



## Accessible Version

June 25, 2019

The Honorable Mike Lee  
Chairman  
Joint Economic Committee  
United States Congress

The Honorable Mark Green  
House of Representatives

### **U.S. AIRLINES: Information on DOT's Oversight of and Stakeholders' Perspectives on Foreign Ownership**

Federal laws on foreign investment in U.S. airlines date back to the 1920s and establish the limits of allowable foreign ownership and control. Foreign ownership may comprise up to 25 percent of the voting stock of U.S. airlines, and among other control requirements, boards of directors may include up to 33 percent non-U.S. citizens. Periodically, there is renewed interest in increasing the limits of allowable foreign ownership in U.S. airlines. Some stakeholders have asserted that U.S. consumers would benefit from increased foreign ownership. According to these stakeholders, existing U.S. airlines could take advantage of greater access to capital, and new airlines may enter the marketplace, and if they were to do so, there would be resultant benefits to consumers from increased competition and new service offerings. Other stakeholders have raised questions about liberalizing foreign ownership, citing U.S. airlines' employment concerns and national security interests among reasons to keep existing laws in place.<sup>1</sup> The Department of Transportation (DOT) is responsible for overseeing U.S. airlines' compliance with foreign ownership and control laws.

In 1992 and 2003, we reported on, among other things, the potential effects an increase in allowable foreign ownership to 49 percent of voting shares could have on domestic competition, international competition, employment, safety, and national security. Our 1992 report included three matters for Congress to consider if it chose to increase the limits on foreign ownership.<sup>2</sup>

---

<sup>1</sup>"Liberalization" in this report refers to easing airline foreign ownership and control restrictions established by governments.

<sup>2</sup>GAO, *Airline Competition: Impact of Changing Foreign Investment and Control Limits on U.S. Airlines*, [GAO/RCED-93-7](#) (Washington, D.C.: Dec. 9, 1992). Specifically, we recommended that Congress consider (1) limiting eligibility for greater investment and control to investors from countries that are willing to exchange improved access to their aviation markets, (2) limiting eligibility to foreign investors that are not subsidized by foreign governments, and (3) modifying the scope and timing of the DOT's review process to ensure potentially harmful investments are prevented. See also GAO, *Issues Relating to Foreign Investment and Control of U.S. Airlines*, [GAO-04-34R](#) (Washington, D.C.: Oct. 30, 2003).

Given the time since our last report and changes in the aviation industry, you asked us to review U.S. airline foreign ownership and control laws. This report presents information (1) on how DOT oversees U.S. airlines' compliance with foreign ownership and control laws and (2) on selected stakeholders' perspectives regarding how increasing allowable foreign ownership of U.S. airlines to 49 percent of voting shares might affect competition, employment, and national security.

To describe steps DOT has taken to oversee U.S. airlines' compliance with foreign ownership and control laws, we examined relevant federal statutes and reviewed DOT documents, including guidance for airline applicants and orders communicating compliance review decisions. We also interviewed DOT officials about how they oversee foreign ownership and control requirements, how they define ownership and control, and what information they consider when reviewing applications for operating an airline and monitoring of continuing airline compliance.

To describe selected stakeholders' perspectives on how increasing allowable foreign ownership of U.S. airlines to 49 percent of voting shares might affect competition and employment, we interviewed a non-generalizable selection of 20 stakeholders, judgmentally selected based on prior GAO work on airlines' foreign ownership and airline competition and other expertise in parts of the airline industry. These stakeholders included representatives of four U.S. and three foreign airlines, five aviation industry associations—including those representing airports as well as those involved in international aviation—two aviation labor unions, two consumer groups, two travel industry groups, and two investment banks. U.S. airlines were selected to include representatives from major airlines and low-cost airlines to provide perspectives from different types of airlines.<sup>3</sup> Foreign airlines were selected based on aviation-industry news articles on foreign ownership. Several other aviation-industry stakeholders that we contacted declined to discuss this topic with us or did not respond to our request. Those not participating included four foreign airlines, one aviation industry association, one private equity firm, and one aviation labor union. To describe how such an increase might affect national security, we interviewed officials from the Department of Defense's (DOD) Transportation Command and the Office of the Deputy Assistant Secretary of Defense for Logistics.

We conducted this performance audit from September 2018 to June 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## **Results in Brief**

We found that:

- DOT guidance states that it is to examine new airline applicant's ownership structure to ensure that it meets statutory requirements for ownership and control, and is under the actual control of U.S. citizens. DOT officials said that they determine actual control on a case-by-case basis, considering factors such as shareholder influence and business

---

<sup>3</sup>Major airlines include network airlines such as American Airlines, Delta Air Lines and United Airlines, and Southwest Airlines, a low cost airline. We did not select all of the major airlines to interview. Network airlines support large, complex hub-and-spoke operations, which provide service to many destinations. Low-cost airlines generally operate less costly point-to-point service using fewer types of aircraft.

relationships. According to DOT officials, this determination sometimes may involve a review of complex airline documentation to fully understand the layers of ownership and types of investors. DOT officials said they assess continued compliance with ownership and control requirements about every 5 years and when notified of substantial changes, as required by DOT regulations.<sup>4</sup>

- Selected stakeholders generally stated that increasing allowable foreign ownership of U.S. airlines to 49 percent, while retaining actual control by U.S. citizens, would likely result in minimal effects on competition, employment, and national security. In particular, several stakeholders told us that such a change would likely have little effect on levels of foreign investment, and therefore competition. These stakeholders cited several reasons why levels of foreign investment would be unlikely to change, including a perceived lack of U.S. airline interest in seeking additional capital, ready access to domestic capital, and likely limited foreign interest, particularly if a foreign investor cannot exert control over the airline. As of June 2019 only one U.S. airline has foreign investment that approaches the current limit of 25 percent, according to DOT officials. However, assuming that a change in foreign investment did occur, several stakeholders said that airport infrastructure limitations can limit entry of any new airlines or expansion of existing airlines into large airports. Similarly, several stakeholders' stated that increasing allowable foreign ownership, without changes to effective control of the airline, would likely have no effects on airline employment, although representatives from a labor union expressed concern over foreign entities' control of U.S. airlines, with respect to their willingness to negotiate on labor issues. Finally, DOD officials stated that with a foreign ownership change at this level without any change in control, any resulting effects to national security would be manageable.

## Background

### Ownership and Control Laws

U.S. aviation citizenship requirements—ownership and control—are defined in statute. In order to operate as a U.S. airline, an entity must obtain approval from DOT. This approval includes meeting aviation “citizenship” criteria. The requirements were enacted in the Air Commerce Act of 1926 and the Civil Aeronautics Act of 1938, and have largely remained the same since then.<sup>5</sup> A “citizen of the United States” is an individual U.S. citizen, a partnership whose members are U.S. citizens, or a corporation or association organized under U.S. law where at least 75 percent of the total voting interest is owned and controlled by U.S. citizens. The law does not specify any limits on foreign investment in nonvoting stock or limits on the provision of debt financing.<sup>6</sup> The law also specifies that the airline president, as well as at least two-thirds of the

---

<sup>4</sup>14 C.F.R. § 204.5.

<sup>5</sup>We reported in 1992 that the United States has restricted ownership and control of U.S. airlines for four primary reasons, according to industry analysts at the time: (1) protection of the then-fledgling U.S. airline industry, (2) regulation of international air service through bilateral agreements, (3) concern about allowing foreign aircraft access to U.S. airspace, and (4) military reliance on civilian airlines to supplement its airlift capacity. See [GAO/RCED-93-7](#).

<sup>6</sup>Potential foreign entities that invest in U.S. airlines can include foreign airlines (for instance Lufthansa's prior investment in JetBlue, which has now been divested) and non-airline institutional investors (such as Lansdowne Partners'—a UK company—investment in Delta Air Lines), among others.

board of directors of the corporation, must be U.S. citizens, and the airline must be under the actual control of U.S. citizens.<sup>7</sup>

### Liberalization Efforts in the United States and Worldwide

There have been previous legislative and regulatory efforts in the United States to ease restrictions on airlines' foreign ownership and control. These efforts sought to improve U.S. airlines' financial stability by providing access to additional capital or to increase competition by potentially encouraging new entrants to the U.S. aviation market. For example:

- In 1991 and 2003, the Secretary of Transportation proposed increasing the allowable foreign ownership of voting stock from 25 to 49 percent. Congress did not adopt these proposals.
- In 2005, the DOT issued a notice of proposed rulemaking to change how it determines control of U.S. airlines, in certain situations, allowing easier access to foreign capital for U.S. airlines. DOT later withdrew the proposed rule.
- In 2018, legislation was introduced in the House to increase allowable foreign ownership of voting stock from 25 to 49 percent and to decrease the required minimum U.S. citizens on the board of directors from 67 to 51 percent, among other changes.<sup>8</sup> The bill did not progress beyond committee.

According to a 2016 World Economic Forum (WEF) report, most countries have made incremental or no changes to their ownership laws, but a few countries have made significant changes.<sup>9</sup> For example:

- Beginning in the 1990s, the European Commission set up a European Single Aviation Market in which airline ownership and control rules made no distinction in citizenship across member countries. This allowed European airlines to expand their market to provide services anywhere within the European Union (EU) market. The rules, however, limit the level of ownership and control from citizens of non-EU countries. Specifically under the rules, European airlines must be more than 50 percent owned and effectively controlled by EU member countries or their citizens. For instance, any EU-licensed airline can be 100 percent owned and controlled by nationals of any other EU member state. Non-EU countries and citizens are not eligible for majority ownership or effective control of European airlines. The WEF report noted these rule changes helped the emergence of European low-cost airlines, which could serve the EU market without ownership restrictions.
- In Latin American, some countries—including Chile, Costa Rica, and El Salvador—have moved from numerical limits on foreign ownership to requiring airlines to have their principal place of business in the respective country. Chile, for instance, had a policy goal for greater market access by improving connectivity to other countries through more liberal air service rules. According to the WEF report, these changes helped enable cross-border mergers, such as the merger of a Chilean and Brazilian airline.

---

<sup>7</sup>The statute was amended in 2003 to specify airlines must be under the actual control of U.S. citizens.

<sup>8</sup>H.R. 5000, 115<sup>th</sup> Congress. (2018). The bill has not been reintroduced in the 116<sup>th</sup> Congress.

<sup>9</sup>World Economic Forum, *A New Regulatory Model for Foreign Investment in Airlines* (Geneva: January 2016).

- In 2018, the Canadian government increased its foreign ownership limits from 25 percent to 49 percent of voting shares for Canadian airlines. According to representatives of a Canadian airline, this action was to access a larger pool of international investors in an effort to increase competition and lower ticket prices. In order to address ongoing concerns regarding foreign control, this increase included a 25 percent restriction on ownership held by any single foreign investor and a provision that Canadians must continue to control the airline.

### U.S. Aviation Industry

Since we last reported on the potential effect of changing foreign ownership and control laws, the U.S. aviation industry has continued to evolve.

- **Airline profits.** In November 2018, we reported that the U.S. airline industry's financial health has improved greatly in recent years in part as a result of the improved economy, industry consolidation to four major airlines and several low-cost airlines, and changes in business practices such as collection of ancillary fees (e.g. baggage fees, seat selection fees, etc.).<sup>10</sup> In all, these circumstances have contributed to record level profits for airlines. However, as we have previously reported, the demand for air travel is highly cyclical in relation to the state of the economy and other factors; therefore, the financial health of airlines might decline when a potential economic downturn occurs.<sup>11</sup>
- **International cooperation.** In March 2009, we reported that U.S. airlines increasingly cooperated in a variety of ways with foreign airlines to expand international air service, which is governed by bilateral agreements between countries.<sup>12</sup> For instance, American Airlines, Delta Air Lines and United Airlines—three of the largest U.S. airlines offering international service—coordinate with foreign airlines through global alliances. These alliances are agreements between or among two or more airlines that allow airlines to coordinate specified activities, such as marketing, sales, and airport operations (e.g., sharing gates or baggage facilities) with foreign airlines. Further, alliance partners may apply for a grant of antitrust immunity from DOT, which enables partners to coordinate on fares, schedules, and shared-network expansion in ways that might otherwise violate U.S. antitrust laws. American Airlines, Delta Air Lines, and United Airlines have entered into various antitrust immunity agreements with their major alliance partners.<sup>13</sup>

---

<sup>10</sup>GAO, *Airline Consumer Protections: Additional Actions Could Enhance DOT's Compliance and Education Efforts*, [GAO-19-76](#) (Washington, D.C.: Nov. 20, 2018).

<sup>11</sup>GAO, *Commercial Aviation: Airline Industry Contraction Due to Volatile Fuel Prices and Falling Demand Affects Airports, Passengers, and Federal Government Revenues*, [GAO-09-393](#) (Washington, D.C.: Apr. 21, 2009).

<sup>12</sup>GAO, *International Air Alliances: Greater Transparency Needed on DOT's Efforts to Monitor the Effects of Antitrust Immunity*, [GAO-19-237](#) (Washington D.C.: Mar. 20, 2019).

<sup>13</sup>49 U.S.C. §§ 41308, 41309.

## DOT Reviews Detailed Airline Ownership Records and Determines Extent of U.S. Citizens' Ownership and Control to Ensure Compliance with U.S. Laws

DOT guidance states that it is to examine new airline applicant's ownership structure and verify that ownership of the airline adheres to legal requirements and that it is under the actual control of U.S. citizens. Specifically:

- **Ownership.** DOT is required to determine whether foreigners own, individually or in the aggregate, 25 percent or less of the voting stock.<sup>14</sup> DOT guidance for new U.S. airlines states that an applicant must provide DOT with detailed information on its ownership structure.<sup>15</sup> For example, applicants must provide a list of all individuals or organizations that substantially own at least 10 percent of the stock of the applicant—including number and percentage of voting shares, address, and citizenship—and information submitted must account for 100 percent of the ownership.
- **Control.** According to guidance, DOT is to review whether applicants meet control requirements—that the president and two-thirds of the board of directors and other managing officers of the airline are U.S. citizens—and U.S. citizens have actual control of the airline. In practice, according to officials, DOT has interpreted the “actual control” standard to mean determining whether or not foreign interests have the ability to exercise substantial influence over the airline beyond the numerical requirements of the law. According to DOT guidance and officials we interviewed, determining actual control is done on a case-by-case basis and involves examining several factors and the totality of the circumstances presented. Factors that DOT official consider can include company debt and funding sources, a shareholder's influence on business decisions, and other business relationships. DOT officials stated they do not have an exhaustive checklist, and there is no single factor or group of factors determinative of actual control. DOT officials also noted that the factors they examine to determine actual control are similar to those identified in guidance issued by others, such as the governments of Canada and the European Commission. Notably, DOT officials told us that based on their analysis, foreign ownership of an airline's voting stock could be less than 25 percent but could still be found to have actual control. Conversely, foreign ownership—including both voting and non-voting shares—could be nearly 50 percent but have little influence in terms of actual control.

According to DOT officials, determination of ownership and control can involve detailed reviews of complex airline documentation. Airlines may have multiple layers of ownership and types of investors, such as corporations, limited partnerships, and other entities. Therefore, DOT officials explained that it may take two or three layers of review before the nationality of individual owners and decision makers can be determined. The responsiveness of the airline under review to DOT can also contribute to how long it takes to complete the review.

DOT can require applicants to make certain ownership business structure changes in order for the airline to meet the statutory requirements. For example, in 2006, DOT reviewed an

---

<sup>14</sup>DOT guidance states that it may approve up to 49 percent total equity ownership (comprised of both voting and non-voting). According to the guidance, this percentage has generally only been permitted when the foreign investors have been nationals of countries with which the United States has open skies aviation bilateral agreements or when DOT determined that the foreign investments were clearly passive and diffuse, with no suggestion of foreign control.

<sup>15</sup>DOT Air Carrier Fitness Division, *Information Packet on How to Become a Certificated Air Carrier* (Washington, D.C.: September 2012).

application from Virgin America for a certificate to provide U.S. air service but found that Virgin America did not meet ownership and control requirements. DOT initially found that less than 75 percent of the total equity was held by U.S. citizens, and Virgin America was under the control of the Virgin Group, which is under the control of British citizens. Following this finding, Virgin America restructured its ownership, governance, and management in order to meet conditions determined by DOT that would meet statutory requirements. DOT issued Virgin America's certificate about 5 months later in spring 2007.

According to DOT, it will periodically assess an airline's continued fitness for operation, which includes changes in ownership and management, among other things. Officials stated that DOT conducts such assessments about every 5 years, unless it had conducted a recent review due to a substantial change in the airline. U.S. airlines are required to report any substantial change in an airline's ownership, management, or operations to DOT.<sup>16</sup> According to DOT officials, they then review the airline's citizenship status in light of the notified changes.<sup>17</sup> In addition to relying on airlines to self-report ownership changes, DOT officials also said that they also respond to complaints reported by others that an airline may not be in compliance with foreign ownership and control laws.

### **Selected Stakeholders Generally Stated That Increasing Allowable Foreign Ownership of U.S. Airlines to 49 Percent While Retaining U.S. Citizen Control Would Likely Have Minimal Effects**

#### According to Several Stakeholders, Increasing Allowable Foreign Ownership to 49 Percent, While Retaining U.S. Citizen Control Would Likely Have Little Effect on Levels of Foreign Investment and Competition

Several stakeholders stated that levels of foreign investment are unlikely to change if foreign ownership laws were increased to allow up to 49 percent foreign ownership of voting stock, while retaining control by U.S. citizens, for several reasons. Specifically:

- **Lack of U.S. airlines' interest in seeking additional capital.** Airline analysts from two investment banks told us that existing major U.S. airlines are not currently interested in seeking additional sources of capital. Specifically, one airline analyst noted that major U.S. airlines are currently buying back their stocks, a move that reflects profitability and shows they do not need additional capital. The other analyst stated that based on his review of financial records, no publicly traded U.S. airlines appears to need additional capital, even with economic models that forecast a potential downturn in the economy. Both analysts stated the possibility that smaller or new airlines may be interested in accessing additional capital. However, representatives from two low-cost airlines we spoke with stated they do not need and have not needed to raise foreign or external capital for years. The views regarding U.S. airlines seeking additional capital made in

---

<sup>16</sup>14 C.F.R. § 204.5. A "substantial change in operations, ownership or management" is defined, among other things, to include "the acquisition by a new shareholder or the accumulation by an existing shareholder of beneficial control of 10 percent or more of the outstanding voting stock in the corporation". 14 C.F.R. § 204.2(l)(3).

<sup>17</sup>For instance, DOT initiated a review of Delta Air Line's ownership in 2019 (after it reported a substantial change in its ownership), a review of American Airlines ownership in 2017 (as a periodic review), a review of Southwest Airlines in 2011 (during its merger with Air Tran), and a review of United Airlines in 2010 (during its merger with Continental).

today's environment are notably different from those made during our 2003 review, when we reported that there was keen interest in accessing additional sources of funding.<sup>18</sup>

- **Ready access to domestic capital.** To the extent a smaller or new U.S. airline may be interested in pursuing additional capital, representatives from an airline industry group stated that existing airlines would have no problems accessing capital domestically. Representatives from a U.S. low-cost airline stated they believe they would likely be able to raise domestic capital if needed. And further, representatives of a start-up Canadian low-cost airline stated that a key source of capital for their airline was a U.S. private equity firm, and that the change to allow 49 percent foreign ownership in Canada came about, in part, because airlines had less access to capital in Canada. However, several stakeholders—representatives from two investment banks and one airline—stated generally that a smaller or new airline could potentially benefit from increased foreign capital, for instance if the airline had difficulty raising enough capital from domestic investors.
- **Likely limited foreign interest.** Two airline analysts stated there is currently a lack of foreign interest to invest in the U.S. aviation market; a few other stakeholders had differing views on the likely levels of foreign interest if allowable foreign ownership of voting stock were increased to 49 percent.
  - DOT officials and an airline analyst from a major international investment bank stated that generally U.S. airlines currently do not have more than 15 percent foreign ownership.<sup>19</sup> Accordingly, they said that foreign parties at this time have chosen not to invest in U.S. airlines even at the currently allowable maximum level of 25 percent of voting stock.
  - An airline analyst explained that because large foreign airlines are already in global alliances with major U.S. airlines, which allow them to coordinate route networks and operations, they may not need to invest in U.S. airlines to derive those same benefits. Another airline analyst added that foreign airlines in these alliances would be unlikely to invest in other smaller U.S. airlines as well, as it may undercut their existing agreements with their partner airlines.
  - An airline analyst stated that there is generally a lack of interest to invest in any new entrants to the U.S. aviation market because entry barriers—such as limited access for takeoff and landing at major airports—lower any expected return on investments and, subsequently, the desire to invest in these airlines.<sup>20</sup>
  - Representatives of a consumer group and a travel industry group we spoke to stated that there could be some interest in the U.S. market if the airline ownership laws were changed to allow for 49 percent foreign ownership of voting stock. The representative from the travel industry group stated the

---

<sup>18</sup>[GAO-04-34R](#).

<sup>19</sup>According to DOT officials, the one exception is Polar Air Cargo, which is a freight subsidiary of Atlas Air Worldwide Holdings—a U.S. company with no current substantial foreign ownership. Polar is 51 percent owned by Atlas and 49 percent owned—with 25 percent voting interest—by DHL Express, a subsidiary of Deutsche Post (Germany).

<sup>20</sup>The analyst further stated that inaccessibility to some airports' infrastructure is a more limiting factor for potential new entrant airlines than any problem with accessing necessary capital.

higher threshold may make U.S. airlines more attractive for foreign investors, particularly those foreign airlines that are not currently in a global alliance.

- Representatives from two aviation industry associations stated that there could be more foreign interest in U.S. airlines if the foreign entity is allowed to take actual control of the U.S. airline. Retaining control of U.S. airlines among U.S. citizens limits the benefits a foreign entity could otherwise have under foreign control, therefore limiting foreign interest.

Several stakeholders stated that levels of competition are unlikely to change for the following reasons:

- As discussed above, several stakeholders generally agreed that increasing allowable foreign ownership would likely result in little change in the level of foreign investment. If only minimal changes in such investments occurred, there would likely be no related structural changes that might affect the state of competition among U.S. airlines.
- Moreover, even if increasing allowable foreign ownership to 49 percent of the voting stock did result in more substantial foreign investment, a few stakeholders stated it seems unlikely there would be much effect on competition. They stated that new airlines are less likely to be launched today—even if they had access to foreign capital—because they may not be able to gain access to existing major airports. Representatives of a U.S. airline similarly described restrictions on takeoff and landing at three major U.S. airports they serve and limited access to gates at other major airports as significant barriers to new entrants.
- Representatives of a U.S. multinational cargo airline stated that increasing allowable foreign ownership would have a beneficial effect on competition for cargo services; however, there would need to be reciprocal changes made by other countries. They explained that a change in U.S. law could motivate other countries to change their airline foreign ownership laws, a step that could allow the cargo airline to buy foreign airlines and enhance cargo services for consumers.

#### Several Stakeholders Stated That Increasing Allowable Foreign Ownership to 49 Percent, While Retaining U.S. Citizen Control, Would Likely Have No Effect on Airline Employment

We previously reported that there are differing views on how changes in U.S. airline foreign ownership laws could affect U.S. airlines' employment; however, for our current audit several stakeholders stated such differing views would only result from a larger change allowing majority ownership and actual control.<sup>21</sup> Two airline analysts we spoke with stated that increasing allowable foreign ownership up to 49 percent would likely have no effect on employment. Representatives from a labor union we spoke with said they could not comment on any potential effects associated with such a change in foreign ownership levels. However, as summarized below, several stakeholders' views diverge when considering the potential effect on employment if foreign entities were allowed to take majority ownership—that is, greater than 49 percent—and actual control of a U.S. airline.

- If the level of foreign ownership were allowed to be over 50 percent, representatives of a cargo airline stated that it is possible that new entry and expansion of existing airlines could benefit the U.S. labor force by creating new jobs.

---

<sup>21</sup>[GAO-04-34R](#).

- However, according to an airline analyst and two aviation labor unions, increasing foreign ownership could have a negative effect on employment if the foreign entity takes more than 50 percent of ownership and actual control of the U.S. airline. The airline analyst stated that if foreign ownership is allowed to be over 50 percent, it is possible that the airline might consider moving jobs overseas to countries with lower labor costs. Representatives from a labor union suggested that foreign-controlled companies may not come to the negotiating table with U.S. labor unions. The union representatives cited an example of a European low-cost airline that planned to operate transatlantic flights to U.S. destinations that contracted with a separate management company to hire the aviation workforce and did not consider these airline employees subject to certain requirements. While that example did not involve ownership or control of a U.S. airline, it provides insight into labor groups' concerns about foreign entities' potential actions, assuming foreign control over management and operational decisions for U.S. airlines.

DOD Has Previously Voiced Concerns about Increasing Foreign Ownership, but Officials Said the Potential Effects to National Security Are Likely Manageable

DOD has traditionally been concerned that increasing foreign ownership in U.S. airlines may decrease its access to civilian aircraft if needed to provide support during national emergencies.<sup>22</sup> Under DOD's Civil Reserve Air Fleet (CRAF) program, U.S. airlines may choose to contractually commit aircraft and crew for DOD's use if needed during wartime or national emergencies.<sup>23</sup> DOD performs background checks on any airline participating in CRAF because the program requires key airline representatives to be vetted with security clearances. According to DOD officials, potential effects to the CRAF program would be their only national security concern related to a change in U.S. airline foreign ownership and control laws.

DOD officials said that if there were an increase in allowable foreign ownership—from 25 to 49 percent—it would probably be manageable from a national security perspective, as long as that 49 percent voting interest does not yield control. Specifically, any increase should not adversely affect U.S. airlines' willingness to participate in the CRAF program or fulfill their obligations under CRAF agreements. DOD officials also stated that U.S. airlines with some foreign ownership have not shown a reluctance to participate in the CRAF program, and CRAF participants currently provide more aircraft than currently needed, though defense-planning needs change every year.

However, according to DOD officials, it is always possible that some foreign owners could seek to influence airline and aircraft participation in the CRAF program. For example, officials explained that if a foreign owner did not agree with a policy decision that caused DOD to activate CRAF, the investor may seek to remove aircraft from the CRAF inventory in a wartime conflict. Officials noted that under CRAF agreements, DOD does not have the right to seize contractually committed aircraft.

We provided a draft of this report to DOT and DOD for comments. DOT provided technical comments, which we incorporated as appropriate. DOD did not have any comments on this report.

---

<sup>22</sup>Airlines are one of several industries—such as maritime shipping and communications licensing for radio—on which the U.S. law restricts foreign ownership to protect national security concerns.

<sup>23</sup>10 U.S.C. §§ 9511 – 9517.

---

We are sending copies of this report to the Secretary of Transportation and the Secretary of Defense. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-2834 or [vonaha@gao.gov](mailto:vonaha@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are Heather MacLeod (Assistant Director); Brian Chung (Analyst in Charge); Amy Abramowitz; Dave Hooper; Delwen Jones; Dan Luo; Todd Scharfung; and Sandra Sokol.

A handwritten signature in black ink, appearing to read 'Andrew Von Ah', with a stylized, cursive script.

Andrew Von Ah  
Director  
Physical Infrastructure

(103018)