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REPORT
105–244

AVIATION INSURANCE REAUTHORIZATION ACT OF 1997

SEPTEMBER 4, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation, submitted the following

REPORT

[To accompany H.R. 2036]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 2036) to amend chapter 443 of title 49, United States Code, to extend the authorization of the aviation insurance program, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

REPORT

Aircraft insurance is, of course, essential to any airline operation. However, commercial insurance companies will often not insure flights to high risk areas such as countries at war or on the verge of war. In many cases, these flights are required to further the foreign policy or national security of the United States. For example, in Operation Desert Shield and Desert Storm, commercial airlines were needed to ferry troops and equipment to the Middle East.

To ensure that flights to high risk areas can operate when needed, Chapter 443 of Title 49 of the U.S. Code authorizes the Secretary of Transportation to provide war-risk insurance and reinsurance to commercial airlines.

Before such insurance can be issued, two tests must be satisfied. First, the Secretary must find that the airline cannot acquire the insurance from a commercial insurance company on reasonable terms (Section 44302(a)(2)). Secondly, the President must find that providing the war-risk insurance is necessary to carry out the Nation's foreign policy (44302(b)). The war risk insurance may be provided for only 60 days unless the President determines that an ex-

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tension is needed (Section 44306(b)). FAA rules governing this program can be found at 14 CFR Part 198.

The war risk insurance program offers both a premium and a nonpremium policy. Under the premium policy, insurance is provided to U.S. or foreign airlines for commercial scheduled or charter service. It can be used only for international flights. A premium is paid by the airline to the Federal Aviation Administration (FAA) for the coverage just as in a normal insurance arrangement. Premium insurance was provided during the Vietnam War and 37 times after Iraq invaded Kuwait.

The nonpremium policy is issued to airlines operating under contract to a government agency, usually either the State or Defense Department. It can cover either domestic or international flights. Although no premium is paid by the airline under this policy, airlines must pay a one-time binder fee of $200 per aircraft (FAA recently proposed to increase this to $550 (62 F.R. 19008, April 17, 1997)). In the event of a loss, the contracting government agency (usually either State or Defense) would have to indemnify the FAA for any claims it had to pay to the airline.

Both premium and nonpremium insurance will cover both hull loss (the destruction of the aircraft) and liability (injury, death, or damage to property).

According to the FAA, it has paid $151,000 in claims under the nonpremium insurance program. It has never paid a claim under the premium insurance program.

Premiums paid for coverage, the binder fee, and any sums appropriated support a revolving fund which is used to defray the cost of operating the war risk program. At the end of March 1997, the revolving fund had a balance of $65.2 million. The cost of administering the program in 1995 was $475,000. However, the fund could be bankrupted by the crash of a large aircraft covered by war risk insurance.

The war risk insurance program was first authorized in 1951. Insurance was provided under this program in the early 1970s in the aftermath of attacks by Palestinian terrorists, and also during the final days of the Vietnam war. Since 1975, nonpremium war risk insurance has been activated over 5,000 times in the following cases.

Period and place of activation	*Number of flights*
1983–1984, to Honduras	50
August 17, 1990 to May 24, 1991, to the Middle East. (Operation Desert Shield/Storm)	5,000
January 11, 1991, Department of State flight from Oman to Frankfurt	1
January 11 to April 14, 1993, to Kuwait (Operation Desert Caravan)	20
December 8, 1992 to early 1994, to Mogadishu and Kisimayo, Somalia (Operation Restore Hope)	155
February 28, March 2, and April 7, 1994, to Tbilisi, Georgia	3
September to October 1994, to Haiti (Operation Uphold Democracy)	32
April 15 to September 30, 1996, to Tuzla Bosnia (Operation Joint Endeavor)	111

The program has been reauthorized 10 times and is now scheduled to expire on September 30 of this year.

In the past, the reauthorization of the war risk program has been relatively routine and was often accomplished without any changes or even the need for holding a hearing. However, as a result of the experience gained during the Persian Gulf War, new issues were raised that needed to be addressed.

When the program was last reauthorized in 1992 (Title IV of P.L. 102–581, 106 Stat. 4897), the insurance coverage was expanded to cover certain domestic flights and also flights being operated pursuant to an agreement between the U.S. government and a foreign government. In addition, the legislation directed GAO to review the administration of the war risk insurance program during the Persian Gulf War to determine whether its efficiency could be improved. GAO submitted its report in July 1994. It found the following problems with the war-risk insurance program:

There is not enough money in the FAA's insurance fund to cover the loss of even one large aircraft.

Since there is not enough money in the fund, there could be delays in reimbursement to airlines while the FAA sought a supplemental appropriation from Congress to make up the difference between the value of the damaged plane and the amount in the fund.

Because of the potential delays in reimbursement and the financial hardship that would cause, the airlines have been increasingly reluctant to provide service to the U.S. government for military airlift operations.

The war risk insurance policy does not cover everything that a commercial policy covers such as search and rescue, wreckage removal, or extortion.

There is ambiguity in the law as to whether a presidential determination is required before non-premium insurance can be issued.

FAA does not maintain current commercial policies in its files and therefore cannot be sure they are providing the proper amount of hull and liability coverage in the war risk policies.

As a result of the findings, GAO made the following recommendations to Congress:

Provide a mechanism to ensure that there are sufficient funds available to reimburse airlines for losses that exceed the amount in FAA's insurance fund.

Clarify whether a presidential determination is needed before non-premium insurance can be issued and for each subsequent 60-day extension.

In addition, GAO also made the following recommendations to FAA:

Revise the FAA's premium war risk policies to make them more consistent with commercial policies.

Require airlines to submit copies of their current commercial policies as a condition for obtaining war risk coverage from the FAA.

FAA has changed its policies and procedures to address the GAO's concerns.

Congress partially addressed GAO's concerns in Section 9514 of Title 10 of the U.S. Code, that was added by last year's Defense Department Reauthorization Act (P.L. 104–201). This section provides a mechanism to reimburse airlines in most cases. It directed the Secretary of Defense to indemnify the FAA for any claims paid by the war risk insurance fund within 30 days of DOT's determination that it owes an airline money for damage to an aircraft.

This ensures that airlines will receive prompt payment for loses when they conduct flights on behalf of the Defense Department. These constitute the bulk of the flights covered by the war risk insurance program. However, in those limited cases where flights are conducted for the State Department or for some other purpose, the airlines still have no assurance they will be paid in a timely fashion. This can pose significant problems for a relatively small airline with few planes in its fleet where the unreimbursed loss of even one aircraft can have a dramatic effect on its business.

The reported bill addresses this problem by permitting FAA to borrow money from the Federal treasury in order to reimburse airlines for their loss. FAA could then seek a supplemental appropriation in order to pay off the debt or replenish the fund. Importantly, the airline would not have to endure an unreimbursed loss while the supplemental appropriation winds its way through Congress.

The reported bill also makes other changes suggested by the Administration or GAO and described in the section-by-section summary below.

Related to the issue of war risk insurance is the Civil Reserve Air Fleet (CRAF) Program. Airlines performing flights for the Department of Defense (DOD) under CRAF are insured under the war-risk program. DOD has an indemnity agreement with DOT, whereby FAA extends war risk insurance to airlines without a premium with the understanding that any losses resulting from insurance claims will be reimbursed by DOD within 30 days as explained above.

The CRAF program arose out of the experience of World War II and the Berlin Airlift where the problems of a massive military mobilization were first encountered. In 1951, President Truman issued Executive Order 10219 directing that a plan be established for the utilization of the nation's civilian airlines during a national emergency.

The CRAF program is a voluntary one. Its purpose is to provide civil aircraft to augment DOD's military airlift capability. Without it, the military would have to keep many more aircraft in reserve. Currently, about 30 airlines have contracted with the Military Airlift Command (MAC) to provide more than 900 aircraft for the CRAF program. In return for agreeing to make their aircraft available during an emergency, DOD gives these airlines preference when it selects carriers for commercial peacetime flights.

Until the Persian Gulf War, CRAF had never been utilized. Activation during that war did not necessitate calling up all the aircraft that had agreed to participate. If that had happened, it probably would have caused many civilian flights to be canceled. As it happened, a drop in civilian traffic meant that there were aircraft available for the limited CRAF that was needed. The general consensus seems to be that the CRAF program worked well. A hearing of our Investigations and Oversight Subcommittee in October 1990 found no major problems with CRAF.

SECTION-BY-SECTION SUMMARY

Section 1 is the short title.

Section 2 was requested by the Administration by a letter from DOT Secretary Slater dated April 30, 1997. It authorizes the Secretary to be guided by reasonable business practices of the commercial aviation insurance industry when determining the amount for which an aircraft should be insured. This change is intended to recognize that there may be instances in which an aircraft's market value is not the appropriate basis for determining the amount of insurance. For example, this occurs in the case of leased or mortgaged aircraft when the lessor or mortgagor requires a specified amount of insurance in the lease or mortgage agreement. As the market values of aircraft fluctuate, the specified amount may sometimes be different than the market value of the aircraft.

Section 3 was also requested by the Administration. It states that the President's signature of the indemnification agreement between the DOT Secretary and the head of another U.S. government agency will constitute the required finding under section 44302(b) that the flight is necessary to carry out the foreign policy of the United States.

Section 4 authorizes FAA to borrow money from the Federal treasury to pay a claim resulting from the loss of an aircraft covered by war risk insurance. Before exercising this authority, the FAA would first have to notify Congress of its plans and the amount of money involved and wait 25 days. This borrowing authority is needed because the amount in the FAA's insurance fund is not enough to cover a major aircraft accident. This provision would not affect the amount of money for which the government is liable, only the timing of the reimbursement to the airline.

Section 5 permits a war risk insurance policy to provide for binding arbitration of a dispute between FAA and the commercial insurer over what part of a loss each is responsible for. This is consistent with the September 27, 1996 memo from Deputy Assistant Attorney General Richard L. Shiffrin to FAA Chief Counsel Nicholas G. Garaufis.

Section 6 extends the program for 5 years.

HEARINGS AND LEGISLATIVE HISTORY

The Subcommittee on Aviation held hearings on the issue of War Risk Insurance on May 1, 1997. H.R. 2036 was introduced on June 25, 1997.

On July 10, 1997, the Subcommittee on Aviation reported the bill, by unanimous voice vote, to the Committee on Transportation and Infrastructure. On July 23, 1997 the Committee on Transportation and Infrastructure ordered the bill reported, without an amendment, by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3)(A) of rule XI of the Rules of House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 2036 will have no significant inflationary impact on prices and costs in the operation of the national economy.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (2)(l)(4) of rule XI of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under Article I, Section 8 of the Constitution.

COSTS OF THE LEGISLATION

Clause 7 of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, and section 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.
2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2036.
3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2036 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 1, 1997.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2036, the Aviation Insurance Reauthorization Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Clare Doherty.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 2036—Aviation Insurance Reauthorization Act of 1997

H.R. 2036 would amend Title 49 of the U.S. Code to extend the authorization of the aviation insurance program and to provide the Federal Aviation Administration (FAA) with borrowing authority to reimburse airlines for any losses that exceed amounts in the aviation insurance fund. Under current law, the program will expire on September 30, 1997. Because enacting H.R. 2036 could affect direct spending, pay-as-you-go procedures would apply, but CBO estimates that enacting the bill would probably not have any significant impact on the federal budget over the next five years. H.R. 2036 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not affect the budgets of state, local, or tribal governments.

The aviation insurance program provides insurance coverage for aircraft operations that are deemed essential to the foreign policy interests of the United States when commercial insurance is unavailable on reasonable terms. The program is financed through the Aviation Insurance Revolving Fund, which is supported by premiums paid for coverage (for "premium insurance"), one-time binder fees paid by the airlines (for "nonpremium insurance"), appropriated funds, and interest on investments in U.S. Treasury securities. From 1959 though March 1997, the fund accumulated $65 million in revenues and paid out a total of $151,000 in claims. Enacting H.R. 2036 would provide the FAA with unlimited borrowing authority to be used if insurance claims for an aviation disaster exceed amounts in the fund, currently $65 million.

Nonpremium insurance, which accounts for about 99 percent of all aviation insurance, is for U.S. airlines that are providing contract services for federal agencies that have indemnification agreements with the Department of Transportation (DOT). Currently only the Department of Defense (DoD) and the State Department have such agreements with DOT. In the event of a loss, DoD and the State Department would reimburse the FAA for the insurance claims it would have to pay to the airlines. Since 1975, there have been approximately 5,400 flights covered by the program.

Premium insurance is provided to U.S. or foreign airlines for regularly scheduled commercial or charter service. Airlines pay a premium to the FAA for the coverage, similar to a normal insurance policy. Both types of insurance policies cover both hull loss and liability.

Based on information from DOT, CBO estimates that it is unlikely that enacting H.R. 2036 would have a significant impact on the federal budget over the next five years. The bill could affect federal spending if new claims occur from extending the insurance program. Moreover, such new spending could be very large, particularly if a claim exceeded the balance of the trust fund and the FAA had to borrow funds from the Treasury, but historical experience suggests that such events are very rare.

According to the FAA, DoD flights comprise a large percentage of the flights covered in the aviation insurance program. Under current law, DoD is required to repay DOT for any loss and to use available operations and maintenance funds for the repayment. Assuming that DoD would use its appropriated funds to pay the insurance claims, the FAA would not need to withdraw any monies from the trust fund or borrow from the Treasury. However, in the event that a State Department policy or a premium insurance policy was activated and the claim exceeded $65 million, the FAA would need to use the borrowing authority that H.R. 2036 would provide to pay the carrier. Such policies apply to less than 1 percent of insured flights, so there is little likelihood of claims on the fund's balances or of need for use of the new borrowing authority that H.R. 2036 would provide. H.R. 2036 authorizes appropriations to repay the fund in the event that there are claims that require use of the new borrowing authority, but any such funding would represent an intragovernmental transfer and thus would have no additional budgetary effect after claims were paid from the insurance fund.

The CBO staff contact for this estimate is Clare Doherty. The estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

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SUBTITLE VII—AVIATION PROGRAMS

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PART A—AIR COMMERCE AND SAFETY

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SUBPART III—SAFETY

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CHAPTER 443—INSURANCE

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§ 44302. General authority

(a) INSURANCE AND REINSURANCE.—(1) * * *

(2) An aircraft may be insured or reinsured for not more than its reasonable value [as determined by the Secretary] *as determined by the Secretary in accordance with reasonable business practices in the commercial aviation insurance industry*. Insurance or reinsurance may be provided only when the Secretary decides that the in-

surance cannot be obtained on reasonable terms from an insurance carrier.

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§ 44305. Insuring United States Government property

(a) * * *

(b) PREMIUM WAIVERS AND INDEMNIFICATION.—With the approval required under subsection (a) of this section, the Secretary of Transportation may provide the insurance without premium at the request of the Secretary of Defense or the head of a department, agency, or instrumentality designated by the President when the Secretary of Defense or the designated head agrees to indemnify the Secretary of Transportation against all losses covered by the insurance. The Secretary of Defense and any designated head may make indemnity agreements with the Secretary of Transportation under this section. *If such an agreement is countersigned by the President, the agreement shall constitute, for purposes of section 44302(b), a determination that continuation of the aircraft operations to which the agreement applies is necessary to carry out the foreign policy of the United States.*

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§ 44307. Revolving fund

(a) EXISTENCE, DISBURSEMENTS, APPROPRIATIONS, AND DEPOSITS.—(1) There is a revolving fund in the Treasury. The Secretary of the Treasury shall disburse from the fund payments to carry out this chapter.

[(2) Necessary amounts to carry out this chapter may be appropriated to the fund. The amounts appropriated and other amounts received in carrying out this chapter shall be deposited in the fund.]

(2) AUTHORIZATION OF APPROPRIATIONS.—Necessary amounts to carry out this chapter, including amounts required to pay the interest accrued on, or to repay the principal of, obligations issued under subsection (e), may be appropriated to the fund.

(3) DEPOSIT IN FUND.—The amounts appropriated and other amounts received, including the proceeds of the sale of obligations issued under subsection (e), shall be deposited in the fund.

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(d) EXPENSES.—The Secretary of Transportation shall deposit annually an amount in the Treasury as miscellaneous receipts to cover the expenses the Government incurs when the Secretary of Transportation uses appropriated amounts in carrying out this chapter. The deposited amount shall equal an amount determined by multiplying the average monthly balance of appropriated amounts retained in the revolving fund by a percentage that is at least the current average rate payable on marketable obligations of the Government. The Secretary of the Treasury shall determine annually in advance the percentage applied. *This subsection does not apply to amounts appropriated for paying interest accrued on, or for repaying the principal of, obligations issued under subsection (e).*

(e) BORROWING.—

(1) ISSUANCE OF OBLIGATIONS.—Subject to the provisions of this subsection, the Administrator of the Federal Aviation Administration may issue and sell such notes or other obligations to the Secretary of the Treasury as the Administrator determines are necessary to provide funds to carry out this chapter.

(2) TERMS AND CONDITIONS.—Obligations under this subsection shall be issued in the forms and denominations, bearing the maturities, and subject to the terms and conditions that the Secretary of the Treasury may prescribe.

(3) NOTIFICATION OF CONGRESS.—At least 25 days before the Administrator intends to issue and sell a note or other obligation under paragraph (1), the Administrator shall notify, in writing, the Senate and House of Representatives of such intention and the dollar amount of such note or obligation.

(4) PURCHASE OF OBLIGATIONS.—The Secretary of the Treasury shall purchase any obligations issued under this subsection. For such purpose, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purposes for which securities may be issued under such Act are extended to include any purchase of obligations issued under this subsection.

(5) RESALE AUTHORITY.—The Secretary of the Treasury may sell any obligations issued under this subsection at the times and prices and upon the terms and conditions that the Secretary of the Treasury shall determine.

(6) TREATMENT.—All purchases, redemptions, and sales of obligations under this subsection by the Secretary of the Treasury shall be treated as public debt transactions of the United States.

§ 44308. Administrative

(a) * * *

(b) ISSUANCE OF POLICIES AND DISPOSITION OF CLAIMS.—(1) The Secretary may issue insurance policies to carry out this chapter. The Secretary may prescribe the forms, amounts insured under the policies, and premiums charged. *Any such policy may authorize the binding arbitration of claims made thereunder in such manner as may be agreed to by the Secretary and any commercial insurer that may be responsible for any part of a loss to which such policy relates.* The Secretary may change an amount of insurance or a premium for an existing policy only with the consent of the insured.

(2) For a claim under insurance authorized by this chapter, the Secretary may—

(A) settle and pay the claim made for or against the United States Government; ⟦and⟧

(B) pay the amount of a binding arbitration award made under paragraph (1); and

⟦(B)⟧ *(C)* pay the amount of a judgment entered against the Government.

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§ 44310. Ending effective date

The authority of the Secretary of Transportation to provide insurance and reinsurance under this chapter is not effective after September 30, [1997] *2002*.

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