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2018 FAA Reauthorization: Opportunities to Improve Federal Aviation Policy

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Since the Federal Aviation Administration's (FAA's) last multi-year extension expired in 2015, a long-term reauthorization of the agency has been unable to take flight. This year, Congress must reauthorize the FAA by October 1, following the extension of its authority in the Consolidated Omnibus Appropriations Act of 2018.[1]

While ambitious reforms to the nation's air traffic control system were proposed in the 21st Century Aviation Innovation, Reform, and Reauthorization (AIRR) Act[2] and its predecessor, the AIRR Act,[3] these reforms were withdrawn due to political pressure from a concentrated group of special interests.[4] The resulting bill, recently proposed in the House, the FAA Reauthorization Act of 2018,[5] is less ambitious in regards to structural reform of the FAA.

Passing a long-term authorization provides Congress with the opportunity to create lasting policy changes to improve the aviation industry and thus the American economy. Congress should seize the opportunity for reform, rather than simply extending the status quo, and exacerbating structural problems inherent to the FAA and its programs. This *Issue Brief* will briefly detail notable provisions in the House's base FAA re-authorization (as modified) and recommend improvements that can be made in the amendment process, in the Senate's bill, and finally, in conference.

This paper, in its entirety, can be found at
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Shortcomings and Strengths of the House FAA Reauthorization (H.R. 4)

Chairman of the House Transportation and Infrastructure Committee Bill Shuster (R–PA), introduced the FAA Reauthorization Act of 2018 last week and modified the bill through three manager's amendments, the last of which was approved by the House Rules Committee the evening of April 24. The bill authorizes FAA programs for five fiscal years from 2019-2023, authorizing roughly $18 billion to $20 billion per year in spending for a five-year total exceeding $110 billion.

Shortcomings. The largest failure of the House's FAA reauthorization has to do with what is left out of the bill: structural reform to federal government's role in the aviation industry. These include much-needed reforms to the nation's air traffic control system by the FAA—which were pulled from consideration following a lack of support among certain members—as well as a comprehensive re-evaluation of the federal government's role in airport funding.[6] While the original manager's amendment made some positive changes to the Air Traffic Organization's structure within the federal government, those changes were stripped from the final version. Given that the pending authorization will span five years, failing to meaningfully address these major areas amounts to a huge missed opportunity that will have costs for flyers and the industry as a whole.

In addition to neglecting large structural reforms, the bill contains multiple provisions that head in the wrong direction in regards to federal intervention in the aviation industry. These include:

- **Increasing federal spending.** The manager's amendment to H.R. 4 increases funding for the Airport Improvement Program by $5.3 billion (30 percent) over the five-year period. This exceeds the additional funds provided in the recent omnibus package, which included a one-time appropriation of $1 billion to be expended by 2020.[7] More additional spending is allocated to other FAA budget accounts and the wasteful Essential Air Service program. These spending increases eschew reform and lock in higher federal funding for unnecessary federal programs in perpetuity.

- **Undermining good governance of drone operations.** The legislation contains several questionable measures related to unmanned aircraft systems (UAS) policy. The most troubling would require drone operators engaged in package delivery or similar activities to receive a federal UAS air carrier certificate. This requirement would lead to the pre-emption of all state and local laws and regulations "related to a price, route, or service of an air carrier."[8] If adopted, communities would be barred from setting reasonable restrictions on drone conduct taking place mere feet above the ground. This provision is unnecessary for the development of drone commerce, would undermine property rights and federalism, and may prompt a backlash from communities forced to endure drone-related nuisances with little recourse.

- **Increasing federal micromanagement of airline business practices**. The bill continues the alarming expansion of federal regulation of air carriers' business practices, continuing to erode the progress that has been made since airline deregulation in the late 1970s.[9] These include federal mandates regarding flight attendant duty periods (Section 314), involuntary denied boarding practices (Section 406), procedures regarding disruptive events (Section 409), a sweeping list of "passenger rights" (Section 414), and much of the rest of Title IV. These mandates will inevitably increase the cost of air travel for consumers and limit airlines' ability to craft their own business models. A far superior approach would be to foster competition and allow consumers—not federal regulators—to choose which airline's business plan best suits their tastes and needs.[10]

- **Furthering aviation protectionism.** Section 530 of the bill contains multiple provisions that would erect further barriers for foreign air carriers (those from European countries) seeking to provide U.S. consumers with services. Not only does this needlessly hurt consumers and stifle competition, but the provision has the potential to jeopardize the nation's numerous Open Skies agreements with other countries, which could cause great harm to global aviation operations. U.S. air carriers are already heavily insulated from foreign competition; good public policy would allow companies to bring consumers more choice—not less.

1 Public Law 115-141. See Justin Bogie et al., "The Good, Bad, and Ugly of the Fiscal Year 2018 Omnibus Appropriations Act," Heritage Foundation *Issue Brief* No. 4830, March 22, 2018, https://www.heritage.org/budget-and-spending/report/the-good-bad-and-ugly-the-fiscal-year-2018-omnibus-appropriations-act.

2 H.R. 2997, the 21st Century Aviation Innovation, Reform, and Reauthorization Act.

3 H.R. 4441, the Aviation Innovation, Reform, and Reauthorization Act of 2016

4 Robert Poole, "Post-Mortem on 2017 US ATC Corporation Effort," Reason Foundation *Air Traffic Control Newsletter* No. 152:, March 20, 2018, https://reason.org/air-traffic-reform/air-traffic-control-newsletter-152/#a (accessed April 25, 2018).

5 H.R. 4, FAA Reauthorization Act of 2018, 115th Congress, 2nd Session.

6 For details on air traffic control and airport funding reform see:Michael Sargent, "2018 FAA Reauthorization: Potential for Positive Air Traffic Control Reforms, But More Policy Improvements Needed," Heritage Foundation *Issue Brief* No. 4724, June 26, 2017, https://www.heritage.org/sites/default/files/2017-06/IB4724.pdf, and Michael Sargent, "End of the Runway: Rethinking the Airport Improvement Program and the Federal Role in Airport Funding," Heritage Foundation *Backgrounder* No. 3170, November 23, 2016, http://thf-reports.s3.amazonaws.com/2016/BG3170.pdf.

7 Public Law 115-141.

8 49 U.S. Code § 41713.

9 See, for example, Fred L. Smith, Jr., and Braden Cox, "Airline Deregulation," *The Concise Encyclopedia of Economics*, 2008, http://www.econlib.org/library/Enc/AirlineDeregulation.html (accessed April 25, 2018).

10 See Michael Sargent, "United's Lousy Service Is a Reason for More Competition, Not Regulation," *The Hill*, April 11, 2017, http://thehill.com/blogs/pundits-blog/transportation/328292-uniteds-lousy-customer-service-is-a-reason-for-more

Strengths. Though the provisions of H.R. 4 discussed above largely mark steps in the wrong direction, the bill does include a number of positive policy changes that deserve to be considered or expanded in the legislative process:

- **Reforming the safety-certification procedures.** Title II contains worthwhile reforms to improve and streamline the FAA's safety-certification process, which has suffered from a lack of accountability and has hampered aviation manufacturers with unnecessary delays.[11] Allowing producers to bring their products to market faster while maintaining safety standards will be a boon to the industry and increase the nation's competitiveness while continuing to improve the industry's impressive safety record.

- **Improving the airport-privatization process.** Provisions in the manager's amendment make laudatory improvements to the Airport Privatization Pilot Program, the current structure of which poses impediments to airport privatization. The proposal would remove the program's pilot status, enshrining it as the Airport Investment Partnership Program and removing the current 10-airport limit on privatization. This provides much-needed certainty for investors and the airport industry while expanding the number of airports eligible for privatization. Other significant changes include allowing proposals to include multiple airports, permitting partial privatization, and allowing private airports to compete on the same playing field as public airports in regards to access to certain federal funds. While additional changes could further improve the prospects of privatization, these provisions should significantly streamline the current process and allow the U.S. to catch up to other developed nations in regards to establishing privately run airports.[12]

- **Providing clarity on flight-sharing regulations.** Section 516 requires the FAA Administrator to clarify arbitrary regulations regarding private pilots' ability to share flight expenses as authorized under current law. Clearing up the reasoning behind the FAA's current illogical treatment of flight-sharing services is the first step to allowing an innovative industry to get off the ground.[13]

Improvements for Federal Aviation Policy

As the FAA reauthorization moves forward, Congress can make improvements to current policies and those included in H.R. 4 by addressing the following areas:

- **Airport funding.** Rather than increasing centralized, inefficient federal funding for airports, Congress should give airports greater authority to collect and spend their own revenues. The simplest way to do so is to increase or eliminate the federal cap on the Passenger Facility Charge while simultaneously reducing federal aviation taxes and Airport Improvement Program spending. Ultimately, Congress should end the federal government's involvement in airport funding entirely.[14]

- **Airport privatization.** Congress can improve upon the privatization provisions contained in H.R. 4's manager's amendment by lowering the current supermajority required for air-carrier approval of a privatization proposal from 65 percent to a standard majority of 50 percent.[15]

11 Congressional Research Service, "Reauthorization of the Federal Aviation Administration (FAA) in the 115th Congress," *Report for Congress* No. R44791, November 30, 2017, https://www.everycrsreport.com/reports/R44791.html#_Toc500252749 (accessed April 25, 2018).

12 Michael Sargent and Nick Loris, "Driving Investment, Fueling Growth: How Strategic Reforms Can Generate $1.1 Trillion in Infrastructure Investment," Heritage Foundation *Backgrounder* No. 3209, May 8, 2017, https://www.heritage.org/sites/default/files/2017-05/BG3209_0.pdf.

13 See Andrew Maleta, "Uber in the Air," *National Review*, August 8, 2016, https://www.nationalreview.com/2016/08/federal-aviation-administration-non-commerical-flight-flyetonow-united-states-supreme-court/ (accessed April 25, 2018), and John-Michael Seibler and Michael Sargent, "Sharing the Skies: Liberalizing Flight-Sharing in the United States," Heritage Foundation *Backgrounder*, forthcoming.

14 Michael Sargent, "End of the Runway: Rethinking the Airport Improvement Program and the Federal Role in Airport Funding," Heritage Foundation *Backgrounder* No. 3170, November 23, 2016, http://thf-reports.s3.amazonaws.com/2016/BG3170.pdf.

15 49 U.S. Code §47134(c)(4)(A); Sargent and Loris, "Driving Investment, Fueling Growth: How Strategic Reforms Can Generate $1.1 Trillion in Infrastructure Investment."

- **Air carrier competition and regulation.** Rather than continuing to impose further regulations and protectionist restrictions on the airline industry, federal policy should foster greater competition. Thus, Congress should reject proposals that regulate airline business practices and erect additional barriers to entry for international carriers. Legislators can improve customer service through competition by allowing new entrants to access markets vis-à-vis airport funding reform (discussed above) and examining possible changes to domestic ownership requirements and outright prohibitions on cabotage in the U.S.[16]

- **Flight-Sharing Innovation:** Congress should establish a legal framework that allows certified private pilots to share flight expenses (or even receive compensation) via Internet-enabled services or any other method of communication.[17]

Conclusion

Congress should not squander its chance to make long-lasting improvements to federal aviation policy. While H.R. 4 contains several provisions that improve upon current law, it largely excludes the structural reforms that are needed for the FAA, and increases ham-handed federal involvement in the industry through spending increases and additional regulatory encroachments. Going forward, Congress should instead adopt a broad reform agenda based on enabling market forces to continue to improve the aviation industry for the 21st century.

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16 Current airport funding practices favor entrenched airlines over new entrants because federal restrictions on airport revenues require U.S. airports to rely heavily on their tenant airlines for revenues, giving incumbent carriers power over airport decisions. See: End of the runway; 49 U.S. Code § 40102(a)(15); 49 U.S. Code § 41703.

17 See, for example, news release, "Sen. Lee Introduces Aviation Empowerment Act," U.S. Senator Mike Lee, April 11, 2018, https://www.lee.senate.gov/public/index.cfm/2018/4/sen-lee-introduces-aviation-empowerment-act (accessed April 25, 2018), and Seibler and Sargent, "Sharing the Skies: Liberalizing Flight-Sharing in the United States," Heritage Foundation *Backgrounder*, forthcoming.