



# Harvard Model Congress Boston 2024

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## COMMERCIAL AVIATION REFORM

*By Ethan Jasny*

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### INTRODUCTION

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Every day, the **Federal Aviation Administration (FAA)** oversees around 2.9 million airline passengers on over 45,000 flights (FAA, 2023). In fact, it is very possible that you will be on one of these flights when you come to Harvard Model Congress Boston 2024.

Domestic commercial aviation is an over 100-billion-dollar industry in the United States (IBISWorld, 2023), which the federal government is tasked with regulating. Given the immense size of the industry and its integration with other key parts of the economy (e.g., tourism, trade, etc.), commercial aviation is a central area of focus for the House Transportation and Infrastructure Committee.

The bipartisan FAA Reauthorization Act of 2018 extended funding of the FAA through Fiscal Year 2023 (FAA, 2023). In this session of Congress, representatives from both sides of the aisle will have to come together to agree on conditions for reauthorizing the FAA. This committee will focus specifically on the FAA's oversight and regulation of the domestic commercial aviation industry.

In addition to establishing the timeframe and parameters for ongoing FAA funding, representatives will consider a range of policy solutions to address two central issues. First, consumer protection: should commercial airlines be regulated more strictly to better protect the interests of passengers? Second, out-of-date practices within the **Air Traffic Organization (ATO)**, the operational arm of the FAA: should the ATO be restructured to improve efficiency and safety?

**Federal Aviation Administration** – a U.S. federal agency which regulates civil (i.e., non-military) aviation

### EXPLANATION OF THE ISSUE

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#### *Historical Development*

The Department of Transportation (DOT) was formed in 1967 as a cabinet-level government agency to centralize transportation

administration. The Federal Aviation Agency was incorporated under the new DOT and became known as the Federal Aviation Administration, as it is known today (FAA, 2023). The business-side of airline regulation was primarily overseen by the **Civil Aeronautics Board (CAB)**. The commercial aviation industry was strictly regulated: the CAB had to approve all routes and fares for interstate flights. Intrastate flights, meanwhile, were regulated by the government of the state in which the flight took place (Smithsonian, 2021).

In the 1970s, the CAB came under fire for perceived bureaucratic inefficiency and overregulation. Legislators hoped that giving airlines the ability to set their own routes and fares would boost competition, lower prices, and expand the industry. Thus, in 1978, the **Airline Deregulation Act** received bipartisan support in Congress and was signed into law by President Jimmy Carter. Restrictions on fares and routes were removed and the regulatory powers of the CAB were gradually phased out (Library of Congress, 2022).

Deregulation spurred competition across the industry. New airlines were formed, regional airlines expanded, and existing intrastate airlines fought each other for service on key routes. In turn, fares declined, and airlines built more efficient networks, centered around key “hub” airports. At the same time, airlines took measures to reduce costs, such as cutting cabin services, in order to provide the most competitive fares for consumers (Smithsonian, 2021).

Deregulation forever changed the airline industry and remains an important lens to understand the challenges facing airline regulators today. One central tension this committee will deal with is the extent to which the federal government should tighten its restrictions on airlines to protect consumers and ensure safety while also keeping fares low and the industry growing.

## *Scope of the Problem*

### Canceled and Delayed Flights

Over the past few decades, several American airlines have merged; today, Delta, United, and American Airlines control around half the domestic market. Moreover, since deregulation in 1978, airlines fall solely under the jurisdiction of the federal government, leaving states with little ability to redress harmed airline passengers (Barkan, 2022). Given the large size of airline corporations and the limited means provided to consumers to seek compensation or policy change, it is clear that a significant power imbalance exists between passengers and airlines.

In 2022, over 210,000 flights were canceled — the most since air traffic was disrupted by the September 11 attacks in 2001, other than the early days of the pandemic (Schaper, 2023). According to a

**Civil Aeronautics Board (CAB)** – a former U.S. agency that strictly regulated the airline industry

**Airline Deregulation Act** – a 1978 law passed by Congress which phased out the CAB and further privatized the aviation industry

report from the Government Accountability Office, post-pandemic cancellations and delays have mainly been caused by factors within the control of airlines, such as missing crews, maintenance issues, or computer failures (GAO, 2023). Understaffing has been a particularly significant problem: many flight and ground crew members were laid off or coaxed into early retirement during the pandemic in order to cut costs (Schaper, 2023).

During the 2021 holiday season, Southwest Airlines canceled nearly 17,000 flights in what Sen. Jacky Rosen (D-NV) called “an unmitigated disaster.” The airline mainly blamed the meltdown on a large winter storm, but the Southwest Airlines Pilots Association pointed to severely outdated technology used to schedule crews as being primarily responsible for the cancellations (Shepardson and Singh, 2023). Given the uptick in delays and cancellations, the House Transportation and Infrastructure Committee could consider forcing airlines to better compensate passengers for inadequate service.

*In 2022, over 210,000 flights were canceled — the most since 9/11, aside from the early days of the pandemic*

## Overbooking

Besides cancellations and delays, another important area of consumer protection involves the booking of flights. Airlines often intentionally overbook flights; that is, they sell more tickets than the plane can hold so that the flight will still be full even if there are some cancellations.

The issue of overbooking gained national attention in 2017 when passenger David Dao was forcibly dragged off an overbooked United Airlines flight at Chicago’s O’Hare International Airport. Typically, airlines will offer travel vouchers or monetary compensation to get passengers to volunteer to give up their seat. But when no one volunteered, the airline selected people to leave the flight. Dao refused and was dragged off the plane by police officers, resulting in a concussion and a broken nose (Bever, 2019). The event caused a public outcry and led United to pay a settlement fee of around \$140 million. Since the incident, airlines have generally offered greater compensation to passengers on overbooked flights (Popli, 2022). However, Congress could take action to mandate greater compensation for passengers or prohibit the practice of overbooking altogether.

## Air Traffic Control

Safe and efficient travel through American air space is overseen by the Air Traffic Organization (ATO), a division of the FAA. The ATO — and the operations of the FAA more broadly — has come under fire for inefficiencies and outdated equipment. In January 2023, the FAA grounded all domestic flights after a major computer failure involving the **Notice to Air Missions (NOTAM)** system. NOTAMs are delivered to pilots with key safety information about

airports and runways. According to airline industry expert Robert Mann in an interview with Politico, the FAA relies on “decades old” hardware and software (Snyder and Gardner, 2023), which may have played a role in the meltdown. American air traffic controllers still keep track of planes using small strips of paper (Bloomberg, 2023).

The FAA is undergoing a series of long-term modernization efforts. The NextGen project, for example, is designed to transition the ATO from sonar to GPS-based navigation. But many of these projects have faced funding issues and delays (Snyder and Gardner, 2023). Modernized and efficient air traffic control policies and technology are crucial for keeping airways safe and flights on schedule. Congress should consider operational and/or organizational reforms to improve American air traffic control.

***Notice to Air Missions (NOTAM)***  
– messages delivered to aircraft pilots with information about potential hazards

### *Congressional Action*

The FAA was most recently reauthorized in 2018. The bipartisan, five-year reauthorization extends funding of the FAA through Fiscal Year 2023. The reauthorization also made some legislative changes, addressing issues such as lithium battery transportation and aircraft noise (FAA, 2023). With reauthorization due this year, commercial aviation reform legislation would likely be included within an FAA reauthorization package.

In 2016, the Aviation Innovation, Reform, and Reauthorization Act (AIRR) was proposed by Reps. Bill Shuster (R-PA) and Frank LoBiondo (R-NJ). Along with reauthorizing the FAA, the bill would have privatized the ATO, creating an independent, non-governmental board to administrate air traffic control. In a press release, the authors of the bill argued that “Establishing an independent ATC provider has become the standard across the world, and the United States is one of the last industrialized nations yet to do so. Countries that have done so have consistently benefited from safety levels that have been maintained or improved, successful modernization of their ATC systems, improved ATC services, and generally lower ATC service costs” (Harclerode, 2016). However, the bill died before receiving a House floor vote.

*The FAA Reauthorization of 2018 funded the FAA through FY 2023*

### *Other Policy Action*

As previously discussed, regulation of the domestic airline industry falls mainly under the purview of the federal government (i.e., not states). Representatives should be aware that the Department of Transportation has significant discretionary rulemaking power to regulate the airline industry. For instance, under Section 41712 of the U.S. Code, the DOT is authorized to propose rules that protect passengers from “unfair” or “deceptive” practices. Recently, the DOT streamlined this regulatory process in

order to more quickly respond to potential consumer protection issues (DOT, 2022). Some experts worry, however, that the DOT's Section 41712 power is too broad and should be clarified by Congress (Scribner, 2022).

## IDEOLOGICAL VIEWPOINTS

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### *Conservative View*

Compared to more contentious issues currently facing Congress, transportation policy tends to be relatively bipartisan; the 2018 FAA reauthorization passed the House with a voice vote and the Senate by a 93-6 margin. Still, conservatives and liberals differ in some meaningful ways. In general, conservatives oppose strict regulation of commercial aviation, trusting the market to keep fares low and customers happy. While conservatives may still value consumer protection measures, they are wary of overly restricting the actions of corporations. Conservatives support air traffic control modernization; in particular, some conservatives may support privatizing the ATO, believing the current government-run system to be bureaucratic and slow. In 2016, House Republicans proposed the AIRR Act, which would have transferred authority over air traffic control to an independent board of stakeholders.

Some conservatives also criticize the Biden Administration's focus on social justice as it relates to transportation. For example, the FAA renamed the "Notice to Airmen" system the gender neutral "Notice to Air Missions." But when the NOTAM system crashed, some Republicans called out the name change (although the renaming had nothing to do with the system crash). Rep. Any Biggs (R-AZ) tweeted, "instead of focusing on real transportation issues, @SecretaryPete and his minions have focused on woke garbage like" the name change (Snyder and Gardner, 2023). Similarly, Sen. Mike Lee (R-UT) proposed legislation removing biographical information from tests in the air traffic control academy, arguing that the "Federal Aviation Administration (FAA) instituted hiring reforms that prioritized diversity quotas over experienced, qualified candidates" (Lee, 2023).

### *Liberal View*

Liberals support stronger regulations on the airline industry in order to protect consumers. For example, during the widespread flight cancellations in the summer of 2022, Sen. Bernie Sanders (D-VT) urged Secretary of Transportation Pete Buttigieg to require airlines to refund passengers for delays and provide greater access to meal vouchers, lodging and alternative transportation for inconvenienced customers. He urged Buttigieg to fine airlines for



*Air traffic control tower at Reagan National Airport in Washington, DC*

CNN



long delays and cancellations caused by understaffing. “During the pandemic, when air travel came to a near halt, U.S. taxpayers came to the rescue and gave \$54 billion to the airline industry,” said Sanders. “Given all of the generous taxpayer support that has been provided to the airline industry, all of us have a responsibility to make sure that passengers and crew members are treated with respect, not contempt” (Shabad and Kapur, 2022).

Moreover, liberals would argue that the diversity and inclusion practices mentioned above, both in employment and more generally, are not detrimental to the airline industry. Rather, they increase the accessibility of the airline industry to traditional underrepresented groups and also ensure broader consumer protections and inclusion.

Liberals also support modernizing air traffic control technology but would likely oppose attempts to privatize the ATO; outside government hands, liberals argue, the safety of U.S. air traffic control could be jeopardized.

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## AREAS OF DEBATE

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### *Require Greater Compensation for Delayed and Cancelled Flights*

To address the issue of consumer protection, Congress could directly require that consumers receive greater compensation for delayed or cancelled flights. For example, Sen. Bernie Sanders (D-VT) proposed forcing airlines to refund passengers on flights delayed for over an hour and fining airlines for flights delayed for over two hours (Shabad and Kapur, 2022). Currently, passengers are not entitled to compensation for regular delays. In cases of “significant delays,” customers can be entitled to a refund, but what a “significant delay” means has not been specifically defined and is evaluated on a case-by-case basis by the DOT (DOT, 2023). Congress could also require airlines to rebook passengers on canceled flights to the next available flight on any airline — currently, airlines attempt to avoid rebooking passengers on competitors’ flights given the financial costs (Gilbertson, 2018).

Proponents of this solution would argue that punishments need to be directly imposed on airlines for canceled and delayed flights. It is the responsibility of the airline to ensure that their flights run on schedule; consumers should be properly compensated. Ideally, these solutions would incentivize airlines to end practices that can lead to cancellations and delays (e.g., booking flights that may be understaffed).

Opponents of this solution might argue that these types of bright-line rules are overly extreme. The factors that contribute to flight cancellations and delays are complex — how exactly do we

distinguish between delays that are the fault of the airline and delays that are beyond the airline's direct control (weather, mechanical issues, etc.)? Moreover, harshly punishing airlines for delays could incentivize them to skirt proper safety procedures in order to keep flights on time.

## Political Perspectives on this Solution

Liberals would likely be more supportive of direct regulations aimed at holding airlines accountable to customers. Still, there may be disagreement within the Democratic caucus as to how far Congress should go to regulate airlines; moderate Democrats may favor leaving discretion to the DOT rather than imposing blanket fines and rules.

Although conservatives may support some consumer protection policies, they are unlikely to support requiring airlines reimburse passengers for relatively mild delays. Republicans worry that overly strict regulation of the airline industry may stifle growth and force an increase in airline fares.

## *Ban Overbooking Flights*

Another approach to consumer protection could involve outlawing the practice of overbooking flights. As previously discussed, airlines frequently intentionally overbook flights in order to ensure that flights will remain full even with cancellations. Congress could require a minimum level of compensation for passengers bumped from overbooked flights or ban the practice altogether.

Supporters of this solution maintain that overbooking flights is an unfair practice that can force passengers off flights they paid for.

Opponents argue that overbooking is a cost-effective strategy that rarely leaves consumers stranded. According to Charles Leocha, cofounder of Travelers United, a consumer advocacy group: "If overbooking is made illegal, ticket prices are going to go up. The airlines *normally* do a pretty good job on overbooking. People know it's coming, and they are willing to allow themselves to be bribed to get off the flight" (Hopper, 2017).

## Political Perspectives on this Solution

Liberals could consider this solution as part of a broader approach to protecting airline consumers. Some Democrats would be wary of banning the practice as a whole but could consider increasing the minimum required compensation for passengers (see the existing minimum compensation in § 250.5 in the Code of Federal Regulations).

Conservatives would likely oppose this solution on the basis that overbooking is a valid business practice that maximizes use of

*Experts warn that airline fares could increase if the practice of overbooking is prohibited*

available aircraft space. If the practice was outlawed, airlines would be forced to increase fares in response.

## *Privatize Air Traffic Control*

To address the inefficiencies and outdated technology of the ATO, the FAA could spin off responsibility of air traffic control to a self-funded, independent entity. Canada, for instance, created the independent Nav Canada in 2009, and many European countries have air traffic control run by private, non-profit organizations.

Proponents argue that, with a steady flow of income from airlines, independent air traffic control would be able to better fund needed modernization. Currently, air traffic control funding is at the whim of Congress, potentially undermined by frequent partisan battles over appropriations and the debt ceiling (Bloomberg, 2023). Freed from the ballast that is government bureaucracy, independent air traffic control might be able to more quickly implement the NextGen project (Carey, 2017).

Opponents contend that transferring power from the FAA could jeopardize safety if there is less direct government oversight. The incredibly logistical difficulty of changing control over air traffic operations would be costly — and interrupt progress on long term projects like NextGen (New York Times, 2016).

### Political Perspectives on this Solution

There is potential for bipartisan agreement for this solution under the right conditions. But in general, Republicans are more likely to endorse air traffic privatization, deploring government bureaucracy and believing in the power of a private system to improve efficiency. The 2016 AIRR Act, which would have privatized the ATO, was introduced by Republican Reps. Bill Shuster (R-PA) and Frank LoBiondo (R-NJ).

Democrats are more wary of this solution, concerned about a decline in safety standards if air traffic control falls outside of government hands.

## *Clarify the DOT's Discretionary Power*

Per Section 41712 of the U.S. Code, the DOT is authorized to propose rules that protect passengers from “unfair” or “deceptive” practices. However, what “unfairness” means is never strictly defined. Moreover, there is no clear standard of proof the Department needs to meet in order to deem a practice “unfair.”

During the Trump Administration, Transportation Secretary Elaine Chao introduced rules requiring regulators to meet basic standards of proof to exercise their Section 41712 powers, but under the Biden administration, the DOT changed these definitions to



allow for a broad interpretation of the Secretary’s powers (Scribner, 2022).

## Political Perspectives on this Solution

Democrats would be in favor of a more expansive interpretation of the DOT’s power, hoping that Secretary Buttigieg can effectively protect consumers even if Congress is unwilling to take bolder legislative action.

Republicans would likely prefer a more restrained interpretation of Section 41712, hoping to limit the Department’s ability to take unilateral action. Either way, both parties may favor a clearer definition of “unfairness” so that the DOT’s rulemaking process is more transparent. This is a potential area where our committee can introduce legislation to outline what unfair or predatory practices more clearly would look like.



Secretary Pete  
Buttigieg

DOT

## *Allow States to Regulate Airlines*

The Airline Deregulation Act of 1978 includes a federal preemption clause that effectively gives the DOT the sole authority to regulate the airline industry. If the DOT is unwilling or unable to fully regulate the industry to protect consumers, Congress could expand regulatory authority over the industry back to the states. Ruth Susswein, Director of Consumer Protection at Consumer Action, a U.S. non-profit, states the following: “Consumers deserve recourse when airlines chronically cancel flights, lose their luggage, and refuse to provide refunds. Since the DOT is torn between its responsibilities to carriers and consumers, let’s give the states clear authority to protect their citizens from unfair pricing and unresponsive service” (AELP, 2022). The American Economic Liberties Project proposed model legislation that would allow state attorneys general, legislatures, and courts to regulate and litigate against airlines.

Proponents of this approach argue it would allow for greater consumer protection without forcing Congress to directly act to regulate the industry. States have the ability to regulate most other industries that operate within their jurisdictions — why should commercial aviation be different?

Opponents contend that allowing states to regulate the industry could open airlines up to a series of legal attacks from across the country that would make it difficult to profitably operate. This increased regulation could cause fares to increase. Others could argue that if Congress and the DOT defer their regulatory capabilities to the states, a patchwork of consumer protection regulations could appear across the country; airlines would be forced to follow different rules in every state, leaving some consumers protected and others vulnerable.

## Political Perspectives on this Solution

Liberals would generally favor this approach, seeing a path to better consumer protection. States might be better positioned to understand and serve their airline users, guaranteeing better treatment and reimbursements for consumers.

Conservatives would likely oppose it. They would generally be concerned about increased regulation from states across the country stifling growth and driving up fares. Thus, they would argue that in the long run a decision like this might end up hurting consumers.

## BUDGETARY CONSIDERATIONS

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The 2018 FAA Reauthorization set aside a total of 96.7 billion USD for the FAA from FY 2019-2023. 16.8 billion was immediately authorized in airport grants, with the other 80 billion to be appropriated by Congress over the following five years (Davis, 2018).

As Congress again reauthorizes the FAA, it can consider whether to increase the annual budget for the agency; for reference, the FAA has requested a total of 24.8 billion USD for FY 2024. Congress must also determine the length of the reauthorization.

For a lot of the proposed solutions mentioned above, delegates will have to strike the balance between budgetary considerations and long-term growth of consumer protection, satisfaction, and even safety.

## CONCLUSION

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The commercial aviation industry is difficult to regulate given its complexity. Overseeing commercial air travel is perhaps the most important responsibility of the House Transportation Committee, given the high-stakes safety considerations and the importance of commercial flight to the U.S. and world economy.

Consumer protection and air traffic control modernization are key issues that Congress must address in order to ensure safe, efficient, and affordable air travel for generations of Americans to come. A central tension explored in this briefing concerns regulation versus deregulation; Democrats are more likely to support efforts to closely manage the behavior of airlines, whereas Republicans may favor a more laissez-faire approach in order to keep the industry growing and prices low. Nonetheless, note that there is certainly room for compromise: Republicans still recognize the need to regulate airlines to ensure safety standards, and Democrats want to avoid actions that will hike fares.

*The 2018 FAA Reauthorization set aside a total of 96.7 billion USD for the agency*

Delegates are encouraged to combine the solutions offered in this briefing and consider ideas beyond those expressed here. Regulation of U.S. commercial aviation is a multifaceted and technologically complex undertaking; delegates are welcome to research particular aspects of the industry that they find personally interesting and/or are specifically relevant to their member of Congress.

## GUIDE TO FURTHER RESEARCH

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Delegates are encouraged to closely research their members' stance on commercial air travel. Given the fairly bipartisan nature of the House Transportation Committee, delegates should go beyond party affiliation and dig into their members' personal statements on regulation of the industry. Advanced searches on [Congress.gov](https://www.congress.gov) is a great tool to see if one's representative has previously sponsored legislation related to commercial aviation.

Delegates may also benefit from considering the home constituency of their representative – how is your congressional district impacted by commercial aviation? Is it home to a major airport or air force base?

Finally, delegates are reminded to focus their research on the domestic commercial aviation industry – i.e., though potentially relevant, international and military air travel is not the main focus of the topic. There's plenty to research just within the world of commercial aviation!

## GLOSSARY

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**Federal Aviation Administration** – a U.S. federal agency which regulates civil (i.e., non-military) aviation

**Air Traffic Organization (ATO)** – an arm of the FAA which provides aerial navigation to aircrafts in U.S. territory

**Civil Aeronautics Board (CAB)** – a former U.S. agency that strictly regulated the airline industry

**Airline Deregulation Act** – a 1978 law passed by Congress which phased out the CAB and further privatized the aviation industry

**Notice to Air Missions (NOTAM)** – messages delivered to aircraft pilots with information about potential hazards

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