

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 They are woefully outdated and inadequate, and deprive the flying public, shareholders and the public at large of tremendous economic, environmental and competitive benefits that are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

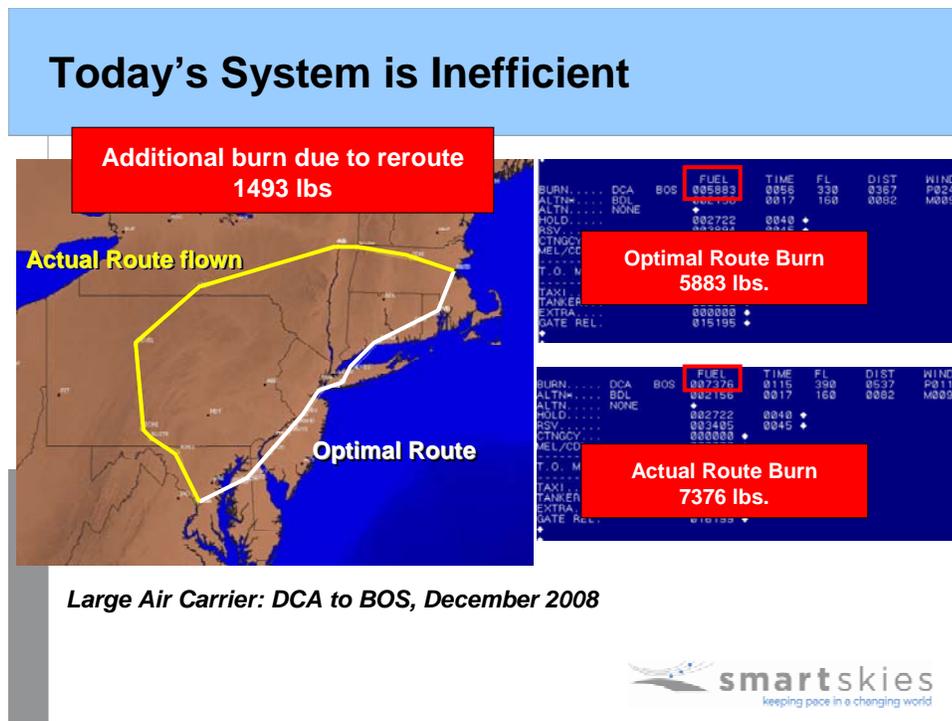
All sectors of the broader aviation industry – airports, airlines, business aviation, manufacturers, passengers and shippers – agree that the FAA ATC system is badly in need of modernization and that it is needed now. As laid out by many witnesses in numerous prior hearings, the current ATC system is 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 (CO₂) 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
Turbine GA share of total	41 percent	71 percent	30 pts.

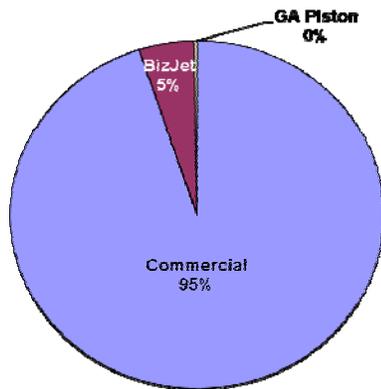
Unfortunately, the taxes and fees paid by this user group have not kept up with this dramatic growth, leading to an imbalance in payments into the Trust Fund. This imbalance in ATC system use and payments has led to an obvious and undeniable economic distortion that has airlines and their customers subsidizing 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.¹ 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.²

¹ The FAA cost-allocation study for FY 2005.

² 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.

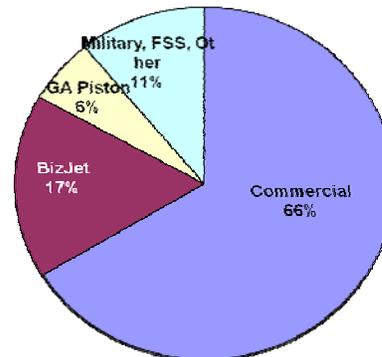
Share of AATF Revenue Contributions



■ Commercial ■ BizJet ■ GA Piston

FY 2008 Estimates

Share of ATC Costs



■ Commercial ■ BizJet ■ GA Piston ■ Military, FSS, Other

FY 2005 Cost Allocation Study

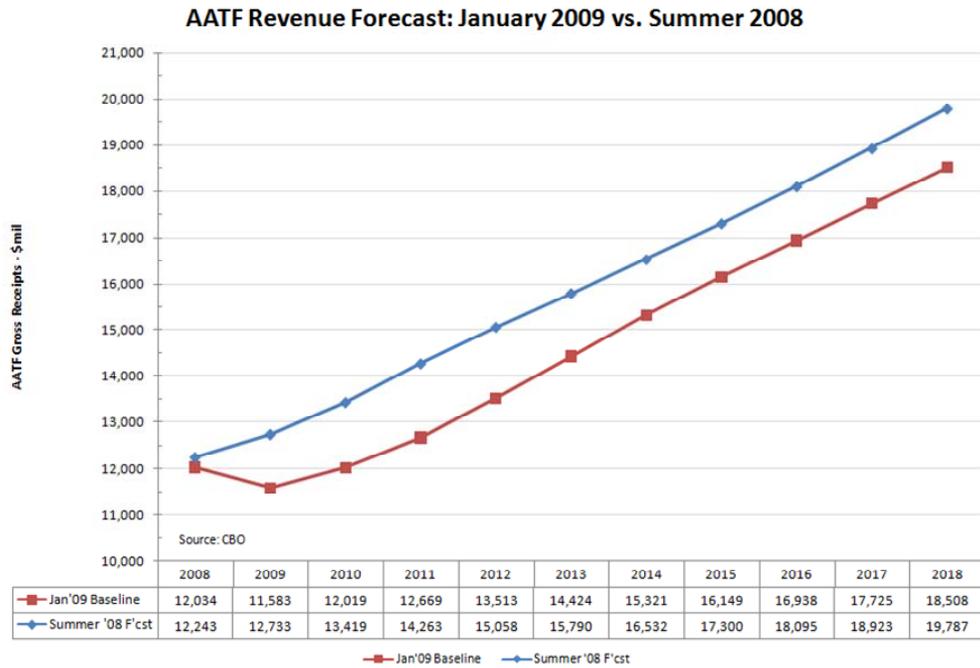
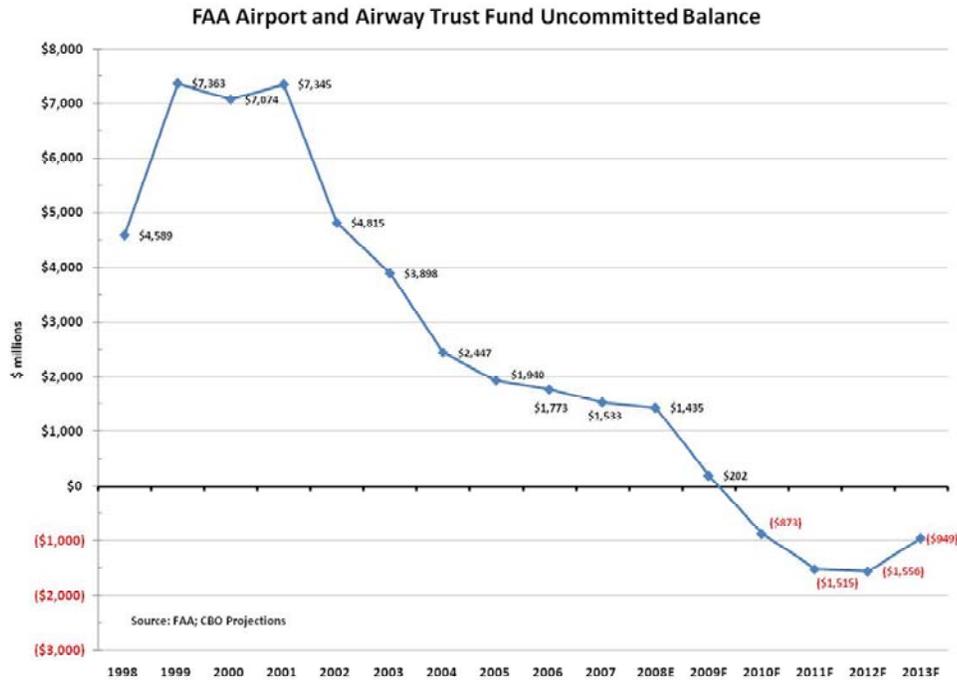
The inequity of this situation is illustrated by comparing the taxes and fees paid by a commercial passenger flight and a private corporate aircraft flight over the same route. A commercial passenger Boeing 737 flying from Washington, D.C. to Fort Lauderdale, Florida, a distance of 902 miles, would generate 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.³ 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

³ “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.

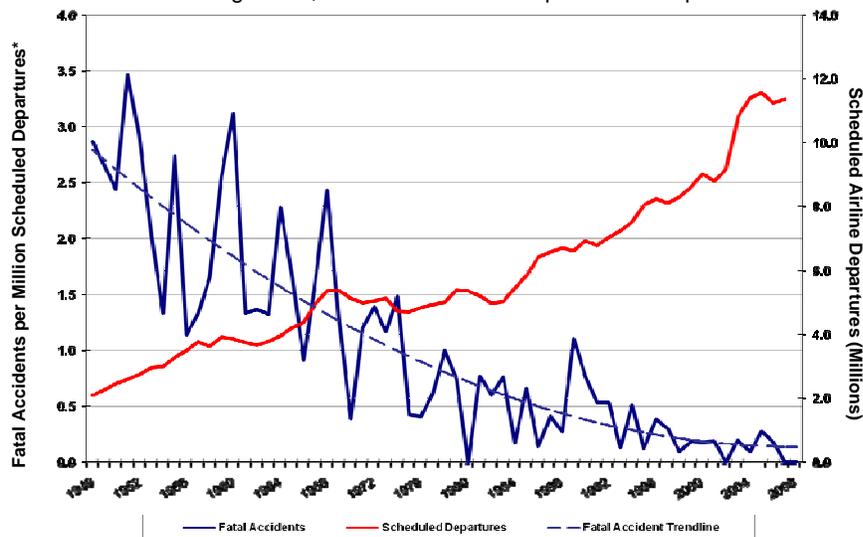
Why financial health?

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.

With Each Decade, U.S. Airline Safety Has Improved

Since Deregulation, < 0.5 Fatal Accidents per Million Departures



* Scheduled passenger and cargo operations of U.S. air carriers operating under 14 CFR 121; NTSB accident rates exclude incidents resulting from illegal acts
Source: National Transportation Safety Board (NTSB)

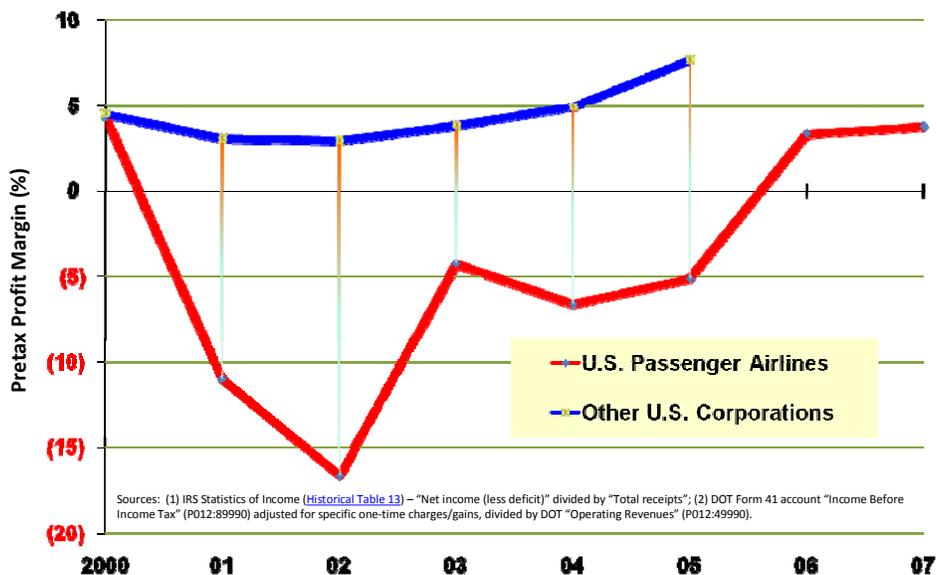
- **Improve wages and benefits for employees.** The post-Sept. 11 period saw the industry lose tens of billions of dollars and the wages and benefits of employees – those who survived reductions in force – shrink. It is obvious that this trend can be reversed only if the financial health of the industry 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.

Breaking Even Isn't Good Enough
 Pretax Profit Margin Consistently Below Average for U.S. Corporations (excl. Airlines)



www.airlines.org

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 2010.⁴ Under these circumstances, it will not take much to tip the industry into another yearly loss position.

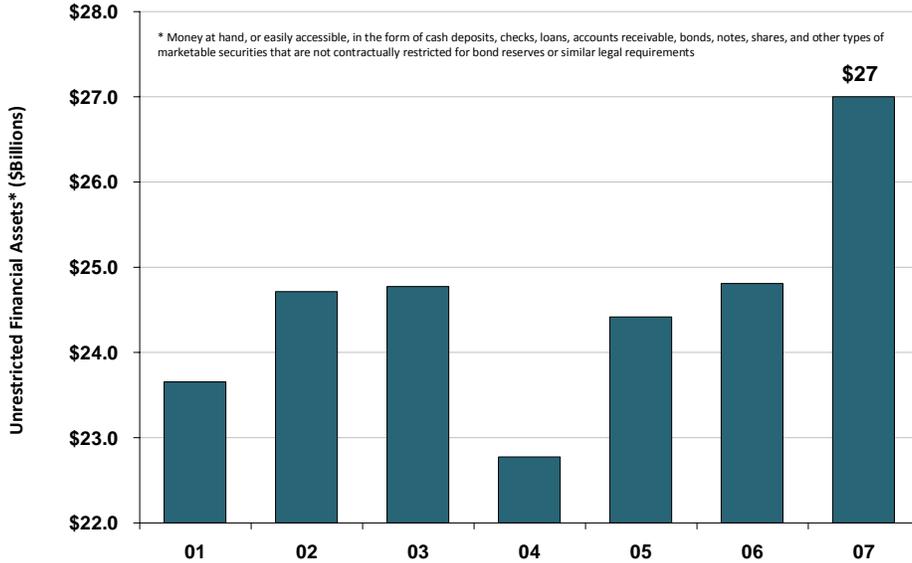
Put simply, the U.S. airline industry cannot afford regressive policies that inhibit best business practices and unnecessarily constrict management decision-making, or that add unnecessary fees and costs. Such policies undermine the ability of airlines to earn a profit, impair shareholder value and impair 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.

⁴ 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



Source: Federal Aviation Administration (FAA)

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).⁵ 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

	<u>YTD 2007*</u>	<u>YTD 2008*</u>	<u>Better/(Worse)</u>
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*

www.airlines.org

...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%

⁵ 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 Report⁶ 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.

⁶ 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,⁷ 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”⁸
- 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.

⁷ See footnote 5 above.

⁸ 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.