



## Alerts

### FAA's Michael Whitaker Appointed Administrator Amidst Industrial and Bureaucratic Turbulence

December 6, 2023

*Hinshaw Alert*

With a presidential election year on the horizon, a split Congress, and an aviation industry encumbered by labor shortages and safety issues, Michael Whitaker, the newly appointed Administrator of the Federal Aviation Administration (FAA), enters the agency's cockpit during bureaucratic turbulence.<sup>[1]</sup>

#### Background on Whitaker's Appointment

President Joseph R. Biden nominated Whitaker on September 7, 2023. Then, the Senate confirmed Whitaker on October 24, 2023, and he began his five-year term as administrator three days later.

Whitaker previously served as Deputy Administrator of the FAA for four years during the Obama administration, where he played a key role in facilitating the United States' transition from a radar-based air traffic control system to the current satellite-enabled surveillance system (ADS-B).

He was the Chief Operating Officer of Supernal, an Advanced Air Mobility designer, and Group CEO of InterGlobe Enterprises, the parent company of IndiGo airlines. He held several executive roles for United Airlines and also holds a private pilot's certificate.

Whitaker is the FAA's first permanent administrator since the departure of Stephen Dickson in March 2022. Dickson, a Trump appointee, was succeeded by acting administrator Billy Nolen, who served from April 1, 2022, to June 9, 2023, until he left for Archer Aviation (an eVTOL manufacturer).

Nolen was followed by acting administrator Polly Trottenberg, who served from June 9, 2023, to October 27, 2023. But for Whitaker's appointment, the FAA would have been required to replace Trottenberg with another acting administrator after October 25, 2023, because of the agency's 210-day term limits for acting administrators.

#### FAA Challenges

The turnover for the FAA's top position in recent years has left the agency needing stable leadership, particularly in light of the challenges presented by recovering from the COVID-19 pandemic and the extraordinary increase in

#### Attorneys

Evan M. Kwartka

Evan N. Soyer

#### Service Areas

Commercial Litigation



domestic and international travel.

Whitaker took up the mantle during a time when there are no shortages of aviation-related safety issues. This year alone has seen a notable increase in near-misses between commercial aircraft, leading then-acting Administrator Nolen to call for a national safety summit for the aviation industry.[2]

Following the summit in March 2023, the FAA issued a Safety Alert for Operators, reminding industry participants to adhere to established safety and communications protocols to reduce the number of near misses, many of which received significant press coverage.[3]

Meanwhile, the United States Air Traffic Control (ATC) workforce is shrinking; many ATC employees are retiring while the U.S. struggles to train and retain new controllers. As of May 2023, the U.S. ATC was understaffed by roughly 3,000 positions.

Transportation Secretary Pete Buttigieg said there were only 11,500 controllers, whereas the “optimal number is closer to 14,500.”[4] The shortage has placed significant stress on current controllers, causing fatigue and distraction that jeopardizes air safety.

## Whitaker’s Proposed Solutions

The FAA also predicts this staffing shortage will directly impact air travel capacity. For instance, the FAA asked airlines to reduce their summer 2023 operations around New York City, where a key ATC facility was roughly only half-staffed.[5]

In response to these challenges, Whitaker stated that the FAA would explore opening a second training academy for air traffic controllers and work with Congress to change current pilot rules and requirements.

One such potential change would be to increase the mandatory retirement age for pilots from 65 to 67. Another proposal would allow pilots in training to contribute up to 150 hours of training on a flight simulator or training device to the 1,500 required training hours; the current rule allows only 100 hours. Both are part of Whitaker’s effort to reduce the current pilot shortage. Although those proposals passed the House of Representatives in July, the Senate rejected them due to disagreements over pilot training safety concerns.[6]

Of course, the execution of Whitaker’s plans requires funding. In November, the National Airspace System (NAS) Safety Review Team, an independent panel of experts within the aviation industry, provided the FAA with a report finding a direct relationship between congressional gridlock relating to FAA funding and the erosion of the FAA’s ability to maintain safety standards, hire and retain controllers, and modernize industry technology.[7]

While the Senate has passed a full-year budget for the FAA, the House has yet to do so—though neither chamber has committed to a long-term authorization bill. Instead, in November, to avoid another government shutdown, Congress passed a short-term spending package to keep the government—including the FAA—open at Fiscal Year 2023 levels.[8]

## Conclusion

The FAA will be in the same predicament on January 19, 2024, the deadline for the House and Senate to fund the government, including the FAA.[9] Most government and industry players are cheering the long-awaited appointment of a permanent administrator, but the Congressional impasse preventing funding could potentially block his goals now and in the future.

The Association of Transportation Law Professionals originally published a version of this article.

---

[1] Whitaker confirmed as new FAA administrator – AOPA



[2] 'We were very lucky': Near-collisions spark new worries for air travel – POLITICO; Private jet came 'within 100 feet' of colliding with Southwest plane, NTSB says | CNN

[3] *See, e.g.*, Off-duty Alaska Airlines pilot tried to shut off engine mid-flight – POLITICO; Portland plane steers toward path of other airliner. Federal officials are investigating – oregonlive.com

[4] Buttigieg says FAA is about 3,000 air traffic controllers short | CNN

[5] *See id.*

[6] Aviation legislation stalls in U.S. Congress over pilot training rules | Reuters; The 1,500-Hour Rule Has Broken The Pilot Pipeline In The U.S. (forbes.com)

[7] National Airspace System Safety Review Team – Discussion and Recommendations To Address Risk in the National Airspace System

[8] U.S. Senate Passes Bipartisan C.R., Extending FAA Funding Through January 19, 2024 – NATCA

[9] *See id.*