HOUSE AND SENATE FAA BILLS TAKE DIVERGING FLIGHT PATHS TOWARD REAUTHORIZATION

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With the authorization for the Federal Aviation Administration (FAA) set to expire on July 15, the clock is ticking for Congress to enact legislation to ensure that FAA programs and funding continue without interruption. Although the House was first out of the gate with its Aviation Innovation, Reform, and Reauthorization Act of 2016 (H.R. 4441; the "AIRR Act"), reported by the House Transportation and Infrastructure Committee on February 11, the Senate leapfrogged ahead by passing its FAA Reauthorization Act of 2016 (H.R. 636; "FAARA") on April 19. Since then, observers have waited to see whether the House will move to advance the AIRR Act, take up the Senate bill, or pursue an extension.

Given the differences between the House and Senate bills, the outcomes of decisions and actions in the coming months have significant implications for aviation industry stakeholders. As described in our previous alert, the AIRR Act would provide a long-term, six-year reauthorization of the FAA and reshape the U.S. air traffic control (ATC) system by establishing a new, independent nonprofit corporation to manage most ATC functions. In contrast, the Senate bill would provide a shorter-term, 18-month reauthorization and omit the House's ATC proposal. ATC reform is a key priority for House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA), and it remains to be seen whether he will accede to a reauthorization bill that does not include it. However, the AIRR Act's ATC provisions have been a source of scrutiny from certain stakeholders, as well as some of Chairman Shuster's colleagues in Congress.

Regardless of the path the House takes, numerous opportunities remain to shape the direction of the final reauthorization package. Participants in the aviation industry should be aware of how each bill would affect their operations and strategic interests and should consider engaging in the legislative process to address challenges and advance priorities. To that end, this alert provides an overview of the key provisions of FAARA, a bill that would have an impact on every aspect of the aviation industry — from unmanned aircraft systems (UAS), to the FAA's Next Generation Air Transportation System ("NextGen"), to aircraft certification, and beyond.

ENHANCED PASSENGER PROTECTIONS

Improving passenger air service is one of FAARA's areas of focus. The bill would require the Department of Transportation (DOT) to promulgate regulations providing for the automatic refund of baggage fees and charges for other ancillary services that a passenger is unable to use due to service disruptions. DOT would also be tasked with standardizing airline fee disclosure and implementing a policy to ensure that families traveling with children under the age of 13 are seated together. In addition, FAARA would grant DOT the authority to prohibit the use of cell phones for voice communications on passenger flights.

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FAARA would also launch a variety of studies to inform future enhancements of airline passenger protections. The bill would require DOT to undertake comprehensive studies of delays, cancellations, and involuntary itinerary changes made by airlines, in order to evaluate the need for further regulation and reform. DOT would also be required to undertake a study of the minimum pitch dimension for passenger airline seats. The air travel needs of passengers with disabilities are another area of emphasis. FAARA would authorize a new advisory committee of private- and public-sector stakeholders to assess the disability-related access barriers encountered by passengers with disabilities and develop recommendations for improvements. The advisory committee would make reports to the Secretary of Transportation on an ongoing, annual basis. Furthermore, FAARA would instruct the Comptroller General to study airport accommodations for people with disabilities and make recommendations for improvements.

AIRCRAFT CERTIFICATION AND FLIGHT STANDARDS REFORM

In an area of commonality with the AIRR Act, FAARA would lay the groundwork for a comprehensive overhaul of the FAA's current approach to aircraft certification and flight standards development. The bill would establish a Safety Oversight and Certification Advisory Committee comprised of public- and private-sector stakeholders to provide input on the FAA's certification activities, including its development of performance objectives and metrics as required by FAARA. Among other things, these objectives would be focused on eliminating certification delays, increasing accountability and transparency, and improving the management of the FAA's certification workforce. The bill would instruct the FAA to pursue similar goals with respect to its flight standards development activities and appoint a separate FAA Task Force on Flights Standards Reform.

FAARA's certification and flight standards provisions reflect a focus on the competitiveness of the U.S. aviation industry. The bill would call for the Secretary of Transportation to "promote United States aerospace-related safety standards abroad" and "facilitate and vigorously defend approvals of United States aerospace products and services abroad." In addition, it would direct the FAA Administrator to devote greater time and resources to international issues in order "to promote United States aerospace safety standards, reduce redundant regulatory activity, and facilitate acceptance of FAA design and production approvals abroad."

NEXTGEN IMPLEMENTATION AND OVERSIGHT

FAARA's provisions on NextGen demonstrate a keen interest in the progress toward implementation of this technology platform for aircraft navigation. The bill would require the FAA to perform a variety of assessments and develop a number of comprehensive plans in connection with the transition to NextGen. Particular areas of interest for implementation and evaluation activities include cybersecurity and NextGen platform's interoperability with international air traffic navigation systems. FAARA would also establish performance goals for NextGen and conduct an assessment of the program's return on investment for the federal government and airspace system users.

UNMANNED AIRCRAFT SYSTEMS

The UAS provisions of FAARA would transform the current regulatory landscape for manufacturers and operators of UAS. The bill calls for the development of new safety standards that would require each UAS product to be evaluated and approved by the FAA. Operators would be subject to new identification standards, privacy regulations, aeronautical knowledge testing requirements, and enhanced enforcement provisions. Notably,

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FAARA would also take a first step toward reconciling inconsistent federal, state, and local regulation of UAS. The bill would also urge the FAA to complete its pending rulemaking on the commercial use of small UAS and expresses support for the expansion of nighttime and beyond visual-line-of-sight operations.

Other sections of the bill's UAS title aim to promote research and development in this emerging sector of the technology industry. FAARA would extend and enhance the FAA's existing test site program, authorize the use of UAS by institutions of higher education, and create a pilot program to study hazard mitigation technology for airports and other critical infrastructure. Looking further into the future, the bill calls for the FAA to develop a regulatory framework for UAS package delivery services and provides a timeline for the rollout of a UAS traffic management (UTM) system to coordinate the operation of multiple unmanned aircraft in high-density areas.

AVIATION SECURITY

In part as a response to the March 22 terrorist attacks on the Brussels Airport and other incidents and concerns, FAARA includes a number of transportation security provisions. The bill incorporates a version of the Airport Security Enhancement and Oversight Act proposed by Senate Commerce, Science, and Transportation Committee Chairman John Thune (R-SD). Among other provisions, the act would require enhanced oversight and vetting of airport procedures with respect to Secure Identification Display Area (SIDA) badges, which are used to control access to secure areas. The act also calls for the FAA Administrator to perform a threat assessment on the risk to domestic airports posed by holders of SIDA badges in light of recent international terrorist activity.

Turning from domestic airports to airports overseas, FAARA also incorporates a version of the Securing Aviation from Foreign Entry Points and Guarding Airports Through Enhanced Security Act of 2016, originally introduced by Representative John Katko (R-NY), which would require that the Transportation Security Administration (TSA) perform an assessment of security risks at airports that offer nonstop flights to the United States. The act also provides the TSA with authority to examine and evaluate the air cargo security measures of foreign countries.

Additional security-related provisions of FAARA focus on aviation cybersecurity, expansion of the TSA's PreCheck screening program, and training for law enforcement responses to mass casualty and active shooter incidents.

OTHER PROVISIONS

FAARA is a detailed and comprehensive piece of legislation. For further information on provisions that would affect your business specifically, please contact the authors of this alert or your usual K&L Gates contact.

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