



February 2021

GENERAL AVIATION

Stakeholders Expressed Mixed Views of FAA Policies on Private Pilot Expense Sharing

Accessible Version



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GAO@100 Highlights

Highlights of [GAO-21-285](#), a report to congressional committees

Why GAO Did This Study

Private flying is expensive, and FAA allows private pilots to reduce their costs by carrying passengers and sharing certain flight expenses with them. However, private pilots cannot engage in common carriage. If pilots do engage in common carriage, they are subject to FAA's more stringent regulations covering commercial air carriers. Some private pilots have sought to use internet applications to find expense-sharing passengers.

The FAA Reauthorization Act of 2018 directed FAA to issue advisory guidance clarifying how private pilots may share expenses. In February 2020, FAA released this guidance as an advisory circular. The Act also includes a provision for GAO to review FAA's policies on expense sharing. This report describes: (1) FAA's rationale for its policies on how private pilots may find expense-sharing passengers and (2) selected stakeholder perspectives on FAA's policies and the risks and benefits of arranging these expense-sharing flights online.

GAO interviewed FAA officials on how FAA developed its policies and guidance related to expense sharing. GAO also reviewed FAA's data on enforcement actions related to expense sharing and safety data from NTSB. In addition, GAO interviewed a non-generalizable sample of 15 private-sector stakeholders, including professional organizations, such as trade groups representing general aviation pilots, companies that developed expense-sharing internet applications, and flying clubs.

View [GAO-21-285](#). For more information, contact Heather Krause at (202) 512-2834 or krauseh@gao.gov.

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Stakeholders Expressed Mixed Views of FAA Policies on Private Pilot Expense Sharing

What GAO Found

The Federal Aviation Administration's (FAA) primary rationale for its policies on private pilots' sharing expenses with passengers is based on passenger expectations of safety. FAA policies allow private pilots to share the cost of certain flight expenses with passengers but prohibit these pilots from engaging in "common carriage," which is communicating to the public a willingness to fly in exchange for compensation. These policies generally prohibit pilots from using the internet to find passengers. FAA officials said these policies are in place because they are concerned the public might expect a similar level of safety on private expense-sharing flights as commercial flights. However, the safety record of commercial aviation is better than that of private flying (general aviation). For example, according to data from the National Transportation Safety Board (NTSB), commercial carriers had a fatal accident rate around 30 times lower than general aviation in 2018. FAA officials said their goal for FAA's 2020 guidance on expense sharing was to restate and clarify existing policies.

Example of an Aircraft Private Pilots Could Use for Expense-Sharing Flights



Source: GAO. | GAO-21-285

Stakeholders described benefits of expense sharing but expressed mixed views on FAA's policies and guidance. For example, stakeholders cited potential economic benefits to the general aviation sector and a potential expansion of the pool of future professional pilots as benefits of expense sharing. Most (eight of 13) stakeholders said FAA's 2020 guidance on expense-sharing is clear and provides sufficient information. However, some stakeholders said the guidance could provide more definitive examples of allowed expense-sharing flights, and others disagreed with how FAA defined certain concepts such as how pilots can be compensated for flying passengers. Also, stakeholders split on whether FAA should allow pilots to use the internet to find expense-sharing passengers. Seven of 15 stakeholders, including four representatives from companies with expense-sharing applications, said FAA should allow pilots to use the internet to find these passengers by citing, for example, ongoing positive experiences in Europe. However, eight stakeholders, including six of seven professional organizations, said FAA should not. These stakeholders cited safety-related risks of expense sharing including what they characterized as FAA's limited capacity to enforce current regulations and flights using less experienced pilots.

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Abbreviations

DOT	Department of Transportation
EASA	European Aviation Safety Agency
FAA	Federal Aviation Administration
general aviation	private flying
NTSB	National Transportation Safety Board

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February 18, 2021

The Honorable Maria Cantwell
Chairman
The Honorable Roger F. Wicker
Ranking Member
Committee on Commerce, Science and Transportation
United States Senate

The Honorable Peter A. DeFazio
Chairman
The Honorable Sam Graves
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

Private flying (general aviation) is expensive—costing upwards of \$200 per hour. In some circumstances, the Federal Aviation Administration (FAA) allows private pilots to reduce their costs by sharing certain flight expenses with their passengers.¹ Private pilots have long conducted these expense-sharing flights, for example by splitting aircraft rental and fuel costs with friends to fly to an airshow. FAA allows this practice, but only as long as the pilots do not engage in “common carriage”—that is, communicate to the public their willingness to provide transportation in exchange for compensation to anyone who wants it.² When pilots engage in common carriage, they are generally subject to the more stringent regulations covering commercial air carriers (air carriers).

More recently, some pilots and companies have expressed an interest in using internet applications to find potential passengers for expense-sharing flights. In response, in 2014 FAA issued legal interpretations

¹ In its 2020 advisory circular on expense sharing, FAA stated that for the purposes of expense sharing, it considers “private pilots” to include both pilots with private pilot certificates as well as pilots with commercial or air transport pilot certificates who must abide by expense-sharing regulations when they are exercising the privileges of a private pilot. See FAA, AC-61-142, Sharing Aircraft Operating Expenses in Accordance with 14 CFR § 61.113(c), (Washington, D.C.: Feb. 25, 2020).

² FAA defines common carriage as holding out a willingness to transport persons or property from place to place for compensation or hire. See later in this report and FAA, AC-120-12A, Private Carriage Versus Common Carriage of Persons or Property, (Washington, D.C.: Apr. 24, 1986).

stating that the agency considered using these platforms to be engaging in common carriage.³ One company that had been operating an expense-sharing platform, Flytenow, then filed a lawsuit against the FAA; however, the U.S. Court of Appeals for the District of Columbia Circuit denied Flytenow's petition to overturn FAA's interpretation of common carriage in December 2015.⁴ The U.S. Supreme Court declined to hear the case.⁵

Section 515 of the FAA Reauthorization Act of 2018 provides for FAA to issue advisory guidance that describes how private pilots may share flight expenses with passengers and includes a provision for GAO to analyze FAA policies on the subject including the rationale for FAA's policies, the safety and other concerns related to pilots sharing expenses with passengers, and benefits related to pilots sharing expenses with passengers. FAA released its advisory circular covering allowed expense-sharing operations in February 2020.⁶

This report describes:

- FAA's rationale for its policies on how private pilots may find expense-sharing passengers, and
- Selected stakeholder perspectives on FAA's expense-sharing policies and the benefits and risks of arranging these flights online.

To describe FAA's rationale for its policies on how private pilots may find expense-sharing passengers, we reviewed statutes, FAA regulations, advisory circulars, and legal interpretations. In addition, we interviewed FAA officials regarding how FAA developed its current policies and guidance related to expense sharing, as well as how FAA has been enforcing regulations related to expense sharing. To describe the fatal accident rates of general aviation and air carrier flights, we reviewed publically available data from the National Transportation Safety Board

³ Legal Interpretation from Mark W. Bury to Rebecca B. MacPherson (Aug. 13, 2014); Legal Interpretation from Mark W. Bury to Gregory S. Winton (Aug. 14, 2014).

⁴ *Flytenow v. Federal Aviation Administration*, 808 F.3d 882 (D.C. Cir., 2015) (reh'g en banc denied).

⁵ *Flytenow v. Federal Aviation Administration*, 137 S. Ct. 618 (2017) (cert denied).

⁶ The FAA Reauthorization Act of 2018 provides for FAA to issue advisory guidance on expense sharing within 90 days of the October 5, 2018, signing of the Act. FAA published this advisory circular on February 25, 2020. FAA officials said that the delay was due to needing significant changes to the advisory circular after the initial version.

(NTSB) on aviation fatalities, accidents and rates from calendar years 2013 through 2018, the most recent year for which final data were available. To describe the fatal accident rates of general aviation, we used NTSB's data on the total number of general aviation accidents and the total number of hours flown by general aviation operators. To describe the total fatal accident rate for commercial aviation, we combined NTSB's data on accidents and hours flown by scheduled and nonscheduled airlines operating under 14 C.F.R. part 121 (i.e., airlines); commuter air carriers operating under 14 C.F.R. part 135 (i.e., commuter airlines); and on-demand air carriers operating under 14 C.F.R. part 135 (i.e., air taxi and other on-demand operators). We reviewed available information on NTSB's aviation accident data and determined that the data were reliable for the purposes of showing trends in aviation accident rates.

To describe selected stakeholder perspectives on FAA's expense-sharing policies and the benefits and risks of arranging these flights online, we interviewed a non-generalizable sample of 15 private-sector stakeholders whom we identified and initially interviewed during prior work on this subject, conducted in 2019. In those interviews, we obtained their views on FAA's policies on expense sharing, including the risks and benefits of expense sharing in general and of arranging these flights online. For this report, we contacted these stakeholders again to confirm their prior statements as well as to obtain additional information on more recent developments related to expense sharing, including FAA's 2020 advisory circular covering allowed expense-sharing operations. These stakeholders included professional organizations such as trade groups representing general aviation pilots and aircraft manufacturers, companies that developed expense-sharing internet applications, and flying clubs. We identified the key themes from these interviews by conducting a content analysis of the interview responses. To conduct this analysis we organized the responses by topic area, and then one GAO analyst reviewed all of the interview responses and identified recurring themes. Using the identified themes, the analyst then developed categories for coding the interview responses and independently coded the responses for each question. To ensure accuracy, a second GAO analyst reviewed the first analyst's coding of the interview responses, and then the two analysts reconciled any discrepancies.

In addition, because the European Aviation Safety Agency (EASA) allows internet-based expense sharing and some stakeholders pointed to EASA's regulations as a potential model for FAA, we interviewed officials from EASA and the civil aviation authorities of three countries—France, the Netherlands, and the United Kingdom—that follow EASA's

regulations. In these interviews we obtained their views on the following: (1) the European market for expense-sharing flights, including how internet platforms have operated and the safety record of these flights; (2) how the civil aviation authorities have enforced expense-sharing regulations; (3) the benefits and risks of internet-based expense sharing; and (4) how the civil aviation authorities have used data collected from expense-sharing internet platforms. We also interviewed officials from one company that operates an expense-sharing internet platform to obtain their views on how expense-sharing platforms work in Europe, the number and types of flights that have operated using this platform, the platform's relationship with EASA and national civil aviation authorities, and the safety record of flights that have operated using the platform.

To identify the number and describe the type of enforcement actions FAA has taken against pilots for violations of expense-sharing regulations, we reviewed data from FAA's Enforcement Information System—FAA's enforcement database. We reviewed FAA enforcement actions related to expense sharing that FAA closed between the beginning of fiscal year 2014 and June 24, 2020. We sorted these data to identify only records related to FAA enforcement actions against individual pilots for violating FAA's regulations covering what expenses private pilots may share with their passengers. We assessed the reliability of this data by reviewing documentation and interviewing FAA officials and concluded that the data were reliable for the purposes of identifying the number and type of enforcement actions FAA took during this period.

We conducted this performance audit from April 2020 to February 2021 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.

Background

Private pilots have long used expense-sharing flights to defray some of the high costs of owning and operating private aircraft. Examples of these expense-sharing flights include splitting aircraft rental costs with friends or family to fly to a wedding or with a fellow member of a flying club to fly to an airshow. FAA allows private pilots to share certain flight expenses with

passengers so long as the pilots meet a number of requirements including:

- The pilot and passengers share only expenditures related to fuel, oil, airport fees, and aircraft rental costs;
- The pilot pays a *pro rata* share of these costs, which FAA defines as a proportionate share;
- The pilot and passengers both have a reason for making the trip (i.e., the pilot is not just providing transportation to the passengers), which FAA refers to as a “common purpose”; and
- The pilot’s actions do not constitute “common carriage,” described below.

FAA Example of a Common Purpose

“A pilot plans to fly his plane to a wedding on Long Island. He is transporting passengers whose destination is also Long Island, but they are heading to a basketball game. As the pilot dictated the destination and both the passengers and the pilot have personal business on Long Island, a common purpose exists in these circumstances.”

Source: FAA Advisory Circular AC-61-142. | GAO-21-285

According to an FAA advisory circular, pilots engage in “common carriage” when they communicate to the public that they are willing to provide a transportation service, within the limits of their facilities, to any person who wants it.⁷ In this circular, FAA described four questions that it asks to determine whether a pilot’s actions meet the definition of common carriage:

1. Did the pilot provide transportation?
2. Was that transportation from one place to another?
3. Did the pilot receive compensation?
4. Did the pilot “hold out” a willingness to provide this transportation?

If the answer to all four of those questions is “yes,” then FAA determines that the pilot is engaging in common carriage and would be required to obtain an air carrier certificate and operate according to the air carrier

⁷ FAA, AC-120-12A, *Private Carriage versus Common Carriage of persons or property* (1986).

operating requirements.⁸ Under FAA's current policies, all expense-sharing flights meet the first three elements of common carriage. Expense-sharing flights, by definition, involve people traveling from place to place. In addition, FAA defines compensation—the third element of common carriage—as the receipt of anything of value in exchange for providing transportation, including the reimbursement pilots receive for shared expenses. Therefore, FAA's primary determinant of whether an expense-sharing operation constitutes common carriage is whether the pilot is performing the last of the four elements, "holding out."

FAA's advisory circulars state that FAA does not have a specific rule or criteria to define holding out; FAA instead assesses whether an operation is holding out on a case-by-case basis. According to FAA's 2020 advisory circular on expense sharing, pilots hold out when they communicate to the public that a transportation service is available to anyone who desires it. Holding out can include advertising in print or on social media, or by using an internet application. See figure 1 for additional examples of methods FAA allows and does not allow pilots to use to find expense-sharing passengers.

⁸ FAA requires common carriers to obtain an air carrier operating certificate under 14 C.F.R. § 119. When FAA issues a certificate, it will also issue a set of Operations Specifications that state the specific types of operations the air carrier is allowed to conduct. These air carriers must then operate their aircraft in accordance with these Operations Specifications and operating regulations contained within 14 C.F.R. § 121 or 14 C.F.R. § 135.

Figure 1: Examples of Methods the Federal Aviation Administration (FAA) Allows and Does Not Allow Private Pilots to Use to Find Expense-Sharing Passengers



Source: GAO representation of information from FAA Advisory Circular AC-61-142. | GAO-21-285

Note: FAA generally allows pilots to share certain flight expenses with passengers so long as they do not hold out—that is, communicate to the public that a transportation service is available to anyone who desires it.

FAA’s regulations state that pilots are allowed to share expenses so long as they pay a pro rata share and also define which expenses pilots are allowed to share.⁹ Civil Air Regulations adopted in 1945 permitted the sharing of expenses when a flight is made solely for the personal transportation of the pilot. These regulations have been amended several times, most recently in 1997 when FAA added a list of specific expenses pilots are allowed to share. FAA defines the remainder of the legal concepts related to expense sharing, including common carriage and holding out, in advisory circulars and legal interpretations that it has published over many years. Most recently, in February 2020—in response to the FAA Reauthorization Act of 2018—FAA issued an advisory circular describing current FAA regulations regarding expense sharing and providing examples of how pilots may communicate with potential passengers without holding out. The 2018 act required FAA to issue advisory guidance that describes how a pilot may share flight expenses with passengers in a manner consistent with federal law.

FAA’s requirements for air carriers are more stringent and generally require more resources to fulfill than those that apply to private operators who do not hold out to the public. For example, even though FAA’s regulations vary in scope depending on the size of the aircraft to be used,

⁹ 14 C.F.R. § 61.113(c).

the number of pilots employed, and the type of operation, FAA generally requires air carriers to perform more frequent maintenance inspections, have exclusive use of at least one aircraft to be used, hold a particular type of accident liability insurance, conduct drug and alcohol testing of certain employees, and comply with flight and duty time limitations for flight crewmembers. In addition, FAA's rules for air carriers require each pilot to undergo a flight evaluation to ensure that the pilot possesses the required knowledge, skills, and experience to operate under the air carrier regulations. FAA also requires anyone applying for an air carrier certificate to submit for approval a document listing the qualifications and relevant experience of the people who will hold certain management positions overseeing the air carrier's operations.

If FAA finds that a pilot has violated FAA's expense-sharing regulations, it can take actions against the pilot in accordance with its current enforcement policies. Under these policies, FAA can take steps including:

- compliance actions, e.g., counseling the pilot about the violation to ensure that the pilot understands the requirements and that the pilot agrees to avoid such violations in the future;
- administrative actions, e.g., a warning notice or letter of correction; or
- civil legal enforcement actions, e.g., a civil penalty or suspending or revoking a pilot's certificate.

According to FAA's orders covering surveillance and enforcement activities, the range of enforcement approaches is based on factors such as the number of instances and the pilot's intent. These orders state that if FAA determines that the violation was not intentional and the pilot is willing and able to comply with the regulations in the future, it will typically use a compliance action. However, if FAA determines that a pilot has deliberately violated regulations or has violated regulations multiple times, FAA may pursue administrative or legal enforcement action against the pilot.¹⁰

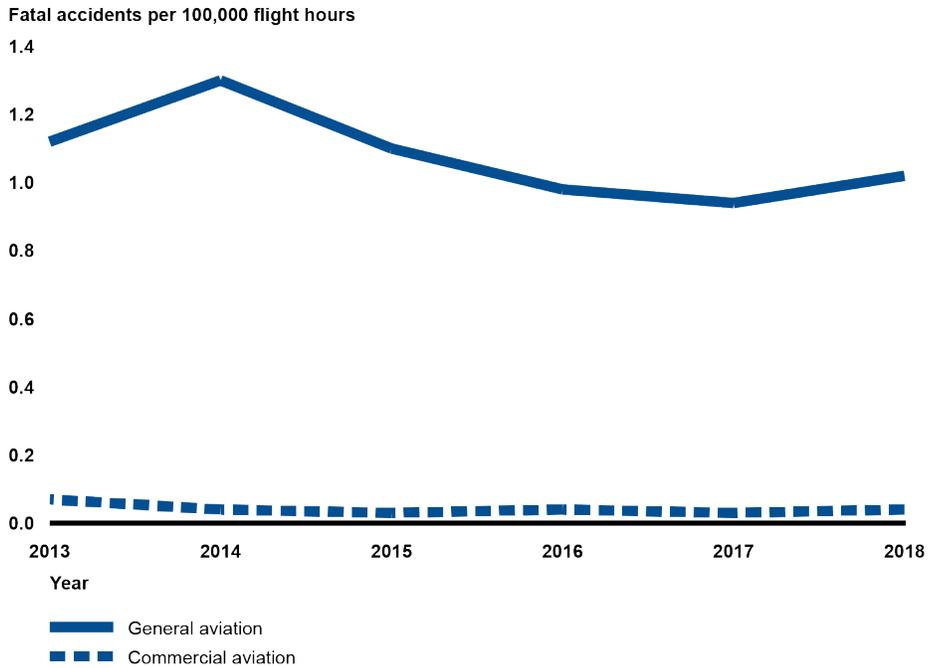
¹⁰ In 2015, FAA introduced a change to its enforcement policy known as the Compliance Program wherein FAA promoted the use of compliance actions as opposed to punitive enforcement actions to address violations of safety standards, and since that time FAA has made increasing use of compliance actions. For more information on the Compliance Program see GAO, *Aviation Safety: Actions Needed to Evaluate Changes to FAA's Enforcement Policy on Safety Standards*, [GAO-20-642](#) (Washington, D.C.: Aug. 18, 2020).

FAA's Rationale for Its Policies on Expense Sharing Is Based on its Current Safety-Based Regulatory Framework

FAA officials said that their primary rationale when developing their policies on expense sharing was safety. According to FAA, the public expects a higher level of safety when they have provided money or other compensation in exchange for transportation, and therefore, FAA regulates air carriers to higher levels of safety than general aviation. FAA officials told us that members of the public who participate in internet-based expense-sharing flights may expect the pilots who operate these flights to meet the same safety standards as air carriers. Data we reviewed from the National Transportation Safety Board showed that while general aviation safety has improved over the past 10 years, it continues to have a significantly higher fatal accident rate than commercial aviation. For example, in 2018 general aviation flights had a fatal accident rate of about 1.02 fatal accidents per 100,000 flight hours, compared with 0.03 for commercial aviation, (see fig. 2).¹¹

¹¹ The most recent year for which final data were available was 2018. In this instance, we define commercial aviation as all flights conducted under 14 C.F.R. Parts 121 or 135.

Figure 2: National Transportation Safety Board Reported Fatal Accidents per 100,000 Flight Hours, 2013 through 2018



Source: GAO representation of National Transportation Safety Board data. | GAO-21-285

FAA officials told us that private pilots flying in general aviation environments cannot meet the higher levels of safety required of air carriers, so FAA has set policies that generally limit pilots to seeking expense sharing passengers from among the group of people with whom the pilot has a pre-existing relationship. The officials said it would not be reasonable for FAA to require general aviation to meet the same safety standards as commercial aviation because of the time, expense, and expertise involved. For example, they said that air carrier regulations require a significantly higher level of aircraft maintenance than general aviation and that providing that level of maintenance would be prohibitively expensive to most general aviation pilots.

FAA officials told us that when developing the 2020 advisory circular on expense sharing, FAA intended to continue its safety-based approach while restating and clarifying its existing policies, which had previously been spread throughout regulations, advisory circulars, and legal interpretations. FAA officials said that the lack of a single source for information on FAA's expense-sharing policies had made it difficult for pilots to develop a comprehensive understanding of the ways pilots are

allowed to share expenses with passengers. They said that the 2020 advisory circular clarifies the forms of communication that pilots can use to seek expense-sharing passengers without holding out and added that pilots should seek these passengers from among defined and limited groups of people with whom the pilot has an ongoing, pre-existing relationship. As such, the circular clarifies FAA's position that it does not generally allow for the use of internet-based means, such as applications, to identify passengers with whom to share flight expenses.¹² In addition, FAA officials said the circular provides additional explanation of some of the concepts FAA uses to decide whether an operation is allowed, and examples of common situations pilots may face when conducting expense-sharing flights. For example, it provides additional explanation of the "common purpose" test that FAA uses to determine whether a passenger and pilot each had a bona fide reason for making a trip, and clarifies how pilots may use airport bulletin boards to find expense-sharing passengers without holding out.

FAA officials said that they did not consider pursuing a formal rulemaking on expense sharing for two reasons: first, because the language in the FAA Reauthorization Act of 2018 only required them to produce advisory guidance and, second, because they determined the content of the circular did not represent a change in FAA policy and therefore did not require a formal rulemaking. FAA officials said that even though advisory circulars are not required to undergo notice and comment, as with a formal rulemaking, it is FAA's general practice to solicit comments from stakeholders and the public prior to publishing them. However, in this instance FAA officials said that they determined soliciting comments was not required because the new circular only restated existing FAA guidance and did not meet the Department of Transportation's (DOT) standards for soliciting comments as it was not significant or important to DOT's interests.¹³ Two stakeholders we spoke with said that they had

¹² Specifically, the circular states that FAA would likely consider pilots using internet applications, websites, or open social media groups designed to attract broad segments of the public to be holding out. However, the circular also states that FAA would likely not consider pilots using small, closed social media groups with a defined and limited audience, such as a group for an enthusiasts club, to be holding out. See AC-61-142.

¹³ DOT generally requires its administrations to follow an informal notice-and-comment procedure for guidance documents that are "significant" or important to DOT's interests. This procedure for guidance involves publishing a notice in the *Federal Register* inviting public comments, accepting comments for at least 30 days, and publishing responses to major concerns raised by commenters. However, DOT does not require this procedure for guidance if officials determine the guidance is not significant or is not otherwise important to DOT's interests. See 49 C.F.R. § 5.41.

reached out to FAA to provide feedback on this issue either before publication or informally directly to FAA officials since publication, and FAA officials said that they were aware of the opinions of certain interest groups through articles published in the industry press. We discuss the nature of stakeholder comments on the advisory circular in the next section.

Selected Stakeholders Expressed Mixed Views on FAA's Expense Sharing Policies Including FAA's 2020 Guidance and Internet Communications

Most Stakeholders Cited Benefits of Expense Sharing and Said That FAA's Advisory Circular is Clear and Useful, but Some Disagreed with Certain Aspects of the Circular

Benefits of Expense Sharing

Stakeholders we interviewed stated that the ability to share flight expenses benefits pilots and the general aviation industry. Specifically, twelve of 15 stakeholders said that expense sharing allows pilots to fly more; nine said that it allows pilots to reduce the significant costs of owning and operating an aircraft; and seven said that the increased flying opportunities could help attract more people to the general aviation industry. These stakeholders said that additional opportunities to fly can help pilots gain experience and obtain the more advanced certificates and ratings needed to qualify for jobs in both commercial and general aviation, and expense sharing could help expand the pool of those who will form the next generation of professional pilots. In 2018, we reported that high costs were one of the major challenges facing pilot training programs in recruiting and retaining students.¹⁴ In addition, four stakeholders said that by allowing pilots to fly more often, expense sharing could enable more proficient and safe general aviation pilots.

Six of 15 stakeholders said that expense sharing may provide positive economic benefits for the general aviation industry. For example, these stakeholders said that general aviation activity has been in decline in recent decades because of high costs, among other factors, and that allowing pilots to share these costs with passengers could provide an incentive for pilots to fly more and use additional general aviation services such as fuel and maintenance. One stakeholder said that expense sharing could also provide improved accessibility to smaller and rural communities that have limited access to major airports. In FAA's most recent 2020-2040 aerospace forecast, FAA projected that both the number of fixed-wing piston engine aircraft—the type of aircraft most commonly used by private pilots for expense sharing and the largest component of the general aviation fleet—and the usage of those aircraft would decline by 2040 due to, among other things, an aging general aviation pilot population and the rising cost of private aircraft ownership.¹⁵ In addition, FAA forecasted that the number of active general aviation pilots would also decrease between 2019 and 2040.¹⁶

¹⁴ See GAO, *Collegiate Aviation Schools: Stakeholders' Views on Challenges for Initial Pilot Training Programs*, [GAO-18-403](#) (Washington, D.C.: May 15, 2018).

¹⁵ See FAA, *FAA Aerospace Forecast Fiscal Years 2020-2040*, TC20-0011, (Washington, D.C.: July 23, 2020).

¹⁶ At this time, it is unclear what impact COVID-19 will have on general aviation.

Stakeholder Perspective on Expense Sharing

“Flying is expensive, and any time pilots can defer the cost to help them fly more, this will help with proficiency and safety. Pilots will be more proficient if they can fly twice as much because they have to pay less.”

Source: GAO Interviews with Selected Expense Sharing Stakeholders. | GAO-21-285

Stakeholder Perspective on FAA’s Expense-Sharing Advisory Circular

Most stakeholders we interviewed said that FAA’s advisory circular on expense sharing operations is clear and useful. Specifically, eight of the 13 stakeholders with whom we discussed the advisory circular, including representatives from five of the seven professional organizations, said that FAA’s advisory circular covering expense-sharing operations provides sufficient and clear information for pilots to make decisions about whether their operations are or are not allowable.¹⁷ In addition, ten of the 13 stakeholders said that the examples within the advisory circular were clear and helpful to pilots.

Stakeholder Perspective on Expense Sharing

“While I disagree with FAA’s general approach to flight expense sharing, I think the examples contained within the circular are consistent with FAA’s existing policies and easy for pilots to understand.”

Source: GAO Interviews with Selected Expense Sharing Stakeholders. | GAO-21-285

However, some stakeholders we interviewed disagreed with certain aspects of the advisory circular, specifically the advisory circular’s treatment of:

- **Compensation.** Seven of the 15 stakeholders, including all four representatives from expense sharing companies, disagreed with the FAA guidance’s characterization of expense sharing as compensation.¹⁸ In particular, one stakeholder said that the circular’s definition of compensation is inconsistent with FAA’s application process to be an air carrier because the process to become an air carrier requires applicants to demonstrate a viable commercial operation. This stakeholder said expense-sharing

¹⁷ We did not include two stakeholder responses to this topic because we spoke with those stakeholders before FAA published the advisory circular.

¹⁸As previously discussed, FAA defines compensation—one of four elements of common carriage—as the receipt of anything of value in exchange for providing transportation, including the reimbursement pilots receive for shared expenses.

pilots would not meet this standard because they would only receive pro rata reimbursement as opposed to profit-seeking compensation.¹⁹ Another stakeholder explained that FAA has not always been consistent in whether it considered expense sharing to be compensation. This stakeholder said that in the preambles to rulemakings issued in 1950, 1964, and 1997 FAA did not consider expense sharing compensation.²⁰ For example, in the preamble to the 1964 rule FAA stated that “the fact that one or more passengers contribute to the actual operating expenses of a flight is not considered the carriage of persons for compensation or hire.”²¹

FAA officials acknowledged that some statements in past rulemakings may have been inconsistent or confusing but said that FAA has always considered expense sharing to be compensation for the purposes of deciding whether a pilot’s operations constitute common carriage, including in legal interpretations FAA issued in the 1970s and 1980s.²² The officials said that the regulations allowing expense sharing in certain circumstances describe the practice as an authorized exception to FAA’s general prohibition on private pilots receiving compensation. Additionally, FAA pointed to Flytenow’s lawsuit against FAA, in which the court stated that “[t]he text and structure of the regulation make clear that allowable expense sharing is still compensation, albeit an authorized subcategory.”²³

¹⁹ Applicants for an interstate air carrier operating certificate must obtain two sets of authorizations: a safety authorization from FAA under 14 C.F.R. Part 119, and an economic authority from the Office of the Secretary of Transportation under 49 U.S.C. § 41102. To provide this economic authorization for air carrier service, DOT requires that the applicant is “fit, willing, and able” to provide the proposed service. To certify fitness, DOT reviews, among other things, the applicants’ operating and financial plans, and proposed profit and loss statements to see if they have the necessary capital to commence operations. See U.S. Department of Transportation, Office of the Secretary of Transportation, Air Carrier Fitness Division, *How to Become a Certificated Air Carrier*, (Washington, D.C.: September 2012).

²⁰ A preamble to a notice of proposed rulemaking or final rule is not legally binding.

²¹ Private Pilot; General Privileges and Limitations, 29 Fed. Reg. 4717, 4718 (Apr. 2, 1964).

²² Legal Interpretation from John H. Cassady to Hal Klee (Dec. 12, 1985); Legal Interpretation from Dewitte T. Lawson to D. David Brown (Apr. 16, 1976); Legal Interpretation from John H. Cassady to Thomas Chero, (Dec. 26, 1985).

²³ Flytenow, 808 F.3d at 890.

- **Holding out.** Three of 13 stakeholders disagreed with one of FAA's examples of holding out.²⁴ Specifically, they disagreed with an example involving a pilot taking routine expense sharing flights without advertising or otherwise proactively communicating their intent to share expenses with passengers. In this example, the pilot flies every week from one city to another to visit family, and everyone in the pilot's community is aware that the pilot is making these trips and is willing to share expenses with anyone who asks. The advisory circular states that this activity might constitute holding out, because the pilot is regularly taking these flights and accepting any passenger who wants to come along and share the flight expenses.²⁵ The three stakeholders said that in their understanding of holding out, pilots must take action in some way to communicate their intent to carry passengers for compensation while in this example the pilot did not do so. FAA officials told us that this example might constitute holding out because the pilot would take any passengers indiscriminately, as opposed to only taking those passengers the pilot knew. FAA officials said that because this issue is complex, in this circular they wanted to provide some examples of cases that FAA considered obviously holding out as well as some that were not as straightforward.
- **Compliance certainty.** Two stakeholders said that the advisory circular only states that some examples, including the above example related to holding out, "might be considered to be holding out," which they said was not helpful to pilots looking for more certainty in FAA's guidance documents. In addition, one stakeholder said that because the advisory circular states that FAA will determine compliance with regulations on a case-by-case basis and frequently refers to legal interpretations, it would be helpful if pilots could obtain FAA legal interpretations about the specific legality of their operations. However, in fiscal year 2019 FAA revised its policy from providing legal interpretations for all pilots who request an interpretation to only providing this service for requests that present a novel or legally significant issue, as determined by FAA's Chief Counsel. This stakeholder said that they are concerned that with limited access to legal clarification

²⁴ We did not ask stakeholders about individual examples in the advisory circular; these three stakeholders mentioned this particular example in response to a general question about the clarity of the advisory circular.

²⁵ AC-61-142.

from FAA, additional pilots will unintentionally violate FAA regulations and be subject to enforcement actions.

FAA officials also said that the circular does not provide definitive answers on whether an operation would be considered holding out because FAA makes those determinations based on the specific facts of each case. FAA officials told us that they changed their policies on providing legal interpretations because the majority of the requests they received had been adequately addressed through prior legal interpretations, even if the specific facts of the case were somewhat different, and that other requests involved regulations that were unambiguous.

- **Pilot's relationship to passengers.** One stakeholder raised concerns about the advisory circular's guidance to seek expense sharing passengers from only among people with whom pilots have an ongoing, pre-existing relationship. In particular, this stakeholder noted such guidance was vague and unworkable because it did not define what would constitute an acceptable relationship making it difficult for pilots to know which passengers they could share expenses with. FAA officials told us that they put the guidance about ongoing, pre-existing relationships into the advisory circular to make it clear that FAA considers advertising to the general public holding out, no matter how the pilot does it.

Selected Stakeholders Had Differing Opinions on Whether FAA Should Allow Internet-Based Expense Sharing and Suggested Assessing Potential Options

Seven of 15 Stakeholders Supported Internet-Based Expense Sharing

Seven of 15 stakeholders we interviewed, including each of the four representatives from expense-sharing companies and two of the four representatives of flying clubs, said that FAA should allow pilots to use the internet to find expense-sharing passengers. Officials from expense-sharing companies said that their programs allowed pilots and passengers to arrange flights that followed the same regulations and standards as any other general aviation flight, no matter how the pilot and passengers meet, and that using the internet to facilitate these flights

would increase the availability and usefulness of general aviation. Five of the 15 stakeholders said that regardless of FAA's current policies, as long as pilots want to fly and passengers are seeking lower cost and more convenient transportation options, pilots will try to find ways to use the internet to connect with expense-sharing passengers.²⁶

Two stakeholders who supported internet-based expense sharing pointed to Europe, where EASA—the European Union's aviation regulation setting body—has explicitly allowed these operations since 2012, and said that FAA could follow a similar model to allowing those operations in the United States. EASA allows pilots to use internet applications to seek expense-sharing passengers, but only if pilots use smaller aircraft with six or fewer occupants. As of December 2020, ten companies have agreed to EASA's regulatory terms and begun offering internet applications to match pilots with expense-sharing passengers throughout Europe. For example, officials from one such company told us that flights using its platform have carried around 38,000 passengers—primarily for sightseeing or other leisure purposes—with no reported accidents or incidents.²⁷ Officials from EASA and two national civil aviation authorities told us that internet applications share information on flights with national regulators, including the origin, destination, and the cost of the flights. The officials said that this has helped them understand the market and find illegal operations.

FAA officials told us that they are aware of EASA's different rules regarding how pilots may seek expense-sharing passengers, but they and six stakeholders told us that Europe has a very different general aviation market and regulatory structure than the United States. For example, they said that in Europe general aviation is more expensive than in the United States because of higher fuel costs, airport fees, and air traffic control fees. These factors limit a pilot's ability to fly absent the ability to share expenses. Officials noted that such differences make the European

²⁶ As discussed above, FAA's 2020 advisory circular on expense sharing states that private pilots may use the internet to solicit expense-sharing passengers but only if they target a defined and limited group of people such as friends, family members, fellow members of an enthusiast's club, or a closed social media group.

²⁷ The officials said that around 75 percent of the flights using their platform are for sightseeing or other leisure purposes, which are a focus of their business plan. The company also focuses on flights between secondary cities that are not well served by rail networks and commercial aviation.

experience with expense sharing not necessarily comparable to how it could happen in the United States.

Stakeholder Perspective on Expense Sharing

“After nearly four years of experience, we know that [internet-based] flight-sharing operations can and are conducted safely and efficiently based on the experience in Europe.”

Source: GAO Interviews with Selected Expense Sharing Stakeholders. | GAO-21-285

Eight of 15 Stakeholders Did Not Support Internet-Based Expense Sharing

Eight of 15 stakeholders we interviewed, including six of the seven representatives from professional organizations, said that FAA should not allow pilots to use the internet to find expense-sharing passengers. These stakeholders, as well as some who supported internet-based expense sharing, said that the primary risks to allowing internet-based expense sharing are limited FAA enforcement, passenger expectations of airline-style service, and less experienced pilots. Specifically:

- **Limited FAA enforcement:** Nine of 15 stakeholders said that FAA enforcement of current expense-sharing regulations is limited, and that FAA does not have the staffing or other resources to provide adequate oversight of internet-based operations. For example, they said that FAA does not proactively look for violations except during other work or as mentioned due to a complaint. In addition, one stakeholder said that some of the regulations about compensation are inherently difficult to enforce because pilots can be compensated in many ways beyond direct payment of money for costs.

According to data we reviewed from FAA’s Enforcement Information System, from fiscal year 2014 through June 2020, FAA closed four enforcement actions against pilots for violations of expense-sharing regulations. In contrast, in 2020 we reported that from 2014 through 2019 FAA closed more than 35,000 total enforcement actions.²⁸ Penalties for these expense-sharing enforcement actions included one certificate revocation, one certificate suspension, and two warning letters. In addition, between implementing the compliance program at the beginning of fiscal year 2016 and August 2020, FAA addressed seven other violations of expense-sharing regulations with less

²⁸ [GAO-20-642](#).

punitive compliance actions. FAA officials told us that it is difficult for them to discover violations unless they receive a tip. They also said that once they receive a tip they need to identify all of the parties to the flight, obtain their cooperation, and establish proof that the pilot violated the regulations within a 6-month period to notify a pilot of a potential violation, which they said can be difficult to do.²⁹

- **Passenger expectations:** Nine of 15 stakeholders said that passengers could expect a similar level of service to that provided by air carriers, which could lead to pressure on pilots to complete flights in adverse conditions. For example, these stakeholders said members of the public who respond to an internet solicitation for an expense-sharing flight may not understand the differences between general aviation and commercial aviation. Therefore, they might not understand that the pilots of an expense-sharing flight may cancel for any reason, including that their purpose for making the flight no longer exists or the weather is worse than their comfort level—even though the weather may be good enough for the flight to be legally permissible.
- **Pilot experience:** Additionally, five stakeholders said that these flights could involve pilots with less experience or skill than air carrier flights. For example, these stakeholders said that private pilots often have fewer hours of flight experience and are not required to be tested to as high a standard for proficiency as pilots in air carrier operations, which could lead to these pilots not being able to provide the same levels of safety as an air carrier.

Stakeholder Perspective on Expense Sharing

“The general public does not have the knowledge nor is equipped to make the assessment and decision on whether or not a private pilot is conducting a safe operation. In addition, private pilots could be pressured because they are receiving compensation for a flight.”

Source: GAO Interviews with Selected Expense Sharing Stakeholders. | GAO-21-285

²⁹ When FAA suspends or revokes a pilot certificate as part of an enforcement action, the pilot may appeal the action to the NTSB. 49 U.S.C. § 44709(d). During the course of an appeal, the pilot may ask the NTSB to dismiss the complaint as “stale.” Under the NTSB’s “stale complaint” rule, FAA must advise a pilot of a proposed action involving a potential suspension or revocation of a pilot’s certificate within 6 months of the alleged offense or NTSB may dismiss the complaint unless the offense involved a lack of proper qualifications by the pilot, or if FAA establishes good cause for the delay or that continuing to pursue the enforcement action would be in the public interest. See 49 C.F.R. § 821.33.

Some Stakeholders Suggested Assessing Internet-Based Expense Sharing

Some stakeholders we interviewed said that, despite the advisory circular's being a useful tool for pilots, FAA should assess whether to allow internet-based expense sharing through rulemaking or other more formal means. Specifically, five of the 15 stakeholders, including three of the four representatives of expense-sharing companies, said that FAA should address this issue through a rulemaking or other formal means to define allowed expense sharing and relevant terms including "common carriage," "compensation," and "holding out" in regulation as opposed to in agency legal interpretations. They said that this would provide a definitive source for pilots to reference and make the definitions easier for pilots to find, understand, and interpret when making decisions about their operations. In addition, three stakeholders who supported internet-based expense sharing nevertheless said that if FAA allowed pilots to use internet-based communications when finding passengers, it should require more stringent operating requirements, such as more frequent aircraft maintenance inspections, or limit these flights to pilots with more experience than that required to obtain a private pilot's certificate.

Seven of the 15 stakeholders, including representatives from four of the seven professional organizations, suggested FAA use safety and economic data when considering policy changes related to expense sharing. For example, they said that FAA could use data collected from Europe, where regulators review information on expense-sharing flights including the number and type of flights along with various safety factors, to inform any new FAA policies on expense sharing. Six of the 15 stakeholders said that if FAA wanted to explore allowing internet-based expense sharing, FAA could develop a pilot program or other type of exploratory program to test how it could work. They said FAA could limit a pilot program to a few airports or markets to explore operational safety for expense sharing among pilots and passengers.

Agency Comments

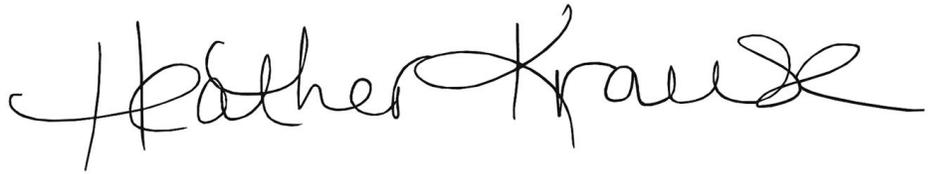
We provided a draft of this report to DOT for review and comment. DOT provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Transportation, and other interested parties.

Letter

In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at (202) 512-2834 or krauseh@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 listed in appendix I.

A handwritten signature in black ink that reads "Heather Krause". The signature is written in a cursive style with a large, stylized initial 'H' and a long, sweeping tail on the 'e'.

Heather Krause
Director, Physical Infrastructure Issues

Appendix I: GAO Contact and Staff Acknowledgments

GAO Contact

Heather Krause, (202) 512-2834 or krauseh@gao.gov

Staff Acknowledgments

In addition to the contact named above, Cathy Colwell, Assistant Director; Alex Fedell, Analyst-in-Charge; Camilo Flores; Christopher Jones; Maureen Luna-Long; Dominic Nadarski; Carol Petersen; Malika Rice; Amy Rosewarne; Kelly Rubin; and Larry Thomas made key contributions to this report.

Appendix II: Accessible Data

Data Tables

Accessible Data for Figure 1: Examples of Methods the Federal Aviation Administration (FAA) Allows and Does Not Allow Private Pilots to Use to Find Expense-Sharing Passengers

Methods of finding passengers	Among members of an enthusiasts club	Among close friends or family members	Using a paper bulletin-board announcement at an airport	Advertising in a newspaper	Using an Internet app used by the public	Posting on an open social media page for the student body at a school
n/a	not holding out	not holding out	not holding out	holding out	holding out	holding out

- ✓ FAA does not consider this method of finding passengers to be “holding out,”^a and pilots can share expenses with these passengers
- ⊙ FAA considers this method of finding passengers to be “holding out,”^a and pilots who share expenses would be subject to more stringent air carrier regulations

Appendix II: Accessible Data

Accessible Data for Figure 2: National Transportation Safety Board Reported Fatal Accidents per 100,000 Flight Hours, 2013 through 2018

Category	2013	2014	2015	2016	2017	2018
General aviation	1.12	1.3	1.1	0.98	0.94	1.02
Commercial aviation	0.07	0.04	0.03	0.04	0.03	0.04

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