrate a shortcoming in the FAA’s ability to coordinate its workforce and ensure that the decision-making abilities vested in inspectors are respected across all divisions of the agency, impairing efforts to achieve a uniform safety standard nationwide. NATA recently surveyed its members and found that eighty-nine percent felt that their businesses have suffered due to inconsistent interpretations of federal regulations within the FAA.

A General Accounting Office (GAO) report has been requested to review how inconsistent regulatory interpretations are costing the FAA and the aviation industry hundreds of millions of dollars in resources, while raising serious concerns about unified safety standards. NATA is hopeful that the results of the report will prove the significance of the issue and signify a need for change within the FAA. Congressional support for this GAO study to address this growing problem is critical.

**Airports Providing Aviation Services:**

In a growing trend, airport operators are seeking financial growth at their airport by competing with, or in some cases taking over the services of, fixed base operators (FBOs) by providing aeronautical services such as fueling or maintenance at their airport. Current conditions in the aviation industry, including the distressed financial condition of the airline industry, have left airport operators scrambling for alternate sources of revenue. Aviation businesses at the airport are among their first targets in the search for this increased revenue stream. While it is the airport sponsor’s right to venture into the business of providing aeronautical services, this practice can have detrimental effects for both the airport and its tenants. The practice of airport authorities seeking to compete with private business at the airport results in strained tenant/airport operator relations at the airport, is not cost effective, and usually has a negative impact on the airport’s attempts to achieve greater operating and financial targets. By entering into the ground support side of operations, an airport authority is distracted from its duties of managing the airport successfully. Anti-trust laws are also an issue, especially in cases when a local or state government runs the airport.

There is a high cost to be paid when government competes with private industry. Economic effectiveness is the largest problem, as government-run ventures are neither as responsive nor cost-effective as private industry. When a government entity, such as an airport authority, duplicates what is provided in the competitive market, government pre-empts competition, stifles entrepreneurial opportunity, destroys economic growth, and raises the price of doing business at the cost of the taxpayer. While airports may offer a less expensive product, they are able to do so because they are subsidized by the taxpayer. The government-run “business” is then able to eliminate market incentives that produce economic efficiency and greater wealth for both buyers and sellers.

Elimination of these businesses also impacts local, state and federal tax revenues. Private enterprises pay property taxes and annual income taxes from which government owned and operated businesses are typically exempt. A provision should be included that prohibits airports from providing aviation services.

#### **NextGen**

The existing U.S. air routes operate as narrow, pre-determined paths in the sky, thus airspace is crowded between airports with the most air traffic. Aircraft are separated from each other by defined vertical and horizontal distances. The architecture of the current ground-based navigation system does not allow for the use of the abundance of the entire airspace system. By utilizing new technologies, airspace routes can be better defined, allowing more aircraft and more routes to be determined within the airspace.

#### **NextGen's satellite-based system technologies include:**

- ❖ Automatic Dependent Surveillance – Broadcast (ADS-B)
- ❖ Required Navigation Performance (RNP)
- ❖ Satellite-based Area Navigation (RNAV)
- ❖ Lateral Precision with Vertical Guidance (LPV) approach capabilities

#### **NextGen's innovation benefits to general aviation include:**

- ❖ Greater access to terminal airspace
- ❖ Sustains small airports
- ❖ Improved weather information

#### **Provisions to Improve Environmental Impact**

As climate change becomes a worldwide concern, all modes of transportation are adopting measures to reduce carbon emissions. While much has been written about the role aircraft play in generating emissions, it is important to highlight the scientific facts related to aviation emissions. It comes as a surprise to many that aviation accounts for less than 3% of greenhouse gas (GHG) emissions worldwide. Additionally, aviation gasoline and jet fuel account for 12% of total petroleum consumption, according to the Transportation Energy Data Book published by the U.S. Department of Energy.

Despite its small percentage of emissions, the aviation industry recognizes the importance of further minimizing its environmental impact and is being proactive in adopting an agenda that supports a sustainable environment. This is true across the industry, including general aviation, commercial airlines, airports, manufacturers and ground handlers.

Since 2000, aviation GHG emissions have been reduced by 13% as general aviation and commercial airlines have done a better job of transporting passengers on less fuel, including harmonizing schedules, increasing load factors, switching to more fuel efficient aircraft and engines, and decreasing idling times to reduce fuel consumption. More efficient general aviation aircraft such as the Cirrus and Columbia are being made of composite materials that are lighter and more fuel efficient. On the ground, airports and

ground handlers are investing in infrastructure to reduce fuel use, such as fuel hydrant systems to reduce fuel truck usage and low-emission vehicles and ground support equipment.

Much like the automobile industry, the aviation industry is investing in research and development of new clean energy and alternative fuel technologies. Private companies are developing and testing hydrogen fuel cells and biofuel blends. The general aviation industry is concerned that Congress will impose stringent regulations, particularly on emissions, that will be detrimental to the aviation industry.

**Conclusion**

NATA looks forward to working with the Subcommittee during the reauthorization process and is eager to serve as a valuable resource for aviation businesses during this critical debate.

**STATEMENT OF  
THE NATIONAL ASSOCIATION OF COUNTIES  
ON  
THE FAA REAUTHORIZATION ACT OF 2009  
BEFORE THE  
SUBCOMMITTEE ON AVIATION  
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
WASHINGTON, DC  
FEBRUARY 11, 2009**

The National Association of Counties (NACo) is submitting this statement for a hearing entitled, the **FAA Reauthorization Act of 2009**, before the Subcommittee on Aviation of the House Committee on Transportation and Infrastructure. NACo has a very real interest in the reauthorization of the federal aviation and airport programs and, in fact, reauthorization of these programs is a 2009 Legislative Priority for NACo. We commend Chairman Oberstar and Aviation Subcommittee Chairman Costello for introducing H.R. 915, The Federal Aviation Administration Reauthorization Act of 2009. Our members are eager to see a multi-year authorization bill enacted as soon as possible.

Counties own about one-third of the nation's commercial and general aviation airports. This includes some of the largest commercial airports in the United States, including those hubs in Miami, Las Vegas, Cincinnati, Milwaukee, Fort Lauderdale, and Orange County, California. Counties also have representatives on many airport authorities and operate hundreds of general aviation airports.

NACo's top four issues on reauthorization are the Airport Improvement Program; the Passenger Facility Charge; Essential Air Service; and the Small Community Air Service Program.

**Airport Improvement Program**

The AIP program is the cornerstone of federal support for airport capital projects. NACo policy is that this program be funded at no less than \$4 billion annually and we are pleased that H.R. 915 reflects that position. Authorizing the AIP program at \$16.2 billion over the next four years will mean that additional projects will be completed. With almost 3400 airports eligible for AIP grants, the increase to \$4 billion is essential. Airports owned by counties have been affected by the substantial increased costs of construction and a \$4 billion annual AIP program will help in absorbing these added costs. While we recognize that the current economic climate and state of the airline industry has resulted in a contraction of service to many airports, we are optimistic that our economy will start growing again shortly. This means we will have to be prepared to address future capacity with the understanding that many capital projects take years to plan and execute.

### **Passenger Facility Charge**

NACo policy supports allowing local sponsors to increase the Passenger Facility Charge (PFC) to no less than \$6.00. We are very encouraged that H.R. 915 increases the cap to \$7.00. The PFC has been has a tremendous boon to airports and has resulted in \$64 billion in airport capital projects since its inception. However, like other airport spending, the value of the PFC has been eroded by inflation and increased construction costs. An increase in the PFC as proposed in this legislation will substantially mitigate these developments. We should also note that nothing in the statute or in H.R. 915 requires an airport to increase the PFC and recognizes that any community which proposes to do so must have the input from a broad range of affected parties. Another benefit is that when a large or medium hub airport implements a PFC, it forgoes a portion of its AIP entitlement. This in turn is redistributed to small airports, which generally have less capacity to raise revenue locally.

### **Essential Air Service**

Essential Air Service (EAS) is extremely important to NACo members from rural areas, and to the approximately 143 rural communities in 36 states that this program serves. In a nutshell, EAS keeps these communities connected to the rest of America. It provides a link for citizens to travel to the larger communities plus a link to the nation and world through the hub airports that EAS connects to. EAS plays a key role in local communities by attracting and retaining businesses. With the recent fluctuations in the cost of fuel followed by the downturn in the economy, EAS service has faced many challenges. NACo has in the past urged reforms in the program to ensure that rural communities can continue to have reasonable air service. We are encouraged that H.R. 915 increases EAS funding from \$127 million to \$200 million annually, including an increase in authorization level to \$150 million. A very important provision in this legislation allows an increase in the \$200 per passenger subsidy to reflect increases in fuel costs and is a change that is long overdue. We think providing the Secretary of Transportation with the authority to provide emergency across-the-board increases is also a prudent reform. We are also encouraged by the provisions in H.R. 915 that address the termination of air service and the elimination of the local match requirement. NACo also endorses provisions for improving air service by incorporating financial incentives into EAS contracts. In particular, we think increased marketing efforts are key to the success of EAS.

### **Small Community Air Service Program**

NACo supports the Small Community Air Service Program. This program needs to be funded at a level that comes close to meeting the demand. While the \$35 million provided annually included in H.R. 915 is a reasonable funding level, we believe that future demand may exceed that level. In past years grant applications have exceeded the available funding by a substantial margin.

Thank you for the opportunity to submit NACo's views on the reauthorization of the federal aviation and airport programs. We would be happy to respond to any written questions you may have.





**Federal Aviation Administration Reauthorization Act of 2009/H.R.  
915)/Airline Insecticide Notification**

**Testimony of**

**Gene Harrington**

**Director, Government Affairs**

**National Pest Management Association**

**Submitted to**

**House Transportation and Infrastructure Subcommittee on Aviation**

**February 11, 2009**

My name is Gene Harrington and I am the Director of Government Affairs for the National Pest Management Association (NPMA), the only national trade group for the professional pest management industry, and I appreciate the opportunity to submit testimony on H.R. 915, the Federal Aviation Administration Reauthorization Act of 2009.

On behalf of NPMA's 5,000 member companies, I submit testimony on H.R. 915, in strong opposition to a provision in the bill that prohibits travel agents and airlines from selling a ticket to a passenger for a flight on an aircraft on which an insecticide has been used within the previous 60 days unless the travel agent or airline inform the customer of the application, including the name of the insecticide. NPMA joins with the American Society of Travel Agents and the Interactive Travel Services Association in opposition to this provision.

The provision, which would cover pest treatments in both cabins and cargo holds, is unnecessary, bureaucratic and unworkable. Included in Section 406, lines 15-25 on page 138, the provision is ill considered, has been subject to very little scrutiny or serious debate, and should be removed from the legislation.

Page Two  
 NPMA Testimony on H.R. 915  
 February 11, 2009

The provision is so broad and overreaching that it would interfere with the use of products as innocuous as non-aerosol insecticide baits. Insecticide baits normally come in gel form or are contained in a tamper resistant container. They are particularly effective in controlling cockroaches and ants. Baits have almost no volatility and pose virtually no risk of exposure. Since it is virtually impossible that a passenger would be exposed to an insecticide contained in the bait providing notification serves no purpose. Such information would be as useful as notifying passengers that the airline is carrying a new brand of hand sanitizer.

Moreover, developing a system to allow pest management companies, airlines, and ticket agents to coordinate insecticide treatments and the conveying of information about the treatments to passengers will lead to increased costs for passengers without providing any obvious benefit. Even if such a system were established the information would be unreliable because airlines and tickets agents rarely know the exact airplane a passenger will be flying on when he or she purchase their ticket.

Pest management companies work closely with airlines to manage insect pests on aircraft as safely, efficiently, and effectively as possible. Nevertheless, aircraft contain everything insect pests need to survive and flourish – food, water, and harborage. It should come as no surprise then that cockroaches, flies, and mosquitoes commonly infest planes. Spiders including poisonous ones, stinging insects, and bed bugs also make their way onto planes.

Insecticides that can be used on aircraft have been carefully evaluated by the U.S. Environmental Protection Agency, and are subject to a rigid, comprehensive health and safety risk assessment, which ensures that there is a "reasonable certainty of no harm" associated with the use of the product. The byproduct of the risk assessment is the insecticide product label that includes instructions that are an extension of federal law. Using the product contrary to the labeling is a violation of federal and state laws. In addition, pest management professionals are trained and certified in the safe and careful use of insecticides, and must fulfill continuing education requirements.

NPMA urges the removal of lines 15-25 on page 138. I encourage you to contact me at (703) 352-6762, ext 212 or [gharrington@pestworld.org](mailto:gharrington@pestworld.org) should you have any questions regarding this matter.