



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

Bill Shuster
Chairman
Mathew M. Sturges
Staff Director

Peter A. DeFazio
Ranking Member
Katherine W. Dedrick
Democratic Staff Director

April 28, 2017

SUMMARY OF SUBJECT MATTER

TO: Members, Committee on Transportation and Infrastructure
FROM: Staff, Committee on Transportation and Infrastructure
RE: Full Committee Hearing on “Oversight of U.S. Airline Customer Service”

PURPOSE

The Committee on Transportation and Infrastructure will meet on Tuesday, May 2, 2017 at 9:30 a.m. in 2167 Rayburn House Office Building to receive testimony concerning airline customer service issues. The Committee will receive testimony from representatives of airlines and consumers.

BACKGROUND

Prior to 1978, the federal government controlled virtually every aspect of the airline industry including routes flown, fares charged, and market entry through an extensive system of regulation. The *Airline Deregulation Act of 1978* (ADA), signed by President Jimmy Carter, eliminated most economic regulation of the airline industry, including regulation of fares, routes, and new market entry. The ADA allows airlines to make commercial decisions based on market conditions and business considerations. However, the federal government retains certain economic regulation related to licensing and consumer protection in addition to comprehensive safety regulation.

According to the U.S. Department of Transportation (DOT), the elimination of government regulation of airline fares and routes has resulted in lower fares and a wide variety of price/service options.¹ Prior to deregulation, the federal government ensured the profitability of U.S. air carriers. Since deregulation, air transportation has become available to more Americans. The number of passengers has greatly increased, while overall airfares have decreased.² In 2016,

¹ U.S. DOT, <https://www.transportation.gov/airconsumer/fly-rights>

² “Reregulating the Airline Industry Would Likely Reverse Consumer Benefits and Not Save Airline Pensions” GAO-06-630: Jun 9, 2006 <http://www.gao.gov/new.items/d06630.pdf> ; see also, “How Airline Ticket Prices Fell 50% in 30 Years (and Why Nobody Noticed), *The Atlantic*, Feb. 28, 2013, <https://www.theatlantic.com/business/archive/2013/02/how-airline-ticket-prices-fell-50-in-30-years-and-why-nobody-noticed/273506/>

U.S. airlines carried an all-time high number of passengers, 823 million system wide, including 719 million domestically and 103 million internationally.³ In 2015, approximately two million passengers flew *each day* on domestic and international flights operated by U.S. airlines.⁴ Foreign carriers serving the United States carried additional passengers to and from the United States.

U.S. airlines have a variety of business models. Some companies offer a comprehensive network of domestic and international destinations using a “hub-and-spoke” model. Other carriers offer low-cost service among limited networks of destinations that are often served point-to-point. Still, other carriers use a hybrid of these models. In recent years, a group of “ultra” low-cost carriers have emerged. Airlines offer different levels of service, types of seat choice, and varying amenities that are “bundled” or “unbundled” depending on the fare and other factors. Major U.S. passenger airlines also often partner with regional airlines to complement their services.

Aviation Consumer Protection

Congress, the DOT, and commercial “contracts of carriage” between airlines and passengers each play a role in determining the relationship between passengers and airlines.

Congressional Oversight and Aviation Consumer Protection Laws

In the decades since airline deregulation, Congress has passed a number of laws to address airline consumer protections. During the 114th Congress, Members introduced bills to address various airline customer service and consumer protection issues. Members have introduced additional bills in the 115th Congress. Congressional oversight over the years has also played an important role. For example, a series of prolonged tarmac delays between 2007 and 2009, during which passengers were confined for hours on aircraft without drinking water or functioning lavatories, led to hearings in 2009, DOT rulemaking proceedings in 2010, and changes in the law in 2012.⁵ The following are brief descriptions of key aviation consumer protection legislation.

Air Carrier Access Act

In 1986, Congress passed the *Air Carrier Access Act* (ACAA) (P.L. 99-435) to prohibit discrimination in air travel on the basis of disability. This law served as a predecessor to the landmark *Americans with Disabilities Act of 1990* (P.L. 101-336). The ACAA includes a number of provisions that protect disabled citizens when traveling by air, including the provision of movable armrests on certain aircraft, accessible lavatories, and assistance at airports.

³ Bureau of Transportation Statistics, March 16, 2017, <https://www.bts.gov/newsroom/2016-annual-and-december-us-airline-traffic-data>

⁴ Bureau of Transportation Statistics. “2015 U.S.-Based Airline Traffic Data.” https://www.rita.dot.gov/bts/press_releases/bts018_16

⁵ Rachel Y. Tang., *Airline Passenger Rights: The Federal Role in Aviation Consumer Protection*. Congressional Research Service, R43078, (Aug. 17, 2016).

FAA Modernization and Reform Act of 2012

On February 14, 2012, President Obama signed into law the *FAA Modernization and Reform Act of 2012* (FMRA) (P.L. 112-95). FMRA contains a subtitle dedicated to passenger air service improvements. The law addresses compensation for delayed baggage, disclosures to facilitate use of child safety seats on aircraft, creation of emergency contingency plans by airlines and airports, creation of a consumer complaint hotline, carriage of musical instruments, and other issues. FMRA also established the Advisory Committee for Aviation Consumer Protection (Advisory Committee) comprised of airlines, airports, state and local governments, and non-profits with expertise in consumer protection matters. The Advisory Committee is also responsible for recommending new programs to the Secretary of Transportation when deemed necessary.⁶

FAA Extension, Safety, and Security Act of 2016

On July 15, 2016, President Obama signed into law the *FAA Extension, Safety, and Security Act of 2016* (P.L. 114-190). This law contains additional reforms related to consumer protection, including clarifying requirements related to long tarmac delays, improvements to refund processes for delayed baggage, and directing the Secretary of Transportation to consider measures to keep families seated together aboard flights. The law also requires the Comptroller General to assess airlines' training policies for assisting individuals with disabilities and extends the Advisory Committee for Aviation Consumer Protection.

The U.S. Department of Transportation

The DOT's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (OAEP) has the primary responsibility of enforcing aviation consumer protection laws. In addition to enforcing specific statutes, such as the ACAA, it also has very broad authority to prohibit "unfair and deceptive practices" under 49 U.S.C. § 41712. The DOT has relied on section 41712 authority to regulate aviation consumer matters, including advertising, information disclosures, airline treatment of passengers during various situations, and the handling of complaints. The DOT enforces the statutes and its rules through the issuance of civil penalties and the negotiation of consent orders or a combination thereof. Airlines are subject to civil penalties of up \$32,140 per violation with lesser penalties allowed for small businesses.⁷ In 2015, the DOT issued 15 consent orders related to consumer rule violations and assessed \$2,435,000 in civil penalties.⁸ In 2016, there were 27 consent orders issued by the DOT and \$6,355,000 dollars in civil penalties. So far in 2017, there have been eight enforcement orders issued.⁹

⁶ <https://www.transportation.gov/airconsumer/ACACP>

⁷ 49 U.S.C. § 46301.

⁸ Rachel Y. Tang, *Supra* at 3.

⁹ https://www.transportation.gov/airconsumer/enforcement-orders?term_node_tid_depth=All&items_per_page=All

The OAEP also includes the Aviation Consumer Protection Division (ACPD). The ACPD is tasked with receiving complaints from members of the traveling public concerning issues they experienced during air travel. The ACPD assesses whether or not the action, inaction, or behavior complained of is a violation of consumer protection regulations. In 2015, the DOT received a total of 20,170 complaints, up from 15,539 received by the DOT in 2014.¹⁰ However, in the most recent Air Travel Consumer Report compiled by the ACPD, dated February 2017, 950 complaints were reported, 596 of which were directed toward U.S. airlines and 334 of which were directed toward foreign airlines.¹¹ These numbers are down from 1,501 total complaints reported in 2015, 1,111 of which were directed at U.S. airlines and 349 of which were directed at foreign airlines.¹²

Airline Contracts of Carriage

Contracts of carriage are a legal agreement between the airline and passengers containing the relevant terms and conditions of each carrier's service. While federal law requires a contract of carriage, each airline's contract of carriage can be different. The contracts include rules related to check-in, refunds, delayed flights, frequent flyer programs, liability limitations, etc. For domestic travel, an airline may provide all of its contract terms on or with the ticket. Other airlines may include their rules in a separate document which the ticket purchaser can request or review on the airline's website. In the era of electronic ticketing, these contracts are often available on airline websites. There are special notice requirements for contract provisions related to airfares. Additionally, not all of the notification and other requirements apply when traveling internationally. Modern day contracts of carriage by airlines replace the pre-airline deregulation tariffs that were enforced by the Civil Aeronautics Board.¹³ The DOT advises passengers to review the contract of carriage and ask questions.

¹⁰ https://www.rita.dot.gov/bts/press_releases/dot014_16

¹¹ Department of Transportation, Air Travel Consumer Report, 37 (April 2017), <https://www.transportation.gov/sites/dot.gov/files/docs/resources/individuals/aviation-consumer-protection/278481/2017-april-atcr.pdf>

¹² Id.

¹³ Rachel Y. Tang, *Supra* at 4.

WITNESS LIST

Mr. Oscar Munoz
Chief Executive Officer
United Airlines
(*Accompanied by:* Mr. Scott Kirby
President, United Airlines)

Ms. Kerry Philipovitch
Senior Vice President of Customer Experience
American Airlines

Mr. Joseph Sprague
Senior Vice President of External Relations
Alaska Airlines

Mr. Bob Jordan
Executive Vice President and Chief Commercial Officer
Southwest Airlines

Mr. William J. McGee
Aviation Consultant
Consumers Union