

March 11, 2016

The Honorable Bill Shuster, Chairman
The Honorable Peter A. DeFazio, Ranking Member
Committee on Transportation and Infrastructure
United States House of Representatives
Washington, DC 20515

Dear Chairman Shuster and Ranking Member DeFazio:

Consumers Union, the policy and advocacy arm of Consumer Reports, writes regarding the bill H.R. 4441, the Aviation Innovation, Reform, and Reauthorization Act of 2016. With the increasing consolidation of the airline industry, the elimination of routes and choices for consumers and communities, the increasing prevalence of add-on fees for basic and ancillary services, and the corner-cutting on passenger comfort and convenience, it is more important than ever that our laws and regulatory oversight be up to the task of ensuring safe air travel that serves the interests and needs of consumers. As approved by the Committee on Transportation and Infrastructure, the bill promotes that objective in a number of respects. But we are concerned that in other respects, the bill would undermine that objective.

Among the provisions in the bill, as ordered reported, on which we are focusing are the following:

Strengthened Consumer Protections

The bill strengthens a number of protections for consumers, including:

- Requiring notice when seats on a flight cannot be purchased together, to protect families traveling with children. (We would recommend that airlines also be encouraged to take further steps to accommodate families traveling with younger children as to seating needs.) (Section 501)
- Prohibiting passengers from making or receiving voice calls on their cell phones while the flight is in the air. (Section 502)
- Strengthening airline customer complaint hotline websites by adding the airline's customer service plan for easier reference, and by requiring consideration of mobile phone applications and other technologies for submitting complaints. (Sections 503, 504)

- Strengthening required disclosures regarding application of insecticides in planes while in foreign countries. (Section 505)
- Requiring refunds of checked baggage fees when delivery of checked baggage is delayed. (Section 507)
- Expediting a rulemaking to improve air travel accessibility for persons with disabilities. (Section 508)
- Extending the life of DOT's Advisory Committee for Aviation Consumer Protection for an additional six years. (Section 506)
- Addressing potential fatigue of passenger airline crew members by specifying minimum rest periods between shorter duty periods. (Amendment by Mr. Capuano)
- Spurring the development of stronger restrictions against shipment of lithium ion batteries as cargo on passenger aircraft, where they are subject to spontaneous combustion. Several lithium battery fires have already occurred on cargo planes. Passenger airlines are already taking steps to address this hazard, but the bill adds constructively to these efforts. (Section 615)

Extension of Essential Air Service Program for Smaller Communities

The bill extends the Essential Air Services Program for an additional six years, to help ensure preservation of lifeline service to smaller and more vulnerable communities. (Sections 531-535)

Strengthening Safety Oversight of Foreign Repair Stations

The bill strengthens safety oversight of aircraft repair stations located outside the United States, by (1) requiring that the FAA's safety assessment inspections place particular focus on repair stations that conduct scheduled heavy maintenance work, and whose work requires more frequent and significant follow-up corrective actions, and (2) expediting completion of the FAA's current rulemaking to strengthen drug and alcohol testing for maintenance workers at foreign repair stations. We have long urged the FAA to strengthen its oversight of outsourced maintenance and repair of commercial aircraft operated by U.S. airlines, and particularly at facilities located in foreign countries, to ensure that the highest safety standards are effectively enforced. The bill takes important steps to further this objective. (Section 402)

Backtracking on Airfare Transparency

We are concerned to see a revival of the effort to reverse the Department of Transportation's improvements to the way consumers receive information on airfares when they are purchasing an airline ticket. The mis-named Transparent Airfares Act of 2014 would actually have obscured the additional fees that are an increasing portion of the ticket price paid by consumers, misleading consumers and making comparison shopping more difficult. We believe this provision should be removed from the bill. (Section 617)

Air Traffic Control Corporation

Title II of the bill would transfer the nation's air traffic control system to a newly established non-profit corporation. We urge Congress to proceed with utmost caution in considering such a significant change. Turning air traffic control into a business proposition, and injecting corporate revenue-generating and cost-cutting considerations into the core responsibility of ensuring safe and reliable coordination of flights in our skies and on our runways, could have major safety ramifications. It might also lead to a further centralization of passenger air traffic routes, and the curtailment of essential lifeline air service to smaller and non-hub communities.

In our view, it is far from clear that such a privatization would lead to a more efficient, less costly system; and we are concerned that it could instead undermine safety and service. We believe modernization of the system, as proposed in the Next Generation Air Transportation System, which we have supported, should be pursued in the more immediate future as a more prudent course of action. A centerpiece of this bill should be authorization of sufficient funding to put and keep NextGen on a steady course.

We note that the proposed composition of the Board in the bill as introduced would not include any consumer representative. The amendment adopted in Committee to require that the two members chosen at the discretion of the Secretary be appointed "to act in the public interest" will help ensure that consumers' views will have some voice. We remain concerned, however, that the consumer voice may still not be strong enough. (Section 211, proposed § 90306(a))

Similarly, the amendment adopted in Committee to strengthen the prohibition against membership on the Board for anyone who has a material financial interest as a customer, supplier, or user of the corporation would help prevent direct financial conflicts of interest, but might not be enough to ensure that the Board is acting independently in the public interest. (Section 211, proposed § 90306(e)(2)(D) (ii))

We are also concerned that the scope of the new corporation's legal accountability is not clear. Provision is made for the FAA to exercise regulatory authority over the corporation, but the standards of review appear to be skewed in certain respects in favor of deference to the corporation.

Support for Including Other Measures

We recommend that the bill be amended to include the proposal to establish minimum dimensions for passenger seats on commercial passenger aircraft, to effectively protect passenger safety and health, in light of concerns including increased risk of deep vein thrombosis, as well as increased risk of impeding effective evacuation. (H.R. 4490, by Mr. Cohen)

Conclusion

We look forward to working with you for enactment of legislation that effectively ensures a safe and reliable aviation system that works in the interests of consumers.

Respectfully,



William J. McGee
Aviation and Travel Expert



George P. Slover
Senior Policy Counsel

cc: Hon. Frank A. LoBiondo
Hon. Rick Larsen