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

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March 20, 2023

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Aviation
FROM: Staff, Subcommittee on Aviation
RE: Subcommittee Hearing on "*FAA Reauthorization: Navigating the Comprehensive Passenger Experience*"

I. PURPOSE

The Subcommittee on Aviation will meet on Thursday, March 23, 2023, at 10:00 a.m. ET in 2167 of the Rayburn House Office Building for a hearing titled, "*FAA Reauthorization: Navigating the Comprehensive Passenger Experience*." The hearing will provide a comprehensive assessment of the airline passenger experience – analyzing the air transportation system, from the time a passenger arrives at the departure airport to the time the passenger departs from the destination airport. This hearing is in advance of Congress acting to reauthorize the Federal Aviation Administration's (FAA's) statutory authorities, which expire on October 1, 2023. The Subcommittee will receive testimony from witnesses representing Airlines for America (A4A), the National Air Traffic Controllers Association (NATCA), Airports Council International-North America (ACI-NA), and Paralyzed Veterans of America (PVA).

II. BACKGROUND

For most commercial airline passengers, the air transportation journey often begins at the curb or parking lot of the departure airport and ends at the same point at the destination airport. During that timeframe, a passenger's unique experience is affected by myriad factors and entities including, but not limited to, airlines, airports, airport contractors and vendors, and air traffic management system and operations.

The COVID-19 pandemic caused major difficulties for the entire United States aviation sector. From January 2020 to April 2020, airline revenue passenger miles fell by 96 percent.[1] Furthermore, passenger enplanements at commercial service airports declined by over 50 percent

[1] *Air Passenger Revenue Miles*, Federal Reserve Bank of St. Louis, *available at* https://fred.stlouisfed.org/series/AIRRPMTSID11.

from 2019 to 2020.[2] As a result, in January 2021, full-time equivalent staffing at U.S. scheduled passenger airlines was at its lowest level for the month of January since 2015.[3] The FAA similarly reduced the planned air traffic controller hiring goals for 2021 from 910 to 500 to account for the historic drop in air traffic volume.[4]

As COVID-19 restrictions began to lift, air carriers experienced a greater than anticipated increase in demand for air travel, leading to capacity and staffing constraints, posing significant operational challenges.[5] In 2022, more than 850 million people travelled on scheduled air carriers, an increase of more than 50 percent from 2020.[6] Consequently, from June to August of 2022, more than 2.5 percent of scheduled air carrier flights were cancelled and over 22.5 percent were delayed by 15 minutes or more.[7] Additionally, staffing shortages at air traffic control facilities, severe weather, and pandemic-driven changes in air traffic further contributed to the numerous delays and cancellations across the country.[8] In response to the post-pandemic surge in demand, airlines and the FAA took action to address hiring needs. United States scheduled passenger airline employment levels in December of 2022 were up 4.3 percent from the same month in 2019.[9] Additionally, the FAA increased its air traffic controller hiring target to 1,020 for 2022.[10]

Title IV of the *FAA Reauthorization Act of 2018* (P.L. 115-254) included more than 40 provisions related to improving the airline passenger experience.[11] These provisions include the establishment of a consumer complaints hotline, improved access to aviation consumer protection information online, the creation of an Airline Passengers with Disabilities Bill of Rights, and improvements to the consumer complaint process, among other things.[12] Additionally, the bill required a review of causes of airline cancellations, delays, and involuntary

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[2] *Passenger Boarding (Enplanement) and All-Cargo Data for U.S. Airports – Previous Years: Enplanements at All Commercial Service Airports (by Rank) CY2020,* FAA, *available at* https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/previous_years#2020

[3] Press Release. BUREAU OF TRANSP. STATISTICS, *Mid-January 2021 U.S. Passenger Airline Employment Up Nearly 19,000 FTEs from Mid-December*, (Mar. 17, 2021)., *available at* https://www.bts.gov/newsroom/mid-january-2021-us-passenger-airline-employment-nearly-19000-ftes-mid-december.

[4] FAA, The Air Traffic Controller Workforce Plan 2022-2031 (2022), *available at* https://www.faa.gov/sites/faa.gov/files/2022-06/2022-afn-cwp.pdf. [hereinafter *ATC Workforce Plan*]

[5] Michael B. Baker, *Airlines Prepare for Operational Challenges as Demand Rebounds,* Business Travel News, (Aug. 4, 2021), *available at* https://www.businesstravelnews.com/Transportation/Air/Airlines-Prepare-for-Operational-Challenges-as-Demand-Rebounds.

[6] *Passengers, All Carriers – All Airports*, BUREAU OF TRANSP. STATISTICS, U.S. DEP'T OF TRANSP., *available at* https://www.transtats.bts.gov/Data_Elements.aspx?Data=1. [*hereinafter* BTS All Carriers].

[7] Zach Wichter, *45,000+ flights were cancelled this summer. Her's what flyers can expect this winter,* USA TODAY, (Nov. 13, 2022), *available at* https://www.usatoday.com/story/travel/airline-news/2022/11/13/flight-cancellations-summer-2022-airline-improvements/10668152002/.

[8] Taylor Rains, *Flight cancellations are spiking in part because this air traffic control center in Florida is severely understaffed, airline group says,* BUSINESS INSIDER, (June 24, 2022), *available at* https://www.businessinsider.com/air-traffic-control-staffing-shortage-causing-flight-cancellations-alpa-2022-6. [hereinafter *Business Insider*].

[9] BTS All Carriers, *supra* note 6.

[10] *ATC Workforce Plan, supra* note 4.

[11] *FAA Reauthorization Act of 2018*, Pub. L. No. 115-254, 132 Stat. 3186.

[12] *Id*.

changes to passenger itineraries; established an Aviation Consumer Advocate; and reauthorized the Aviation Consumer Protection Advisory Committee.[13]

III. AIRPORTS

Each year, millions of passengers pass through our Nation's airports. The current National Plan of Integrated Airport Systems (NPIAS) identifies 3,287 commercial service and general aviation airports which are significant to national air transportation and thus eligible to receive Federal grants under the Airport Improvement Program (AIP).[14] It also estimates the amount of funding needed to complete infrastructure development projects needed to bring these airports up to current design standards or add capacity at congested airports.[15] The current NPIAS estimates there was $62.4 billion in AIP-eligible projects between 2017 and 2021.[16] The NPIAS also estimates that 11 airports are expected to be runway capacity constrained by 2026, increasing to 14 by 2031, and an additional 16 airports at risk of significant congestion by 2031.[17]

Airports included in the NPIAS are distinguished by two categories: primary and nonprimary.[18] There are 383 airports in the NPIAS classified as primary airports – supporting scheduled commercial air service at a certain volume – and 2,904 non-primary airports – supporting low-level commercial service and general aviation operations.[19]

Airport Revenue

To finance daily operations, airports generate and rely on both aeronautical and non-aeronautical revenue.[20] The primary sources of aeronautical, or airside, revenue are various fees paid by airlines and other airport users for the lease of terminal space, landing fees, and use of other airport facilities, such as jet bridges. Non-aeronautical, or landside, revenue sources include airport terminal concessions, parking, rental car operations, and rental fees.

Airport Capital

To finance capital needs, airports use a combination of Federal grants, Federally-authorized local airport charges, state and local grants, and airport revenues. The primary Federal grant funding for airport development and planning is the AIP. AIP funds are primarily used for improvements related to enhancing airport safety, capacity, and security, and mitigating environmental concerns. Airport sponsors can also use AIP funds, in most cases, on airfield

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[13] *Id*.
[14] NAT'L PLAN OF INTEGRATED AIRPORT SYSTEMS (NPAIS) 2023-2027, FAA (Sept. 30, 2022), *available at* https://www.faa.gov/sites/faa.gov/files/npias-2023-2027-narrative.pdf. [hereinafter *NPIAS*].
[15] *National Plan on Integrated Airport Systems (NPAIS)*, FAA, available at https://www.faa.gov/airports/planning_capacity/npias.
[16] NPIAS, *supra* note 14.
[17] *Id*.
[18] *Id*.
[19] *Id*.
[20] *Financing Airport Improvements*, CONG. RESEARCH SERV., (R43327) (Updated Mar. 15, 2019) *available at* https://crsreports.congress.gov/product/pdf/R/R43327/18.

capital improvements or repairs and, in some specific situations, for terminals and hangars.[21] The AIP is currently authorized at its FY2012 level of $3.35 billion.[22] Prior to 2012, the last major increase to AIP authorization amounts occurred in FY2001, increasing from $2.475 billion to $3.2 billion.[23]

Because the AIP does not cover all airport capital needs, Congress has authorized airports to collect a fee from passengers called the passenger facility charge (PFC). A PFC is approved by the Federal government, collected by the airlines, and paid directly to the airport without going through the Federal Treasury. The PFC is intended to supplement, not replace, AIP funds. Airports can use PFCs to build critical infrastructure projects at their facilities.[24] However, unlike AIP funds, airports can use PFC revenue for gates, airline ticket areas, and debt service on bonds that airports issue to finance airport infrastructure projects.[25] In 2021, the FAA estimated that airports collected approximately $2.5 billion from PFCs.[26] Airports may impose a maximum $4.50 PFC on enplaning passengers, up to a maximum of $18 on a roundtrip ticket.[27] The PFC is not indexed to the cost of inflation, and Congress has not increased the cap on the PFC since 2000.[28]

IV. AIR TRAFFIC CONTROL (ATC)

One of the least visible, but most impactful, functions of the FAA is the operation of the air traffic control (ATC) system. The FAA provides ATC services in the United States airspace and vast areas of international airspace over the Gulf of Mexico, Atlantic Ocean, and Pacific Ocean. FAA's Air Traffic Organization (ATO) is responsible for managing the air traffic system and its operations, consisting of more than 14,000 air traffic controllers, 21 Air Route Traffic Control Centers, 147 Terminal Radar Approach Control facilities, and 520 airport traffic control towers.[29]

The 5,300,000 square miles of United States domestic airspace makes it the largest and most complex airspace in the world.[30] Air traffic controllers provide air traffic services to 45,000 daily flights on average and assist roughly 5,400 aircraft at one time during peak operational hours.[31] A reliable and efficient air traffic control system is vital to the aviation industry and provides necessary navigation services to ensure passengers arrive at their destinations safely and on time. Any disruption to the ATC system could mean widespread flight delays, passengers sitting in an aircraft at the gate or on the tarmac, or aircraft forced to hold or slowdown en route to their destination.

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[21] *Overview: What is AIP & What is Eligible?*, FAA, *available at* https://www.faa.gov/airports/aip/overview.
[22] 49 U.S.C. § 48103.
[23] Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. No. 106-181, 114 Stat. 61. [hereinafter *21st Century*].
[24] 14 C.F.R. § 158 (2023).
[25] *Id*.
[26] *Key Passenger Facility Charge Statistics,* FAA, *available at* https://www.faa.gov/sites/faa.gov/files/stats.pdf.
[27] 49 U.S.C. § 40117(e)(2).
[28] *21st Century, supra* note 23.
[29] *Air Traffic by The Numbers,* FAA, *available at* https://www.faa.gov/air_traffic/by_the_numbers.
[30] *Air Traffic,* FAA, *available at* https://www.faa.gov/air_traffic.
[31] *Id*.

Air Traffic Controller Staffing

The FAA's mission is to provide the safest and most efficient aerospace system in the world.[32] To this goal, the FAA uses dynamic staffing to align air traffic controller resources with demand.[33] At the onset of the COVID-19 pandemic, decreased demand for air travel led to the elimination or reduction of activities at ATC facilities.[34] For example, ATO's controller hiring goals for 2021 were reduced to account for decreased air travel demand.[35] Additionally, ATO shuttered its training academy due to the pandemic.[36] Consequently, as demand for air travel increased post-pandemic, ATO struggled with staffing shortages at critical facilities, causing airline cancellations and delays.[37] With air travel demand forecasted to surpass pre-pandemic levels by 2024, scrutiny on controller staffing efforts is needed.[38]

In the 2022 Air Traffic Controller Workforce Plan, the FAA nearly doubled its hiring goals compared to 2021 to match the increase in air travel demand.[39] However, the process of hiring and adequately training an air traffic controller is a lengthy process, often taking over a year to complete.[40] Furthermore, controller staffing has not kept up with attrition, as the FAA presently has 1,000 less controllers than it did ten years ago.[41] This has led to staffing shortages at various vital Air Route Traffic Control Centers.[42]

Finally, while the FAA is seeking to increase staffing numbers in ATC centers, its Air Traffic Control Workforce Plan counts newly hired and untrained air traffic controllers in its overall workforce numbers.[43] This gives the appearance that a facility is within its staffing range when, in fact, the facility would be below its staffing range if such trainees – who have never been certified and cannot perform the requisite duties – are excluded.[44] This creates uncertainty and confusion in the overall air traffic controller workforce, decreases the FAA's awareness of such issues, and weakens the FAA's ability to meet operational needs.

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[32] *Mission,* FAA, *available at* https://www.faa.gov/about/mission.
[33] *ATC Workforce Plan, supra* note 4.
[34] *Id*.
[35] *Id*.
[36] Eric Katz, *FAA-Caused Flight Delays in New York Preview Potential 'Crisis' in Coming Years,* GOV'T EXEC., (Aug. 16, 2022), *available at* https://www.govexec.com/workforce/2022/08/faa-caused-flight-delays-new-york-preview-potential-crisis-coming-years/375914/.
[37] *Id*.
[38] FAA, FAA AEROSPACE FORECAST FISCAL YEARS 2022-2024 (2022), *available at* https://www.faa.gov/sites/faa.gov/files/2022-06/FY2022_42_FAA_Aerospace_Forecast.pdf.
[39] *ATC Workforce Plan, supra* note 4.
[40] *Air Traffic Controllers, How to Become an Air Traffic Controller,* BUREAU OF LABOR STATISTICS, *available at* https://www.bls.gov/ooh/transportation-and-material-moving/air-traffic-controllers.htm#tab-4.
[41] *FAA Must Report Air Traffic Controller Staffing Accurately in Controller Workforce Plan,* TRANSP. TRADES DEP'T (Nov. 10, 2022), *available at* https://ttd.org/policy/faa-must-report-air-traffic-controller-staffing-accurately-in-controller-workforce-plan/.
[42] *Business Insider, supra* note 8.
[43] *ATC Workforce Plan, supra* note 4.
[44] *Id*.

Notice to Air Missions (NOTAM)

A NOTAM is a notice to pilots, flight crews, and other personnel essential to flight operations regarding abnormalities or status updates in the National Airspace System (NAS).[45] The NOTAM system is vital to users of the NAS, as it delivers information necessary for safe flight operations.[46] For instance, a NOTAM may alert pilots and flight crews of a closed runway, temporary airspace restrictions, or inoperable navigation aids. On January 11, 2023, the FAA issued the first nationwide ground stop of all aircraft since September 11, 2001, due to an outage of the NOTAM system caused by an unintentionally deleted database file in the system.[47] This 90-minute outage caused thousands of commercial airline delays and cancellations around the country, with several major airlines reporting 40 percent or more delays and cancellations of scheduled flights.[48]

On January 13, 2023, Chairman Sam Graves and Ranking Member Rick Larsen, along with 120 other Members of Congress, wrote to Department of Transportation (DOT) Secretary Pete Buttigieg seeking answers on the NOTAM outage.[49] The letter noted FAA's awareness of the persistent problems facing the NOTAM system and expressed concern with FAA's apparent issues managing the agency's ATC legacy systems.[50]

On January 25, 2023, the House passed H.R. 346, *the NOTAM Improvement Act of 2023*, by a vote of 424-4. This legislation directed the FAA to establish a task force — composed of representatives from airlines, airports, aviation safety experts, and aviation labor unions, among others — to review the existing NOTAM system and make recommendations to improve the presentation of information and the system's resiliency and cybersecurity.[51]

The underlying issues which led to the temporary failure of the NOTAM system are indicative of an aging technology system that requires constant maintenance and replacement. It consists of thousands of pieces of hardware and software which have been built up over decades of operations. The FAA has struggled to keep up with the maintenance of these technology systems, resulting in poor performance and disruptions.[52]

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[45] *What is a NOTAM?,* FAA, *available at* https://www.faa.gov/about/initiatives/notam/what_is_a_notam.
[46] *NOTAM Modernization,* FAA, *available at* https://www.faa.gov/about/initiatives/notam.
[47] Press Release, FAA, *FAA NOTAM Statement* (Jan. 19, 2023), *available at* https://www.faa.gov/newsroom/faa-notam-statement.
[48] David Shepardson, Rajesh Kumar Singh & Abhijith Ganapavaram, *Airlines hope for return to normal Thursday after FAA outage snarls U.S. travel,* REUTERS, (Jan. 11, 2023), *available at* https://www.reuters.com/business/aerospace-defense/us-faa-says-flight-personnel-alert-system-not-processing-updates-after-outage-2023-01-11/.
[49] Letter from Sam Graves, Chairman, and Rick Larsen, Ranking Member, H. Comm. on Transp. And Infrastructure to Secretary Pete Buttigieg (Jan. 13, 2023), *available at* https://transportation.house.gov/uploadedfiles/2023-01-13_-_letter_to_dot_on_notam_system_outage_final.pdf.
[50] *Id.*
[51] NOTAM Improvement Act of 2023, H.R. 346, 118th Cong. (2023).
[52] Niraj Chokshi and Mark Walker, *F.A.A. Outage Highlights Fragility of the Aviation System,* N.Y. TIMES, (Jan. 11, 2023), *available at* https://www.nytimes.com/2023/01/11/business/faa-flight-delays-outage.html.

Next Generation Air Transportation System (NextGen)

In the early 2000s, Congress began directing the FAA to undertake a series of initiatives, known as "NextGen," to revamp the Nation's ATC system in order to meet anticipated growth in air traffic.[53] The goal of NextGen is to transition the system from reliance on ground-based navigation and surveillance systems to a satellite-based system to increase the efficiency, capacity, and flexibility of our airspace. Specifically, NextGen initiatives are expected to reduce the required separation between aircraft, result in more efficient routes, and decrease congestion. Together, these initiatives are intended to provide a better experience for the travelling public.[54] Presently, NextGen efforts include specific programs to realize these benefits, including Automatic Dependent Surveillance-Broadcast (ADS-B), System-Wide Information Management (SWIM), and Data Communications (Data Comm).

The goal at the inception of NextGen was to transform the NAS by 2025.[55] However, NextGen programs have been vulnerable to delays and cost-overruns.[56] According to a November 2016 GAO report, six NextGen activities with completion dates in 2025 have been delayed to 2030.[57] Although anticipated costs for NextGen programs have fallen back in line with original estimates, challenges remain for the FAA's continued implementation, including the uncertainty of future funding, aircraft owners' equipage capabilities to fully utilize NextGen improvements, the instability of FAA' leadership and cybersecurity issues.[58]

En Route Automation Modernization (ERAM)

The ERAM program is foundational to the FAA's NextGen initiative.[59] Focused on modernizing computer systems to improve flight tracking and management, ERAM provides real-time air traffic management and information-sharing for pilots, allowing better flight planning.[60] For controllers, ERAM enables them to handle air traffic more accurately and efficiently and increase the amount of flights which can be tracked.[61] However, since its completion, ERAM has experienced numerous outages, causing thousands of flight delays and cancellations.[62] Most recently on January 2, 2023, an issue with the ERAM system at Miami Air Route Traffic Control Center caused hundreds of delays at Florida airports for several hours.[63]

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[53] *Next Generation Air Transport System (NextGen)*, FAA, *available at* https://www.faa.gov/nextgen.
[54] FAA, THE ECONOMIC IMPACT OF CIVIL AVIATION ON THE U.S. ECONOMY (Nov. 2016) *available at* https://www.faa.gov/air_traffic/publications/media/2016-economic-impact-report_FINAL.pdf.
[55] *Id*.
[56] U.S. GOV'T ACCOUNTABILITY OFF., GAO-17-241R, NEXT GENERATION AIR TRANSP. SYSTEM: INFORMATION ON EXPENDITURES, SCHEDULE, AND COST ESTIMATES, FISCAL YEARS 2004-2030 (2016).
[57] *Id*.
[58] U.S. GOV'T ACCOUNTABILITY OFF., GAO-17-450, AIR TRAFFIC CONTROL MODERNIZATION: PROGRESS AND CHALLENGES IN IMPLEMENTING NEXTGEN (2017).
[59] *En route Automation Modernization (ERAM),* FAA, *available at* https://www.faa.gov/air_traffic/technology/eram.
[60] *Id*.
[61] *Id*.
[62] U.S. DOT OFF. OF INSPECTOR GEN., REPORT NO. AV2019004, FAA HAS TAKEN STEPS TO ADDRESS ERAM OUTAGES, BUT SOME VULNERABILITIES REMAIN (2018).
[63] *Hours-long flight delays at Florida airports caused by FAA air traffic control issue,* CBS MIAMI, (Jan. 2, 2023), *available at* https://www.cbsnews.com/miami/news/faa-slows-air-traffic-into-florida-due-to-computer-issue/.

V. AIR CARRIERS

The air transportation industry includes major airlines, regional airlines, all-cargo airlines, and charter operators that serve the widely varying needs of American consumers and businesses. In 1978, the *Airline Deregulation Act of 1978* was signed into law.[64] The *Airline Deregulation Act of 1978* made fundamental changes to the Federal Government's oversight and regulation of the airline industry. Prior to 1978, the Federal Government was authorized to closely regulate air carriers and control, among other things, routes, rates, and service.[65] Since enactment of the *Airline Deregulation Act of 1978*, airfares fell dramatically in real terms.[66]

In 1992, the United States entered its first "Open Skies" agreement which eliminated most governmental limits on international services. Since that time, the United States has entered Open Skies agreements with over 100 countries around the world.[67] Major United States passenger airlines often partner with other airlines to complement their services. Domestically, they partner with regional airlines operating smaller aircraft to fly routes or during times-of-day that cannot be economically served with other, larger aircraft. Internationally, airlines also form alliances with foreign airlines to mutually expand the reach of their global networks.

DOT Consumer Protection

The DOT is responsible for executing and enforcing airline consumer laws established by Congress, as well as developing regulations based on its existing statutory authority.[68] The DOT's Office of Aviation Consumer Protection is the primary entity tasked with monitoring and enforcing violations of aviation consumer protection and civil rights, reviewing and responding to aviation consumer complaints, and establishing aviation consumer protection and civil rights regulations.[69] For instance, the office is responsible for the implementation and enforcement of regulations prohibiting discrimination against passengers with disabilities.[70] The office's primary responsibilities include investigating disability-related complaints against airlines and promoting awareness of passenger rights through public education, among other efforts.[71]

The *Airline Deregulation Act of 1978* eliminated Federal control over several airline business practices—chief among them pricing and domestic route selection.[72] However, the

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[64] *Airline Deregulation Act of 1978,* Pub. L. No. 95-1779, 92 Stat. 1705.
[65] *Airline Deregulation Act of 1978: Preemption of State Consumer Protection Laws*, CONG. RESEARCH SERV. (LSB10925) (Mar. 1, 2023) *available at* https://crsreports.congress.gov/product/pdf/LSB/LSB10925.
[66] Derek Thompson, *How Airline Ticket Prices Fell 50 Percent in 30 Years (and Why Nobody Noticed),* THE ATLANTIC. (Feb. 23, 2013), a*vailable at* https://www.theatlantic.com/business/archive/2013/02/how-airline-ticket-prices-fell-50-in-30-years-and-why-nobody-noticed/273506/.
[67] *Open Skies Agreements Currently Being Applied*, U.S. DOT, *available at* https://www.transportation.gov/policy/aviation-policy/open-skies-agreements-being-applied.
[68] *Airline Passenger Rights: The Federal Role in Aviation Consumer Protection*, CONG. RESEARCH SERV. (R43078) (Updated Aug. 17, 2016). [hereinafter *CRS: Federal Role].*
[69] *About Us, Office of Aviation Consumer Protection,* U.S. DOT, *available at* https://www.transportation.gov/airconsumer/about-us.
[70] U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-354, PASSENGERS WITH DISABILITIES: AIRPORT ACCESSIBILITY BARRIERS AND PRACTICES AND DOT'S OVERSIGHT OF AIRLINES' DISABILITY-RELATED TRAINING (Apr. 2021).
[71] *Id* at 18.
[72] *CRS: Federal Role, supra* note 68.

Secretary of Transportation has statutory authority to investigate and decide whether an air carrier is engaged in an "unfair or deceptive practice."[73] The interpretation of "unfair and deceptive" can significantly affect the scope of DOT's enforcement authority as such terms are not defined in statute.[74] In December of 2020, the DOT issued a final rule codifying its interpretation of "unfair" and "deceptive" to provide certainty in the Department's aviation consumer protection rulemaking and enforcement actions.[75] In response to Executive Order 14036, the DOT published a guidance document to provide further interpretation of "unfair" and "deceptive" in August of 2022.[76]

Air Carrier Consumer Complaints

As air travel has increased post-pandemic, so have air travel consumer complaints. Passengers filed 5,379 consumer complaints for United States scheduled air carriers in October 2022.[77] This represents a 370 percent increase from pre-pandemic levels in October 2019.[78] Consumer complaints are classified in various categories. These categories include reservations, ticketing, boarding, fares, refunds, baggage, customer service, disability, discrimination, and flight problems such as cancellations and delays.[79] In November 2022, the DOT received a total of 166 disability-related complaints, down from 206 in October 2022, but significantly up from 66 received pre-pandemic in November 2019.[80]

Delays and Cancellations

The on-time arrival rate for U.S. scheduled air carriers from January to November 2022 was 77.4 percent.[81] This is down from the 79 percent rate for pre-pandemic 2019.[82] Delays and cancellations are classified in different categories based on cause. For example, in November

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[73] 49 U.S.C. § 41712.
[74] *CRS: Federal Role, supra* note 68.
[75] 14 C.F.R. § 399 (2020).
[76] Exec. Order No. 14036, 86 Fed. Reg. 36987, (Jul. 9, 2021), *available at* https://www.federalregister.gov/documents/2021/07/14/2021-15069/promoting-competition-in-the-american-economy*;* s*ee also* Guidance Regarding Interpretation of Unfair and Deceptive Practices, 87 Fed. Reg. 52,677 (Aug. 29, 2022) (to be codified at 14 C.F.R. pt. 399).
[77] U.S. DOT, OFF. OF AVIATION CONSUMER PROTECTION, AIR TRAVEL CONSUMER REP. (Dec. 2022), *available at* https://www.transportation.gov/sites/dot.gov/files/2023-01/December%202022%20ATCR.pdf.
[78] Press Release, BUREAU OF TRANSP. STATISTICS, *Air Travel Consumer Report: October Consumer Complaints Down 12% from September, Yet Remain Three Times Higher Than Pre-Pandemic Levels* (Jan. 10, 2023), *available at* https://www.bts.gov/newsroom/air-travel-consumer-report-october-consumer-complaints-down-12-september-yet-remain-three.
[79] U.S. DOT, OFF. OF AVIATION CONSUMER PROTECTION, AIR TRAVEL CONSUMER REP. (Jan. 2023), *available at* https://www.transportation.gov/sites/dot.gov/files/2023-02/January%202023%20ATCR.pdf. [*hereinafter* BTS, Jan. 2023].
[80] U.S. DOT, AIR TRAVEL CONSUMER REPORT: NOVEMBER CONSUMER COMPLAINTS INCREASE FROM OCTOBER, (Feb. 2022), *available at* https://www.transportation.gov/briefing-room/air-travel-consumer-report-november-consumer-complaints-increase-october
[81] Press Release, BUREAU OF TRANSP. STATISTICS, *Air Travel Consumer Report: November Consumer Complaints Increase form October (*Feb. 7, 2023), *available at* https://www.bts.gov/newsroom/air-travel-consumer-report-november-consumer-complaints-increase-october.
[82] U.S. DOT, OFF. OF AVIATION CONSUMER PROTECTION, AIR TRAVEL CONSUMER REP. (Feb. 2020), *available at* https://www.transportation.gov/sites/dot.gov/files/2020-02/February%202020%20ATCR.pdf.

2022, 6.79 percent of flights were delayed due to circumstances within the airline's control. On the contrary, 5.12 percent of delays were due to NAS delays, which include non-extreme weather conditions, airport operations, heavy traffic volume or air traffic control.[83] Other categories of cancellations and delays include extreme weather delays, late arriving aircraft delays, and security delays.[84]

VI. WITNESSES

Ms. Sharon Pinkerton
Senior Vice President, Legislative and Regulatory Policy
Airlines for America

Mr. Kevin Dolliole
Director of Aviation
Louis Armstrong New Orleans International Airport
on behalf of the
Airports Council International- North America

Mr. Rich Santa
President
National Air Traffic Controllers Association

Mr. Lee Page
Senior Associate Advocacy Director
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[83] BTS, Jan. 2023, *supra* note 79.
[84] *Id*.