

Congress of the United States

Washington, DC 20515

April 25, 2013

The Honorable Ray LaHood
Secretary
U.S. Department of Transportation
800 Independence Avenue, SW
Washington, DC 20591

Dear Mr. Secretary:

The Committee on Transportation and Infrastructure and the Committee on Oversight and Government Reform are concerned that the Federal Aviation Administration (FAA), without sufficient transparency, is hastily implementing sequestration through a blanket reduction across air traffic facilities that will result in furloughs of tens of thousands of employees, including air traffic controllers. Many believe the FAA has sufficient budgeting flexibility to avoid many of these furloughs and thereby avoid disruption to the safety and efficiency of the nation's aviation system. To understand how the Department of Transportation (DOT) and the FAA view the FAA's ability to manage sequestration, the Committees require information related to the FAA's sequestration plans.

The FAA provided little notice to the public about its plans to furlough employees. On Tuesday, April 16, 2013, the FAA announced that in five days, on Sunday, April 21, 2013, it would begin furloughs of more than 47,000 employees,¹ including roughly 15,000 air traffic controllers.² Instead of targeting the furloughs to provide the least disruption to air travelers, it appears the FAA is implementing an across-the-board reduction by furloughing air traffic controllers and other personnel approximately one day every pay period between April and September without regard to location or other factors.³ Indeed, representatives of airline companies and the airline pilots union assert that "FAA offered no analysis, no reasoning, and no consideration of alternatives that would comply with sequestration obligations without causing massive disruptions to the air transportation system."⁴

¹ See *Aviation Safety: FAA's Progress on Key Safety Initiatives: Hearing Before the U.S. Sen. Comm. on Commerce, Science, & Transportation Subcomm. on Aviation Operations, Safety, Security*, 113th Cong. (2013) (statement of Michael P. Huerta), available at http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=4171322f-8181-4ccb-94fc-e5b5b1f010ce.

² See FoxNews, *Travelers brace for delays as FAA imposes furloughs, lawmakers decry 'stunt'*, FoxNews.com, April 22, 2013, available at <http://www.foxnews.com/politics/2013/04/22/some-flight-delays-appear-as-faa-furloughs-kick-in-due-to-sequester/>.

³ See *Aviation Safety: FAA's Progress on Key Safety Initiatives: Hearing Before the U.S. Sen. Comm. on Commerce, Science, & Transportation Subcomm. on Aviation Operations, Safety, Security*, 113th Cong. (2013) (statement of Michael P. Huerta), available at http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=4171322f-8181-4ccb-94fc-e5b5b1f010ce; see also *Airlines for America, et al., v. Federal Aviation Administration, et al.*, Petitioners' Emergency Motion for Stay of FAA Agency Action Pending Review, Case No. 13-1140 (D.C. Cir. Apr. 19, 2013) at 7. [herein after *Emergency Motion for Stay*]

⁴ *Emergency Motion for Stay* at 2.

Questions have been raised about whether the FAA is properly applying the budget reductions required by sequestration. The FAA has stated it must apply sequestration to each “program, project and activity [PPA] within the FAA’s budget[,]” while apparently also choosing to apply the cuts to each facility level.⁵ However, legal experts have disputed that the FAA must apply sequestration to each PPA—much less to each individual facility. In fact, it appears that under current law the FAA has flexibility to implement the cuts to minimize the impact.⁶ Moreover, it has also been questioned why air traffic controllers are not exempt from furloughs. According to some members of the aviation community, the FAA did not try to mitigate the impacts to air travel by weighing the furloughs of more essential personnel, such as air traffic controllers, against less essential personnel so that more essential employees could remain at work.⁷ Likewise, twelve aviation representatives including airlines and unions wrote to the White House to express concern that it was “unprecedented” for air traffic controllers to be furloughed, noting they had been exempt in the past.⁸

Information has been brought to the Committee on Oversight and Government Reform alleging that at least some senior FAA officials believe that the agency has both the resources and the budgetary flexibility to avoid the furloughs. If true, this information raises the prospect that politicized sequestration adjustments are causing unnecessary disruptions to the aviation community and the American public.

We request the following information by May 9, 2013:

1. All documents and communications referring or relating to the implementation of sequestration at the FAA, including but not limited to all instructions and guidance given to FAA officials regarding how to apply budget adjustments under sequestration.
2. All documents and communications between or among employees, agents, or contractors of DOT or FAA and employees, agents, or contractors of the Executive Office of the President referring or relating to the implementation of sequestration at the FAA.

Finally, we are disappointed that you have failed to respond to the Transportation Committee’s February 25, 2013, letter asking for specific sequestration planning and financial information, as well as the Oversight Committee’s February 28, 2013, letter asking for how the Oversight Committee can help to reduce waste and improve efficiency at the DOT in light of sequestration.⁹

⁵ *Id.*

⁶ *See id.*; see Letter from Capt. Lee Moak, President, Air Line Pilots Assn., et al., to Denis McDonough, Chief of Staff, The White House, Apr. 19, 2013; see also U.S. House Committee on Transportation, FAA Furlough Plans, available at http://transportation.house.gov/sites/republicans.transportation.house.gov/files/documents/2013-04-22--Sequester_Fact_Sheet.pdf.

⁷ Emergency Motion for Stay at 10.

⁸ Letter from Capt. Lee Moak, President, Air Line Pilots Assn., et al., to Denis McDonough, Chief of Staff, The White House, Apr. 19, 2013.

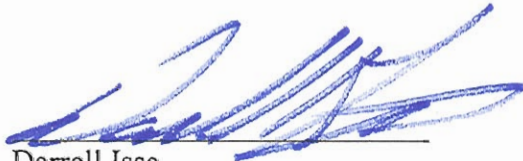
⁹ Letter from Chairman Darrell Issa to Secretary Ray LaHood, Feb. 28, 2013.

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April 25, 2013
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When producing documents to the Oversight Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. When producing documents to the Transportation and Infrastructure Committee, please deliver production sets to the Majority Staff in Room 2165 of the Rayburn House Office Building and the Minority Staff in Room 2163 of the Rayburn House Office Building. When producing documents to the Subcommittee on Aviation please deliver production sets to Majority and Minority Staffs in Room 2251 of the Rayburn House Office Building. We prefer, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact Kristin Nelson with the Oversight Committee Staff at 202-225-5074 or Holly Woodruff Lyons with the Transportation Committee Staff at 202-225-9446. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman
Committee on Oversight
and Government Reform



Bill Shuster
Chairman
Committee on Transportation
and Infrastructure

Enclosure

cc: The Honorable Elijah Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

The Honorable Nick J. Rahall, II, Ranking Minority Member
Committee on Transportation and Infrastructure

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority (202) 225-5074
Minority (202) 225-5051

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.