

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

**The Air Traffic Control System:
Management by a Government Corporation**

A Study for the Air Transport Association of America

**A Report by a Panel of the
National Academy of Public Administration**

March 1986

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

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PRESIDENT'S PREFACE

In December of 1985, the Air Transport Association of America (ATA) asked the National Academy of Public Administration to undertake a study of the use of a government corporation or government enterprise as an organizational alternative to the existing Federal Aviation Administration (FAA). Currently, the FAA is a standard government agency, subject to all of the problems, constraints, and uncertainties that now characterize the federal executive establishment.

This report represents not only a source of advice and recommendations to the ATA, but a National Academy contribution to the broad question of when and under what policy conditions a government corporation represents a superior organizational approach to the management of an important public responsibility. This study was conducted by a Panel of Academy members, each with extensive experience in the design and management of government corporations (see Appendix A for biographies). The Chairman, Robert Moot, and Panel are to be congratulated for their work.

The report itself begins with an executive summary, which presents major Panel findings and recommendations, followed by four major chapters: (1) the purposes of the study, (2) the rationale for the use of government corporations, (3) the current problems of the the federal aviation system, and (4) detailed recommendations for the establishment of a Federal Aviation Authority.

Ray Kline
President

March 1986

PANEL CHAIRMAN'S FOREWORD

It is often difficult to be the advocate of change, especially when dealing with organizations or programs with histories of success and accomplishment. But times change, and it is important to be open-minded about how to keep organizations vital and effective. This is clearly true about federal government organizations, especially when the federal government is in a protracted period of exceptional budgetary stringency.

Budgetary factors and altered perspectives concerning the role of the federal government in transportation matters have affected the Federal Aviation Administration and its responsibilities for the national Air Traffic Control (ATC) system and for airport development. The ATC system puts the federal government in the role of a direct provider of a vital service to the flying public. Moreover, as described in this report, air traffic control is a "safety imperative" system. It is intolerable to diminish the safety, reliability and operational effectiveness of the system through substantial funding shortfalls or constraints on management imposed by the government's management and oversight systems.

Concern about the future effectiveness of the ATC system motivated the Air Transport Association of America to consider the feasibility of a government corporation as an organizational form for the future management of the ATC system.

This report flows from two basic assumptions about change: first, that any reorganization of FAA cannot add to the federal government's budget problems, and second, that it cannot jeopardize the reliability and safety of the ATC

system. Within those boundaries, this report examines the missions, authorities, and responsibilities of a government corporation to assure both the operation of the ATC system and the planning and financing of the national network of airports. The Academy Panel concluded that a government corporation holds considerable promise for the future management of the airports and airways system — advantages that can be achieved without a loss of congressional or executive policy direction.

Robert C. Moot
Panel Chairman

March 1986

EXECUTIVE SUMMARY

This study examines the value and feasibility of a government corporation as an alternative to the present Federal Aviation Administration (FAA). The focus is on the future management of the national air traffic control system. As the Academy Panel conducted its work, the definition of the system was broadened to include FAA's role in the development of airports and its responsibilities in safety regulation.

After assessing current problems through detailed interviews, analysis of a variety of management indicators, and discussions with a sample of officials in the FAA, the Department of Transportation, the Office of Management and Budget, and the private sector, the Academy Panel concludes that there has been a general decline in the overall ability of the ATC system to perform at top effectiveness. As budgets and management systems become tighter, it will be increasingly difficult for federal agencies, including the FAA, to sustain a satisfactory level of management effectiveness. Because safety is imperative for the Air Traffic Control system, the public is entitled to ask "does the present organization, funding, and operation provided by the government offer the necessary level of performance now and into the foreseeable future?"

In answering this question, a Panel of the National Academy of Public Administration makes the following recommendations:

1. Based on its understanding of the history of congressional use of government corporations, and its own diagnosis of the problems facing FAA as a standard government agency, the Panel concludes that a government corporation would, if properly chartered by the Congress, offer substantial advantages over the current FAA in the management of the airports and airways program for the U.S. government.

2. Several alternatives for organization of the corporation were considered; however, the Panel suggests two alternative approaches. The pros and cons of both options are spelled out in the body of this report:

First, the corporation could assume all of the responsibilities of FAA.

Second, the corporation could assume all responsibilities except safety regulation, which would remain in a residual regulatory body within the structure of the Department of Transportation.

The National Academy Panel concludes that the most feasible alternative is the establishment of the Federal Aviation Authority as a government corporation that would assume all of the current functions of the FAA, (except the operation of the national capital airports). This Authority would require a specific charter, created by legislation, vesting in it the powers and missions that are defined in this report.

This Authority would retain the joint operational relationships with the Department of Defense (DOD) set forth in the Federal Aviation Act of 1958, and in Executive order 11161, which place the ATC system under the authority of DOD in war time.

Structural Guidelines

In addition, the Panel recommends the following structural guidelines for the statutory establishment of the Federal Aviation Authority:

1. The Federal Aviation Authority should be established as a government corporation reporting to the Secretary of Transportation, but it should not otherwise be in the Department of Transportation. Thus, the secretary would serve as the principal political and policy officer in assuring the accountability of the Authority to the President and to the Congress.
2. The Authority should be directed by a single Chief Executive Officer appointed by the President for a fixed term. The Panel recommends the establishment of an advisory board, appointed by the President, with members representing the principal aviation and user interests.
3. The Authority should be given the power to make grants and loans, and to provide loan guarantees to assist airport financing.
4. The Authority should be empowered to enter into contracts, acquire and dispose of property, sue and be sued in its own name, and prepare and maintain its budget and financial management in accordance with commercial principles, standards, and practices. As provided in the Tort Claims Act, "the authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346 (b) of this title, and the remedies provided by this title in such cases shall be exclusive."
5. The enabling statute should free the Authority from detailed administrative and budgetary controls normally imposed on standard government agencies, but inappropriate for a government corporate entity. It should have the authority to determine the character and necessity of expenditures and the manner in which incurred, allowed and paid, subject only to a limited number of laws specifically applicable to government corporations.

Financing For The Authority: ATC Operations

The Authority would assume responsibility for operation of the ATC system, as well as the implementation of the airport development plan as approved by Congress. Assets of the system and the capitalized unobligated balance in the Airports and Airways Trust Fund would be transferred to the Authority.

In order to create an organization that can be justified as a government corporation, and to ensure that the corporation can function in a business-like manner, the Panel recommends that the Authority propose and administer a system of corporate user charges in lieu of the present tax and trust fund mechanisms.

This approach offers several major advantages:

1. It would recognize the real user fee nature of charges, and would be consistent with Administration policy to seek out legitimate opportunities to shift the cost of government services to specific user groups.
2. It would relieve the federal government of collection responsibilities on a major tax.
3. It would relieve the federal budget of a large appropriation at a time when this is a critical concern.
4. It would enable the corporation to borrow from the Treasury to finance major capital investments and to repay such loans from revenues.

Congress will need to define the policies, standards, and guidelines governing such a rate system. In addition, the Panel recommends that the Secretary of Transportation be given approval authority over the specific rate schedules prepared by the Authority.

Financing For The Authority: Airport Development

In creating the Authority, Congress would have an opportunity to make a greater contribution to airport development, particularly by vesting the Authority with innovative financing options. To meet this challenge, the Authority could take one or more of the following actions:

1. Substitute user charges for the tax revenues flowing through the Trust Fund.
2. Continue the present grant program if Congress desires, using appropriated funds. This could be done either by Congress authorizing the continuation of the present formulas for fund allocation, or by giving the Authority a block of contract authority to place such grant funds where they would be most needed.
3. Make interest bearing loans for airport development to local governmental public bodies.
4. Make guarantees of borrowing by public bodies to finance airport development and charge fees for such guarantees. Congress could define policies establishing limits on the total amount of such guarantees outstanding at any one time.
5. Under defined conditions, act as a secondary market for obligations issued by local airport authorities.

Summary

The National Academy Panel concludes that a government corporation has the potential to provide enhanced operational effectiveness and system safety and reliability in an era of rapidly growing traffic and intense competitive pressure. Further, the traveling and shipping public would both pay for the services and reap the benefits. The Authority would expand and enhance the ability of the federal government to participate in the planning and financing of the national network of airports, in partnership with state and local governments, without adding to the federal government's budget or deficit reduction problems. These advantages can be achieved within the framework of ongoing political and policy direction and control by the Congress and the Executive Branch.

I. PURPOSE OF THE STUDY

As the nation approaches the tenth anniversary of airline deregulation, the need for flexibility and responsiveness in the management of federal aviation programs has never been greater. The question is how to achieve that flexibility without hurting reliability. This study was designed to examine the feasibility of a government corporation as an alternative to the present Federal Aviation Administration (FAA) for managing the nation's Air Traffic Control (ATC) system and related programs.

The use of a government corporation or authority is an organizational question. Because of technical, economic, policy, budgetary and management issues, and because both the air traffic control system and the federal government are in a period of change and uncertainty, the question of alternative structures is critical.

The following examination deals with two different concerns. The first involves what is usually called the ATC system -- that is, the procedures and techniques for the management and control of the take-off and landing of aircraft at airports, and the control of aircraft enroute from one destination to another. The ATC system is a joint program involving both civilian and military flights, thus involving the Department of Defense as well as the FAA. In order to control air traffic, air space must be managed, not only enroute to destination, but in the vicinity of airports and military installations. In addition, the system includes the important collateral roles of safety regulation, definition of operational flight rules, and installation, maintenance, and repair of equipment and facilities. Obviously, a crucial element of the ATC system is its people -- the air traffic controllers and the technicians.

The second issue involves a broader concern for the development and operation of airports, and the relationships among airports, air traffic control, aircrafts, and crews. The Panel decided to consider the total system precisely because it is a system of mutual relationships between airports, airways, aircraft, and the regulations that guide their use. Because all are interrelated, they must be examined together.

Commercial aviation is a vital national resource. After a 12 percent annual growth rate over the last two decades, current estimates show future annual increases in commercial aviation of about seven percent annually through the year 2000 and beyond. Commuter services will grow most rapidly. Airports increasingly will be the critical element of the total airport and airways system. As such, there is a growing concern about how the national network of airports will keep up with this persistent growth. By the turn of the century, 12 to 19 of the nation's 24 current major airports are likely to be severely congested. In addition, another 15 to 20 of the next most active airports are expected to experience serious congestion.

Although there is some federal funding through the Airport Improvement Program (AIP), airports are financed primarily by state and local governments and airport authorities -- many of which are themselves government corporations. Consequently, the evolution of the national airport network is subject to the local politics and the finances of hundreds of governments. (Most of the local funding is underwritten by certificated airlines and other airport tenants). It seems reasonably certain that many local communities will experience difficulties in building or enlarging their airport facilities to meet future needs, especially during a period in which a higher level of financial participation can not be expected from the federal government. The ATC system will also be hard-pressed

to keep pace with the rate of expansion. Not only will there be greater volumes of activity across the system, but many cities will experience greater demand during specific seasons and times of day.

Thus, congestion is a serious future concern for both airports and the ATC system. As traffic grows, greater reliance is being placed on technology to meet the problem. As traffic volumes increase, flight control -- including enroute control, take-off, and destination access control -- will become more sophisticated, centralized and integrated. More general aviation traffic will come under instrument flight rules. (Indeed, general aviation is expected to account for one-half of the flight control workload over the next decade.) More sophisticated instruments will be needed to permit maximum take-off and landing spacing at crowded airports. Further, more reliance will be placed on pilots and their newer cockpit instruments, which, in turn, will shift a greater responsibility for air traffic control to the air carriers themselves. General aviation users may find that crowded skies will demand more technological sophistication on their part, too.

The problems of crowded airports are, of course, less responsive to technological solutions. Nevertheless, new concepts of flow management and automated ground traffic control might join dual runways and other improvements in facilitating solutions for the future.

What then are the problems involved in this Academy study?

First, there is a strong consensus on one point: the technology affecting air travel in the United States, and indeed the world, is in one of its most dynamic periods. This current and potential technological change is so rapid that it threatens to outpace the capacity of the government system to keep up. In some government programs, it might be tolerable to function with less than the best

available technology, but for the air traffic control system, this is not permissible. The ATC system is a high-technology, high-performance operation with safety as the top priority. Any technological improvement that would provide greater public safety should be implemented as quickly as possible. Otherwise, those who fly are denied that extra increment of safety that must be the ultimate goal of public policy.

Second, in addition to safety, the future of the FAA raises economic issues. Congress has an impressive record of understanding and responding to the growing demands of aviation, but conditions change. At a time when steady growth in the need for airports and air traffic control are almost certain, the federal government has entered a period of chronic budget deficits and difficult, protracted conflicts over the allocation of available federal revenues. In this environment, federal aviation programs are competing for diminishing resources, and there are no assurances as to how the debates will be resolved. The years of rapid growth and the likelihood of substantial future growth in aviation have made the economic investments by federal, state, and local governments, and by the private sector large enough to significantly influence the whole economy. The federal budget for FAA alone will be more than \$4.8 billion for fiscal year 1987 — not an inconsequential amount in the grand scheme of federal resource allocation.

Third, added to safety and economic impact, this report addresses growing concerns about efficiency. The current fiscal climate intensifies the need to examine the system to ensure that it is functioning efficiently. Such an examination should address the following questions:

- Is the system producing value in a cost-effective way?
- Is the current federal organization and management the best and most effective vehicle for the direction and control of the system?
- Should taxpayers continue to bear the same financial burden in the future that they do now, or are there more effective forms of cost-sharing?

Fourth, despite the history and achievements of the FAA, there are growing concerns that changes in the federal government are making it increasingly difficult for any federal agency to sustain a satisfactory level of management effectiveness. The FAA is not immune to these trends and forces. Some believe the agency is less effective now than it has been in the past, and that this trend will continue into the future. One set of problems arises out of the fact that federal government management systems have become more inflexible, complex, and demanding than ever before. Budgets for manpower and equipment are severely strained. Personnel staffing, training and employee development have been curtailed or neglected. Procurement procedures and computer acquisition are burdened with red tape, uncertainty, and delays. Decision-making has become more protracted and management has become notably less flexible and innovative.

These are government-wide problems that are especially detrimental to operational programs, where the ability to move quickly and to adapt to change is essential. The ATC system is one of the largest and most sensitive of the federal programs that provide direct service to the public. It can and should be self-sustaining in the provision of those services, and it should have the freedom to respond quickly to the demands placed upon it.

Ultimately, this study is concerned with the question of how the ATC system can assure and maintain the highest level of public safety. This is in part an issue of the regulation of safety, and how well that regulation is performed in the current organizational environment. But, as the discussion above concludes, safety also involves economic, financial, and management issues.

II. BACKGROUND: WHY GOVERNMENT CORPORATIONS ARE USED

A. Introduction

Congress has long recognized the need for alternatives to standard government agencies in the pursuit of public policies. As one such alternative, government corporations have proven most valuable where the public program needs to be run like a business — that is, where goods or services need to be provided efficiently and where the provision of those goods or services is subject to market forces. It is because traditional public agencies are not structured to perform in this manner that government corporations are used, particularly where business-type functions are intended to be self-sustaining.

At the same time, public programs must remain responsive to public control, even when they are placed in corporations. This classic dichotomy — public accountability versus corporate freedom — has been at the center of the debate over whether and how corporate entities should be created.

While government corporations have many common features and attributes, there is no single format; each corporation must be specifically tailored to the unique needs of a given program. Thus, when the Congress sets out to create a government corporation, it must be free to innovate, to define its authorities and responsibilities in new and different ways. If creation is done carefully and intelligently, it substantially enhances the likelihood that the new corporation will be capable of doing its work well, providing the intended services efficiently and reliably.

B. Types of Government Corporations

In its 1981 study of government corporations for the U.S. Office of Management and Budget, the National Academy of Public Administration sought to classify government corporations. In examining the history and intent of a variety of corporate creations, a number of Congressional goals can be discerned:

- To provide authority to an organization to operate in the market-place in a business-like manner, so that the public institution can be competitive.
- To provide a public enterprise with a degree of operational flexibility not otherwise available to standard government agencies.
- To provide a system of financing and financial control specifically adapted to the requirements of business-type programs.
- To create organizations with special authority to conduct special kinds of financial, banking, or insuring operations that are inappropriate or difficult for traditional agencies.
- To extend the range of the public services that the government wishes to support or sponsor.
- To create an organization flexible enough to undertake rapid development of a new program or a new technology.
- To create a public organization to take over a failed private enterprise which needs to be continued in the public interest.

The scope, variety, and significance of the use of government corporations are substantial, and illustrate congressional willingness to consider the corporate concept if it promises improved management of a public program. It also shows that Congress is often willing to allow operational independence and flexibility if a program has operating and financial requirements significantly different from those of traditional tax-financed public programs. (A set of basic references on government corporations and on FAA is presented in Appendix B.)

III. AN ANALYSIS OF CURRENT PROBLEMS

A. The External Federal Government Environment

In establishing a Panel for this study, the National Academy called upon members with wide experience in the federal government, the Federal Aviation Administration, and the Department of Transportation (DOT). In conducting the research leading to final recommendations, members of the Panel and the staff conducted interviews with knowledgeable officials at the FAA, the Office of the Secretary of DOT, the Office of Management and Budget, public interest groups, and others in the private sector.

After detailed assessment of current conditions in both the aviation industry and the FAA, the Academy Panel concludes that there has been a general decline in the overall ability of the ATC system to perform at top effectiveness and to respond swiftly to the demands placed upon it. This decline is in overall management effectiveness, not in operational safety. If this deterioration is permitted to persist, it eventually will jeopardize the capacity to sustain the operational safety and the overall excellence of the system.

The Panel believes that the performance of the airports and airways system under the management inside the FAA cannot be fully understood without an appreciation for the impact of the political and policy environment of the federal government outside the FAA. In the Panel's view, that environment has become markedly worse, especially for the execution of operations-oriented activities of the kind administered by the FAA.

The federal policy process puts great pressure on program operations. Approaches to oversight and accountability tend to be too heavy-handed for field

operations. In effect, real control has been diffused into a complex, confusing, and often kaleidoscopic array of authorities among FAA leadership, the Office of the Secretary of DOT, the Office of Management and Budget, the Office of Personnel Management, the White House staff, and several congressional committees.

At its best, the Office of the Secretary of DOT has provided strong policy leadership and has been an ally in helping tackle FAA problems. The Secretary is a member of the President's Cabinet, and usually has had the level of prestige and clout with Congress and outside interests to get needed political action. At its worst, the relationship has entailed meddling, micro-management, and conflicts of judgment which can delay decision-making and discourage initiative in the FAA.

Oversight from the Executive Office of the President is primarily that of the Office of Management and Budget. In recent years, deficits, fiscal pressure, and the mandated cuts embedded in the Gramm-Rudman-Hollings budget act have forced OMB into an institutional stance of finding ways to constrain budgets rather than forming balanced judgments reflecting the public's needs and interests.

Despite genuine sympathy with and understanding of the aviation world, Congress faces this same dilemma. As the range of federal programs expands and the demands for federal funds multiply, the competition for funds intensifies. In times of relative plenty, all things were possible. During the last decade, however, the federal budget has involved the allocation of scarcity. It is likely that even fully accepted programs will fail to receive all of the funding that is justified as necessary. With substantial deficits projected for years into the future, it is hard to see an end to fiscal pressures on even the most popular and critical public programs. The concern is that Gramm-Rudman-Hollings legislation

will exacerbate the situation by producing more severe fiscal problems for unprotected federal activities.

Along with the White House and Executive Branch political appointees, Congress has also been a participant in another trend: the tendency of the political decision-makers to delve more deeply into the operations of federal government agencies. Clearly, Congress has the constitutional authority to concern itself with the administration of the programs that it authorizes and oversees, but this constitutional right is not the issue. Detailed legislative prescriptions, when applied to operational activities, restrict the management authority of political officers and professional administrators who normally direct these programs. This, in turn, can produce a loss of clear control and accountability, and a chilling of initiative and innovation because of uncertainty about who has the real authority. Sound strategic planning tends to deteriorate in the face of short term uncertainties and changes in direction.

B. FAA Internal Management Problems

These descriptions are not intended as comments on current political leadership, but as reflections about how program management in the federal establishment has become more complex, more difficult, and -- in all too many cases -- less successful. Many of the specific issues that plague FAA as described in the following summary can be more clearly understood if it is recognized how this pervasive federal government environment impinges on FAA's capacity to perform.

1. Problems of Policy Direction, Leadership, and Planning

a. Oversight Impact

FAA is a major agency within the Department of Transportation. In turn, DOT is part of the Executive Branch; the secretary is appointed by and reports to the President. Elements of the Executive Office of the President, notably the Office of Management and Budget, exercise oversight of FAA's activities on behalf of the President. Finally, Congress exercises its authority through policy formulation by legislation, funding control through appropriation, and program direction through oversight hearings, testimony, reports, investigations, and program evaluations.

Observers of this oversight process contend that it has become exceedingly diffuse and complicated. Yet, few would challenge the necessity for oversight at the public policy level. Rather, there is concern that detailed oversight can become a cause of poor organizational performance rather than a guard against it. The basic question is: Granting that policy direction is the legitimate province of the Congress and the President, where should oversight stop, thus leaving implementation in the hands of the managers? The frank view of many observers is that the line is blurred and that this vagueness causes a number of problems:

- A layering of oversight: at any given time and for any given issue, it may be unclear who controls a decision, and how long it will take to get the decision made.
- A degree of micro-management: external oversight is applied to detailed operational matters, small commitments of funds and specific detailed regulations. This means that the managers in operating organizations who would normally make decisions are often unable to take needed actions until external review and appraisal are resolved.

- Frequent changes of political leadership: even when excellent people have been appointed, the technical nature and demanding operational nature of FAA's work are not easy to grasp. The "learning curve" is long and steep and not all appointees travel it fully.
- Conflicts of judgment: conflicts and negotiation may be the essence of political decision-making, but they can cause problems for a program like the ATC system which demands planning stability and a high order of technical understanding in order to optimize performance, safety, and reliability of operations. While conflicts of views are inevitable and often constructive, such conflicts need to be resolved quickly and resultant decisions built into stable plans and operational groundrules. The concern is that conflicts of judgment have not been pursued with equal skill and knowledge at all levels, and frequently take place over minor issues which should not be in conflict at all. To the extent that this is true, conflicts of judgment are perceived as delaying and distorting decisions which should be made on their technical merits.
- Budget vs. management need: although this conflict exists in any organization, it is perceived as particularly important in government agencies, where it can be crippling to operational effectiveness now and into the future.

b. Planning

Congress has mandated several kinds of aviation systems planning: a research and development plan, the National Airspace System plan (NAS plan), an airport development plan and others. The FAA has worked hard on such plans, but the consensus is that the results have not been sufficiently comprehensive and penetrating, and that the integration of technology, program planning, and political decision-making has not been adequate.

The NAS plan is one example of this complex situation. Its very existence is an implicit acknowledgment that the system is becoming obsolete. Major infusions of new technology, new equipment, and new concepts are not being carried out through the usual annual budget cycle.

But the preparation and marketing of a multi-year, multi-billion dollar plan is enormously difficult in any government environment. The processes of building political consensus behind such a plan and all of its complex elements takes many years. Compromises can alter the intent of the plan, require more time for approval, and create greater rigidity in the plan itself. Even if plans are perfect at the time of approval, technologies may change swiftly, operational improvements may become available, costs may fluctuate, and the needs of the system may change.

These problems are now affecting the ATC system. Veterans of the NAS planning process fear that the rigidities of the federal planning cycle are so great, and the trauma of debating changes in the plan so substantial, that FAA may be "locked into" the current plan and may be unable to retain enough flexibility to respond to changes in operational reality. The NAS plan is often viewed as front-loaded — that is, it is trying to accomplish too much in its first few years which runs up the cost in the face of tight budgets.

In addition, there is a fear that the necessity to "stick to the plan" for the sake of political and financial stability might freeze out the introduction of expensive but valuable new technologies which could add to the safety and/or reliability of the system. Further, there is a view that the planning process should be closely linked to Defense Department's needs, that DOD should more actively integrate planning in its own services, and that DOD should assume a more active role in making its plans an integral part of a more comprehensive planning program.

c. Airport Planning and Development

The federal role in airport development is not dominant, largely because of the restricted range of federal participation (i.e., a limited grant-in-aid program) and an unwillingness to contemplate new strategies for fear that they might create new demands on the federal budget. Thus, while there is an airport development plan, it is not a plan for the evolution of a national network of airports driven by established needs and priorities. It primarily serves as guidance for the allocation of limited federal airport grant funds. Even here, during the first 15 years of their use, the funds have been applied at least 50 percent of the time to revitalize old and obsolete facilities and equipment rather than to construct facilities for future patterns of use. Observers feel that newer and faster growing needs, such as those for general aviation, commuter, and reliever airports, will not be met unless a more innovative overall strategy for airport development emerges from the policy formulation and planning process.

d. Approaches to Safety Regulation

The federal government's regulatory role in assuring safety in aviation is widely accepted. The FAA's regulatory responsibilities include the operations and procedures for the functioning of the ATC system, but go far beyond to include the safety of aircraft, air crews, and airports. These responsibilities include programs of aviation standards to assure the safe design, manufacture, and maintenance of aircraft, standards for aviation medicine and proficiency of air crews, aviation security standards, and standards for the operation of airports.

Despite wide support, especially among general aviation groups, for current levels of political oversight of FAA programs, such oversight can sometimes result in unintended consequences -- in this case, rigid regulations and constrained operational flexibility. There is a growing perception that new concepts of general performance or "outcome" regulations would be superior to the current and growing body of detailed "means" or "how to do it" regulations.

The Academy Panel also recognized that safety must be regarded as an integrated system in which all elements must be coordinated to achieve maximum operational safety, reliability, and effectiveness. This operational integrity also means that regulations and operational rules which define safety requirements must also be integrated.

This concern was expressed in virtually every interview conducted for this project. It led to the Panel's conclusion that the full array of current safety regulatory responsibilities should be kept together in a single organization.

However, even with all regulatory authority united in FAA, there are still problems of coordination. While it is technically possible to draw distinctions between authorities which might pass to a corporation versus those which would remain in some regulatory body, the Panel believes that any such division would add further complexity to an already difficult task.

e. Research and Development

Observers fear that research and development at the FAA is becoming weaker. Further, there is little confidence that future budgets will provide the funds to upgrade FAA's R & D programs to advance the state of airports or the ATC technology. As a basic minimum, FAA must have the capacity to keep up

with the technological revolution that is taking place in the private sector and in the Defense Department, in order to make intelligent decisions about what technological improvements should be incorporated into the NAS plan and at what pace. Deficit driven constraints on FAA's budget for R & D would be inconsistent with meeting the demands of the system.

It is important to note that the Defense Department, under the Federal Aviation Act of 1958, shares responsibility with FAA for the ATC system, both as a generator of new technology and as a demanding customer for the best technology available. Many military demands are more sophisticated than those of civilian aviation, and DOD should be a strong advocate for the development and adoption of the best feasible technology at the swiftest possible pace.

2. Problems in Operations and Systems Optimization

a. Staffing

One of the most serious deficiencies of government has been the failure to match personnel needs with work demands. Although the FAA makes workforce estimates a part of budget submissions, this linkage is often lost in reviews outside of FAA, thereby separating staffing estimates from program changes. This may result in staffing cuts or increases based on the budget. These cuts or influences often have no direct relationship to program demands or changes. The freedom from these artificial staffing constraints and the authority to set and adjust workforce levels to meet real program needs is one of the major advantages which a corporation can offer.

The history of FAA staffing has been mixed. Until the air traffic controllers strike, the FAA was widely perceived as overstaffed. Indeed, the problem appeared to be the unwillingness to trim the staff for economic or efficiency reasons. After the strike, both the DOT Secretary and the FAA Administrator testified that it had been possible — in fact almost necessary in the political environment of those times — for FAA to be overstaffed.

Since the strike, the situation has been exactly the opposite. The current perception is that FAA is somehow understaffed. This issue alone has become the source of much public conflict between FAA and its oversight organizations. The ATC system urgently needs to match personnel staffing to its workload and to maintain realistic staffing levels. The National Academy Panel noted that, once the Post Office Department was converted into the Postal Service, its new corporate freedom permitted it to have a more effective and efficient operation.

b. Personnel Management

In the re-examination of personnel and human resources management problems and practices following the air traffic controller strike, FAA leadership became more open about the problems of workforce management under federal personnel regulations. Problems that plague the system include:

- (1) General patterns of overstaffing or understaffing.
- (2) Problems of misallocation of staff — either in geographical terms or in terms of the mix of staff to match workload demand.
- (3) Inability to swiftly move staff in order to cover shifting patterns of work need.

- (4) Periodic but persistent lack of funds to provide employee training, retraining, skills upgrading, and management development.
- (5) Lack of adequate flexibility in the use of controllers to meet peak demands.
- (6) Inflexibility in the system to take disciplinary action or to transfer or remove unsuccessful employees.
- (7) Inability to use innovative or even adequate employee motivation and incentive programs.
- (8) Rigidity in pay rates and bonus arrangements, especially for employees in high stress occupations.

Constraints in the federal personnel system are neither fatal nor insurmountable, and FAA is currently involved in attempting to solve these problems. Still, the Panel concluded that federal personnel management leaves much to be desired, and that many of the negative elements of the system inhibit rather than encourage the pursuit of excellence, increased productivity and superior performance. This has been true for many years, nor does the Panel foresee any substantial government-wide improvement.

On this point alone the value of a government corporation has almost compelling merit. A corporation that is free to develop and use its own personnel system can be authorized to apply the best contemporary human resources management concepts and techniques from the private sector or elsewhere. Doing so would have two distinct advantages. First, it would create the opportunity and the tools to achieve more effective use of the total staff and to attain new levels of productivity and system-wide cost-effectiveness. Second, it would create a new and more vital work environment in which there would be greater opportunities for employees to advance and enhance their own skills and work satisfaction. Observers both inside and outside of FAA expressed concern that

many of the agency's managers may soon leave for better paying and more attractive opportunities elsewhere. The corporation would have the potential to deal more effectively with this possible crisis.

c. Procurement

It is important that the FAA be in a position to contract effectively for computers, navigation and communication equipment, controller display consoles, technical and administrative support services, and a variety of other elements of the air traffic control system. While there is no question that the FAA has legal authority to enter into contracts, its recent history is marked by procurement delays.

The procurement system is structured by federal procurement statutes and regulations. This is another case of a well-intended management system gone awry. The FAA is sometimes criticized because of the slowness with which it converts the congressional approvals of the NAS plan into procurement contracts. While FAA shares some of the blame, the government's procurement system inhibits fast action.

As with the personnel system, the National Academy Panel is not persuaded that any rapid improvement in the government-wide procurement system can be expected in the foreseeable future. Thus, the Panel concludes that the corporation, if authorized to establish its own procurement policies and procedures, could develop a far superior approach to awarding contracts and effectively managing contractor performance.

d. Overhead

There is a related concern that FAA has invested too great a proportion of its total staff resources in overhead functions rather than in high productivity line operations. This concern is expressed in two principal areas:

- (1) With respect to the heavy investment in regional offices, there is a concern regarding the impact of what might be too much independence, particularly because substantial differences are permitted in the operational practices from region to region with resulting confusion to users.
- (2) With respect to planning, budgeting, personnel and procurement, there is a concern regarding the high cost of operating under federal management systems, particularly because huge investments of staff time are needed to deal with and support the red tape and time delays that the use of these systems demand.

The National Academy Panel is convinced that a properly chartered corporation could be more effective in solving overhead concerns.

e. System Optimization

In both its R & D and general management planning, FAA has examined ways in which the design of the ATC system could be optimized by changing the technology and the degree of automation, as well as the location and scope of its enroute facilities. Under current groundrules, it is extremely difficult to introduce changes in the overall system design, even when FAA is convinced that such changes would produce greater cost-effectiveness and system performance.

Many of these issues are regularly caught up in political oversight processes that tend to defend the status quo. A corporation could be used as the vehicle for re-examination of such constraints; it could be given the discretion to make adjustments within a general framework of congressional oversight and accountability.

C. Objectives and Major Options for a Government Corporation

There are seven objectives that can and should be pursued through the creation of a corporation to replace the existing FAA:

1. Expedite the modernization of the airports and airways system including both airports and the air traffic control system.
2. Stabilize the financing of this system and remove it from current high-risk conditions.
3. Enhance the autonomy of the entity administering the ATC system and to reduce the number and intensity of external approvals and controls.
4. Maximize the operational effectiveness of the system.
5. Protect and improve the capacity to define and enforce public safety regulation and system safety including airports, airways, aircraft, and the personnel involved.
6. Retain essential public policy direction and control, but permit maximum feasible latitude to achieve operational effectiveness.
7. Assure fairness and equity to users of the system.

RECOMMENDATION: Based on its awareness of the innovative history of the Congressional use of government corporations, and its diagnosis of the problems being experienced by FAA as a standard government agency, the Panel concludes that a government corporation would, if properly chartered by the Congress, offer substantial advantages over the current FAA in the management of the airports and airways program of the United States.

The Panel believes that the corporate concept warrants serious consideration. In order to derive maximum benefit from such a corporation, chartering legislation would need to be carefully drafted.

In general terms, the FAA has three roles: planning and development, operations, and safety regulation. The National Academy Panel considered many alternatives for corporate organization, responsibilities, and authorities, and believes that there are two options which should be considered regarding those roles. The first option is to keep all roles together in the proposed corporation, thus preserving the logic that combined them in FAA initially. These kinds of roles are now being performed by other government corporations such as the Tennessee Valley Authority. The panel is deeply concerned that breaking the FAA into an ATC system, an airport's corporation and a regulatory agency would cause problems of coordination and would seriously undermine the rationale for the corporation.

The second option is to conclude that safety regulation is different in character from development and operations, and that it can, therefore, be placed in an independent organization. There are precedents in the federal government (the Nuclear Regulatory Commission and the Merit System Protection Board) where the Congress has established an independent body to exercise public

regulatory authority. Interviews conducted by the Panel and staff found almost unanimous agreement that the regulatory and enforcement authorities should be kept together in one organization with planning and operations. In other words, while a split of regulatory authority is technically possible, the need for integration and coordination of safety regulation is compelling. A split into different organizations might impair this coordination.

In either case, the Panel believes that airport development and the development and operation of the ATC system should be deliberately linked together organizationally, so that planning and development can be integrated. The Panel also strongly believes that a government corporation offers marked advantages in airport development, primarily in terms of its ability to do creative financing.

Because regulation development and enforcement are inherent parts of the system designed to foster safety and efficiency in aviation, this option is less attractive than the first. Dividing the FAA could have unforeseen consequences. The Federal Aviation Act of 1958 was designed to unify previously scattered federal aviation functions, and many of those consulted by the Academy Panel and staff expressed concern over a return to the difficulties of pre-FAA days.

The Panel recognizes that the corporation would maintain joint relationships between the civilian and military ATC systems as defined in the Federal Aviation Act of 1958. The DOD is both a user of the ATC system and a partner in its operation. It handles, with military controllers and equipment, a significant share of the total of air traffic flights, including some civilian flights. As a user, DOD should bear its fair share of the cost of the services it receives; however, DOD also absorbs part of the cost of the system. It was not possible for the Panel staff to determine whether DOD would be a net gainer or loser in a cost

sense. In fact, it is doubtful whether current cost data are sufficiently specific to answer that question. But it appears feasible for the corporation and the DOD to enter into an agreement by which costs and contributions are netted out on an annual basis as a means for resolving funding issues.

It should be explicitly stated that the creation of a government corporation would not change the intent or the feasibility of Executive Order 11161 which provides that the ATC system would pass under the authority of the Department of Defense in war time.

RECOMMENDATION: On balance, the National Academy Panel favors the creation of a Federal Aviation Authority as a government corporation which would assume all of the ongoing FAA functions (except the operations of the national capital airports). This Authority would require a specific charter, created in legislation, in which the Congress would vest it with the powers, authorities, and missions which are defined and discussed in the balance of this report.

IV. GUIDELINES FOR THE STATUTORY DESIGN OF THE FEDERAL AVIATION AUTHORITY

A. Authority for Federal Aviation Authority

The title "Authority" is recommended for the corporation because of a long history of its use (mainly at the state and local levels, but also at the federal level; note the Tennessee Valley Authority) to designate organizations that have both governmental and commercial functions. For example, the Tennessee Valley Authority's non-revenue producing programs are financed by appropriations which are not subject to fiscal year limitations, and its power and other commercial programs are financed from revenues and borrowing. No distinction is made between revenue and non-revenue programs in the exercise of the corporate powers granted to Tennessee Valley Authority. This is the combination which the National Academy Panel proposes for the Federal Aviation Authority.

There is a commonly accepted group of authorities and capabilities that should be given to the Federal Aviation Authority, including:

1. Authority to retain and utilize revenues.
2. Authority to sue and be sued and to conduct litigation in its own name. As provided in the Tort Claims Act, "the authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346 (b) of this title, and the remedies provided by this title in such cases shall be exclusive."
3. Authority to enter into contracts and to acquire and dispose of property in the name of the corporation without regard to statutes generally applicable to contractors and procurement by government agencies.
4. Authority to maintain bank accounts, either with the Treasury Department, or in private banks as approved by the Secretary of Treasury.

5. Authority to borrow for the statutorily defined purposes of the Authority. This authority might also include the capacity to borrow through the Federal Financing Bank at preferred rates enjoyed by the FFB. The Secretary of the Treasury must approve the timing, form, price and maturities of any obligations sold to the public.
6. Authority to make grants, to make loans, and to provide loan guarantees for airport development as authorized by the Congress.
7. Authority to submit a business-type budget as provided by the Government Corporation Control Act (GCCA). A business-type budget provides for the approval of the corporate program, but it does not limit the use of funds available to the corporation except for administrative expenses. (A copy of the Act is presented in Appendix C.)
8. Authority to determine the character and necessity of expenditures, except for laws specifically applicable to government corporations. This exempts the corporation from most of the regulatory and prohibitory statutes and disallowance of expenditures by the General Accounting Office (GAO). The GCCA provides for a commercial audit by GAO.
9. Authority to hire and fix the compensation of officers and employees in accordance with standards established in the corporate charter without regard to the provisions of the civil services laws and classification act.
10. Authority to acquire needed office space and to request General Services Administration assistance when the Authority determines that it is advantageous to do so.

These provisions will provide the operating and financial flexibility necessary for effective operations while maintaining appropriate accountability to the President and the Congress.

As a corporation, the Authority would not be subject to detailed "line item" reviews, and single year expenditure controls. It also should be exempt from personnel ceilings and other constraints deemed appropriate for tax financed federal agencies operating under standard government budget and appropriation

rules. The Authority should be free to design management systems for itself, governed by what is needed to optimize its own effectiveness and to respond to the dynamics of its own situation. But that does not mean the abandonment of important principles and policies such as competition in contracting or equal employment opportunity. The Authority's enabling statute should also continue the current "no strike/no slowdown" provision for employees.

Finally, incorporation in and of itself merely alters legal status. It is critical that any corporation be equipped with those powers which are essential if it is to function on a business-like basis. Chartering a corporation with excessive administrative constraints would hamstring the organization from the very start and vitiate the very purposes argued for its creation.

B. Organization and Accountability

There are at least three major organizational recommendations in the structure of the Federal Aviation Authority:

1. The Authority should report to the Secretary of Transportation. In this manner, the secretary will continue to serve the role of the chief political and policy officer for the Administration in matters related to the activities of the Authority. Also, the secretary should be accountable to Congress for the oversight of the Authority's activities. It should be emphasized however, that under this arrangement, the secretary, by statute, would not be concerned with the day to day internal operations of the Authority which would be the responsibility by law of its CEO.
2. The Authority should have a single chief executive officer, appointed by the President with the advice and consent of the Senate for a fixed term, perhaps of six years. A deputy should also be provided who would be selected by the chief executive officer. The National Academy Panel strongly emphasizes that the Authority will require management of the highest order of executive, management, and technical

knowledge and experience, and it urges consideration of language in the statute which would call upon the President to appoint an administrator who possesses management and technical qualifications of the highest caliber.

3. The authority should have an advisory board of members appointed by the President, designed to represent the interests of the principal users of airports and airways, plus such additional members as are needed to give the board expertise in banking, aviation technology, municipal government, etc. Members of the board should be appointed for rotating fixed terms, and should be eligible for reappointment.

The Panel considered and rejected the option of vesting administration of the Authority in a Board of Directors.

The Panel believes that establishment of a governing board would generate problems not associated with reliance upon a single executive:

1. There is the considerable risk that the powers of such a board, in the government environment, would be difficult to define in two directions. First, in terms of the division of authority between the board and the Secretary of Transportation, who would really set policy or direct implementation? Second, in terms of the division of authority between the board and the administrator of the Authority, what constructive role could the board play which would not confuse or hinder the ability of the administrator to effectively manage the organization?
2. There is a long history, in federal, state, and local government corporations and authorities, of conflict over the composition of such boards. Where it is intended that the members be "representative" — i.e. representing certain specific interests — there is conflict over which interests are to be represented, how many such "seats" must be designated, and how to keep the board's total membership balanced. There is the further concern that such "representative" members may feel compelled to put their special interests first, and will not put the overall interests of the corporation in proper balance.

In summary, the statute should retain general policy oversight within the executive branch, but should specifically free the Authority from detailed administrative and operational reviews. The Authority should be defined explicitly as a government corporation, remain part of the federal government establishment, and be accountable to both the President and the Congress. Its employees should continue to be officers and employees of the United States government.

C. Airports and Airways System Development

1. Long-term Planning

The Panel concludes that the development of the ATC system should proceed within the context of the kind of comprehensive system-wide planning that does not now adequately exist. Such a plan would start with the future growth of air travel. This, in turn, would be translated into defined needs for airports -- their location, size, and operational capacities. This, in turn, would largely determine air space allocation and utilization. Finally, these factors would become the basis for planning the evolution of the ATC system itself.

Absence of a national plan which is readily available has hampered the evolution of a rational and comprehensive airports and airways development strategy. The Federal Aviation Administration has the greatest current knowledge, but does not have a comprehensive charter to involve local initiatives with respect to airport development. The Authority could be chartered to perform in a manner similar to the United States Railway Association (USRA) -- that is, to be mandated by Congress to put together a "systems plan," circulate it widely and submit it to Congress for review and approval.

RECOMMENDATION: The Authority should be responsible for the preparation of the "National Airports and Airways Systems Plan"; this plan should be developed after extensive consultation with affected interests.

2. Financing for the Authority: The Air Traffic Control System

Initially, the Authority would assume responsibility for the operation of the ATC system and the implementation of the NAS plan as approved by the Congress. The Authority would also assume the assets of the system and the capitalized unobligated balance in the Airports and Airways Trust Fund. In order to justify Congressional approval, the National Academy Panel believes that the Authority must meet the broad criteria stated earlier: namely, that it be predominantly of a commercial character, self-sustaining, and involve business-like transactions with the public.

The Panel discussed three general funding approaches for the Authority:

- (1) The continuation of the taxes now collected and the use of the trust fund. It would be unprecedented to commit a tax generated, dedicated trust fund revenue stream into the hands of a government corporation, and it would violate the principle that government corporations operate through payments from users. Also, since no funds could be made available from the trust fund unless by appropriation by Congress, the continuation of the trust fund would, of necessity, mean the continuation of the current processes of congressional and Executive Branch oversight and funding control.
- (2) Use of a "continuing appropriation". In the case of the Social Security Trust Fund, Congress has been willing to enact a continuing appropriation (i.e. one that is perpetual and does not require annual review and enactment). But, as a condition of enacting this form of appropriation, Congress has also spelled out the policies, practices, standards, and payment amounts in

detail to assure that these funds are expended in accordance with the public will. The Panel feels that the management of ATC and airport development requires considerable latitude, and therefore, a continuing appropriation could prove to be neither appropriate nor politically feasible. There is also the concern that such continuing appropriations are too open-ended and thus lack constraint on spending.

- (3) Changing the revenue source. The method of financing is the key factor limiting the choice of organizational options. It is doubtful that the Congress would be willing to provide essential flexibility unless the program were financed from user charges rather than by a dedicated tax and appropriations. Specifically, the Authority could be authorized to establish its own schedule of fees or charges in accordance with formulas established by law including the applicability of the Administrative Procedures Act. Under this approach, the taxes now charged to finance the ATC system would be withdrawn, and the trust fund terminated. Thus, the revenue stream to support the ATC system would be corporate revenues, not tax revenues and, therefore, the system would not be subject to appropriations and the oversight which necessarily accompanies the exercise of appropriation authority. Those who pay the fees would be in a better position to demand services.

The last of these approaches has several major advantages. First, it would be consistent with Administration policy and a growing interest in identifying legitimate opportunities to shift the cost of government services that can be attributed to specific user groups.

Second, it would obviate the need for a major federal tax.

Third, it would relieve the federal budget of a large item of appropriation (approximately \$4.8 Billion in FY 1987) at a time when this is a critically important element in overall federal government resource allocation strategy.

Finally, it would reduce the degree of oversight time that the Congress and the Executive Branch spend on ATC system matters. It should be pointed out that neither the President nor the Congress would relinquish their general policy

oversight authority, and as a government corporation reporting to the Secretary of Transportation, the Authority would remain fully accountable in a political and policy sense.

RECOMMENDATION: The National Academy Panel recommends that the best course of action in considering the financing of the proposed Authority would be to authorize it to establish a corporate system of user charges, in substitution for the present tax and Trust Fund mechanism.

Based on these recommendations, the Panel believes that the following financing approaches would be appropriate:

- The enabling statute should make it clear that, in the operation of the ATC, the Authority would be required to be self-sustaining; that is, it would be authorized and required to establish a system of charges such that the full total cost of the administration of the system would be covered, and that it would not be the intent that appropriations be sought for any of these costs. But there are two potential exceptions to this general principle. The GCCA and most enabling statutes for existing government corporations do provide for appropriations needed to protect against deficits that threaten the capacity of the corporation to function. Also, if it were the intent of the Congress to retain control of, and, therefore, fund, some part of the cost of the ATC system (i.e. special subsidies, or the cost of public regulation) it could fund such activities by appropriated funds conveyed to the corporation.
- Congress should spell out, in authorizing legislation, the policies, standards, and guidelines that would govern the rate system to be established by the Authority. In addition, the Panel recommends that the Secretary of Transportation be given approval authority over the specific rate schedules prepared and recommended by the Authority.

- The Congress should place the corporation under the GCCA, and insist on the procedure whereby the business-type budget of the corporation is reported in the President's budget for approval of the corporate program only. In keeping with the intent of the GCCA, the budget should not be subject to line item review.

3. Financing the Authority: Airport Development

Almost universally, it was stated that the real "pacing item" in the future development of the total airports/airways system was the airports, not the ATC system. Thus, the Panel felt strongly that no concept of the corporation would be satisfactory unless it attempted to identify better solutions to the problems of airport development.

Proposals for the creation of the national plan recognize that there is a need to develop airports and airways together in a comprehensive manner, and that the future of the ATC system itself cannot really be planned until the development of airports and their use by both major carriers and general aviation is fully understood.

Airport development is not within the sole authority nor control of the federal government. The major investment is by local government and there is also substantial investment by the carriers. The federal investment is marginal, and is made available only through a formula grant program in decreasing amounts. A strong case can be made that the Authority can and should be able to make a greater contribution to airport development because it can be vested with innovative kinds of financing authorities beyond the capacity of a regular government agency. To meet this need, the Federal Aviation Authority could be given authority by Congress to:

- Substitute user charges for tax revenues now flowing through the trust fund.
- Continue the present Airways Development Grant Program using appropriated funds. This could be done either by Congress authorizing the continuation of the present formula allocations, or by giving the Authority a block of discretionary contract authority to place such grant funds where they would be most needed to implement the purpose of the proposed Airports and Airways System Development Plan.
- Make loans for airport development to public bodies, either governments or official airport authorities. This authority should be with respect to the use of either federal funds or funds from private sources. Thus, the Congress could authorize federal loan funds, borrowed from the Treasury for corporate programs, with appropriate policy guidance. Such authority should be under a five year authorization and appropriation with commercial audit, and residual GAO audit authority.
- Make loan guarantees. Congress could define policies and establish limits on the total amount.
- Assist municipalities and airport authorities in the sale of their own securities.

D. Summary

In summary, the National Academy Panel concludes that a government corporation has the potential to provide for the superior operation of the ATC system serving a traveling and shipping public who would both pay for the service and receive the benefits of greater operational effectiveness, safety, and reliability. In addition, the Authority would offer a more flexible and business-like way to expand and enhance the ability of the federal government to participate in the planning and financing of the national network of airports, in partnership with state and local governments, without posing a new threat to the

federal government's budget and deficit reduction problems. These advantages can be achieved within the framework of political and policy direction and control in the Congress and the Executive Branch.

These issues are complex, and may lead to concerns over the substantial changes emerging from the creation of the Authority. But the Panel concludes that the need for change is great and the opportunities for improvements far outweigh the risk.

APPENDIX A

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

PANEL BIOGRAPHIES

Mr. Robert C. Moot, Panel Chairman
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APPENDIX B

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APPENDIX C

Government Corporation Control Act ¹

**PUBLIC LAW 248—79TH CONGRESS
CHAPTER 557—1ST SESSION**

AN ACT

To provide for financial control of Government corporations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Government Corporation Control Act."

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of the Congress to bring Government corporations and their transactions and operations under annual scrutiny by the Congress and provide current financial control thereof.

TITLE I—Wholly Owned Government Corporations

SEC. 101. As used in this Act the term "wholly owned Government corporation" means the Commodity Credit Corporation; Federal Intermediate Credit Banks; Production Credit Corporations; Regional Agricultural Credit Corporations; Farmers Home Corporation; Federal Crop Insurance Corporation; Federal Farm Mortgage Corporation; Federal Surplus Commodities Corporation; Reconstruction Finance Corporation; Defense Plant Corpo-

¹ 59 Stat. 597.

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ration; Defense Supplies Corporation; Metals Reserve Company; Rubber Reserve Company; War Damage Corporation; Federal National Mortgage Association; the RFC Mortgage Company; Disaster Loan Corporation; Inland Waterways Corporation; Warrior River Terminal Company; The Virgin Islands Company; Federal Prison Industries, Incorporated; United States Spruce Production Corporation; Institute of Inter-American Affairs; Institute of Inter-American Transportation; Inter-American Educational Foundation, Incorporated; Inter-American Navigation Corporation; Prencinradio, Incorporated; Cargoes, Incorporated; Export-Import Bank of Washington; Petroleum Reserves Corporation; Rubber Development Corporation; U. S. Commercial Company; Smaller War Plants Corporation; Federal Public Housing Authority (or United States Housing Authority) and including public housing projects financed from appropriated funds and operations thereof; Defense Homes Corporation; Federal Savings and Loan Insurance Corporation; Home Owners' Loan Corporation; United States Housing Corporation; Panama Railroad Company; Tennessee Valley Authority; Federal Housing Administration; and Tennessee Valley Associated Cooperatives, Incorporated.

SEC. 102. Each wholly owned Government corporation shall cause to be prepared annually a business-type budget which shall be submitted to the Bureau of the Budget, under such rules and regulations as the President may establish as to the date of submission, the form and content, the classification of data,¹ and the manner in which such budget program shall be prepared and presented. The budget program shall be a business-type budget, or plan of operations, with due allowance given to the need for flexibility, including provision for emergencies and contingencies, in order that the corporation may properly carry out its activities as authorized by law. The budget program shall contain estimates of the financial condition and operations of the corporation for the current and ensuing fiscal years and the actual condition and results of operation for the last completed fiscal year.

¹ As amended by sec. 105 of the Budgeting and Accounting Procedures Act of 1950.

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Such budget program shall include a statement of financial condition, a statement of income and expense, an analysis of surplus or deficit, a statement of sources and application of funds, and such other supplementary statements and information as are necessary or desirable to make known the financial condition and operations of the corporation. Such statement shall include estimates of operations by major types of activities, together with estimates of administrative expenses, estimates of borrowings, and estimates of the amount of Government capital funds which shall be returned to the Treasury during the fiscal year or the appropriations required to provide for the restoration of capital impairments.

SEC. 103. The budget programs of the corporations as modified, amended, or revised by the President shall be transmitted to the Congress as a part of the annual Budget required by the Budget and Accounting Act, 1921. Amendments to the annual budget programs may be submitted from time to time.

Budget programs shall be submitted for all wholly owned Government corporations covering operations for the fiscal year commencing July 1, 1946, and each fiscal year thereafter.

SEC. 104. The budget programs transmitted by the President to the Congress shall be considered and legislation shall be enacted making necessary appropriations, as may be authorized by law, making available for expenditure for operating and administrative expenses such corporate funds or other financial resources or limiting the use thereof as the Congress may determine and providing for repayment of capital funds and the payment of dividends. The provisions of this section shall not be construed as preventing Government corporations from carrying out and financing their activities as authorized by existing law, nor as affecting the provisions of section 26 of the Tennessee Valley Authority Act, as amended. The provisions of this section shall not be construed as affecting the existing authority of any Government corporation to make contracts or other commitments without reference to fiscal year limitations.¹

¹ As amended by P.L. 268, 80th Cong.

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SEC. 105. The financial transactions of wholly owned Government corporations shall be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States: *Provided*, That such rules and regulations may provide for the retention at the offices of such corporations, in whole or in part, of any accounts of accountable officers, covering corporate financial transactions, which are required by existing law to be settled and adjusted in the General Accounting Office, and for the settlement and adjustment of such accounts in whole or in part upon the basis of examinations in the course of the audit herein provided, but nothing in this proviso shall be construed as affecting the powers reserved to the Tennessee Valley Authority in section 831h (b) of Title 16. The audit shall be conducted at the place or places where the accounts of the respective corporations are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the respective corporations and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. The audit shall begin with the first fiscal year commencing after the enactment of this Act.

SEC. 106. A report of each such audit for each fiscal year ending on June 30 shall be made by the Comptroller General to the Congress not later than January 15 following the close of the fiscal year for which such audit is made. The report shall set forth the scope of the audit and shall include a statement (showing intercorporate relations) of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep Congress informed of the operations and financial condition of the several corporations, together with such recommendations with respect thereto as the Comptroller

ELEMENTS OF A MODEL CHARTER

General may deem advisable, including a report of any impairment of capital noted in the audit and recommendations for the return of such Government capital or the payment of such dividends as, in his judgment, should be accomplished. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary of the Treasury, and to the corporation concerned at the time submitted to the Congress.

SEC. 107. Whenever it is deemed by the Director of the Bureau of the Budget, with the approval of the President, to be practicable and in the public interest that any wholly owned Government corporation be treated with respect to its appropriations, expenditures, receipts, accounting, and other fiscal matters as if it were a Government agency other than a corporation, the Director shall include in connection with the budget program of such corporation in the Budget a recommendation to that effect. If the Congress approves such recommendation in connection with the budget program for any fiscal year, such corporation, with respect to subsequent fiscal years, shall be regarded as an establishment other than a corporation for the purposes of the Budget and Accounting Act, 1921, and other provisions of law relating to appropriations, expenditures, receipts, accounts, and other fiscal matters, and shall not be subject to the provisions of this Act other than this section. The corporate entity shall not be affected by this section.

TITLE II—Mixed-Ownership Government Corporations

SEC. 201. As used in this Act the term "mixed-ownership Government corporations" means (1) the Central Bank for Cooperatives and the Regional Banks for Cooperatives, (2) Federal Land Banks, (3) Federal Home Loan Banks, and (4) Federal Deposit Insurance Corporation.

SEC. 202. The financial transactions of mixed-ownership Government corporations for any period during which Government

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capital has been invested therein shall be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where the accounts of the respective corporations are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the respective corporations and necessary to facilitate the audit and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. The audit shall begin with the first fiscal year commencing after the enactment of this Act.

SEC. 203. A report of each such audit for each fiscal year ending on June 30 shall be made by the Comptroller General to the Congress not later than January 15, following the close of the fiscal year for which such audit is made. The report shall set forth the scope of the audit and shall include a statement (showing intercorporate relations) of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep Congress informed of the operations and financial condition of, and the use of Government capital by, each such corporation, together with such recommendations with respect thereto as the Comptroller General may deem advisable, including a report of any impairment of capital or lack of sufficient capital noted in the audit and recommendations for the return of such Government capital or the payment of such dividends as, in his judgment, should be accomplished. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary of the

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Treasury, and to the corporation concerned at the time submitted to the Congress.

SEC. 204. The President shall include in the annual Budget any recommendations he may wish to make as to the return of Government capital to the Treasury by any mixed-ownership corporation.

TITLE III—General Provisions

SEC. 301. (a) The expenses of auditing the financial transactions of wholly owned and mixed-ownership Government corporations as provided in sections 105 and 202 of this Act shall be borne out of appropriations to the General Accounting Office, and appropriations in such sums as may be necessary are hereby authorized: *Provided*, That each such corporation shall reimburse the General Accounting Office for the full cost of any such audit as billed therefor by the Comptroller General, and the General Accounting Office shall deposit the sums so reimbursed into the Treasury as miscellaneous receipts: *Provided further*, That in making the audits provided in said sections the Comptroller General shall, to the fullest extent deemed by him to be practicable, utilize reports of examinations of Government corporations made by a supervising administrative agency pursuant to law.

(b) For the purpose of conducting such audit the Comptroller General is authorized in his discretion to employ not more than ten persons without regard to the Classification Act of 1923, as amended, only one of whom may be compensated at a rate of as much as but not more than \$10,000 per annum, and to employ by contract, without regard to section 3709 of the Revised Statutes, professional services of firms and organizations for temporary periods or for special purposes.

(c) The audit provided in sections 105 and 202 of this Act shall be in lieu of any audit of the financial transactions of any Government corporation required to be made by the General Accounting Office for the purpose of a report to the Congress or to the President under any existing law.

(d) Unless otherwise expressly provided by law, no funds of any Government corporation shall be used to pay the cost of any

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private audit of the financial records of the offices of such corporation, except the cost of such audits contracted for and undertaken prior to April 25, 1945.

SEC. 302. The banking or checking accounts of all wholly owned and mixed-ownership Government corporations shall be kept with the Treasurer of the United States, or, with the approval of the Secretary of the Treasury, with a Federal Reserve bank, or with a bank designated as a depository or fiscal agent of the United States: *Provided*, That the Secretary of the Treasury may waive the requirements of this section under such conditions as he may determine: *And provided further*, That this section will not apply to the establishment and maintenance in any bank for a temporary period of banking and checking accounts not in excess of \$50,000 in any one bank. The provisions of this section shall not be applicable to Federal Intermediate Credit Banks, Production Credit Corporations, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, or the Federal Land Banks, except that each such corporation shall be required to report annually to the Secretary of the Treasury the names of the depositories in which such corporation keeps a banking or checking account, and the Secretary of the Treasury may make a report in writing to the corporation, to the President, and to the Congress which he deems advisable upon receipt of any such annual report.

SEC. 303. (a) All bonds, notes, debentures, and other similar obligations which are hereafter issued by any wholly owned or mixed-ownership Government corporation and offered to the public shall be in such forms and denominations, shall have such maturities, shall bear such rates of interest, shall be subject to such terms and conditions, shall be issued in such manner and at such times and sold at such prices as have been or as may be approved by the Secretary of the Treasury.

(b) Hereafter, no wholly owned or mixed-ownership Government corporation shall sell or purchase any direct obligation of the United States or obligation guaranteed as to principal or interest, or both, for its own account and in its own right and interest, at any one time aggregating in excess of \$100,000, with-

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out the approval of the Secretary of the Treasury: *Provided*, That the Secretary of the Treasury may waive the requirement of his approval with respect to any transaction or classes of transactions subject to the provisions of this subsection for such period of time and under such conditions as he may determine.

(c) The Secretary of the Treasury is hereby authorized to exercise any of the functions vested in him by this section through any officer, or employee of any Federal agency whom he may designate, with the concurrence of the head of the agency concerned, for such purpose.

(d) Any mixed-ownership Government corporation from which Government capital has been entirely withdrawn shall not be subject to the provisions of section 302 or of this section during the period such corporation remains without Government capital. The provisions of subsections (a) and (b) of this section shall not be applicable to Federal Intermediate Credit Banks, Production Credit Corporations, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, or the Federal Land Banks, except that each such corporation shall be required to consult with the Secretary of the Treasury prior to taking any action of the kind covered by the provisions of subsections (a) and (b) of this section, and in the event an agreement is not reached, the Secretary of the Treasury may make a report in writing to the corporation, to the President, and to the Congress stating the grounds for his disagreement.

SEC. 304. (a) No corporation shall be created, organized, or acquired hereafter by any officer or agency of the Federal Government or by any Government corporation for the purpose of acting as an agency or instrumentality of the United States, except by Act of Congress or pursuant to an Act of Congress specifically authorizing such action.

(b) No wholly owned Government corporation created by or under the laws of any State, Territory, or possession of the United States or any political subdivision thereof, or under the laws of the District of Columbia, shall continue after June 30, 1948, as an agency or instrumentality of the United States, and no funds of, or obtained from, the United States or any agency thereof,

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including corporations, shall be invested in or employed by any such corporation after that date, except for purposes of liquidation. The proper corporate authority of every such corporation shall take the necessary steps to institute dissolution or liquidation proceedings on or before that date: *Provided*, That prior thereto any such corporation may be reincorporated by Act of Congress for such purposes and term of existence and with such powers, privileges, and duties as authorized by such Act, including the power to take over the assets and assume the liabilities of its respective predecessor corporation.

Approved December 6, 1945.

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EXPLANATORY ILLUSTRATION OF BUDGETS FOR BUSINESS ENTERPRISE AND REVOLVING FUNDS

Statement A
Sources and Application of Funds
(For fiscal years ending June 30, 1951, 1952, and 1953)

This is a balanced presentation of the amounts becoming available during the year, either in the form of cash or other working capital, and the way in which those amounts have been used. The statement excludes depreciation, losses on loans, and other transactions which affect neither cash nor other current assets and liabilities. It does reflect transactions which affect cash, accounts receivable, accounts payable, other accrued liabilities, inventories of supplies for administrative purposes, deferred charges and credits.

Both the "funds applied" and the "funds provided" parts of the statement are divided between "operations" and Treasury "financing." The sum of the amounts applied to operations less the amounts provided by operations equals the net expenditures, which are included within the budget expenditures for the Government as a whole.

	1951 actual	1952 estimate	1953 estimate
FUNDS APPLIED			
To operations:			
Acquisition of assets: Equipment	\$ 10,230	\$ 10,000	\$ 10,000
Expenses:			
Purchase of materials ¹	646,616	630,000	630,000
Other expenses	877,386	966,500	966,500
Total expense	\$ 1,524,002	\$ 1,596,500	\$ 1,596,500
Subtotal ²	1,542,240	1,614,500	1,614,500
Increase in selected working capital items ³	192,864	14,367	6,266
Total funds applied to operations	1,735,104	1,628,867	1,620,766
To financing: Increase in Treasury cash	135,633	633	-----
Total funds applied	\$ 1,870,737	\$ 1,629,500	\$ 1,620,766
FUNDS PROVIDED			
By operations:			
Realization of assets: Equipment	\$ 2,496	\$ 3,500	\$ 2,500
Income:			
Sales of goods and services	1,566,956	1,624,500	1,615,500
Rental income from quarters	1,285	1,500	1,500
Total income	\$ 1,568,241	\$ 1,626,000	\$ 1,617,000
Total funds provided by operations	1,570,737	1,629,500	1,619,500
By financing:			
Appropriation	300,000	-----	-----
Decrease in Treasury cash	-----	-----	1,266
Total funds provided	\$ 1,870,737	\$ 1,629,500	\$ 1,620,766

EFFECT ON BUDGETARY EXPENDITURES			
Funds applied to operations	\$ 1,735,104	\$ 1,628,867	\$ 1,620,766
Funds provided by operations	1,570,737	1,629,500	1,619,500
Net effect on budgetary expenditures ⁴	\$ 164,367	\$ -633	\$ 1,266
The above amounts are charged (or credited [-]) as follows:			
To budgetary authorizations ⁴	300,000	-----	-----
To net receipts of the enterprise ⁴	-135,633	-633	1,266

¹Purchases for manufacture or sale are shown here, whether or not the materials are used within the year.

²The amounts applied to operations, other than changes in working capital, are usually broken down by object class in a supporting schedule. Where there are annual congressional limitations on administrative expenses, the object schedule is usually limited to the expenses which are under limitation.

³The change in selected working capital items will equal the difference between the figures on statement C for two successive years for current assets, other than Treasury cash and inventories for sale and manufacture, less current liabilities.

⁴Net effect on budgetary expenditures includes the spending of appropriations for the revolving fund as well as the spending of the fund's own receipts. A negative figure here indicates collections in excess of expenditures.

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Statement B
Income and Expenses
(For fiscal years ending June 30, 1951, 1952, and 1953)

This is a statement of the income and expenses and the resulting profit or loss for the year. This statement is normally on a full accrual basis, including in the expenses sums for depreciation and provision for losses on receivables. It also indicates losses and charge-offs when they occur. In addition, gains or losses from the sale of equipment or other assets appear here.

At the bottom of this statement there is an analysis of the retained earnings or cumulative deficit, showing any additions to it during the year, any charges made against it, and the balance at the end of the year.

	1951 actual	1952 estimate	1953 estimate
Income:			
Sales of goods and services	\$ 1,566,956	\$ 1,624,500	\$ 1,615,500
Rental income from quarters	1,285	1,500	1,500
Total income ¹	\$ 1,568,241	\$ 1,626,000	\$ 1,617,000
Expenses:			
Cost of materials sold:			
Purchase of materials	646,616	630,000	630,000
Materials donated	3,033	2,001	3,000
Change in materials inventory	4,263	18	-----
Cost of materials sold ²	653,912	632,019	633,000
Other Expenses	877,386	966,500	966,500
Depreciation on equipment ³	26,492	25,000	25,000
Total expenses	\$ 1,557,790	\$ 1,623,519	\$ 1,624,500
Net income (or loss [-]) from operations	\$ 10,451	\$ 2,481	\$ -7,500
Nonoperating income:			
Proceeds from sale of fixed assets	2,496	3,500	2,500
Net book value of assets sold	872	2,000	2,000
Gain on sale of fixed assets	\$ 1,624	\$ 1,500	\$ 500
Net income (or loss [-]) for the year	12,075	3,981	-7,000
Retained earnings beginning of year ⁴	-----	12,075	16,056
Retained earnings end of year ⁴	12,075	16,056	9,056

¹Income (as well as expenses) is usually based on the accrual method of accounting.

²Cost of goods sold, rather than purchases, is considered an expense in this statement.

³Depreciation and other expenses not shown on statement A are indicated separately.

⁴Retained earnings here agrees with the balance sheet. It represents cumulative profits kept in the business, whether in the form of cash, inventories, receivables, or fixed assets.

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Statement C
Financial Condition
(As of June 30, 1951, 1952, and 1953)

This is a balance sheet of assets, liabilities, and investment of the Government at the close of the fiscal year. Like the other statements, it is normally on an accrual basis.

The section for the Government's financial interest is broken down to indicate the amount which has been invested by the Government on which the fund pays interest (if any), the amount invested on which the fund does not pay interest, and the retained earnings or deficit.

	1951 actual	1952 estimate	1953 estimate
ASSETS			
Current assets:			
Cash with U. S. Treasury ¹	\$ 135,633	\$ 136,266	\$ 135,000
Accounts receivable	345,044	340,000	340,000
Inventory of supplies and materials	95,019	95,001	95,001
Total current assets	\$ 575,696	\$ 571,267	\$ 570,001
Fixed assets:			
Equipment	291,451	295,451	299,451
Less portion charged off as depreciation	101,648	114,648	127,648
Total fixed assets	\$ 189,803	\$ 180,803	\$ 171,803
Total assets	\$ 765,499	\$ 752,070	\$ 741,804
LIABILITIES			
Current liabilities:			
Accounts payable	124,073	110,000	104,734
Accrued expenses	126,338	121,000	120,000
Total liabilities ²	\$ 250,411	\$ 231,000	\$ 224,734
INVESTMENT OF U. S. GOVERNMENT			
Principal of fund:			
Appropriation	300,000	300,000	300,000
Donated assets, net	203,013	205,014	208,014
Total principal of fund	503,013	505,014	508,014
Retained earnings	12,075	16,056	9,056
Total investment of U. S. Government ³	\$ 515,088	\$ 521,070	\$ 517,070
Total liabilities and investment of U. S. Government	\$ 765,499	\$ 752,070	\$ 741,804

¹Cash with United States Treasury is the sum that the fund has on deposit with the Treasury. It excludes any balances of appropriations (or other authorizations) which have not yet been paid into the business enterprise or revolving fund.

²Liabilities normally means what is owed for goods and services which have been received. The remainder excludes obligations outstanding for items on order of: \$23,410 as of June 30, 1951, \$23,000 as of June 30, 1952, and \$23,000 as of June 30, 1953.

³The investment of the United States Government indicates the Government's interest as owner, plus the Government's interest as creditor in the form of notes payable to the Treasury where a Government corporation has authorization to borrow on such notes.