



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

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November 14, 2022

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Aviation
FROM: Staff, Subcommittee on Aviation
RE: Subcommittee Hearing on “Accessible Air Travel: Addressing Challenges for Passengers with Disabilities”

PURPOSE

The Subcommittee on Aviation will meet on Thursday, November 17, 2022, at 10:00 a.m. EST in 2167 Rayburn House Office Building and virtually via Zoom for a hearing titled, “Accessible Air Travel: Addressing Challenges for Passengers with Disabilities.” The hearing will focus on issues related to the air travel experience for passengers with disabilities, from check-in at an airport to the baggage claim at their destination. Members will have the opportunity to hear from key stakeholders about what the federal government and U.S. aviation industry are doing to ensure these passengers have a safe and dignified experience. This hearing will also examine the implementation of the disability-related requirements of the *Federal Aviation Administration (FAA) Reauthorization Act of 2018* and explore proposals to address ongoing barriers for passengers with disabilities.

Witnesses include Rep. James R. Langevin (RI-02), representatives from the Paralyzed Veterans of America (PVA), the Metropolitan Airports Commission, the Government Accountability Office (GAO), Airlines for America (A4A), and three-time Team USA Paralympic Medalist Matt Scott.

BACKGROUND

I. OVERVIEW

The U.S. Census Bureau estimates that 42.6 million Americans (nearly 13 percent of individuals) have a disability, which may include issues with physical mobility, hearing, vision, or cognition.¹ While these Americans face various hurdles in their daily lives, air travel often presents additional unique challenges. For instance, airline passengers with disabilities may encounter non-accessible lavatories on aircraft, incur bodily harm when boarding or deplaning an aircraft, and

¹ Gov’t Accountability Office, GAO-21-354, *Passengers with Disabilities: Airport Accessibility Barriers and Practices and DOT’s Oversight of Airlines’ Disability-Related Training* (Apr. 2021).

frequently report lost, damaged, or otherwise mishandled mobility aids, such as wheelchairs and scooters.² Additionally, people who use wheelchairs often face difficulties upon arrival at airports, including problems associated with the mishandling of their mobility aids, navigating through crowded terminals, and undergoing security screening.³ Such challenges can prevent passengers with disabilities from enjoying their air travel experience and may lead them to seek out alternative means of travel altogether.⁴

Congress passed *the Air Carrier Access Act* (ACAA) in 1986⁵ and *the Americans with Disabilities Act* (ADA) in 1990.⁶ These pieces of legislation were designed to prevent discrimination against people with disabilities in air travel and all other areas of public life, respectively.⁷ Although these laws have made tremendous strides toward ending disability-related discrimination, persistent gaps remain.⁸

II. AIR CARRIER ACCESS ACT (ACAA)

The ACAA is the primary federal statute governing the rights of passengers with disabilities during air travel.⁹ The statute aims to address the unique difficulties faced by people with disabilities by (1) prohibiting discrimination on the basis of disability in air travel; (2) defining requirements regarding the accessibility of aircraft facilities; and (3) ensuring airlines provide certain services and accommodations for these passengers.¹⁰

Before the ACAA was passed in 1986, people with disabilities often had no way of predicting the extent of a given airline's or flight crew's accommodations. It was common practice for people with disabilities to be forced to travel with an attendant at their own expense; be required to sit on a blanket for fear that they might soil the passenger seat; or simply be refused service.¹¹ Passage of the ACAA helped to provide this community with improved air travel by setting clear standards regarding aircraft accessibility, seating accommodations, boarding and deplaning assistance, service animals, and screening, among other things.¹²

In 1990, the U.S. Department of Transportation (DOT) promulgated final rules under the ACAA defining the rights of passengers with disabilities and the obligations of air carriers under this law.¹³ The regulations, among other things:

² Amanda Morris, *Embarrassing, uncomfortable and risky: What flying is like for passengers who use wheelchairs*, The New York Times (Aug. 2022), available at: <https://www.nytimes.com/2022/08/08/travel/air-travel-wheelchair.html>.

³ Joseph Shapiro, *Despite calls to improve, air travel is still a nightmare for many with disabilities*, NPR (Nov. 2021), available at: <https://www.npr.org/2021/11/09/1049814332/despite-calls-to-improve-air-travel-is-still-a-nightmare-for-many-with-disabilit>.

⁴ Statement of David Zurfluh, former National President, Paralyzed Veterans of America, *A Work in Progress: Implementation of the FAA Reauthorization Act of 2018: Before the Subcomm. on Aviation of the House Transportation and Infrastructure Committee*, 115th Cong. (Sept. 2019).

⁵ 49 USC § 41705.

⁶ 42 USC § 12101, *et seq.*

⁷ Congressional Research Service, CRS Report No. IF12227, *The Americans with Disabilities Act: A Brief Overview* (Oct. 2022), available at: <https://www.crs.gov/reports/pdf/IF12227/IF12227.pdf>; CRS Report No. R43078, *Airline Passenger Rights: The Federal Role in Aviation Consumer Protection* (Aug. 2016), available at: <https://www.crs.gov/reports/pdf/R43078/R43078.pdf>.

⁸ Shapiro, *supra* note 3.

⁹ Paralyzed Veterans of America, *Air Carrier Access Act: Protecting passengers with disabilities*, (2022), available at: <https://pva.org/research-resources/disability-rights-advocacy/air-carrier-access-act/>.

¹⁰ DOT, *Passengers with Disabilities*, (Oct. 2022), available at: <https://www.transportation.gov/airconsumer/passengers-disabilities#:~:text=About%20the%20Air%20Carrier%20Access,of%20airlines%20under%20this%20law>.

¹¹ Zurfluh, *supra* note 4, at 2.

¹² DOT *supra* note 8.

¹³ *Id.*

- Prohibit air carriers from requiring a person with a disability to travel with an attendant;¹⁴
- Require widebody (twin-aisle) aircraft to include accessible lavatories, however, single-aisle aircraft may, but are not required to, provide an accessible lavatory;¹⁵
- Require aircraft of a certain size to have priority storage space for wheelchairs, assistive devices, and other mobility aids in the aircraft cabin;¹⁶
- Require air carriers to provide assistance with boarding and deplaning;¹⁷
- Prohibit air carriers from charging passengers with disabilities for providing services and accommodations;¹⁸
- Require air carriers to ensure contractors provide services to assist passengers with disabilities;¹⁹ and
- Require that air carriers designate “complaints resolution officials” to respond to disability-related complaints.²⁰

At the federal level, the DOT enforces the ACAA requirements along with other consumer protection standards.²¹ Specifically, the DOT’s Office of Aviation Consumer Protection oversees air carriers’ compliance with consumer protection laws and ensures implementation of regulations prohibiting discrimination against passengers with disabilities.²² The office’s primary responsibilities include investigating disability-related complaints against airlines; promoting awareness of passenger rights through public education efforts; and assessing the need for and developing aviation consumer protection rules.²³ According to the U.S. Bureau of Transportation Statistics (BTS), the DOT received 195 disability-related complaints in August 2022, a decrease from the 248 disability-related complaints received the month prior, but an increase from the 109 complaints received in August 2019.²⁴

Although individuals with disabilities may enforce their rights under the ADA by bringing civil lawsuits, courts have held that the ACAA does not expressly provide for a private right of action.²⁵ Thus, passengers with disabilities cannot enforce their rights under the ACAA through civil litigation in U.S. courts and must instead rely on the DOT to take corrective measures. Some disability rights groups continue to advocate for establishing a private right of action under the ACAA.²⁶

¹⁴ 14 CFR § 382.29(a).

¹⁵ 14 CFR § 382.63.

¹⁶ 14 CFR § 382.121(a).

¹⁷ 14 CFR § 382.95.

¹⁸ 14 CFR § 382.31.

¹⁹ 14 CFR § 382.15.

²⁰ 14 CFR § 382.151.

²¹ GAO, *supra* note 1, at 6.

²² *Id.* at 17.

²³ *Id.* at 18.

²⁴ U.S. Bureau of Transportation Statistics, *Air Travel Consumer Report: August Consumer Complaints Up 6 Percent from July, More Than 320 Percent Above Pre-Pandemic Levels* (Oct. 2022), available at: <https://www.bts.gov/newsroom/air-travel-consumer-report-august-consumer-complaints-6-percent-july-more-320-percent>.

²⁵ See *Boswell v. Skywest Airlines, Inc.*, 361 F.3d 1263, 1265 (10th Cir. 2004) (concluding that the "ACAA establishes certain administrative remedies but not a private right of action").

²⁶ Paralyzed Veterans of America, *Priorities for the 2023 FAA Reauthorization*, Aug. 2022, (notes on file, Committee on Transportation and Infrastructure, Subcommittee on Aviation).

III. AMERICANS WITH DISABILITIES ACT (ADA)

Enacted in 1990, the ADA prohibits discrimination against people with disabilities in public spaces.²⁷ To achieve this, the ADA requires “reasonable accommodations” be made in order to render a good, service, facility, or privilege accessible to individuals with disabilities.²⁸ The law provides broad nondiscrimination protection in areas of employment, public services, public accommodations, transportation (except air travel), and services operated by private entities for people with disabilities.²⁹ The ADA includes several requirements for U.S. airports, such as:

- Providing accessible inter-terminal transportation, including but not limited to moving sidewalks, shuttle vehicles, and other people movers;³⁰
- Providing access for people with disabilities between gates and aircraft, at loading bridges, and in passenger lounges;³¹
- Ensuring that informational media, such as flight information displays, include high-contrast captions or other features for those with visual or hearing impairments;³² and
- Providing passengers with disabilities with terminal facilities they can readily use.³³

The FAA’s Office of Civil Rights oversees airport compliance with regards to the ADA and related statutes.³⁴ The office’s primary duties include investigating disability-related complaints against airports; sharing best practices with U.S. airports; and developing and sharing guidance on key accessibility-related roles and legal responsibilities for airports and airlines.³⁵

IV. KEY ISSUES AFFECTING PASSENGERS WITH DISABILITIES DURING AIR TRAVEL

A. Accessible Aircraft Lavatories

People with disabilities cite access to aircraft lavatories as one of the most persistent impediments to flying.³⁶ If an aircraft does not have an accessible lavatory, some passengers resort to dehydrating themselves before a flight—which can cause adverse health effects—or avoid flying altogether.³⁷ Under the ACAA, all new widebody (twin-aisle) aircraft must have accessible lavatories, but narrower (single-aisle) aircraft are exempted from this requirement.³⁸

There have been several efforts to address this issue in recent years. In 2016, the DOT established a negotiated rulemaking committee, the ACCESS Advisory Committee, to develop a compromised proposed rule on lavatory access with the disability rights community, air carriers,

²⁷ See ADA: A Brief Overview, *supra* note 7.

²⁸ *Id.*

²⁹ *Id.*

³⁰ 14 CFR § 382.51.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ GAO *supra* note 1 at 18.

³⁵ *Id.*

³⁶ Morris, *supra* note 2.

³⁷ DOT, U.S. Department of Transportation announces proposed rule to improve accessibility of lavatories on single-aisle aircraft, (March 2022), available at: <https://www.transportation.gov/briefing-room/us-department-transportation-announces-proposed-rule-improve-accessibility-lavatories>.

³⁸ 14 CFR § 382.63.

flight attendants, aircraft manufacturers, and other stakeholders.³⁹ The DOT subsequently announced an agreement which included short-term and long-term actions to address barriers passengers with disabilities face when on board a single-aisle aircraft.⁴⁰ Under the agreement, air carriers are required to take several steps to improve lavatory accessibility—short of increasing their size—three years after the effective date of the final rule.⁴¹ In addition, the DOT is required to develop improved safety and maneuverability standards for aircrafts' on-board (aisle) wheelchair.⁴² Furthermore, in the long-term, air carriers must provide accessible lavatories on single-aisle aircraft with at least 125 seats.⁴³

More recently, in March 2022, the DOT published a notice of proposed rulemaking (NPRM) to improve the accessibility of lavatories for people with disabilities on new single-aisle aircraft.⁴⁴ Specifically, the proposed rule would require air carriers to make at least one lavatory on new single-aisle aircraft with more than 125 seats large enough to allow a passenger with a disability (with the help of an assistant, if necessary) to approach, enter, and maneuver within the lavatory, use all facilities in the lavatory, and exit using the aircraft's onboard wheelchair.⁴⁵ This requirement would apply to new aircraft ordered 18 years after the final rule's effective date or delivered 20 years after the final rule's effective date.⁴⁶

Section 426 of the *FAA Reauthorization Act of 2018* ("2018 FAA reauthorization law") required the Government Accountability Office (GAO) to study lavatory access on aircraft, including accessibility for passengers with disabilities.⁴⁷ The GAO issued the report in January 2020, which found that aircraft manufacturers offer designs for onboard lavatories that are designed to accommodate passengers using onboard wheelchairs, but air carriers generally choose not to acquire this option for their single-aisle aircraft.⁴⁸ In response to the report, air carriers argued that they consider several factors when ordering aircraft lavatories, including financial and service tradeoffs, such as potentially losing seats or reduced food and beverage service for passengers.⁴⁹

B. Preventing Damage to Mobility Aids

Mobility aids—such as wheelchairs, scooters, or other assistive devices—not only provide a means of transport for many people with disabilities, but also can be critical tools to help facilitate communication and manage serious health conditions. If wheelchairs or other mobility aids are damaged, delayed, or lost, it has the potential to limit a person's mobility and impose costly repairs or replacement.⁵⁰ Although the ACAA details several responsibilities that air carriers must comply

³⁹ DOT, *DOT Negotiated Rulemaking Committee agrees on future measures to improve accessibility of aircraft lavatories and in-flight entertainment*, (Dec. 2016), available at: <https://www.transportation.gov/briefing-room/dot-negotiated-rulemaking-committee-agrees-future-measures-improve-accessibility>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ DOT, *U.S. Department of Transportation announces proposed rule to improve accessibility of lavatories on single-aisle aircraft*, (March 2022), <https://www.transportation.gov/briefing-room/us-department-transportation-announces-proposed-rule-improve-accessibility-lavatories>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Pub. L. No. 115-254, § 426.

⁴⁸ GAO, GAO-20-258, *Aviation Consumer Protection: Few U.S. Aircraft Have Lavatories Designed to Accommodate Passengers with Reduced Mobility* (Jan. 2020).

⁴⁹ *Id.*

⁵⁰ Hannah Sampson, *Airlines have lost or damaged more than 15,000 wheelchairs since late 2018*, *The Washington Post* (June 2021), available at: <https://www.washingtonpost.com/travel/2021/06/07/wheelchair-scooter-damage-airplane-flights/>.

with to prevent discrimination against passengers who utilize mobility aids,⁵¹ there continues to be significant concern among passengers with disabilities over the handling of mobility aids and air carriers' ability to assist the people who use them.⁵² According to recent BTS data, air carriers reported mishandling 1,057 wheelchairs and scooters (a rate of 1.56 percent) in August 2022; however, this is lower than the rate of 1.63 percent mishandled in the previous month and the rate of 1.58 percent mishandled in August 2019.⁵³

Several provisions in the 2018 FAA reauthorization law aim to address these concerns. Section 433 required the DOT to develop, if appropriate, specific recommendations regarding improvements to wheelchair assistance and related employee training provided by air carriers.⁵⁴ The law also increases the amount of a civil penalty assessed as a result of damage to a passenger's wheelchair or other mobility aid.⁵⁵ Further, it required the DOT to implement a rule it had previously delayed requiring large air carriers to report on a monthly basis the number of wheelchairs and scooters emplaned and subsequently lost, damaged, or otherwise mishandled.⁵⁶

C. Accessible Airport Facilities

Despite ongoing efforts by the federal government and U.S. aviation industry, barriers to accessible facilities for passengers with disabilities persist. For instance, infrastructure challenges such as complex airport terminal layouts and long distances between gates may be difficult for people with different types of disabilities to navigate.⁵⁷ In addition, essential travel information is not always available in a format accessible to all (e.g., a person with hearing loss could miss important gate information that is only provided over a loudspeaker).⁵⁸

The ADA requires public and private facilities, including airports, to allow people with disabilities who use manual or power wheelchairs or scooters and manually powered mobility aids, such as walkers or crutches, into all public areas.⁵⁹ Additionally, under Section 504 of *the Rehabilitation Act of 1973* (which prohibited discrimination against people with disabilities in federal programs and among federal grant recipients), and implemented by Section 27.1(b) of Title 49 of the Code of Federal Regulations, airport operators receiving federal funding must ensure that terminal facilities and terminal services are readily accessible to and usable by individuals with disabilities, including those using wheelchairs.⁶⁰ The ADA also requires that any new airports and airport expansions or renovations that are supported by federal funding meet minimum accessibility standards.⁶¹

To address outstanding accessibility issues, the 2018 FAA reauthorization law required the development of an "Airline Passengers with Disabilities Bill of Rights" describing basic protections for people with disabilities, among other things.⁶² In July 2022, the DOT published this document,

⁵¹ 14 CFR Part 382.

⁵² Sampson, *supra* note 43.

⁵³ BTS *supra* note 22.

⁵⁴ Pub. L. No. 115-254, § 433.

⁵⁵ Pub. L. No. 115-254, § 436.

⁵⁶ Pub. L. No. 115-254, § 441.

⁵⁷ GAO *supra* note 1 at 2.

⁵⁸ *Id.*

⁵⁹ U.S. Dept. of Justice (DOJ), Civil Rights Division, *Wheelchairs, Mobility Aids and Other Power-Driven Mobility Devices*, January 31, 2014, available at <https://www.ada.gov/opdmd.htm>.

⁶⁰ 49 CFR § 27.71(b).

⁶¹ GAO *supra* note 1 at 13.

⁶² Pub. L. No. 115-254, § 434.

and included such protections as the right to assistance at airports and the right to accessible airport facilities.⁶³ Section 440 of the law also directed the DOT to review, and if necessary, revise regulations to ensure that passengers with disabilities requesting assistance during air travel receive dignified, timely, and effective assistance at airports.⁶⁴ More recently, in November 2021, President Biden signed the *Infrastructure Investment and Jobs Act* (IIJA), into law.⁶⁵ Among its provisions, the law provided approximately \$5 billion in funding under the new Airport Terminal Program (ATP).⁶⁶ Among other uses, ATP grants can support airport terminal projects designed to improve compliance with the ADA, including expanding accessibility for people with disabilities.

D. Service Animals

Many people with disabilities use a service animal in order to fully participate in everyday life. These animals can be trained to perform a number of important tasks to assist people with disabilities, such as providing stability for a person who has difficulty walking, preventing a child with autism from wandering away, or alerting a person with hearing loss when someone is approaching them from behind.⁶⁷

Section 437 of the 2018 FAA reauthorization law directed the DOT to define “service animal” and to develop minimum requirement standards for passengers bringing service and emotional support animals in aircraft cabins.⁶⁸ After receiving more than 15,000 comments on the NPRM, the DOT issued a final rule on traveling by air with service animals in December 2020.⁶⁹ Among its provisions, the final rule:

- Defines a service animal as a dog, of breed or type, that is individually trained to do work or perform tasks for the benefit of a person with a disability;
- No longer considers an emotional support animal to be a service animal;
- Allows airlines to require forms developed by the DOT attesting to a service animal’s health, behavior, and training. Individuals traveling with a service animal are required to submit the forms up to 48 hours in advance of the date of travel if the passenger’s reservation was made prior to that time;
- Limits the number of service animals traveling with a single passenger with a disability to two service animals; and
- Allows airlines to require a service animal to fit within its handler’s foot space on the aircraft, and be harnessed, leashed, or tethered at all times in the airport and on the aircraft.⁷⁰

According to the DOT, there were several “compelling needs to revise” the previous service animal regulations, including:

⁶³ DOT, *DOT announces first-ever Bill of Rights for passengers with disabilities, calls on airlines to seat families together free of charge*, (July 2022), available at: <https://www.transportation.gov/briefing-room/dot-announces-first-ever-bill-rights-passengers-disabilities-calls-airlines-seat>.

⁶⁴ Pub. L. No. 115-254, § 440.

⁶⁵ Public L. No. 117-58.

⁶⁶ *Id.*

⁶⁷ DOJ, DOJ Civil Rights Division, *Frequently Asked Questions about Service Animals and the ADA*, (July 2015), available at https://www.ada.gov/regs2010/service_animal_qa.html.

⁶⁸ Pub. L. No. 115-254, § 437.

⁶⁹ DOT, *U.S. Department of Transportation Announces Final Rule on traveling by air with Service Animals*, (Dec. 2020), available at: <https://www.transportation.gov/briefing-room/us-department-transportation-announces-final-rule-traveling-air-service-animals>

⁷⁰ *Id.*

1) [T]he increasing number of service animal complaints received from passengers with disabilities; 2) inconsistent definitions of ‘service animal’ among federal agencies; 3) disruptions caused by requests to transport unusual species of animals onboard aircraft; 4) the increasing frequency of incidents of travelers fraudulently representing their pets as service animals; and 5) the reported increase in the incidents of misbehavior by emotional support animals.⁷¹

E. Transportation Security Administration (TSA) Screening Procedures

For passengers with disabilities, especially those using mobility aids, the screening process at airport security checkpoints poses unique challenges. Passengers with mobility-related disabilities can be screened through a metal detector, advanced imaging technology, or receive a pat-down by a TSA officer.⁷² TSA officers will also screen wheelchairs and scooters, including seat cushions and any non-removable components; other mobility aids and devices must undergo X-ray screening.⁷³ If a passenger uses the TSA PreCheck program, they can usually avoid these requirements; however, like other participants in this program, they could be subject to randomized screening, including pat-downs.⁷⁴

The 2018 FAA reauthorization law directed TSA to, in consultation with nationally-recognized veterans and disability organizations, revise the training requirements for TSA officers related to the screening of passengers with disabilities, develop best practices for addressing the concerns for passengers with disabilities, clarify how to address mistreatment, and submit an annual report to Congress.⁷⁵ In October 2019, TSA released its first report describing efforts to update security screening procedures.⁷⁶ According to the report, TSA’s changes include:

- Refining new hire training to provide more exposure to situations involving passengers with disabilities at a simulated checkpoint;
- Changing on-the-job training to expose officers to a broader variety of screening situations involving individuals with disabilities;
- Improving recurrent training, along with customized training scenarios to reinforce proper communication with, and screening of, individuals with certain types of disabilities and medical conditions.⁷⁷

⁷¹ DOT, *Traveling by Air with Service Animals*, RIN 2105–AE63, (Dec. 2020), available at: <https://www.transportation.gov/sites/dot.gov/files/2020-12/Service%20Animal%20Final%20Rule.pdf>.

⁷² TSA, *Disabilities and Medical Conditions*, available at <https://www.tsa.gov/travel/special-procedures>.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Pub. L. No. 115-254, § 1950.

⁷⁶ TSA, *TSA’s improvements for screening of passengers with disabilities*, (Oct. 2019), available at: https://pva.org/wp-content/uploads/2021/10/tsas-improvements-for-screening-of-passengers-with-disabilities_final_10-3-19_1.pdf

⁷⁷ *Id.*

WITNESSES

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