



# Sequestration at the Federal Aviation Administration (FAA): Air Traffic Controller Furloughs and Congressional Response

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## Summary

In response to across-the-board funding reductions in federal programs through the budget sequestration process implemented in FY2013, the Federal Aviation Administration (FAA) began to furlough personnel, including air traffic controllers, on April 21, 2013. In conjunction with air traffic controller furloughs, FAA implemented various air traffic management initiatives to mitigate impacts of the reduced staffing on controller workload. This resulted in some delays affecting about 3%-4% of flights, with some acute delay impacts occurring in congested airspace, particularly in the New York City area.

Amid concerns over the impacts of air traffic controller furloughs, Congress passed the Reducing Flight Delays Act of 2013 (P.L. 113-9). The act authorized FAA to transfer up to \$253 million from funding available for airport grants or other FAA programs and accounts to the FAA operations account for necessary costs to prevent reduced operations and staffing and ensure a safe and efficient air transportation system. Following passage of this legislation in Congress, FAA suspended all employee furloughs and resumed air traffic control operations under normal procedures and full staffing levels.

Prior to the April 2013 furloughs, FAA furloughed employees in the summer of 2011. However, the FAA furlough actions associated with sequestration had a different legal basis and were consequently implemented quite differently. The summer 2011 furloughs arose as a result of a lapse in authority to collect Airport and Airways Trust Fund (AATF) revenues, the sole funding source for FAA's facilities and equipment (F&E) account, the Airport Improvement Program (AIP), and research, engineering, and development activities. Expenditure authority for AIP also expired in the summer of 2011. The expiration of these authorities resulted in immediate furloughs for most employees funded from these accounts. Some employees funded through the F&E account responsible for ensuring the safety and reliability of navigation and communications equipment were ordered to stay on the job. Employees paid through FAA's operations account, including air traffic controllers, were not furloughed in 2011.

Certain AIP grants-in-aid funds for airport development and planning are now subject to provisions of the Reducing Flight Delays Act of 2013. It appears that the transfer of the designated AIP discretionary funds to air traffic operations reduces the amount made available to airports under 49 U.S.C. 48103. This has implications for both the eventual spending of AIP discretionary funds and the calculation of the amount of AIP entitlement funding available for distribution.

- Unless Congress takes further action, the transferred funds will eventually lead to real reductions in AIP discretionary spending.
- FAA may need to stop or reduce its AIP discretionary grant making for the remainder of FY2013 to comply with the act.
- Individual airports' formula "entitlements" could be reduced for the remainder of the fiscal year if FAA transfers most or all of the \$253 million allowed under the act.

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## Introduction

The Budget Control Act of 2011 (BCA; P.L. 112-25) provided for automatic reductions to most federal discretionary spending if no agreement on deficit reduction was reached by the Joint Select Committee on Deficit Reduction. Such reductions, referred to as sequestration, went into effect on March 1, 2013, which was the extended deadline for a deficit reduction agreement established under the American Taxpayer Relief Act of 2012 (ATRA; P.L. 112-240).<sup>1</sup> In general, sequestration requires agencies to reduce spending for certain suballocations of funds—programs, projects, and activities—within nondefense discretionary accounts by 5.3% in FY2013.<sup>2</sup>

To implement the sequester-related reductions, the Federal Aviation Administration (FAA) began to furlough personnel, including air traffic controllers, on April 21, 2013.<sup>3</sup> In the wake of concerns about the adverse effects of furloughs on air travel, the Senate passed S. 853, the Reducing Flight Delays Act of 2013 (RFDA), on April 25, 2013, by unanimous consent.<sup>4</sup> The bill provided new authority to the Secretary of Transportation to transfer up to \$253 million to FAA's "operations" account from other FAA accounts, including discretionary grants-in-aid for airports. The next day, the House agreed to H.R. 1765 under suspension of the rules.<sup>5</sup> Under agreement, H.R. 1765, being identical in content to S. 853, was presented to the President on April 30, 2013, and was enacted on May 1, 2013, becoming P.L. 113-9. FAA halted furlough actions even before the bill was signed by President Obama.

This report provides a brief overview of FAA's implementation of the sequester in April 2013, as it relates to air traffic control operations and staff furloughs. It then considers the congressional response, including the potential impact of the funds transfers authorized under P.L. 113-9 on FAA's Airport Improvement Program (AIP).

## Sequester Cuts and the FAA Budget

The sequester cuts reduced FAA spending for FY2013 by about \$636 million below the amount specified in the FY2013 continuing budget resolution. The portion of funding designated for staff salaries and benefits varies considerably by major FAA funding account. FAA's operations account, which includes air traffic operations and aviation safety functions, is the most labor-intensive, with about 71% of outlays going to employee salaries and benefits. This is by far the

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<sup>1</sup> CRS Report R42884, *The "Fiscal Cliff" and the American Taxpayer Relief Act of 2012*, coordinated by Mindy R. Levit.

<sup>2</sup> See CRS Report R42972, *Sequestration as a Budget Enforcement Process: Frequently Asked Questions*, by Megan S. Lynch.

<sup>3</sup> FAA also previously announced plans to cease operations completely at several air traffic control towers, including 149 towers in the Federal Contract Tower program. A four-week phased closure process, originally set to begin on April 7, 2013, was postponed until June 15, 2013. P.L. 113-9 does not specifically mention contract towers. Pending tower closures are discussed in detail in CRS Report R43021, *Proposed Cuts to Air Traffic Control Towers Under Budget Sequestration: Background and Considerations for Congress*, by Bart Elias.

<sup>4</sup> Likely in light of past House assertions that appropriations bills must originate in the House, the unanimous consent agreement provided "that if the Senate receives a bill from the House and the text of that bill is identical to S. 853, the bill then be considered read three times and passed and the motion to reconsider be considered made and laid upon the table."

<sup>5</sup> The House later in the day corrected a typographical error in the bill by unanimous consent, replacing in Section 2(a) the first instance of the word "account" with "accounts."

largest FAA budget account. The facilities and equipment account, on the other hand, is spent largely for facility construction and technology acquisition and maintenance, and only 15% of spending is devoted to salaries and benefits. Similarly, Grants-in-Aid for Airports, also known as the Airport Improvement Program (AIP), has a very low percentage (roughly 3%) of its total devoted to salaries and benefits, as most funds designated for this account are passed on to airport authorities for carrying out construction and maintenance projects. The research, engineering, and development account mainly performs its functions through university research grants and industry contracts, with 23% of its budget going to salaries and benefits.

As operations, including both air traffic services and safety-related functions, require the most internal labor resources from FAA, these functions are most heavily impacted by agency-wide furlough actions (see **Table 1**). FAA operations face a sequester reduction of roughly \$486 million. P.L. 113-9 gives FAA authority to transfer up to \$253 million to operations using available moneys from unspent airport funds, which were not subject to sequestration, and from other available sources. While the focus of legislative debate on P.L. 113-9 was the reduction or elimination of air traffic controller furloughs in order to avoid disruption of airline service, the effects of the legislation will hinge on FAA's specific budgetary actions under this authority.

**Table 1. FAA Major Account Funding Levels**

\$ in Millions

Account	FY2012 Actual	FY2013 Requested	FY2013 Continuing Resolution	FY2013 Pre-Sequester Salaries and Benefits	Salaries and Benefits as % of Enacted Account Totals	Sequester Amount
			Pre-Sequester Estimate <sup>a</sup>			
Operations	9,653	9,718	9,634	6,857	71%	-486
Facilities and Equipment	2,730	2,850	2,754 <sup>b</sup>	422	15%	-142
Research, Engineering, and Development	166	154	166	39	23%	-8
Grants-in-Aid for Airports	3,350	2,424	3,343	87	3%	0
Total <sup>c</sup>	15,902	15,146	15,897	7,405	46%	-636

**Source:** Federal Aviation Administration, FY2013 and FY2014 Budget Estimates.

- a. The FY2013 Continuing Resolution (CR) pre-sequester estimate applies a 0.2% rescission to FY2012 amounts to all nonsecurity budget authority based on Office of Management and Budget (OMB) calculations of across-the-board rescissions necessary to avoid exceeding discretionary spending limits. For details of the FY2013 CR, see CRS Report R42782, *FY2013 Continuing Resolutions: Analysis of Components and Congressional Action*, by Jessica Tollestrup.
- b. Amount includes \$30 million supplemental appropriation specified in P.L. 113-2.
- c. Column totals do not equal sum of account totals due to rounding.

## Implementation of Sequestration at FAA

Sequestration under the American Taxpayer Relief Act of 2012 did not affect all Federal Aviation Administration (FAA) functions. FAA's grants for airport improvements, which are subject to obligation limitations, are statutorily exempt from the sequester cuts.<sup>6</sup> FAA's other functions faced significant spending reductions. FAA interpreted the law as requiring it to reduce spending proportionately in all accounts other than airport grants. In response, FAA implemented agency-wide furloughs of employees, including air traffic controllers, beginning April 21, 2013. FAA employees were told they would be required to take 11 furlough days through the remainder of FY2013.

FAA employs about 45,000 people in a variety of functions. Different FAA components implemented various approaches to designating furlough days. FAA's Air Traffic Organization, which includes both air traffic controllers and the technicians and engineers who maintain the air traffic control system, implemented rolling furloughs among its 33,000 employees to minimize staffing impacts to flight operations. Following negotiations with the union representing controllers, FAA agreed that all air traffic controllers nationwide would be required to take one unpaid furlough day in each two-week pay period, irrespective of the workload or potential impact of reduced staffing at a particular facility.

FAA implemented various air traffic management initiatives to mitigate impacts of the reduced staffing due to furloughs, including increased aircraft spacing, which reduces the number of flights an airport can handle in a given period. These measures led to delays during the first week of reduced staffing, most noticeably in the New York City area and at Dallas-Fort Worth, Las Vegas, Chicago, and Tampa airports.<sup>7</sup> In total, delays related to staffing reductions appear to have affected about 3%-4% of flights, with some acute delay impacts occurring in congested airspace, particularly in the New York City area.

Airlines warned that prolonged furloughs and associated delays could impact revenues, but this could be offset somewhat by lower fuel prices.<sup>8</sup> Also, in response to the furlough delays, airline advocacy groups sought exemption from the Department of Transportation's tarmac delay rules, which generally require airlines to allow passengers to disembark from aircraft delayed more than three hours and carry fines for airlines that fail to comply.<sup>9</sup>

On April 27, 2013, following House and Senate passage of legislation to allow it to transfer \$253 million from other accounts to its operations account, FAA announced that it had suspended all employee furloughs and that air traffic facilities would resume operations under normal staffing levels.<sup>10</sup>

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<sup>6</sup> See CRS Report R42050, *Budget "Sequestration" and Selected Program Exemptions and Special Rules*, coordinated by Karen Spar.

<sup>7</sup> Federal Aviation Administration, *Press Release—FAA Statement*, April 23, 2013. Available at [http://www.faa.gov/news/press\\_releases/news\\_story.cfm?newsid=14575](http://www.faa.gov/news/press_releases/news_story.cfm?newsid=14575).

<sup>8</sup> Hugo Martin, "Flight Delays Continue As Airlines Worry About Fiscal Impact," *Los Angeles Times*, April 25, 2013; Gina Chon, "Airlines Warn FAA Furloughs Eating Into April Earnings," *Government Executive*, April 23, 2013.

<sup>9</sup> Motion of Airlines for America (A4) and Regional Airlines Association (RAA) for a temporary exemption from 14 C.F.R. §259.4, Docket DOT-OST-213- 0084, April 19, 2013.

<sup>10</sup> Federal Aviation Administration, *Press Release—FAA Statement*, April 27, 2013.

It is not certain that these steps will avert all furloughs of FAA employees in FY2013. As explained below, FAA may be unable to transfer the entire \$253 million from AIP to its operations account without triggering reductions in many airports' entitlements under AIP. One way for FAA to avoid this problem would be for it to transfer some of the funds from programs other than AIP. This would necessitate spending reductions in those programs, which could potentially include employee furloughs.

## **Contrast with FAA's Summer 2011 Furloughs**

FAA previously furloughed employees in the summer of 2011. Its furlough actions in April 2013 had significantly different impacts due to the fact that they had a different legal basis from those in 2011.

The 2011 furloughs resulted from the effective temporary shutdown of the Airport Improvement Program (AIP) and a lapse in revenue collection authority for the Airport and Airways Trust Fund (AATF), which provides major funding for FAA programs. When short-term extensions of FAA authority under the Airport and Airway Extension Act of 2011, Part III (P.L. 112-21), expired on July 22, 2011, employees working for FAA's office of airports and funded under AIP were immediately furloughed. Other employees paid from the facilities and equipment and research, engineering, and development accounts were also furloughed, as the sole funding source for those FAA programs, the AATF, could no longer collect revenue. Certain employees funded from the facilities and equipment account who inspected FAA navigation and communications equipment were ordered to stay on the job without pay because they were deemed to be essential to the safety of the air traffic system. About 4,000 FAA employees in total, roughly 9% of FAA's total workforce, were affected. As general fund moneys were available to continue paying employees, including any air traffic controllers paid out of the FAA's operations account, these employees were not immediately furloughed.

A subsequent short-term extension of AIP expenditure authority and AATF revenue collection authority (P.L. 112-27) was enacted on August 5, 2011, ending the furloughs for affected FAA employees and eliminating the need for possible additional furloughs of other employees paid through the operations account. Although additional legislation (e.g., H.R. 2814, 112<sup>th</sup> Congress) sought to compensate FAA employees for lost wages under the August 2011 furlough, the legislation was determined to be unnecessary, and employees were subsequently granted back pay for furloughed days under existing Department of Transportation authority.<sup>11</sup>

## **The Difference Between Shutdown- and Sequestration-Related Furloughs**

The term "furlough" refers to placement of an employee in temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons, but with continued benefits under certain conditions, such as health insurance.<sup>12</sup> There are two types of furloughs: "shutdown furloughs" (also called "emergency furloughs") and "administrative furloughs." This distinction

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<sup>11</sup> Sean Reilly, "Furloughed FAA Employees To Receive Back Pay," *Federal Times*, October 3, 2011.

<sup>12</sup> U.S. Office of Personnel Management (hereinafter OPM), "Pay & Leave: Furlough Guidance," at <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/>.

explains why, during FAA's April 2013 implementation of the sequester, federal civil service employees such as air traffic controllers were treated differently in comparison with the 2011 shutdown of certain FAA activities in response to a lapse in budget authority.<sup>13</sup>

## **Shutdowns and Associated "Shutdown Furloughs"**

Under a shutdown, an agency suddenly may lack authority to obligate and spend certain funds due to a lapse in annual appropriations, or, alternatively, due to expiration of an authorizing act that provides access to certain funds.<sup>14</sup> In these situations, it is generally understood that the lapse (or expiration) is temporary, due to an impasse in negotiations within Congress or between Congress and the President, and not intended by policymakers to be a permanent change in law. Some employees who are paid from affected funds are "excepted" by law from a specific kind of furlough ("shutdown furlough").<sup>15</sup> In the context of a shutdown, for example, employees whose duties involve the safety of human life or the protection of property may be told by an agency to come to work during the period of time in which funds are lapsed or an authorizing statute is expired. In other words, they are excepted from furlough. Other employees whose duties do not fit that criterion, however, may be placed on shutdown furlough and told to not come to work during this time period.<sup>16</sup>

The so-called Antideficiency Act, in particular, generally prohibits agencies from accepting voluntary services and employing personal services exceeding that authorized by law, "except for emergencies involving the safety of human life or the protection of property" (31 U.S.C. §1342). The statute elaborates that "the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property."

Two legal opinions from former Attorney General Benjamin R. Civiletti, written in 1980 and 1981, have strongly influenced activities in the executive branch related to shutdowns.<sup>17</sup> The opinions and subsequent guidance from the Office of Management and Budget (OMB) and Office of Personnel Management (OPM) direct agencies in interpreting the Antideficiency Act and the exceptions from the act that are authorized by law, including the exception related to safety of human life and protection of property. These interpretations generally tell agencies which groups of employees may be directed to come to work in the absence of appropriations (i.e., which employees are excepted from shutdown furlough). The interpretations do not require agencies to

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<sup>13</sup> For example, see Glenn Kessler, "Sequester Politics: Claims About the FAA Furloughs," *Washingtonpost.com*, April 25, 2013, at [http://www.washingtonpost.com/blogs/fact-checker/post/sequester-politics-claims-about-the-faa-furloughs/2013/04/24/e0bcf4ce-ad30-11e2-a8b9-2a63d75b5459\\_blog.html](http://www.washingtonpost.com/blogs/fact-checker/post/sequester-politics-claims-about-the-faa-furloughs/2013/04/24/e0bcf4ce-ad30-11e2-a8b9-2a63d75b5459_blog.html).

<sup>14</sup> For more information about shutdowns associated with a lapse in appropriations, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

<sup>15</sup> For frequently asked questions regarding shutdown furloughs, see OPM, "Pay & Leave: Furlough Guidance," tab on "Shutdown Furlough," at <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough>.

<sup>16</sup> CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

<sup>17</sup> For discussion and links to copies of the opinions, see *ibid*. Congress amended the Antideficiency Act in 1990. In 1995, the Department of Justice issued a further opinion that interpreted the effect of the amendment. The 1995 opinion said one aspect of the 1981 Civiletti opinion's description of emergency governmental functions should be modified in light of the amendment, but that the 1981 opinion otherwise "continues to be a sound analysis of the legal authorities respecting government operations" during a funding gap.



make exceptions for all employees whose activities involve the safety of human life or the protection of property. However, it is possible that agencies may interpret law and guidance as generally communicating an expectation that all or many of these employees should (or shall) be excepted from furlough.

Affected excepted employees and nonexcepted employees do not receive pay during a shutdown, due to lack of available budget authority. Arguably, there is a legal obligation for an agency to pay excepted employees for their work during the lapse period, once funding resumes, however. In historical practice, subsequent law has provided for both excepted and nonexcepted personnel to be paid for the work days that pass during a shutdown period.

### **Sequestration and Associated “Administrative Furloughs”**

Under the process known as sequestration, a sequester—such as the one associated with the Budget Control Act of 2011 (BCA; P.L. 112-25)—provides for the automatic cancellation of previously enacted spending, making largely across-the-board reductions to nonexempt programs, activities, and accounts.<sup>18</sup> In this situation, certain percentage reductions are applied across major categories of spending. For each category, a uniform percentage reduction of nonexempt budgetary resources is determined. The reduction then is applied to each program, project, and activity (PPA) within each budget account that falls within the category.<sup>19</sup>

Ultimately, sequestration could be characterized as an elaborate process for making a policy decision to reduce the budgets for certain federal activities. As such, Congress and the President may, through law, reduce the budgets of activities that involve the safety of human life or the protection of property. When agencies face these across-the-board reductions at the account level and the PPA level, they may adjust the incidence of the reductions for a given account or PPA through any available authorities to transfer funds from one account to another and reprogram funds from one PPA to another within the same account.<sup>20</sup> A transfer or reprogramming may cushion some activities from across-the-board reductions, but this may increase the extent of reductions elsewhere.

One way in which an agency may cope with budget cuts is to use administrative furloughs. These furloughs reduce an agency’s personnel costs, because employees are not required to be paid for furlough days and, in practice, are not paid for these days.<sup>21</sup> Agencies generally have considerable

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<sup>18</sup> CRS Report R42972, *Sequestration as a Budget Enforcement Process: Frequently Asked Questions*, by Megan S. Lynch.

<sup>19</sup> Ibid. As noted in this CRS report, PPAs are delineated in different ways: for accounts included in appropriations acts, PPAs within each budget account are delineated in those acts or accompanying reports; and for accounts not included in appropriations acts, PPAs are delineated in the most recently submitted President’s budget.

<sup>20</sup> U.S. Government Accountability Office, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, pp. 85 and 95. For an agency to use transfer authority, it must be given this authority by statute. An agency may reprogram funds as part of its duty to manage funds without additional statutory authority. Many statutes require an agency to notify certain committees in advance of a transfer or reprogramming, a certain number of days before the transfer or reprogramming takes place. In practice, an agency’s exercise of transfer and reprogramming authorities may be influenced by congressional committees, such as committees that are required by statute to be notified by the agency.

<sup>21</sup> For frequently asked questions regarding administrative furloughs, see OPM, “Pay & Leave: Furlough Guidance,” tab on “Administrative Furlough,” at <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Administrative-Furlough>.

discretion to choose which employees are subject to administrative furlough. OPM's guidance says that "[a]gencies are responsible for identifying the employees affected by administrative furloughs based on budget conditions, funding sources, mission priorities (including the need to perform emergency work involving the safety of human life or protection of property), and other mission-related factors."<sup>22</sup>

In the context of sequestration related to BCA, OMB has offered similar guidance to agencies to implement sequestration-related reductions—including any transfers or reprogramming—in a way that mitigates operational risks and negative impacts on an agency's core mission.<sup>23</sup> Although OMB and OPM both make reference to work involving the safety of human life or protection of property, budget reductions may affect and reduce the extent of this work that an agency undertakes, which in some cases may make administrative furloughs unavoidable.

## **Implications of the Reducing Flight Delays Act of 2013 (RFDA; P.L. 113-9)**

RFDA provides FAA with the authority to transfer up to \$253 million of FAA funds from other uses to operations. Although worded broadly, the transfer authority is meant primarily to counteract the impact of sequestration on the air traffic control system.

The act allows FAA to transfer funds from two sources. Amounts made available for obligation under the Airport Improvement Program (AIP) in FY2013 for discretionary grants derived from apportioned funds not required in FY2013, pursuant to 49 U.S.C. 47117(f), can be transferred to other uses. Further, the act allows for transfers from "any other program or account" of FAA. The transferred amounts are to be available immediately for obligation and expenditure as directly appropriated budget authority.

### **RFDA and the Airport Improvement Program (AIP)**

The Airport Improvement Program provides federal grants to airports for airport development and planning. The 3,355 airports eligible for AIP grants range from major international hubs to county general aviation airports that have no commercial service.<sup>24</sup>

There are two forms of grant distribution to these airports: entitlement and discretionary. The entitlement funds (also called apportionments) are based on formulas that determine the amount

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<sup>22</sup> OPM, *Guidance for Administrative Furloughs*, April 2013, p. 1, at <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Administrative-Furlough>.

<sup>23</sup> See several memoranda from OMB, including U.S. Executive Office of the President, Office of Management and Budget (hereinafter OMB), "Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources," memorandum M-13-03, January 14, 2013, p. 2; OMB, "Agency Responsibilities for Implementation of Potential Joint Committee Sequestration," memorandum M-13-05, February 27, 2013, pp. 1-4; OMB, "Issuance of the Sequestration Order Pursuant to Section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985, as Amended," memorandum M-13-06, March 1, 2013, p. 1; and OMB, "Ongoing Implementation of the Joint Committee Sequestration," memorandum M-13-11, April 4, 2013, pp. 1-2; available at [http://www.whitehouse.gov/omb/memoranda\\_default/](http://www.whitehouse.gov/omb/memoranda_default/).

<sup>24</sup> See the National Plan of Integrated Airport Systems (NPIAS) reports at [http://www.faa.gov/airports/planning\\_capacity/npias/reports/](http://www.faa.gov/airports/planning_capacity/npias/reports/).

that each eligible airport is entitled to for a fiscal year. Airports do not need to compete with one another for these funds. Once the entitlements are fulfilled, the remaining funds are distributed as discretionary funds by FAA. The distribution is conditioned by certain set-asides and is based on project priority and other selection criteria. The federal share under AIP varies from 75% for projects at large and medium hub airports to 90% for most small airports. The local match is generally paid for by the airport.

Entitlements are available to recipient airports for either three or four years, depending on the type of airport. If an airport has not obligated its entitlement funds within the allowed period, the amounts are reclassified as discretionary funds and remain available for FAA to distribute until expended.

AIP spending authority is based on contract authority, which is a kind of spending authority that allows obligations to be incurred in advance of appropriations. Because of this characteristic, AIP spending is controlled through a limitation on obligations. The annual limitation on obligations is usually set in appropriations legislation and restricts the amount of AIP contract authority that can be obligated (i.e., awarded) in a particular year. Controlling the rate of the annual obligation of funds allows Congress to control the rate of eventual outlays.

### **“Carryover” Funds (Protected Entitlement Funds)**

Section 2(a)(1) of RFDA allows FAA to transfer any apportioned entitlement funds that airports have elected not to use in the year that the funds are apportioned, for use as discretionary funds. These sums historically were referred to as “carryover” funds, but FAA now uses the term “protected entitlement funds.” These entitlement funds are “protected” in the sense that airports have the right to use them in later years of their eligibility. This movement of funds from entitlement to discretionary (carryover) status and back to restored entitlement status is done because of the multiyear nature of the entitlements and the desire to obligate the entire obligation limitation level each year.<sup>25</sup>

In recent years, the balance of protected entitlement funds (i.e., carryover funds) has grown. This could have occurred for a number of reasons. Some airports, especially small ones, sometimes let the funds build up so that they draw on two or more years’ entitlements at once to fund larger projects. In some cases, the sequence of a project’s construction schedule requires entitlement funds to be held for a period before being spent. Some airports in recent years have had difficulty raising their local matching shares. Also, prior to the enactment of the FAA Modernization and Reform Act of 2012 (P.L. 112-95), FAA funding underwent 23 short-term extensions that made systematic planning difficult for some airports. These factors have caused some airports to defer the obligation of their apportionments to the later years of their eligibility, and the “carryover” balance has reportedly grown to roughly \$700 million.

It is important to understand that the use of the terms “carryover funds” or “unused entitlement funds” does not mean that these are idle surplus funds with no intended use. The transfer of these funds to other parts of FAA under RFDA will reduce eventual AIP discretionary outlays by a like amount. Airports of all sizes benefit from the discretionary grants, but unlike entitlement funds, not every airport receives funding every year. In general, small airports depend on AIP funds for

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<sup>25</sup> The Federal Highway Administration has an annual August redistribution of unobligated formula funds among the states to deal with the same dilemma of multiyear eligibility under annual obligation limitations.

airport improvements more than large airports, because small airports are less likely to be able to finance improvements by selling bonds or imposing passenger facility charges.

### **Implications of RFDA Transfers for AIP**

Section 2(b)(2) of the act appears to require the amount transferred to be considered an obligation for grants-in-aid airports, effectively reducing the spending authority made available for such purposes. In effect, the act appears to reduce the obligation limitation for FY2013. Should this be the case, there would be two major implications.

- Because the transferred amounts reduce the FY2013 obligation limitation by a like amount (pursuant to Section 2 (b)(2)), FAA might have to refrain from making additional awards or reduce the rate of award-making of discretionary grants from now until the end of FY2013 to keep AIP within its reduced obligation limitation. This reduction of obligational authority for AIP discretionary funding will eventually lead to reductions in outlays for airport improvements unless Congress decides to restore the funding in the future.
- Under the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century (P.L. 106-181; codified under 49 U.S.C. 47114), a threshold of at least \$3.2 billion must be made available for airport planning and development under Section 48103 in order for FAA to implement certain “special rules” that provide for more generous entitlements.<sup>26</sup> Consequently, if the transfers authorized by RFDA reduce the \$3.343 billion<sup>27</sup> made available for FY2013 below \$3.2 billion, most airports’ entitlements could be reduced for the remainder of FY2013. The \$3.2 billion threshold has been met every year for the last 10 fiscal years, and airports have become accustomed to the larger entitlement distributions.<sup>28</sup> To prevent reductions in entitlements, FAA would have to forgo transferring from AIP roughly \$100 million to \$110 million of the \$253 million it is authorized to transfer under RFDA.<sup>29</sup> If FAA determines that it needs the entire \$253 million amount to avoid controller furloughs, then, to avoid breaching the threshold, it appears that it would have to transfer roughly \$100 million to \$110 million from FAA accounts other than AIP unless Congress were to provide some other legislative solution.

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<sup>26</sup> P.L. 106-181 provided for a major increase in AIP funding over FY1999-FY2003. The act retained most of the underlying formulas. However, to increase entitlement funding the law added a special rule that, contingent on \$3.2 billion or more being made available for a fiscal year, doubled the primary airport entitlement and raised the primary minimum entitlement from \$650,000 to \$1 million; changed the general aviation entitlement from an area and population formula to a guarantee of the lesser of \$150,000 or one-fifth of the most recently published estimate of each airport’s five-year costs for improvements; and altered cargo and reliever airport grants.

<sup>27</sup> The \$3.343 billion reflects the OMB-calculated 0.2% rescission of \$6.7 million (under P.L. 113-6) from the \$3.350 billion made available for AIP for FY2013.

<sup>28</sup> The amount of discretionary funds available might actually increase, since discretionary funds are the funds that remain after the entitlements are satisfied.

<sup>29</sup> The amount is uncertain because of the unknown budgetary treatment of the 0.2% rescission in the Further Continuing Appropriations Act of 2013 (P.L. 113-9, Division F and Division G, §3004). The Office of Management and Budget estimated AIP rescission to be \$6.7 million. See [http://www.whitehouse.gov/sites/default/files/omb/assets/legislative\\_reports/reductions/fy13\\_atb\\_reductions\\_04\\_25\\_13.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/reductions/fy13_atb_reductions_04_25_13.pdf).

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