



Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Washington DC 20515

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February 27, 2020

**SUMMARY OF SUBJECT MATTER**

**TO:** Members, Subcommittee on Aviation  
**FROM:** Staff, Subcommittee on Aviation  
**RE:** Subcommittee Hearing on “The Airline Passenger Experience: What It Is and What It Can Be”

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**PURPOSE**

The Subcommittee on Aviation will meet on Tuesday, March 3, 2020, at 10:00 a.m. in 2167 Rayburn House Office Building to hold a hearing titled, “The Airline Passenger Experience: What It Is and What It Can Be.” The hearing will examine the U.S. airline passenger experience today, how airlines are working to improve the air travel experience, and opportunities to invest in technologies or innovations that could enhance the air travel experience. The Subcommittee will hear testimony from the Government Accountability Office (GAO); Consumer Reports; Paralyzed Veterans of America; Airline Passenger Experience Association (APEX); and Spirit Airlines.

**BACKGROUND**

**I. OPPORTUNITIES FOR INNOVATION**

A decade of sustained profitability provides U.S. carriers an opportunity to invest in the passenger experience and implement innovative technologies and features. For example, to address the challenges faced by passengers with reduced mobility, discussed in section V, *infra*, companies have developed “the world’s first expanding aircraft lavatory” for single-aisle aircraft to accommodate passengers with reduced mobility.<sup>1</sup>

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<sup>1</sup> Stephanie Taylor, *New Aircraft Lavatory Concept Is Accessible to Passengers in Wheelchairs*, APEX (Feb. 12, 2020), <https://apex.aero/2020/02/12/access-aircraft-lavatory-design>.



Other companies have developed glass touch-controlled reading lights.<sup>2</sup>



While these innovative technologies have not yet been adopted by airlines, they are examples of the types of innovations—along with temperature-controlled seats<sup>3</sup> and seats that collect data on parameters such as cushion pressure and passenger movement to help inform future seat designs<sup>4</sup>—available to airlines that could improve passengers’ in-flight experience.

## II. AVIATION REGULATION

While the Federal Aviation Administration (FAA) provides air traffic control and regulates aviation safety in the United States,<sup>5</sup> the U.S. Department of Transportation (DOT) conducts limited economic regulation of the airline industry by monitoring compliance with and investigating violations of its aviation economic, consumer protection, and civil rights requirements.<sup>6</sup> Much of the DOT’s economic regulation of the industry is remnants of the former Civil Aeronautics Board’s regulatory authority, which included the complete regulation of airline rates, routes, and services.<sup>7</sup> Congress mostly ended this economic regulation of air carriers with the enactment of the Airline Deregulation Act of 1978 (Pub. L. 95-504).

<sup>2</sup> Stephanie Taylor, *Schott Reveals Touch-Controlled Reading Light*, APEX (Feb. 19, 2020), <https://apex.aero/2020/02/19/schott-jade-reading-light-priestmangoode>.

<sup>3</sup> Marisa Garcia, *Lantal Delivers Temperature-Control System for Aircraft Seats*, APEX (Feb. 5, 2020), <https://apex.aero/2020/02/05/lantal-temperature-controlled-seats>.

<sup>4</sup> Katie Sehl, *Sitting on Air: Lantal’s Pneumatic Comfort System*, APEX (May 16, 2016), <https://apex.aero/2016/05/16/sitting-air-lantal-pneumatic-comfort-system>.

<sup>5</sup> See 49 U.S.C. §§ 44701, *et seq.*

<sup>6</sup> See DOT, *Aviation Consumer Protection*, <https://www.transportation.gov/airconsumer>. The DOT prohibits, for example, unfair or deceptive practices, such as excessive tarmac delays and misleading advertisements. See 49 U.S.C. §§ 41101–02 (economic fitness certification), § 41712 (prohibition on unfair and deceptive trade practices).

<sup>7</sup> See Federal Aviation Act of 1958, Pub. L. 85-726.

In the realm of consumer protection and civil rights, the DOT has broad authority to investigate and prohibit “an unfair or deceptive practice or unfair method of competition” among air carriers and ticket agents.<sup>8</sup> In addition to monitoring industry compliance with DOT requirements, the DOT receives and reviews consumer complaints filed with the Department.<sup>9</sup> If the DOT reviews and investigates a complaint and finds that an air carrier or ticket agent has violated a DOT regulation or order, or otherwise engaged in an unfair or deceptive practice, the DOT will take appropriate enforcement action, including issuing warning letters or consent orders, seeking injunctive relief, or imposing civil penalties.<sup>10</sup>

On February 20, 2020, the DOT issued a notice of proposed rulemaking (NPRM) intended to clarify the meaning of “unfair” or “deceptive” practices in air travel to align DOT definitions with Federal Trade Commission principles, according to the Secretary of Transportation.<sup>11</sup> Among other things, the proposed rulemaking would:

- Codify the DOT’s longstanding interpretation of the terms “unfair” and “deceptive”;<sup>12</sup>
- Require the DOT “to articulate in future enforcement orders [against airlines or ticket agents] the basis for concluding that a practice is unfair or deceptive where no existing [DOT] regulation governs the practice in question”;<sup>13</sup> and
- Require the DOT “to state the basis for its conclusion that a practice is unfair or deceptive when it issues discretionary aviation consumer protection regulations.”<sup>14</sup>

While Airlines for America—the trade association representing U.S. carriers—applauded the proposed rule, stating it would “provide greater transparency for both the U.S. airline industry and the flying public,” a National Consumers League executive argued the rule will set “all kinds of new bars that [the DOT] would have to get over in order to conduct any enforcement actions.”<sup>15</sup> The NPRM will be available for public review and comment for 60 days.<sup>16</sup>

### III. AIRLINE CONSUMER COMPLAINTS

As noted above, the DOT is responsible for monitoring compliance with and investigating violations of aviation civil rights and consumer protection requirements. In 2019, the DOT received a total of 15,332 consumer complaints—9,547 against U.S. airlines; 5,147 against foreign airlines; and the remainder against travel agents, tour operators, and others.<sup>17</sup> Of those complaints, approximately:

- 31 percent related to cancellations, delays, or misconnections;

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<sup>8</sup> 49 U.S.C. § 41712.

<sup>9</sup> DOT, *Aviation Enforcement and Proceedings*, <https://www.transportation.gov/airconsumer/about-us>.

<sup>10</sup> 49 U.S.C. § 46301. *See generally* the DOT’s message to major air carriers (Sept. 25, 2001), *available at* [https://www.transportation.gov/sites/dot.dev/files/docs/20010925\\_0.pdf](https://www.transportation.gov/sites/dot.dev/files/docs/20010925_0.pdf).

<sup>11</sup> POLITICO Pro Transp., *DOT to Propose New Rule on ‘Deceptive’ Practices by Airlines, Ticket Agents* (Feb. 20, 2020).

<sup>12</sup> DOT NPRM, *Defining Unfair or Deceptive Practices*, DOT-OST-2019-0182 at 1 (Feb. 20, 2020).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Sam Mintz, Morning Transportation, POLITICO (Feb. 21, 2020).

<sup>16</sup> DOT NPRM, *supra* note 12 at 2.

<sup>17</sup> DOT Office of Aviation Enforcement and Proceedings, *Air Travel Consumer Report (ATCR)* (Feb. 2020) 60–64, <https://www.transportation.gov/sites/dot.gov/files/2020-02/February%202020%20ATCR.pdf>.

- 17 percent related to baggage;
- 12 percent related to reservations, ticketing, or boarding;
- 11 percent related to customer service;
- 6 percent related to disability; and
- the remainder related to fares, refunds, oversales, advertising, discrimination, and loss, injury, or death of animals.<sup>18</sup>

In 2019, 10 U.S. air carriers reported receiving 2,966,496 mishandled baggage reports from passengers<sup>19</sup> and reported denying boarding to, or bumping, more than 20,000 passengers holding confirmed reservations involuntarily, although the latter number is inflated from prior years due to the worldwide grounding of the Boeing 737 MAX aircraft.<sup>20</sup> Reporting U.S. air carriers informed the DOT they collectively mishandled 10,548 wheelchairs and scooters in 2019—for a monthly average of 879 mishandled mobility aids.<sup>21</sup>

#### IV. U.S. AIRLINES' PERFORMANCE AND CUSTOMER SERVICE

According to most recent Federal data, approximately 888.6 million passengers boarded U.S. airlines in 2018—an increase of more than 25 percent in passenger levels since the 2008-09 economic crises.<sup>22</sup> As described in detail below, U.S. airlines have benefited from the annual increases in passenger traffic, surging to record profitability. In fact, since the economic crises, the U.S. airline industry has become the world's most profitable. In 2018, the airlines reported an after-tax net profit of \$11.8 billion and a pre-tax operating profit of \$17.6 billion.<sup>23</sup> As a whole, the U.S. airline industry has been solidly profitable for 10 consecutive years.<sup>24</sup>

In addition to increased and new ancillary fees contributing to U.S. airlines' recent financial performance, a series of airline mergers over the last decade has reduced the number of large competitors from eight to four, helping keep airfares higher and airline costs lower than they would

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<sup>18</sup> *Id.* at 60.

<sup>19</sup> *Id.* at 36.

<sup>20</sup> This figure represents 0.24 involuntary denied boardings per 10,000 passengers. *Id.* at 46. “On March 13, 2019, the Federal Aviation Administration ordered the immediate grounding of Boeing 737 MAX aircraft operated by U.S. airlines or in U.S. territory based on data arising out of the relevant accident investigations. American Airlines and Southwest Airlines separately informed the Department that the grounding of the 737 MAX aircraft has negatively impacted their involuntary denied boarding statistics immediately following the grounding.” *Id.*

<sup>21</sup> Pub. L. 115-254, § 441 (requiring airline compliance with the DOT's 2016 final rule requiring reporting of mishandled baggage and wheelchairs in aircraft cargo compartments). See *ATCR (Feb. 2020)*, *supra* note 17 at 41. The figure for mishandled wheelchairs and scooters represents 1.54 percent of the 685,792 aids enplaned in 2019. *Id.*

<sup>22</sup> U.S. Bureau of Transp. Statistics (BTS), *Passengers, All Carriers – All Airports*, [https://www.transtats.bts.gov/Data\\_Elements.aspx?Data=1](https://www.transtats.bts.gov/Data_Elements.aspx?Data=1).

<sup>23</sup> BTS, *2018 Annual and 4th Quarter U.S. Airline Financial Data* (May 6, 2019), <https://www.bts.gov/newsroom/2018-annual-and-4th-quarter-us-airline-financial-data>.

<sup>24</sup> *Id.* 2018 marked the tenth consecutive annual pre-tax operating profit; the sixth consecutive annual after-tax net profit. *Id.* According to Airlines for America calculations, over the course of the last 50 years, even in the best years, the profitability of U.S. airlines has lagged the U.S. corporate average. See A4A, *Presentation: Industry Review and Outlook*, at 6–7, <https://www.airlines.org/dataset/a4a-presentation-industry-review-and-outlook/>. For company-specific margins, please see the Security and Exchange Commission (SEC) filings of each respective company. For the overall U.S. average, please see U.S. Bureau of Economic Analysis, Department of Commerce, NIPA (Table 1.14, lines 1 and 11), *available at* [http://www.bea.gov/iTable/index\\_nipa.cfm](http://www.bea.gov/iTable/index_nipa.cfm).

have been otherwise.<sup>25</sup> Still, flying today is lower than the cost of air travel 25 years ago. According to U.S. Bureau of Transportation Statistics (BTS) data, the average domestic airfare, when adjusted for inflation, fell nearly 37 percent from 1993 to 2018, from \$563 to \$345.<sup>26</sup> This reduction may be at least partially associated with the competitive effects associated with the entry of low-cost and ultra-low-cost carriers into different aviation markets.<sup>27</sup>

### **A. Contracts of Carriage**

Most of an air passenger's rights—beyond those mandated by Congress or the DOT—are defined in an airline's contract of carriage—"the legal agreement between an airline and its ticket holders."<sup>28</sup> These contracts contain provisions on everything from how the airline will conduct check-in and ticket refund procedures to its responsibilities to a passenger when a flight is delayed.<sup>29</sup> Each airline has its own contract, so provisions differ from carrier to carrier. For domestic travel, an airline may provide its contract terms on or with a ticket at the time of purchase, or elect to "incorporate the terms by reference," meaning they are contained in a separate document that a passenger can request or that is available on the airline's website.<sup>30</sup>

But contracts of carriage can be lengthy and complicated. In 2017, the GAO reviewed the contracts of carriage of 11 U.S. airlines.<sup>31</sup> The GAO found that the approximate average length of the documents was 40 pages.<sup>32</sup> Using an automated grade-level readability test, the GAO found these documents "require a reading level of someone with a college graduate degree."<sup>33</sup>

### **B. Unbundling of Fees for Optional Services**

U.S. airlines' assessment of fees for checked baggage and reservation changes alone totaled \$7.6 billion in 2018—\$4.9 billion for checked baggage and \$2.7 billion for reservation changes.<sup>34</sup> And some U.S. airlines have recently increased these fees. For example, on February 21, 2020, United Airlines increased its checked baggage fee by \$5, resulting in a passenger's first checked bag costing \$35 and the second bag \$45, unless the passenger pre-pays for the bag before online check-in.<sup>35</sup> If past behavior is indicative of what is to come, competitors could follow suit and raise their

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<sup>25</sup> Delta and Northwest merged in 2008, United and Continental merged in 2010, Southwest and AirTran merged in 2010, and American and US Airways merged in 2013. See GAO, *Airline Competition: The Average Number of Competitors in Markets Serving the Majority of Passengers Has Changed Little in Recent Years, but Stakeholders Voice Concerns About Competition* 1, 6, 13–15, GAO-14-515 (June 2014).

<sup>26</sup> BTS, *Average Domestic Airline Itinerary Fares*, <https://www.transtats.bts.gov/AverageFare/>.

<sup>27</sup> Alexander Bachwich and Michael Wittman, *The Emergence and Effects of the Ultra-Low Cost Carrier (ULCC) Business Model in the U.S. Airline Industry*, 62 J. of Air Transp. Mgmt. 155–64 (July 2017).

<sup>28</sup> Cong. Res. Service, *Airline Passenger Rights: The Federal Role in Aviation Consumer Protection* 4 (Aug. 17, 2016).

<sup>29</sup> See *id.* See also Bill McGee, *Contracts of Carriage: Deciphering Murky Airline Rules*, USA TODAY (July 12, 2017), <https://www.usatoday.com/story/travel/columnist/mcgee/2017/07/12/airline-contract-carriage/469916001/>.

<sup>30</sup> DOT, *A Consumer Guide to Air Travel*, <https://www.transportation.gov/airconsumer/fly-rights>.

<sup>31</sup> GAO, *Information on Airline Fees for Optional Services*, GAO-17-756, 35 (Sept. 2017), available at <https://www.gao.gov/assets/gao-17-756.pdf>.

<sup>32</sup> *Id.* at 35.

<sup>33</sup> *Id.*

<sup>34</sup> See BTS, *Baggage Fees by Airline 2018*, <https://www.bts.gov/node/221236> and BTS, *Reservation Cancellation/Change Fees by Airline 2018*, <https://www.bts.gov/node/221251>.

<sup>35</sup> Dawn Gilbertson, *United Airlines Raising Checked-Bag Fees, Joining JetBlue*, USA TODAY (Feb. 21, 2020), <https://www.usatoday.com/story/travel/airline-news/2020/02/21/united-airlines-bag-fees-35-first-checked-bag-45-second/4831976002/>.

bag fees as well. For example, when JetBlue Airways increased its bag fees by \$5 in August 2018, United, Delta Air Lines, and American Airlines all raised theirs by \$5 within 30 days.<sup>36</sup>

Over the past decade, in addition to increasing existing fee amounts (e.g., checked and oversized bags, ticket cancellation), U.S. airlines have introduced a variety of new fees for *optional* services<sup>37</sup> that were once included in the total/base cost of a passenger's ticket, such as seat selection and priority boarding.<sup>38</sup> Consumer advocates have “raised concerns about the lack of transparency regarding optional service fees and the full price of airline tickets,” which affect the ability of consumers to compare the total cost of planned air travel across several airlines before purchase.<sup>39</sup>

Despite increased and new ancillary fees, passenger travel has continued to grow since 2010.<sup>40</sup> In its 2017 report, the GAO noted that “unlike the revenues from domestic airfares, revenues from most optional service fees are not subject to the excise tax that helps fund the Airport and Airway Trust Fund, which partially supports the Federal Aviation Administration (FAA) . . . .”<sup>41</sup> For example, the nearly \$5 billion in checked baggage fees in 2018 was not subject to the aviation excise tax like the base cost of the ticket for air travel.<sup>42</sup> If this ancillary fee were subject to the 7.5 percent excise tax, approximately \$367 million in excise tax revenue would have been deposited into the Trust Fund, the dedicated source of funding that helps finance the FAA's investments in the airport and airway system and FAA operations, including air traffic control services and aviation safety inspections, among other things.<sup>43</sup>

### C. Fare Classes

U.S. airlines divide their economy-class inventory into fare classes at different costs.<sup>44</sup> Beginning in 2015, several U.S. airlines introduced “basic economy” tickets,<sup>45</sup> which have been called “the cheapest, least flexible, unfriendliest option” available to a consumer due to all of the restrictions entailed.<sup>46</sup> Passengers purchasing these restricted tickets may be “assigned seats after checking in, meaning that they might not be seated with the rest of their travel group; board the

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<sup>36</sup> See *id.* See also Dawn Gilbertson, *No Surprise: American Airlines Raises Bag Fees to \$30, Matching Delta and United*, USA TODAY (Sept. 20, 2018), <https://www.usatoday.com/story/travel/flights/todayinthesky/2018/09/20/american-increases-bag-fees-matching-united-delta-jetblue/1189021002/>.

<sup>37</sup> GAO-17-756, *supra* note 31 at 10.

<sup>38</sup> *Id.* at 1.

<sup>39</sup> *Id.* at 1–2.

<sup>40</sup> *Id.* at 18.

<sup>41</sup> *Id.*

<sup>42</sup> See *id.* at n. 18 (describing how Department of Treasury regulations specifically exempt baggage fee payments from the 7.5-percent aviation excise tax).

<sup>43</sup> See FAA, *Airport & Airway Trust Fund (AATF)*, <https://www.faa.gov/about/budget/aatf/>.

<sup>44</sup> Hannah Sampson, *Airline Classes Are Complicated. Here's How to Know Which One You Need*, WASH. POST (Nov. 15, 2019), <https://www.washingtonpost.com/travel/2019/11/15/airline-fares-are-complicated-heres-how-know-which-one-you-need/>.

<sup>45</sup> GAO-17-756, *supra* note 31 at 13. See Hugo Martin, *Senator Says Basic Economy Seats on Planes Add to Travel Confusion and Airline Profits*, L.A. TIMES (Jan. 27, 2018), <https://www.latimes.com/business/la-fi-travel-briefcase-basic-economy-20180127-story.html>.

<sup>46</sup> Sampson, *supra* note 44. Others have said, “[T]he growing number of ultra-low-cost carriers along with price conscience travelers searching on comparison websites have forced the major legacy carriers to introduce these bare-bones tickets in order to compete.” Peter Thornton, *A New Look at Basic Economy for Domestic and Short-Haul International Travel*, AirfareWatchdog (Dec. 20, 2019), <https://www.airfarewatchdog.com/blog/44259587/a-new-look-at-basic-economy-for-domestic-and-short-haul-international-travel/>. Basic economy tickets are also sold on Canadian and Mexican airlines.

aircraft last; cannot upgrade seats or class of service; and cannot change their flights.”<sup>47</sup> Further, some “basic economy” passengers may be denied access to overhead compartments or limited to a single carry-on bag that fits under the seat.<sup>48</sup> Some travelers may, however, take advantage of these tickets if they can pack light, bring their own snacks, and travel with few expectations, for example.<sup>49</sup>

But these fares sometimes push passengers to ultimately purchase more expensive tickets that include the flexibility to change flights or roomier seats.<sup>50</sup> According to one American Airlines executive, “The product is working entirely as we expected and so we’re seeing the buy-up rates that we expected to see and we’re seeing the sell-up amounts that we expected to see . . . . So basic economy is really, at this point, working as designed.”<sup>51</sup> United Airlines president Scott Kirby similarly said that segmentation of the economy cabin could add up to \$1 billion in revenue for the carrier within a few years.<sup>52</sup>

There have been cases when “basic economy” policies have caused confusion at the airport, both for employees who must enforce the policies and for passengers who may have unknowingly or mistakenly purchased such a restricted ticket. For example, in 2017, American Airlines employees erroneously attempted to charge a nursing mother \$150 to check a cooler of frozen breast milk at the gate because she had purchased a “basic economy” ticket, which limited her carry-on baggage allowance.<sup>53</sup> The airline clarified that the employees were not acting consistently with the carrier’s policy, which would have permitted the passenger to carry the cooler on board.<sup>54</sup> The “budget-conscious” passenger felt pressured to leave behind 40 ounces of frozen breast milk at the gate.<sup>55</sup> There have been other cases of consumers becoming frustrated with these “budget tickets,” and several airlines have responded by ensuring that communications with customers purchasing a “basic economy” ticket are clear as to how the fares work and any associated restrictions.<sup>56</sup>

The detailed segmentation has also prompted difficulty for families traveling together. Parents often do not want to pay extra for assigned seats next to their children. But when asked about this issue, United Airlines president Scott Kirby said, “Look, when you go to a concert, do you think you should pay the same price to sit in the nosebleed seats or to sit up front?”<sup>57</sup>

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<sup>47</sup> GAO-17-756, *supra* note 31 at 13.

<sup>48</sup> *Id.*

<sup>49</sup> See Thornton, *supra* note 36.

<sup>50</sup> Martin, *supra* note 45.

<sup>51</sup> *Id.*

<sup>52</sup> Edward Russell, *United Completes Domestic Basic Economy Roll Out*, FlightGlobal (June 7, 2017), <https://www.flightglobal.com/united-completes-domestic-basic-economy-roll-out/124319.article>.

<sup>53</sup> Dawn Gilbertson, *American Airlines Tries to Charge Mom \$150 to Check Frozen Breast Milk*, USA TODAY (Dec. 14, 2017), <https://www.usatoday.com/story/travel/nation-now/2017/12/14/breast-milk-baggage-fee/953074001/>.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> See Cadie Thompson, *United Airlines Unveiled New Budget Tickets – and Some Customers are Furious*, BUS. INSIDER (June 14, 2017), <https://www.businessinsider.com/united-airlines-basic-economy-tickets-frustrating-customers-2017-6> (describing instances of public response to United’s basic economy tickets and several airlines’ efforts to ensure ticket restrictions are made clear to passengers before and after purchase).

<sup>57</sup> See Brian Sumers, *United Airlines President on Turning Skeptics Into Believers*, Skift (Aug. 27, 2018), [https://skift.com/2018/08/27/united-airlines-president-on-turning-skeptics-into-believers/?utm\\_content=76281326&utm\\_medium=social&utm\\_source=twitter](https://skift.com/2018/08/27/united-airlines-president-on-turning-skeptics-into-believers/?utm_content=76281326&utm_medium=social&utm_source=twitter).

#### D. Denied Boarding

For decades, airlines routinely overbooked flights to compensate for an inevitable number of “no-shows” among passengers holding confirmed reservations.<sup>58</sup> However, non-refundable or non-flexible ticket options and reservation change fees have reduced the number of no-shows, and overbooking practices result in “oversale” situations in which airlines are forced to involuntarily deny boarding to, or “bump,” some passengers.<sup>59</sup> The need to accommodate airline flight crews or aircraft maintenance issues can also result in denied boardings.<sup>60</sup> While most denied boardings are voluntary—meaning the passenger voluntarily gives up their seat and accepts the airline’s offer for compensation (e.g., cash or an airline voucher)—others are involuntary.<sup>61</sup>

In these situations, airlines must first solicit passengers to voluntarily give up their seats before denying boarding involuntarily,<sup>62</sup> and the rules for how an airline will select passengers for bumping if there is an insufficient number of volunteers vary by carrier.<sup>63</sup> DOT rules set minimum compensation amounts for passengers who are involuntarily denied boarding; amounts vary based on fare and the amount of time by which the passenger’s arrival at their final destination is delayed.<sup>64</sup>

A high-profile incident in 2017 raised public questions about airlines’ denied-boarding policies. In order to accommodate off-duty crewmembers traveling on a United Express flight from Chicago to Louisville, United Airlines gate agents attempted to bump a passenger who had already boarded the aircraft.<sup>65</sup> When the passenger refused to give up his seat, airline staff called police officers from the Chicago Department of Aviation to physically remove the passenger.<sup>66</sup> As evidenced by several passengers’ video recordings, the passenger was bloodied and seriously injured as he was forcefully removed from the aircraft.<sup>67</sup>

In an attempt to prevent such incidents in the future, the *FAA Reauthorization Act of 2018* prohibited, with few limitations, an airline from denying boarding to or involuntarily removing a passenger from an aircraft after the passenger has checked in for the flight and had their boarding pass accepted by the gate agent.<sup>68</sup> The law also directed the GAO to review airline policies and practices related to oversales of flights.<sup>69</sup> In its review, the GAO found that to reduce the possibility of denied boarding, airlines have “reduced their rate of overbooking or eliminated [overbooking]

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<sup>58</sup> Tom Chitty, *Why Do Airlines Overbook Flights*, CNBC (June 21, 2019), <https://www.cnbc.com/2019/06/21/why-do-airlines-overbook-flights-paris-air-show.html>.

<sup>59</sup> See *id.* See also GAO, *Information on Airlines’ Denied Boarding Practices*, GAO-20-191 (Dec. 2019), <https://www.gao.gov/assets/gao-20-191.pdf>.

<sup>60</sup> See GAO-20-191 *supra* note 59 at 1.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 6.

<sup>63</sup> *Id.* at 7. Factors for determining how an airline will select passengers to deny boarding involuntarily include fare types, check-in times, and frequent flyer status. *Id.*

<sup>64</sup> *Id.* at 8.

<sup>65</sup> See Erin McCann, *United’s Apologies: A Timeline*, N.Y. TIMES (Apr. 14, 2017), [https://www.nytimes.com/2017/04/14/business/united-airlines-passenger-doctor.html?\\_r=0](https://www.nytimes.com/2017/04/14/business/united-airlines-passenger-doctor.html?_r=0) and David Koenig, *United CEO Says No One Will Be Fired for Dragging Incident*, AP Online (Apr. 18, 2017), <https://www.nytimes.com/aponline/2017/04/18/business/ap-us-united-passenger-removed.html>.

<sup>66</sup> McCann, *supra* note 65.

<sup>67</sup> *Id.*

<sup>68</sup> Pub. L. 115-254, § 425(b).

<sup>69</sup> *Id.* § 425(f).



altogether,”<sup>70</sup> and now solicit volunteers to give up their seats earlier in the process (e.g., soliciting voluntary passengers before airport arrival), or offer alternative forms of compensation (e.g., gift cards or iPads).<sup>71</sup>

### **E. Widespread Information Technology (IT) Disruptions**

A series of high-profile IT system failures resulting in the delay or cancellation of tens of thousands of U.S. flights has affected airlines’ overall on-time performance in recent years. In total, the GAO identified 34 IT outages between 2015 and 2017, with 85 percent of those outages resulting in flight delays or cancellations.<sup>72</sup> For example, in July 2016, more than 2,300 Southwest Airlines flights were canceled, 7,000 more were delayed, and nearly all flights were grounded at the airline’s Chicago-Midway hub due to the failure of a small Cisco router—one of about 2,000—in a Southwest data center.<sup>73</sup> Similarly, Delta canceled 2,300 flights over three days in August 2016, after a critical computer system crashed due to a power outage and small fire in a Delta data center.<sup>74</sup>

While airlines’ policies may vary in what they will provide their passengers during an IT outage (e.g., food, hotel), according to DOT policy, passengers affected by cancellations or *significant* disruptions are entitled to a refund of any unused portion of their tickets if they so request.<sup>75</sup> Under DOT policy, an airline’s failure to provide such a refund is an unfair and deceptive practice.<sup>76</sup>

## **V. PASSENGERS WITH DISABILITIES**

According to the most recent Census, 57 million Americans (roughly 1 in 5 individuals) have a disability, and more than half of these individuals experience issues with physical mobility.<sup>77</sup> While these Americans may face various hurdles in their daily life, air travel can often present an additional unique set of challenges. For instance, airline passengers with disabilities may encounter inaccessible lavatories on aircraft or incur bodily harm when boarding or deplaning an aircraft, and frequently report lost, damaged, or otherwise mishandled mobility aids, such as wheelchairs and scooters.<sup>78</sup> In addition, individuals with certain disabilities, such as wheelchair users, require additional assistance or have difficulty performing certain actions at airports, such as handling their baggage, navigating through crowded terminals, and undergoing security screening.<sup>79</sup> Such challenges can prevent

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<sup>70</sup> GAO-20-191, *supra* note 59 at 15.

<sup>71</sup> *Id.* at 16–17.

<sup>72</sup> GAO, *Information on Airline IT Outages*, GAO-19-514 (June 2019), <https://www.gao.gov/assets/gao-19-514.pdf>.

<sup>73</sup> Robert Wall, *U.S. Airlines Report Delays Caused by System Fault*, WALL ST. J. (Apr. 1, 2019), <https://www.wsj.com/articles/southwest-airlines-says-systemwide-technology-problem-affecting-flights-11554117011>.

<sup>74</sup> *See id.* *See also* GAO-19-514, *supra* note 72 at 1.

<sup>75</sup> GAO-19-514, *supra* note 72 at 1, 10.

<sup>76</sup> *Id.* *See* 49 U.S.C. § 41712 (prohibiting broadly unfair and deceptive practices among air carriers and ticket agents). Airlines or ticket agents that violate that proscription may be required to pay a civil penalty to the DOT.

<sup>77</sup> GAO, *Passengers with Disabilities: Air Carriers’ Disability-Training Programs and the Department of Transportation’s Oversight*, GAO-17-541R (May 31, 2017), <https://www.gao.gov/assets/gao-17-541r.pdf>.

<sup>78</sup> *A Work in Progress: Implementation of the FAA Reauthorization Act of 2018: Before the Subcomm. on Aviation of the House Transportation and Infrastructure Committee*, 115<sup>th</sup> Cong. 2 (2019) (statement of David Zurfluh, National President, Paralyzed Veterans of America).

<sup>79</sup> Barbara Twardowski, *Flying Tips for Wheelchair Users, from Wheelchair Users*, N.Y. TIMES (Mar. 8, 2019), <https://www.nytimes.com/2019/03/08/travel/flying-tips-for-wheelchair-users-disabilities.html>.

passengers with disabilities from enjoying their air travel experience, and may lead them to seek out alternative means of travel or avoid traveling altogether.<sup>80</sup>

In 1986, Congress passed the Air Carrier Access Act (ACAA), landmark legislation specifically focused on preventing discrimination against people with disabilities in air travel.<sup>81</sup> Before the ACAA, people with disabilities often had no way of predicting the extent of a given airline's or flight crew's accommodations.<sup>82</sup> It was common practice for people with disabilities to routinely be forced to travel with an attendant at their own expense, even if they did not need assistance to fly safely; be required to sit on a blanket for fears that they might soil the passenger seat; or simply be refused service.<sup>83</sup> Passage of the ACAA provided people with disabilities improved air travel by setting clear standards regarding aircraft accessibility, seating accommodations, boarding and deplaning assistance, service animals, and screening, among other things.<sup>84</sup>

In 1990, the DOT promulgated rules under the ACAA defining the rights of passengers with disabilities and the obligations of air carriers under this law. Among other things, the ACAA:

- Prohibits air carriers from requiring a person with disability to travel with an attendant;<sup>85</sup>
- Requires widebody (twin-aisle) aircraft to include accessible lavatories;<sup>86</sup>
- Requires aircraft of a certain size to have priority space for wheelchair storage in cabin;<sup>87</sup>
- Requires airline assistance with boarding and deplaning;<sup>88</sup>
- Prohibits airlines from charging passengers with disabilities for providing accommodations;<sup>89</sup>
- Requires airlines to train airline and contractor personnel who assist people with disabilities;<sup>90</sup> and
- Requires that air carriers designate “complaints resolution officials” to respond to disability-related complaints.<sup>91</sup>

## VI. EMOTIONAL SUPPORT ANIMALS

Many people with disabilities use a service animal in order to fully participate in everyday life. Under the ACAA, a service animal is defined as *any* animal that is individually trained or able to provide assistance to a person with a disability; or any animal that assists persons with disabilities by providing emotional support.<sup>92</sup> By law, airlines must allow individuals with disabilities to travel with service animals, including emotional support animals.<sup>93</sup>

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<sup>80</sup> See Zurfluh, *supra* note 78, at 2.

<sup>81</sup> Pub. L. No. 99-435.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> See generally Cong. Res. Service, *Overview of the Air Carrier Access Act* (May 19, 2009).

<sup>85</sup> 14 C.F.R. § 382.29(a).

<sup>86</sup> 14 C.F.R. § 382.63.

<sup>87</sup> 14 C.F.R. § 382.121(a).

<sup>88</sup> 14 C.F.R. § 382.95.

<sup>89</sup> 14 C.F.R. § 382.31.

<sup>90</sup> 14 C.F.R. § 382.15.

<sup>91</sup> 14 C.F.R. § 382.151.

<sup>92</sup> DOT, *Service Animals (Including Emotional Support Animals)* (Mar. 20, 2018), available at <https://www.transportation.gov/individuals/aviation-consumer-protection/service-animals-including-emotional-support-animals>.

<sup>93</sup> *Id.*

The ACAA requirement to allow emotional support or “comfort” animals diverges from the requirements of the Americans with Disabilities Act.<sup>94</sup> This has led to an increasing variety of purported emotional support animals being used in recent years, including pigs, peacocks, miniature horses, snakes, iguanas, and parrots, with air carriers having limited ability to restrict some of these animals.<sup>95</sup> Airlines and flight attendants have reported numerous instances of purported emotional support animals growling at and biting flight crew or passengers and displaying aggression toward other purported emotional support animals.<sup>96</sup>

The *FAA Reauthorization Act of 2018* directs the DOT to define “service animal” and develop minimum requirement standards for both service and emotional support animals.<sup>97</sup> In January, the DOT proposed a rule that would, among other things, end the requirement that airlines recognize emotional support animals as service animals and thereby allow airlines to deny their carriage.<sup>98</sup> The president of the Association of Flight Attendants lauded the proposal and said, “The days of Noah’s Ark in the air are hopefully coming to an end.”<sup>99</sup>

## VII. UNLAWFUL DISCRIMINATION

Federal law prohibits discrimination by both U.S. and foreign air carriers against individuals on the basis of race, color, national origin, religion, sex, or ancestry<sup>100</sup> as well as disability.<sup>101</sup> As described above, the DOT is responsible for enforcing statutes prohibiting unlawful discrimination by airlines against air travelers, monitors compliance with DOT regulations, and processes and investigates complaints filed with the DOT alleging discrimination.<sup>102</sup>

In January 2020, the DOT found Delta violated Federal anti-discriminatory/bias statutes in two 2016 incidents where the carrier’s flight crews ordered three Muslim passengers off the aircraft.<sup>103</sup> In the first case, the DOT found that, but for the couple’s “perceived religion,” the carrier “would not have removed or denied them re-boarding.”<sup>104</sup> In the second case, flight crew flagged

<sup>94</sup> Cong. Res. Service, *The Americans with Disabilities Act and Service Animals* 3 (Oct. 28, 2010).

<sup>95</sup> *Id.*

<sup>96</sup> See, e.g., Ted Reed, ‘Emotional Support’ Dog Bites Flight Attendant Who Requires Five Stitches, FORBES (July 23, 2019), <https://www.forbes.com/sites/tedreed/2019/07/23/emotional-support-dog-bites-flight-attendant-who-requires-five-stitches/#10c1284e2286>.

<sup>97</sup> Pub. L. No. 115-254, § 437.

<sup>98</sup> DOT, *U.S. Department of Transportation Seeks Comment on Proposed Amendments to Regulation of Service Animals on Flights* (Jan. 22, 2020), <https://www.transportation.gov/briefing-room/us-department-transportation-seeks-comment-proposed-amendments-regulation-service>.

<sup>99</sup> Ass’n of Flight Attendants, *Flight Attendants Applaud DOT’s Clear Rule on Animals in the Cabin* (Jan. 22, 2020), at [https://www.afacwa.org/flight\\_attendants\\_applaud\\_dot\\_rule\\_animals\\_cabin](https://www.afacwa.org/flight_attendants_applaud_dot_rule_animals_cabin).

<sup>100</sup> 49 U.S.C. § 40127(a). See also 49 U.S.C. §§ 41310(a), 41712, and 41702 (other provisions that the DOT has interpreted as prohibiting discrimination in air travel).

<sup>101</sup> See 49 U.S.C. § 41705. See also 14 C.F.R. part 382 (the DOT’s regulation implementing the *Air Carrier Access Act of 1968*). Part 382 includes a series of sections describing air carriers’ requirements, including making airport facilities and aircraft accessible. See, e.g., 14 C.F.R. part 382 subpart E (“Accessibility of Aircraft”), subpart F (“Seating Accommodations”), and subpart G (“Boarding, Deplaning, and Connecting Assistance”).

<sup>102</sup> See DOT, *Passengers’ Right to Fly Free From Discrimination*, <https://www.transportation.gov/sites/dot.gov/files/docs/Passengers%20Right%20to%20Fly%20Free%20from%20Discrimination.pdf>.

<sup>103</sup> David Koenig, *U.S. Fines Delta \$50,000 for Booting Off 3 Muslim Passengers*, AP News (Jan. 24, 2020), <https://apnews.com/3edb75b25d5863e79a4ea37fd71102b5>.

<sup>104</sup> DOT Consent Order Issued to Delta Air Lines (Order No. 2020-1-9) 2 (Jan. 24, 2020), <https://www.transportation.gov/sites/dot.gov/files/2020-01/delta-air-lines-order-2020-1-9.pdf>.

the behavior of a Muslim passenger, and despite the carrier's security office reporting the passenger's record had "no red flags," the captain requested the passenger be removed after flight attendants expressed that "they remained uncomfortable."<sup>105</sup> The DOT found that the captain's removal of the passenger after being cleared by security was discriminatory.<sup>106</sup>

Without admitting or denying these violations, the airline consented to the DOT's issuance of an order to cease and desist from violating applicable anti-discrimination statutes, and the DOT fined the carrier \$50,000, mandated civil rights training for certain employees, and required the carrier to enhance its e-training civil rights program.<sup>107</sup>

*The FAA Reauthorization Act of 2018* directed the GAO to examine airlines' training programs on racial, ethnic, and religious non-discrimination for their employees and contractors, including how frequently airlines train new employees and contractors.<sup>108</sup> The GAO found that the six U.S. airlines selected for the audit did indeed provide such training to their newly hired employees, including pilots, flight attendants, and customer service representatives.<sup>109</sup>

## VIII. AIRCRAFT EVACUATION STANDARDS

The Federal Aviation Regulations require that the design of an airliner, by virtue of the locations and types of emergency exits, must permit all passengers to evacuate the aircraft within 90 seconds with half the exits blocked.<sup>110</sup> But recent accidents have raised concerns about whether all passengers can, in fact, evacuate an airliner in 90 seconds, given passengers' propensity to carry on large bags, such as roll-aboard suitcases, and other behavioral shifts over the last decade.

For example, the National Transportation Safety Board (NTSB) concluded that it took *at least* 2 minutes and 21 seconds—51 seconds longer than the FAA assumes—for 161 passengers to evacuate a lightly-loaded American Airlines 767-300ER after an uncontained engine failure and fire during takeoff at Chicago O'Hare in 2016.<sup>111</sup> The NTSB concluded that "evidence of passengers retrieving carry-on baggage during this and other recent emergency evacuations demonstrates that previous FAA actions to mitigate this potential safety hazard have not been effective."<sup>112</sup> This was not an isolated event.<sup>113</sup> The *FAA Reauthorization Act of 2018* directs the FAA to review the

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<sup>105</sup> *Id.* at 3.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 1.

<sup>108</sup> Pub. L. 115-254, § 407. See GAO, *Information on Selected Airlines' Non-Discrimination Training Programs* 1, GAO-19-654R, <https://www.gao.gov/products/gao-19-654r>.

<sup>109</sup> GAO-19-654R, *supra* note 108 at 3.

<sup>110</sup> See 14 C.F.R. §§ 25.803, 25.807; 14 C.F.R. part 25, app'x. J.

<sup>111</sup> Nat'l Transp. Safety Bd., NTSB/AAR-18/01, *Uncontained Engine Failure and Subsequent Fire, American Airlines Flight 383, Boeing 767-323, N345AN, Chicago, Illinois, October 28, 2016*, at 27 (2018).

<sup>112</sup> *Id.* at 66. The Safety Board found that "some passengers evacuated from all three usable exits with carry-on baggage. In one case, a flight attendant tried to take a bag away from a passenger who did not follow the instruction to evacuate without baggage, but the flight attendant realized that the struggle over the bag was prolonging the evacuation and allowed the passenger to take the bag. In another case, a passenger came to the left overwing exit with a bag and evacuated with it despite being instructed to leave the bag behind." *Id.* at 65.

<sup>113</sup> For example, in-cabin video footage of passengers evacuating Emirates flight 521, a Boeing 777-300 that crash-landed in Dubai in 2016, shows passengers retrieving large carry-on items from overhead bins despite smoke billowing into the cabin from a large fire on the wing that eventually destroyed the aircraft. THE AVIATION HERALD, *Emirates Boeing 777-300 Registration A6-EMW*, <http://avherald.com/h?article=49c12302&opt=0>; YouTube (Aug. 3, 2016), <https://www.youtube.com/watch?v=nUg7zOBB3Ig>.

assumptions and methods for certifying transport-category airplane designs' compliance with the FAA's evacuation requirement.<sup>114</sup> The FAA convened an aviation rulemaking committee last year to conduct that review; the committee's work continues.<sup>115</sup>

In addition to passengers' propensity to carry on large bags, reduced spacing between seats to accommodate more passengers per flight may also affect cabin evacuation times. According to aviation consultant Bill McGee, who will be testifying before the Subcommittee, "legroom (as measured in seat pitch) and comfort (as measured in seat width) have both been steadily decreasing since the 1980s."<sup>116</sup> Mr. McGee and others assert that tighter seats—with seat pitch as low as 28 inches and width as low as 16.5 inches in some U.S. airlines' aircraft—may pose health issues for passengers (e.g., blood clotting, deep vein thrombosis), in addition to making emergency egress from a commercial airliner more difficult.<sup>117</sup>

The *FAA Reauthorization Act of 2018* directs the FAA to "issue regulations that establish minimum dimensions for passenger seats on aircraft operated by air carriers . . . , including minimums for seat pitch, width, and length, and that are necessary for the safety of passengers."<sup>118</sup> From November 2019–January 2020, the FAA conducted testing to evaluate the relationship between seat spacing and evacuation times at an Oklahoma City facility;<sup>119</sup> agency staff are now analyzing the results of that testing, although action is not expected before the second half of 2020.

## IX. AIRLINE RESPONSE TO CORONAVIRUS DISEASE 2019

Over the past several weeks, the global community has closely observed an outbreak of a "respiratory disease caused by a novel (new) coronavirus that was first detected in Wuhan City, Hubei Province, China" and which continues to expand internationally.<sup>120</sup> Last month, the World Health Organization named the disease "coronavirus disease 2019" (COVID-19).<sup>121</sup> The virus can spread person-to-person and has spread outside of China, including to the United States, where the first confirmed person-to-person spread was reported on January 30, 2020.<sup>122</sup>

In response to the outbreak, the three U.S. airlines serving China—American, Delta, and United—have temporarily suspended all flights between the United States and China. Airlines are generally offering refunds and change fee waivers for previously scheduled travel to China. Some Chinese carriers continue to serve the United States, although most have scaled back or cancelled service given new entry restrictions imposed by the United States and reduced demand.

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<sup>114</sup> Pub. L. 115-254, § 337.

<sup>115</sup> FAA, *Emergency Evacuation Standards ARC Charter*, Aug. 29, 2019, available at [https://www.faa.gov/regulations\\_policies/rulemaking/committees/documents/index.cfm/document/information/documentID/3983](https://www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/document/information/documentID/3983).

<sup>116</sup> Bill McGee, *Airline Seat Size: Will FAA Bring Relief to Squeezed Flyers?*, USA TODAY (Nov. 15, 2018), <https://www.usatoday.com/story/travel/columnist/mcgee/2018/11/15/airline-seat-size-faa/2003043002/>.

<sup>117</sup> *Id.*

<sup>118</sup> Pub. L. No. 115-254, § 577.

<sup>119</sup> David Koenig, *FAA to Test Whether Packed Planes Affect Evacuation Time*, ABC News (Oct. 17, 2019), <https://abcnews.go.com/Business/wireStory/faa-test-packed-planes-affect-evacuation-time-66358368>.

<sup>120</sup> CDC, *Coronavirus Disease 2019 (COVID-19) Situation Summary*, <https://www.cdc.gov/coronavirus/2019-nCoV/summary.html> (last visited on Feb. 19, 2020).

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<b>Airline</b>	<b>Destinations suspended</b>
American	Beijing
	Hong Kong
	Shanghai
Delta	Beijing
	Shanghai
United	Beijing
	Chengdu
	Hong Kong
	Shanghai

As of February 3, 2020, the Department of Homeland Security (DHS) has imposed restrictions on entry into the United States by passengers who have traveled to mainland China within the last 14 days.<sup>123</sup> Because COVID-19 outbreak is a public health crisis, the DOT and FAA roles are limited. While the outbreak will have effects on air commerce, it will not affect safety of flight or air traffic control procedures. DOT aviation consumer protection regulations will continue to apply to canceled flights and requests for refunds. Both the DOT and FAA are providing support to Federal public health and security agencies, such as the Centers for Disease Control, while mitigating operational effects on the aviation industry.<sup>124</sup>

### **WITNESSES**

**Mr. Andrew Von Ah**

Director, Physical Infrastructure  
U.S. Government Accountability Office

**Mr. William J. McGee**

Aviation Consultant  
Consumer Reports

**Mr. Lee Page**

Senior Associate Advocacy Director  
Paralyzed Veterans of America

**Mr. Joe Leader**

Chief Executive Officer  
Airline Passenger Experience Association

**Mr. Matt Klein**

Executive Vice President and Chief Commercial Officer  
Spirit Airlines

<sup>123</sup> DHS, *DHS Issues Supplemental Instructions For Inbound Flights with Individuals Who Have Been in China*, Feb. 2, 2020, [https://www.dhs.gov/news/2020/02/02/dhs-issues-supplemental-instructions-inbound-flights-individuals-who-have-been-china?utm\\_source=hp\\_slideshow&utm\\_medium=web&utm\\_campaign=dhsgov](https://www.dhs.gov/news/2020/02/02/dhs-issues-supplemental-instructions-inbound-flights-individuals-who-have-been-china?utm_source=hp_slideshow&utm_medium=web&utm_campaign=dhsgov).

<sup>124</sup> See, e.g., FAA, *Novel Coronavirus Update*, <https://www.faa.gov/news/updates/?newsId=94991> (last visited Feb. 26, 2020).