



U.S. Department  
of Transportation

General Counsel

1200 New Jersey Ave., S.E.  
Washington, D.C. 20590

Office of the Secretary  
of Transportation

March 9, 2023

The Honorable Ted Cruz  
Ranking Member, Committee on Commerce, Science, and Transportation  
United States Senate  
Washington, DC 20510

Dear Ranking Member Cruz:

Thank you for your letter of March 2, 2023, regarding the nomination of Phil Washington to be Administrator of the Federal Aviation Administration (FAA). I detail below both law and facts to highlight Mr. Washington's substantial credentials to lead the FAA.

Your letter raises two questions: (i) whether Mr. Washington has the requisite "experience in a field directly related to aviation" as required by 49 U.S.C. § 106(c)(3); and (ii) whether Mr. Washington satisfies the statutory requirement in 49 U.S.C. § 106(c)(2) that the FAA Administrator "be a civilian" in view of Mr. Washington's enlisted service in the United States Army, from which he retired in 2000 as a Command Sergeant Major. As explained further below, the clear answer to both questions is yes.

Mr. Washington's tenure running Denver International Airport (DEN) clearly gives him the invaluable "experience in a field directly related to aviation" required by the 49 U.S.C. § 106(c)(3). Moreover, contrary to your assertions, aviation safety is central to Mr. Washington's experience as an airport director. Airport Directors have final authority over essential safety-related functions and must interact with the FAA, airlines, and other airport users daily on a wide variety of airspace, operational, navigation aid, and capital issues essential for the safe and efficient operation of the National Airspace System. Mr. Washington fulfilled these duties on behalf of the third-busiest airport in the world that safely served 69 million passengers in 2022.

In fact, Congress agreed this experience is "in a field directly related to aviation" when it enacted Title 49 of the United States Code, Subtitle VII, which covers "Aviation Programs" and repeatedly includes airport safety, development and operations among these aviation programs, including the entire Part B dedicated to airport issues.

Congress directly and emphatically answered the question in Section 47101 when it made clear that it is the policy of the United States "that the safe operation of the *airport* and airway system *is the highest aviation priority*" and that "airport construction and improvement projects that increase the capacity of facilities to accommodate passenger and cargo traffic be undertaken *to*

*the maximum feasible extent so that safety and efficiency increase and delays decrease.*"<sup>1</sup> And, as part of its core safety requirements, Congress has mandated that large commercial airports like DEN secure and maintain operating certificates to ensure safety.<sup>2</sup>

The importance of the airport safety environment is especially critical now; the FAA has established runway safety as a top priority and recent close calls have occurred in the airport environment, where the Air Traffic Organization, aircraft operators and airports must work together to ensure safety. In fact, Acting Administrator Nolen is convening a Safety Summit next week to address these issues, explicitly including airport representatives, recognizing their central role in runway safety.

Notably, the FAA Administrator oversees the FAA's Office of Airports and its leader, the Associate Administrator of Airports, and safety at over 5000 airports nationally. The successful administration of airport safety is so integral to the FAA's work that the Associate Administrator of Airports is also a political appointee of the President's, recognizing the vital interplay between airports, airport safety, and the communities in which airports reside. In fact, the Office of Airports is the third largest line of business within the FAA in terms of employees.

Mr. Washington has direct experience operating one of the busiest Part 139 airports and is responsible for safety certification, managing current capital development of new gates and terminals to meet airline and passenger needs, and planning for future runway, terminal and other development to support Denver's ability to grow from accommodating 69 million to 100 million passengers per year. This is not only experience in a field directly related to aviation but experience in the safety, capacity, and operational areas that Congress has designated as priorities for our aviation system.<sup>3</sup>

Safety is the core mission for airport directors, especially for those subject to the certification requirements of Part 139 of the Federal Aviation Regulations.<sup>4</sup> Indeed, airport directors, sometimes referred to as an airport's Director of Aviation or Chief Executive Officer (CEO), provide key leadership, organizational strategy, and direction to a variety of stakeholders across the airport environment to ensure safe operations. These stakeholders include engineering, planning, financial, revenue development, IT, police, aircraft rescue firefighting, procurement, legal, marketing, public relations, and building management, as well as third-party vendors that provide services to the traveling public, and to local and state jurisdictional bodies.

Airport CEOs establish and maintain oversight of safety management systems across the airport operating environment to support operational efficiency on the ground and across the national airspace system.<sup>5</sup> This includes leading cross-functional teams to ensure the safety of daily operations by coordinating with tenants such as airlines, fixed based operators, and cargo operators as well as with local, state, and federal agencies in complying with complex civil aviation requirements focused on safety and security. Airport CEOs also execute airport strategic plans and manage complex, dynamic, fast-paced environments. In doing so, they work with

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<sup>1</sup> 49 U.S.C. 47101(a)(1), (7) (emphasis added)

<sup>2</sup> 49 U.S.C. § 44706

<sup>3</sup> 49 U.S.C. 47101

<sup>4</sup> 14 C.F.R. Part 139

<sup>5</sup> See e.g., 14 C.F.R. Part 139, Subpart E (airport safety management systems).

FAA's Office of Aviation Safety to address aircraft operational safety issues related to air carrier, air cargo, and general aviation operations. The FAA's new Safety Management System (SMS) rule for Part 139 airports, which became final in mid-February and will be implemented over the next five years at 200 of the busiest airports in the nation, would benefit greatly from having a constant, guiding hand from someone with SMS experience during that implementation.

Making aviation secure in the terminal, on the airfield, and en route requires strategic planning and relationships with a variety of stakeholders. In addition to overseeing thousands of badged airport personnel, airport CEOs also work hand in hand with the Transportation Security Administration, as well as federal law enforcement agencies and airport, city, and state police departments to maintain a secure environment. This security oversight also includes responsibility for all emergency responses at the airport, which can include aircraft fire and rescue, snow removal, bomb threats, UAS intrusions, or hijackings as well as terminal security to limit access to terminal and airside operations areas. These efforts require continuous coordination with airlines, FAA's Air Traffic and Airports organizations, first responders, and local, state and federal agencies, such as the Department of Homeland Security.

The Denver Airport CEO and his team also work closely with the Air Traffic Organization and nearby aerospace facilities such as Buckley Air Force Base and the Colorado Air and Spaceport (six miles from DEN), regarding airspace issues to ensure safety, efficiency, compatibility, and reducing noise exposures for nearby residents. This is especially essential as DEN seeks to safely accommodate 30 percent more passengers through the development of new airfield and other facilities that need to be safely fit into airspace procedures.

Airport CEOs provide leadership and work closely with airlines and FAA's Air Traffic, Aviation Safety, and Airports Organizations to coordinate construction activities, severe weather event responses, aircraft emergencies, wildlife hazard issues, and other significant events such as presidential temporary flight restrictions or military aircraft operations that may impact airport operations. Airport CEOs also coordinate with other parts of the U.S. Department of Transportation, including those that oversee and/or support highway access, bridges, tunnels, and rail and transit service. This requires state and local system planning, compatible and sustainable infrastructure development, funding, and maintenance and operation of major transportation networks.

It is clear that an airport CEO has the requisite "experience in a field directly related to aviation." From managing and overseeing billions of dollars in airport safety projects, to working with safety action teams to mitigate and address critical safety issues that arise, Mr. Washington has the knowledge, experience, and leadership in managing critical complex operations to ensure that the air transportation system at DEN remains safe. He is responsible for ensuring the safety of all ground movement of aircraft at DEN, the safety of all aircraft and personnel in rescue and firefighting operations on airport grounds, and the safety of all on-site fueling and repair operations.

Previous confirmations of FAA Administrators who are widely considered to have been highly effective further illustrate the point. For example, in 2012, the Senate confirmed Michael Huerta (D) as Administrator after he served for two years as FAA's Deputy Administrator; Mr. Huerta

had not previously worked in aviation before his appointment as Deputy Administrator. In 2002, the Senate confirmed Marion Blakey (R) as Administrator after she served as the Chair of the National Transportation Safety Board for one year and had previous experience at the National Highway Traffic Safety Administration. And in 1997, Jane Garvey (D) was confirmed as Administrator after two years leading Boston’s Logan Airport and previous experience with other non-aviation areas of transportation.<sup>6</sup> Mr. Washington’s experience not only meets, but exceeds the qualifications of the position when viewed historically. Any claim that his important aviation safety-related work as CEO of DEN is insufficient “experience in a field directly related to aviation” is not supported by the law, history or facts, given the important aviation safety responsibilities of airport CEOs and the similar qualifications of past FAA Administrators.

Your assertion that Mr. Washington is not a “civilian” under 49 U.S.C. § 106(c)(2) because, decades ago, he served in the Army as an enlisted soldier is not supported by the law or the facts. It is well established that Congress is understood to “say[] in a statute what it means and mean[] in a statute what it says there.”<sup>7</sup> A fundamental principle of statutory construction, applicable here, is that when the language of a statute is plain and unambiguous, it must be applied according to its terms.<sup>8</sup> This can include referring to a word’s definition in the dictionary to identify its regular usage.<sup>9</sup>

Section 106(c)(2) does not define “civilian,” so the term’s plain and unambiguous meaning is controlling. Dictionaries are consistent in defining “civilian” as a person who is not on active duty in the military.<sup>10</sup> The U.S. Department of Justice’s Office of Legal Counsel (OLC) reached the same conclusion as to the meaning of “civilian” when it considered the requirement in the Space Act that the Administrator of the National Aeronautics and Space Administration (NASA) “be appointed from civilian life.” As OLC explained, “the usual definition of ‘civilian’ includes retired military personnel who are not on active duty,” ultimately determining that Charles Bolden, a retired Marine Corps Major General, could serve as NASA Administrator.<sup>11</sup>

Mr. Washington retired from the U.S. Army after 24 years of stellar service in July 2000 as a Command Sergeant Major. Since his retirement from the military nearly 23 years ago, Mr.

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6 Notably, since the FAA Administrator’s term of office was lengthened to five years, these are the only three people to have served their entire term of office.

7 Connecticut Nat’l Bank v. Germain, 503 U.S. 249, 254 (1992) (Thomas, J.).

8 See, e.g., FCC v. AT&T Inc., 562 U.S. 397, 403 (2011) (“When a statute does not define a term, we typically give the phrase its ordinary meaning.” (internal quotation marks omitted)); *Sebelius v. Cloer*, 569 U.S. 369, 376 (2013) (“As in any statutory construction case, we start, of course, with the statutory text, and proceed from the understanding that unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning.” (internal quotation marks, alterations, and citations omitted)); *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (referencing *Caminetti v. United States*, 242 U.S. 470, 485 (1917)); see also U.S. Congressional Research Service, *Statutory Interpretation: Theories, Tools, and Trends*, R45153, at 23 n.237 (May 18, 2022), available at <https://crsreports.congress.gov/product/pdf/R/R45153> (“The idea that courts should generally give the words of a statute their ‘usual’ meaning is an old one,” citing 1 William Blackstone, *Commentaries* \*59); U.S. Congressional Research Service, *Statutory Interpretation: General Principles and Recent Trends*, at 8 (Sept. 24, 2014), available at [https://www.everycrsreport.com/files/20140924\\_97-589\\_3222be21f7f00c8569c461b506639be98c482e2c.pdf](https://www.everycrsreport.com/files/20140924_97-589_3222be21f7f00c8569c461b506639be98c482e2c.pdf).

<sup>9</sup> See U.S. Congressional Research Service, *Statutory Interpretation: Theories, Tools, and Trends*, at 22-23; *Schwegmann Bros. v. United States*, 341 U.S. 384, 388 (1951) (referring to the statute at issue’s “normal and customary meaning” in interpreting it).

<sup>10</sup> See, e.g., Merriam-Webster Online Dictionary (2023), available at <https://www.merriam-webster.com/dictionary/civilian> (defining “civilian” as “one not on active duty in the armed services or not on a police or firefighting force”); Dictionary.com (2023), available at <https://www.dictionary.com/browse/civilian> (defining “civilian” as “a person who is not on active duty with a military, naval, police, or fire fighting organization”); American Heritage Dictionary (2023), available at <https://ahdictionary.com/word/search.html?q=civilian> (defining “civilian” as “[a] person who is not an active member of the military, the police, or a belligerent group in a conflict”).

<sup>11</sup> See 33 Op. O.L.C., *Eligibility of a Retired Military Officer for Appointment as Administrator of the National Aeronautics and Space Administration*, at 1 (July 8, 2009).

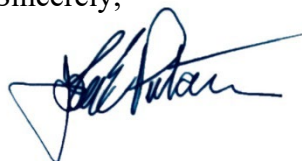
Washington has engaged in solely civilian pursuits and clearly fits the plain and widely understood meaning of the word “civilian.”

No further analysis is required to confirm Mr. Washington’s eligibility. If Congress had wanted to impose additional restrictions on individuals with prior service in the military, it could have done so. Indeed, in 49 U.S.C. § 106(d), Congress imposed limitations on who could serve as Deputy Administrator of the FAA, based upon the prior military service of the Administrator.<sup>12</sup> Section 106(d) confirms both that Congress understood that former service members would serve as Administrator and that Congress could have specified additional requirements for service as Administrator.

To be sure, Congress has, on occasion, passed laws and granted waivers to certain retired officers to allow them to serve as FAA Administrator. Pursuant to the plain text of 49 U.S.C. § 106(c), those waivers were not necessary to make the nominees eligible to serve as FAA Administrator. Mr. Washington is fully qualified to serve as FAA Administrator pursuant to 49 U.S.C. § 106(c), and no waiver of this statutory provision is required.

It bears noting that leadership success in a field often comes without granular, technical knowledge. Surveying the leadership of the aviation field supports this fact overwhelmingly. Of the 10 largest commercial airline CEOs, only one is a former pilot. As you note, this is a pivotal time for the FAA and for aviation in the United States. Leading an organization at a crucial time requires a person with a track record of recruiting and motivating personnel, setting audacious goals, and executing them while never losing sight of the mission. Phil Washington, a highly-decorated Army veteran with significant experience successfully leading, managing, and innovating large, complex organizations – including a critical part of our aviation system, airports – has done this with four major organizations. If anything, the fresh perspective he will bring to his top-to-bottom assessment of the FAA’s culture and operations will be a benefit. Mr. Washington is fully qualified and eligible under 49 U.S.C. § 106 to serve as FAA Administrator. The Administration encourages his swift confirmation. I have sent a similar letter to the co-signer of your letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Putnam", with a stylized flourish extending to the right.

John Putnam  
General Counsel

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<sup>12</sup> See 49 U.S.C. § 106(d)(1).

cc: The Honorable Rick Larsen  
Ranking Member  
House Committee on Transportation and Infrastructure

The Honorable Maria Cantwell  
Chair  
Senate Committee on Commerce, Science, and Transportation