



Under Scrutiny: The New GAO Recommendations for FAA Aircraft Registration

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The aviation industry has been following legislative and agency initiatives to address various continuing concerns about the efficiency, accuracy, and effectiveness of the U.S. aircraft registry (the Registry) and its management by the Federal Aviation Administration (FAA).¹ These initiatives gained considerable momentum after a handful of news accounts in 2017 and 2018 detailed alleged wrongdoing by bad or negligent actors operating FAA-registered aircraft and ultimately resulted in two different federal examinations of the Registry.



In 2019, the Office of Inspector General of the U.S. Department of Transportation (OIG) conducted the first examination.² It focused on how best to modernize the Registry's capability and functions. The U.S. Government Accountability Office (GAO) conducted the second examination,³ and the resulting May 2020 report focused on the impact of the Registry's practices, procedures, and related laws and regulations, including the risk of Registry fraud and abuse by bad actors and FAA oversight of the safe operation of FAA-registered aircraft regardless of location. The GAO ultimately concluded that there were many inadequacies as to the information required by or available from the Registry relating to the ownership and operation of FAA- (or "N-") registered aircraft, and it made several recommendations as to how those inadequacies should be addressed.

The OIG and GAO Reports: A Response to Incidents of Registration Fraud and Abuse

The Registry maintains registration information on approximately 300,000 civil aircraft. Unlike most of the civil aviation registries in other countries, the Registry is solely an owner (not an operator) registry, so each aircraft is registered in the name of the legal owner. The owner can be an individual or a legal entity such as a corporation, limited liability company, or owner trust, but in each case, the owner must meet certain eligibility requirements such as U.S. citizenship or permanent legal residence.⁴ Registry procedures and practices must comply with

federal statutes and regulations, as well as international civil aviation requirements focused on safe operation and other national or international registration considerations. FAA registration of an aircraft is often desirable to owners and operators, in addition to financing providers and investors, because FAA regulations are a benchmark for aviation safety and maintenance standards across the spectrum of aircraft and their operations. The reliability of the Registry records is essential to the FAA and other agencies and to prospective purchasers and financiers, including in connection with establishing the identity of the registered owner and other interest holders in an aircraft.

The OIG's May 8, 2019, report (the OIG Report)⁵ addressed the FAA's progress in modernizing the Registry and providing public access to Registry-related activities. The OIG Report noted the difficulty of achieving Registry modernization by October 2021 as mandated by Congress in the FAA Reauthorization Act of 2018,⁶ given the Registry's outdated software, lack of real-time registration information, paper-based submission process and back-log of registration submissions.

The purpose, conclusions, and recommendations in the GAO's March 2020 report (the GAO Report) are signaled by its title, "FAA Needs to Better Prevent, Detect, and Respond to Fraud and Abuse Risks in Aircraft Registration."⁷ The GAO Report was included in a letter dated March 25, 2020 to Congressman Peter King (D-NY) and Congressman Stephen Lynch (D-Mass.). Congressman Lynch is the chairman of the Subcommittee on National Security of the U.S. House of Representatives' Committee on Oversight and Reform. Prompted by a 2017 *Boston Globe* article⁸ and other reporting of anecdotal incidences involving criminal, unsafe, and other bad conduct by certain owners of

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FAA registered aircraft, Congressmen Lynch and King first attempted to address their Registry concerns legislatively. When no such legislation gained momentum, they requested the GAO to “examine potential fraud and abuse of aircraft registration requirements and processes as well as the extent of FAA and law-enforcement efforts to address vulnerabilities and challenges associated with aircraft registrations.”⁹ Based on that request, the GAO examined instances and risks of actual and potential fraud and abuse by aircraft registrants, assessed the FAA’s ability to prevent and detect such fraud and abuse and its ability to act and coordinate with law-enforcement entities to respond to fraud and abuse risks relating to aircraft registrations.

The GAO’s Five Risk Indicators

The GAO’s stated objective was to ensure that the Registry does not “enable criminal, national security, or safety risks.”¹⁰ Registry data could be used to address these concerns, if such data were sufficient in scope, reliable, and accessible to the various agencies. The GAO analyzed a wide spectrum of sources, including certain laws, regulations, FAA policies, reviews of reports, Department of Justice (DOJ) press releases, news articles, and Registry data from fiscal years 2010 through 2018.¹¹ It also interviewed officials from the FAA, DOJ, and Department of Homeland Security, as well as selected representatives of aviation industry associations and certain Registry intermediaries that facilitate aircraft registrations for others (e.g., trust companies, banks, and “a registered agent”).

The GAO undertook a number of different analyses based on the referenced research in order to reach the conclusions detailed in the GAO Report. For example, it selected six case studies and Registry intermediary examples for review based on categories of fraud and abuse risks in the registration process (e.g., criminal activity, national security, and safety), but it noted that “[t]hese cases may not represent all existing vulnerabilities and are not generalizable to the FAA registry population as a whole.”¹² The GAO also conducted interviews with FAA and law-enforcement officials for their perspectives and, based on those interviews and other research, the GAO selected five risk indicators of potential fraud or abuse for use by the FAA when analyzing Registry data to identify registrations matching one or more of these risk indicators.

The five risk indicators identified by the GAO were: “(1) registrations using registered agent address, (2) registrations using opaque ownership structures, (3) aircraft registration addresses located in countries identified by the Department of State as associated with major illicit drug production and money laundering, (4) OFAC data on individuals and entities subject to U.S. sanctions, and (5) NTSB safety accident and incident reports.”¹³ By its reference to registrations using “opaque ownership structures,” the GAO was referring

to “corporation- and trust-based ownership that potentially disguises the beneficial owner.”¹⁴ These risk indicators were to serve as “points of inquiry for further examination of conduct that may run counter to the interests of the federal government by posing potential criminal, national security, or safety risks.”¹⁵

In a footnote related to the risk-indicator discussion, the GAO Report notes that it found over 17,000 registrations (out of approximately 300,000) with one or more risk indicators, but of those 17,000 registrations, more than 15,000 (or about 90 percent) were associated with only one risk indicator, about 2,000 registrations (10 percent) were associated with two risk indicators, and the remaining 140 (one percent) were associated with three or more risk indicators.¹⁶ Breaking that down further, the GAO Report notes that of those 17,000 registrations, at least 4,080 were made using a resident agent’s address as both the mailing address and physical address, and 6,800 registrations were made by registrants that were noncitizen trusts¹⁷ or were U.S. citizen corporations using a voting trust.

A Closer Look at the Risks

Registration Information May Not Be Reliable

The GAO found a number of Registry practices to be vulnerable to fraud and abuse. First, when submitting applications to register ownership of an aircraft on the Registry, applicants are required to self-certify as to their eligibility and as to the accuracy of certain information regarding their identity, ownership, and address. The Registry is not required to, and it does not, as a practice, verify such information certified by applicants. The GAO explained why this self-certification process creates fraud and abuse risks—essentially, the Registry is relying on the honesty and accuracy of the information submitted by the applicant without independent verification.

Ownership Structures May Obfuscate the Identity of the True Owner

Another vulnerability noted by the GAO relates to the use of what it refers to as “opaque” ownership structures. According to the GAO, an ownership structure is “opaque” if it affords limited transparency as to the person who ultimately owns and controls the aircraft.¹⁸ Ownership structures considered by the GAO included common types of business entities such as limited liability companies, limited partnerships, and statutory or common law trusts. The purposes for registering an aircraft in the name of a business entity of a type characterized by the GAO as opaque could relate to privacy concerns of individual or corporate aircraft owners that may relate to their safety and security. Noncitizen trusts (NCTs) and certain voting trusts are often used as a means of satisfying the FAA citizenship requirements¹⁹ by companies and individuals that either do not meet, or are uncertain as to whether they meet, the FAA definition of a U.S.

citizen.²⁰ The GAO was concerned, however, that these structures could also be used for money laundering or other illegal purposes.

Risk Assessment and Coordination with Other Agencies Has Been Insufficient

The GAO was also concerned by the FAA's failure to conduct a risk assessment of the adequacy of its eligibility review and information collection procedures to prevent fraud and abuse by Registry applicants. The GAO indicated that such an assessment would be necessary for the FAA to better understand, and then address, vulnerabilities in its current procedures that may allow registration by owners or operators engaged in criminal or terrorist activity or operating an aircraft unsafely.

The GAO Report was also critical of the manner in which the FAA coordinates with the various law enforcement and national security agencies. According to the GAO, there is no formal process by which the FAA can coordinate with these agencies and, without such a process, the FAA and these other agencies are unable to sufficiently leverage their respective resources and agency powers, including information-sharing and joint enforcement actions.

FAA's Data Storage Practices Require Modernization

Lastly, the GAO Report discussed inadequacies in the FAA's data storage practices. According to the GAO, these practices limited the utility of the data for research, noting as an example that details pertaining to aircraft ownership are stored in noncompatible or irregular files. However, the GAO notes that by modernizing the Registry's systems (as contemplated by the OIG Report), the FAA will be better able to generate, research, and analyze the information that it collects for use to determine the common characteristics of registrants who engage in fraud and abuse in the Registry.

GAO's 15 Recommendations to FAA

The GAO Report offered the FAA Administrator 15 recommendations (noting that the FAA agreed with all of them). These recommendations may be loosely grouped into four categories, as described below.

Assess Risk

The GAO Report recommends that the FAA conduct and document a risk assessment of inherent and residual fraud and abuse risks with Registry practices that make it vulnerable to unlawful activities, threats to national security, or safety risks. The goal is to develop a detailed strategy to address risks identified in the assessment.

Collect and Verify Registrants' Information

The GAO recommends that the FAA collect and record information on individual registrants, initially including their names, addresses, dates of birth, and driver's or pilot's licenses or both, with subsequent personally

identifiable information (PII) elements to be determined from the FAA's risk assessment findings. Information on each private legal entity owing more than 25 percent of the aircraft is also to be collected. The GAO recommends that the FAA verify aircraft registration applicants' and dealers' eligibility and information and that it increase aircraft registration and dealer fees to ensure collection of amounts sufficient to cover the costs of FAA efforts to collect and verify applicant information and to keep pace with inflation.

Modernize the Registry's Information Technology and Develop Data Analytics Approaches

The GAO recommended that the FAA record in an electronic format that facilitates data analytics by FAA and its stakeholders certain information currently collected in ancillary files or PDFs regarding owners and related individuals and entities with potentially significant responsibilities for aircraft ownership (e.g., beneficial owners, trustors, trustees, beneficiaries, stockholders, directors, and managers; any such owners and "potentially responsible parties"), and declarations of international operations. These systems would link information on potentially responsible parties through a common identifier.

As part of its IT modernization, the FAA would develop an approach to check sanctions data maintained by the Department of the Treasury's Office of Foreign Assets Control (OFAC) to flag sanctioned individuals and entities across aircraft registration and dealer systems. It would use data collected as part of the modernization project as well as current data sources to identify and analyze patterns of activity indicative of fraud or abuse based on information from declarations of international operations, postal addresses, sanctions listings, and other sources, and information on dealers, noncitizen corporations, and other potentially responsible parties.

Establish Information-Sharing and Enforcement Procedures with Other Agencies

The FAA would ideally develop and implement risk-based mitigation actions to address potential fraud and abuse identified through data analyses, as well as mechanisms, including regulations if necessary, for dealer suspension and revocation. In coordination with relevant law enforcement agencies, it would enhance coordination within the Aircraft Registry Task Force through collaborative mechanisms such as written agreements and use of liaison positions and develop a mechanism to provide declarations of international operations for law enforcement purposes.

Looking Ahead to Implementation: Benefits and Burdens

Timing and Funding of Modernization Will Create Challenges

The OIG's recommended Registry modernization

could result in meaningful improvements to the Registry's capabilities and functions. Currently, registering aircraft on the Registry is a manual, paper-based process requiring the necessary paperwork to be mailed or dropped off in person at the FAA Registration Branch in Oklahoma City, Oklahoma, during business hours on weekdays. The Registration process could become web-based and accessible at all hours like that of the International Registry of Mobile Assets, which allows for 24/7/365 online registrations of interests.²¹ Although access of this type may be more aspirational than practical, if achieved to any significant extent, it could ameliorate many of the time constraints and waiting periods (e.g., an inability to register when the Registry's "window" is closed) for aircraft transaction filings. Eventually, combining technologies such as e-filings and digital signatures with a distributed ledger or blockchain framework could further increase the security, uptime, and fraud-detection abilities of a digital Registry by mitigating honeypot risks of a centralized, sensitive data silo and conflicting registrations.²²

The timing and cost of implementing the recommended undertakings in the OIG Report could have an impact on the implementation of the GAO Report recommendations. Many of the recommendations anticipate that the OIG Report's suggested modernization will have been completed. The high costs of planning, labor, equipment, and technology necessary to achieve the modernization, whether by the October 2021 deadline mandated by the FAA Reauthorization Act or after, will likely require the FAA to make some difficult choices as to how best to deploy the limited amount of funds allocated by Congress for those purposes.

The GAO's recommended undertakings will also require a considerable investment both at the implementation stage and after. Whether Congress will allocate sufficient funding to support the implementation of both the OIG and GAO Reports' recommendations remains to be seen. Further, the GAO-recommended collection and verification of information would naturally interfere with the efficiencies of the registration process contemplated by the OIG Report. The OIG's and GAO's recommended procedural changes, as well as the ongoing assessments, agency collaboration, and other recommended Registry responsibilities, will require staffing and other resources and will perhaps overburden the Registry, especially if implemented before the modernization has been completed.

New Registration Procedures May Pose Risks for Legitimate Registrants

As is typically the case in any market affected by government-imposed changes to established transactional practices, the market participants are likely to scrutinize the purposes of, empirical support for, and the

perceived benefits and costs of, the proposed changes. Participants in the U.S. aviation industry will likely welcome any practical changes to Registry practices if these can be reasonably expected to have a meaningful impact on crime prevention, security, and the safe operation of FAA-registered aircraft.

Aviation market participants have often been asked to adapt to changes to FAA registration requirements, policies, and practices over the many years since the Registry was established, and they have collaborated with Registry and FAA officials on mutually acceptable approaches to achieve their purposes. However, certain of the GAO's recommendations could result in changes to Registry requirements and practices that some aviation industry members might find particularly objectionable. Registry users may be concerned that, even though well-intended, changes implemented pursuant to the GAO's recommendations could make Registry use more laborious and protracted, create certain privacy and security risks, unduly restrict transaction structures, or cause registration validity challenges. Some examples include the following.

Focusing on Individual Risk Indicators May Hamper Legitimate Registrations

As noted above, there are currently 300,000 or so aircraft registered on the Registry, and the GAO flagged 17,000 as having risk indicators, and 90 percent of those registrations had a single risk indicator. The most common risk indicators identified by the GAO and accounting for approximately 11,000 of the registrations flagged by the GAO related to the use of a registered agent's address or were registrations using NCTs and U.S. citizen corporations using voting trusts. These risk indicators, when coupled with any of the other three risk indicators (i.e., addresses in countries identified with illicit drug production or money laundering, names on a sanctions list, or names on NSTB accident or incident reports), would be meaningful. But if focused on as stand-alone concerns, those risk indicators could increase "false positive" fraud/risk flags, result in obtrusive scrutiny, or create invalidation risks.

Transparency May Trigger Security and Other Risks

The GAO's focus on "opaque" structures as a risk indicator could be particularly problematic to a large segment of Registry users. For example, individual and corporate aviation Registry users often rely on ownership trusts or special purpose entities (SPEs) when registering aircraft because they are concerned about privacy or security risks associated with information accessed by the general public (i.e., accessibility to the FAA and other agencies would not be a concern). Undue scrutiny, burdensome verification requirements, or restrictions on the use of these ownership entities could create even bigger challenges for parties to all types of complex or structured transactions.²³

Scrutiny of NCTs and Voting Trusts May Cause Unintended Negative Consequences

The opaque structures of particular concern to the GAO are NCTs and voting trusts. A discussion about the essential nature and use of NCTs and voting trusts for legitimate purposes is beyond the scope of this article. However, NCTs and, in some cases, voting trusts are used to satisfy the FAA's citizenship requirement by both truly foreign individuals or entities (i.e., those organized or domiciled outside the United States), and many apparent U.S. entities (e.g., public companies; entities appearing to be domestic as a result of the composition of owners, officers, board members, etc.).²⁴ NCTs, in particular, are essential business tools in a global economy that have been used for legitimate business purposes for 40 years across the spectrum of general, business, and commercial aviation, including by manufacturers, lessors, operators, and other market participants. NCT regulations and practices developed collaboratively between FAA and industry stakeholders, including by a policy clarification published by the FAA in 2013²⁵ that reaffirmed the legitimacy of NCTs but also added further safeguards and requirements for their use.

The GAO Report acknowledges that FAA regulations allow for valid registrations using NCTs and voting trusts to meet FAA's citizenship requirements. However, the GAO further notes that, based on its findings "and according to FAA and law-enforcement officials," registrations using NCTs and voting trusts "may also mask ineligibility or illicit actors"²⁶ and that Registry officials are expected to detect and take measures to address abusive actions. But of the 6,800 registrations identified by the GAO as being NCTs or voting trusts, no more than six "were associated with individuals subject to U.S. sanctions, four were associated with an FAA revocation or suspension, and 16 appeared to be shell companies."²⁷ The commentary in the GAO Report is likely to heighten industry concerns that legitimate use of NCTs might be subjected to even greater scrutiny and undue and burdensome restrictions or compliance burdens.

Data Storage Poses Hacking and Privacy Risks

As with any centralized repository of PII, the data stored and accessible from the Registry may present a potential honeypot for bad actors and data breaches. Further, Registry access and functionality must take into account certain privacy law concerns in the storage and, if applicable, destruction of PII.

Fee Increases May Produce Unforeseen Economic Consequences

Fee increases could be of concern to a spectrum of Registry users. Depending upon how these fees are charged, large-volume Registry users (e.g., airlines, manufacturers, financiers, lessors, etc.) may face significantly greater transaction costs associated with purchase, lien, and novation filings. Some general aviation owners and

operators might be concerned that these fee increases could limit their access to the Registry.

Aircraft lessors, financiers, and investors might be especially concerned. For example, their transactions often involve multilayered ownership and financing structures and multiple parties, certain of which may be non-U.S. citizens, SPEs, or trusts. Delays and costs resulting from the recommended Registry changes could be significantly cumbersome to these commercial parties due to the volume and types of related Registry filings. Any restrictions or burdensome verification requirements imposed on the use of structural devices such as SPEs or NCTs, voting trusts, or other trusts could limit the use of accepted, commercially efficient financing and investment structures.

The additional scrutiny by the FAA and the other agencies sharing the data collected and stored by the FAA could also be concerning to parties to these transactions. Among other things, parties might be concerned that additional scrutiny by multiple agencies, each having its own purpose and perspective as to compliance, could result in challenges to the validity of certain registrations even if none of the parties were engaged in fraud or abuse of the Registry or unsafe operations. In that event, a financing provider could face a number of risks, including loss of priority and coverage challenges by insurance providers. A lessor would have even greater concerns because it is the registered owner and could face even harsher consequences from any alleged failure to comply with related laws or Federal Aviation Regulations. The concerns mentioned in this article are not merely inconveniences to financiers or aircraft owners; any significant cost to airlines or corporate aviation may mean fewer aircraft sales or more expensive financing for airlines, which will adversely impact ticket prices and availability to customers. Any changes to Registry practices or requirements based on the recommendation in the GAO Report must be sufficiently clear and not unduly burdensome and must recognize that the great majority of Registry users engage in legitimate practices.

Conclusion

Both the OIG Report and the GAO Report include recommendations that, if followed, could result in many substantial benefits to Registry users. Modernization of the Registry as contemplated in the OIG Report would be particularly useful. Systemic improvements addressing the inefficiencies and other inadequacies related to the current lack of real-time registration information, the paper-based submission process, and the resulting backlog of registration submissions are long overdue. Societal changes accelerated by COVID-19 highlight the need for modernization and digitization. The Registry changes recommended by the GAO could also result in considerable benefit, especially with respect to the reliability of the information relating to the ownership and operation of "N-" registered

aircraft and the accessibility of that information to the FAA regarding matters of safety and to other agencies for law enforcement and national security purposes.

During the implementation phases, however, the FAA and other governmental decision-makers must balance their purposes of risk mitigation, including as to data collection, verification, analysis, and accessibility, with the legitimate concerns Registry users may have regarding the significantly greater expenses, burdens, and risks that might result from these changes.²⁸ Of particular concern is the focus on NCTs and voting trusts. As noted above, confirmed reports of any misuse are unusual, and, given the legitimate business purposes and the protections already afforded by the existing regulatory requirements, a further investment by the government and industry of time or resources revisiting NCT regulations and practices does not appear to be supported by the findings in the GAO Report. Collaboration among the FAA and other agencies and participants in the aviation industry would be advisable so that the legitimate use of a modernized Registry is achieved to the (reasonable) mutual satisfaction of all of the various constituencies.

Endnotes

1. See generally 49 U.S.C. ch. 441.
2. U.S. DEP'T OF TRANSP. OFFICE OF INSPECTOR GEN., REP. NO. AV2019052, FAA PLANS TO MODERNIZE ITS OUTDATED CIVIL AVIATION REGISTRY SYSTEMS, BUT KEY DECISIONS AND CHALLENGES REMAIN (May 8, 2019) [hereinafter OIG REPORT], <https://www.oig.dot.gov/sites/default/files/FAA%20Civil%20Aviation%20Registry%20Final%20Report%5E5-8-19.pdf>.
3. U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-164, FAA NEEDS TO BETTER PREVENT, DETECT, AND RESPOND TO FRAUD AND ABUSE RISKS IN AIRCRAFT REGISTRATION [hereinafter GAO REPORT], <https://www.gao.gov/assets/710/705505.pdf>.
4. See 49 U.S.C. § 40102 (a)(15).
5. OIG REPORT, *supra* note 2.
6. Pub. L. No. 115-254, 132 Stat. 3186 (2018).
7. GAO REPORT, *supra* note 3.
8. Kelly Carr & Jaimi Dowdell, *Secrets in the Sky*, BOSTON GLOBE, Sept. 22, 2017.
9. GAO REPORT, *supra* note 3, at 2.
10. *Id.* at 5.
11. *Id.* at n. 7.
12. *Id.* at 4.
13. *Id.* at 39.
14. *Id.* at note 3, at 5.
15. *Id.*
16. *Id.* at note 67.
17. Note that a trustee applying for aircraft registration with the FAA may not mean a foreign entity or persons. See 14 C.F.R. § 47.7.
18. GAO REPORT, *supra* note 3, at 1.
19. See 14 C.F.R. § 47.7.
20. See 49 U.S.C. § 40102 (a)(15).
21. See International Registry of Mobile Assets, <https://www.internationalregistry.aero/ir-web/> (last visited May 14, 2020).
22. See Erich Dylus, *The International Blockchain Registry of Mobile Assets*, 44 AIR & SPACE LAW., no. 1, 2019, at 45–52.
23. GAO REPORT, *supra* note 3, at 40. Note that of the 6,800 registrations that were noncitizen trusts or U.S. citizen corporations using a voting trust, “two were associated with individuals subject to U.S. sanctions, four were associated with an FAA revocation or suspension, and 16 appeared to be shell companies.” *Id.*
24. See 14 C.F.R. § 47.7.
25. Notice of Policy Clarification for the Registration of Aircraft to U.S. Citizen Trustees in Situations Involving Non-U.S. Citizen Trustors and Beneficiaries, 78 Fed. Reg. 36,412 (June 18, 2013).
26. GAO REPORT, *supra* note 3, at 41.
27. *Id.* at 40.
28. Certain industry participants hold the view that expecting the FAA Registry to take an active responsibility for matters pertaining to law enforcement or national security stretches its purpose beyond what is typically expected of aviation registries in other nations and registries of other transportation assets in the United States. Typically, the purposes of these registries include safety, accuracy as to ownership, and lien protection. See 49 C.F.R. §1177 (setting forth federal filing procedures for liens on rail equipment), 46 U.S.C. §12501 (establishing the federal vessel identification system), 46 U.S.C. ch. 313 (on commercial instruments and maritime liens, incorporating the Ship Mortgage Act of 1920), and MD Transp. Code § 13-406 (2018) (setting forth grounds for refusing registration of motor vehicles in Maryland). Unfortunately, all of these transportation assets have been or could be used in money laundering, transporting contraband, or other criminal activity or in acts of terrorism or other threats to national security.