



LEGAL EASE

Aviation Law Made Simple

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Keeping the Lights On at the FAA

When I was about 8 years old, my mother forgot to pick me up after a little league practice.

I sat there watching all of the other kids get picked up, and before I knew it, I was alone at the ball field. This particular ball field was set back in the woods about 500 yards from the main road. It was approached from a long, dark, dirt road, and its afternoon shadows held untold terrors for an 8-year-old boy. After a 30-minute period that seemed like forever, it became obvious I was on my own. I walked more than a mile home. Once there, my mother was embarrassed about the error. She had simply forgotten. And, that was the end, until now, as I reveal my family secrets.

It is almost 40 years later, and since then my mother has not forgotten a thing. She remembers my anniversary. She calls on the grandkids' birthdays. She even

remembers to pick me up at the "T" stop when I come to visit. So, perhaps she can be forgiven for one little slip.

It is terrible to feel abandoned by a parent – even if it is just for

and the FAA, are funded by a two-step process known as authorizations and appropriations. Authorizations approve programs and the money that may be spent on them. Once the programs have been

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an hour. Imagine how terrible you would feel if you were abandoned by 535 parents.

The Federal Aviation Administration has been the victim of a certain benign neglect from the 535 members of Congress for years. To understand the nature of this neglect, though, it is important to understand how government agencies, like the FAA, are funded.

Government departments, such as the Department of Transportation

authorized, though, the money must be appropriated. An appropriation allows a federal agency, such as the FAA, to incur financial obligations and authorizes payments for those obligations to be made out of the Treasury.

Traditionally, the FAA is funded on multi-year authorizations allowing it to make strategic decisions for issues like airport construction, and then follow-through on those decisions with a regular cash flow that

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does not require an annual authorization. It allows the FAA to have certain expectations about its cash flow, thereby committing to multi-year infrastructure projects. Then, the annual appropriations allow Congress to manage the cash flow within the structure of the strategic plan laid out in the authorization.

When Congress is deadlocked on a substantive change to an agency or department's law, it is not unusual for the agency's authorization to be subject to a continuing resolution, known in Washington as a "CR." The continuing resolution usually authorizes funds to be spent at the same level as prior authorizations, so that important decisions about strategic planning for the agency can be deferred pending new information or vital debate.

What is unusual? Running an agency on four years worth of continuing resolutions is unusual.

Congress has been wrangling

with a number of issues associated with the FAA for four years and 21 continuing resolutions. The FAA has been running on a pre-programmed autopilot. It has been trying to operate under the prior funding levels, which is achievable. But, it also has been trying to manage new strategic plans under the funding authorizations of outdated strategic plans, which undermines the FAA's ability to commit to the infrastructure improvements necessary to fully implement NextGen.

So, the FAA has been like Congress' forgotten kid. While members of Congress debated the finer points of funding rural airports, they neglected to pass legislation to keep the FAA running.

Oh, they went through the motions. The House of Representatives passed a version of the FAA Reauthorization Bill, but it could not agree with the Senate

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on the final language. Therefore, no legislation came out of those efforts before the deadline – not even a CR.

The FAA authorization was allowed to lapse at midnight on July 23. As a consequence, 4,000 FAA employees who are deemed “non-essential” were furloughed. While the newspapers may call these personnel “non-essential,” in many cases they are the safety professionals who are absolutely

essential to continued advances in aviation safety. They are the people who make sure the FAA continues to provide world-class leadership in safety.

A Congressional compromise was finally reached on Aug. 5, and the 21st continuing resolution restored FAA funding, but only through mid-September. The short-term solution forces Congress to revisit this issue again in order to avoid another lapse in funding.

But, the damage was done, and FAA employees will remember when Congress failed to keep the lights on.

Defenders of our elder statesmen may argue that Congress was embroiled in debates over the debt limit, and therefore, could not afford to spend time on the mundane business of managing the government. But, any safety professional knows that when a crisis hits, it is more important than ever to ensure basic systems are running smoothly. If you shut down one engine after a bird strike, that is not the time to neglect the operation of your other engine. Congress should have passed a continuing resolution before the

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July 23 deadline to maintain funding levels pending eventual resolution of the disputed issues.

The essence of safety management is you learn from mistakes. You also learn from the mistakes of others, so that you do not repeat the same mistakes. If safety management is done right, then you learn to predict mistakes from data and correct them before they are ever made.

What will Congress learn from this? Will they resolve to pay more attention to the FAA? Probably not. Perhaps, Congress will give us the

long-term strategic plan needed to fully implement NextGen. But, even that hope may be overly optimistic.

What have we learned? Don't be late, because people are depending on you.

If you cannot agree on the final plan for business operations, and there is a stop gap measure that permits legitimate operation during continued negotiation, then at least implement the stop gap measure while you negotiate the final plan. This is a lesson that applies to many aspects of business, from

funding decisions to labor-management relations.

In a final admission, I missed a lunch meeting several years ago with a journalist and friend, Matt Thurber. He's forgotten it, but to this day I regret letting him down. I hope that somewhere, sometime, members of Congress will regret letting down an agency, and an industry, that relies on them. □

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