

February 24, 2023

The Honorable Sam Graves  
Chairman  
Committee on Transportation &  
Infrastructure  
Unites States House of Representatives  
Washington, DC 20515

The Honorable Maria Cantwell  
Chair  
Committee on Commerce, Science, &  
Transportation  
Unites States Senate  
Washington, DC 20510

The Honorable Rick Larsen  
Ranking Member  
Committee on Transportation &  
Infrastructure  
Unites States House of Representatives  
Washington, DC 20515

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

**RE: Consumer and Passenger Rights Organizations' Priorities for the 2023 FAA  
Reauthorization Legislation**

Dear Chairman Graves, Chair Cantwell, Ranking Member Larsen, and Ranking Member Cruz,

The nine undersigned consumer and passenger rights organizations urge you to use the opportunity of reauthorizing the Federal Aviation Administration (FAA) this year to address a range of urgently needed consumer protections and industry reforms. Following Congress's appropriation of more than \$50 billion to the air travel industry during the pandemic,<sup>1</sup> travelers across the United States have been clear in their demands for changes to the business practices of air carriers. Major travel disruptions during and after the 2022

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<sup>1</sup> Politico. *Congress to airlines: Where did all the Covid money go?* 2021.  
<https://www.politico.com/news/2021/11/20/airlines-pandemic-bailout-cancellations-523100>

holiday season again demonstrated the need for new protections.<sup>2</sup> We believe the following legislative reforms are urgently needed to address consumers' concerns.

### **Minimize Flight Cancellations and Delays**

Implement delay compensation requirements. When a flight is delayed by three or more hours or cancelled within 14 days prior to the scheduled departure date due to issues within the air carrier's control, affected travelers should be eligible for a minimum of \$250 in compensation. Such compensation should be self-activating, without the need for consumers to seek compensation on their own. Modeled after current European Union (EU) regulations, such a requirement would incentivize greater airline operational performance while adequately compensating harmed travelers.<sup>3</sup>

Require airlines to provide compensation for hotel and meal costs in the event of delays and cancellations. Airlines currently have inconsistent policies regarding compensation to passengers for meal and hotel costs in the event of a lengthy delay or flight cancellation.<sup>4</sup> Congress should require airlines to provide such compensation, as is currently required under European Union regulations.

Institute an industry-wide reciprocity requirement. When a flight is significantly delayed or cancelled for any reason, passengers of that flight should be transferred to another carrier if the second carrier could transport the travelers more quickly than the original carrier. This would benefit passengers by ensuring minimal disruption to their travel plans and incentivizing airlines to reliably maintain their flight schedules, increasing competition in the airline industry.

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<sup>2</sup> Aratani, Lori *et al.* "As Southwest, FAA probes begin, fallout could shape flying for years," *Washington Post*. (February 9, 2023). Online: <https://www.washingtonpost.com/transportation/2023/02/07/faa-southwest-airlines-travel-investigations/>

<sup>3</sup> Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) - Commission Statement

<sup>4</sup> Department of Transportation. "Flight Delays and Cancellation." Online: <https://www.transportation.gov/individuals/aviation-consumer-protection/flight-delays-cancellations>

Hold airlines accountable for chronically delayed and cancelled flights. Air carriers should be required to maintain a minimum percentage of on-time flights per month based on a review of the carrier's published schedule and actual performance. This would allow the Department of Transportation (DOT) to hold airlines accountable when they routinely publish inoperable flight schedules.

Require plain language notices of passenger compensation rights under federal and international law throughout public airports and in air carriers' mobile apps and websites. Such notices should specifically include rights afforded by the Montreal Convention<sup>5</sup> and the EU's Flight Compensation Regulation<sup>6</sup>, as many American travelers may be unaware of the international rights to which they are entitled.

### **Reform Airline Fees, Seating, and Rewards**

Include the Forbidding Airlines from Imposing Ridiculous (FAIR) Fees Act in the 2023 FAA Reauthorization. The FAIR Fees Act would prohibit air carriers from charging fees (including baggage, seating, and reservation change fees) that are not reasonable and proportional to the costs of the services provided.<sup>7</sup>

Ensure that parents and caregivers can be seated with their minor children at no additional charge. Congress has previously urged DOT to act on family seating requirements in the 2016 FAA reauthorization law,<sup>8</sup> yet the Department is only now initiating a rulemaking on the issue—a lengthy process that is beginning almost seven years late. The White House

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<sup>5</sup> The International Air Transport Association. *Convention For The Unification Of Certain Rules For International Carriage By Air*. 1999.

<https://www.iata.org/contentassets/fb1137ff561a4819a2d38f3db7308758/mc99-full-text.pdf>

<sup>6</sup> EUR-Lex. *Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) - Commission Statement*. (2004). <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32004R0261>

<sup>7</sup> S.209 - 118th Congress (2023-2024): FAIR Fees Act of 2023." *Congress.gov*, Library of Congress, 1 February 2023, <https://www.congress.gov/bill/118th-congress/senate-bill/209>

<sup>8</sup> *Congress.gov. Public Law 114–190—July 15, 2016: Sec. 2309. Family Seating*. (2016). <https://www.congress.gov/114/plaws/publ190/PLAW-114publ190.pdf>

has called on Congress to pass a bill to ensure that parents and caregivers are not required to pay a fee to sit next to their minor children on a flight, as this would bypass the need for a lengthy rulemaking process.

Establish basic services standards for air travel. Passengers should be entitled to, at a minimum: a seat, a boarding pass, check-in services, a personal item, a carry-on item, water, and an accessible lavatory included in the ticket price. Additionally, air carriers should be required to maintain a toll-free customer service phone number, with adequate staffing to ensure wait times do not exceed 30 minutes.

Require transparent, upfront pricing of airfare at the outset of the purchase process. Consumers respond to an advertised ticket price but are then faced with additional fees for basic services like baggage, seat reservation, and other ancillary charges throughout the purchase process. This often results in a much higher total cost than originally advertised. Clearly displaying what is included in the fare from the onset will help alleviate the sticker shock many travelers face by the end of their purchase and promote competition between airlines.

End the excise tax exemption for ancillary service fees. Ancillary fees—a multi-billion-dollar source of revenue—currently escape excise taxation, depriving the Airport & Airway Trust Fund (AATF) of resources needed to maintain critical infrastructure.<sup>9</sup> This loophole is a significant incentive for airlines to pass ever more ancillary fees on to consumers.

Narrowly define “service” as it relates to federal preemption and the Airline Deregulation Act of 1978 (ADA). Judicial interpretations of the ADA’s preemption of the regulation of conduct which “relates to service” are expansive and preclude the regulation of virtually any action an air carrier takes during a flight or customer service operation. This effectively

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<sup>9</sup> U.S. Department of Transportation, Office of Inspector General. *Changes in Airline Service Different Significantly for Smaller Communities but Limited Data on Ancillary Fees Hinders Further Analysis*. (2020). [https://www.oig.dot.gov/sites/default/files/Airline%20Service%20to%20Small%20Communities%20Final%20Report\\_0.pdf](https://www.oig.dot.gov/sites/default/files/Airline%20Service%20to%20Small%20Communities%20Final%20Report_0.pdf)

preempts states from protecting travelers in most situations. Removing the phrase “relates to” and clarifying that “service” only includes the frequency and scheduling of transportation on a certain route will reinstate Congress’s original intent in the ADA while enabling state consumer protection agencies to backstop DOT’s role in protecting the flying public.

Establish a minimum passenger seat size. Shrinking seat sizes cause health risks, passenger discomfort and create potential evacuation hazards. The 2018 FAA reauthorization law required FAA to set minimum passenger seat width and pitch within one year of enactment. Almost four years later, FAA still has not fulfilled this mandate. Congress must act when the agency will not.

Require reasonable notice to consumers before devaluation of their frequent flyer program miles. Currently, miles accrued via frequent flyer programs lack important consumer safeguards. A minimum of 60-day notice before devaluing travelers’ frequent flyer miles will increase transparency and allow consumers to make better informed decisions.

### **Enable Stronger Enforcement of Passenger Protections**

Empower state attorneys general to enforce federal consumer protection laws. DOT lacks the resources to address many valid complaints from travelers. For example, despite a record surge in consumer complaints during the pandemic, DOT has initiated only a single enforcement action against an airline.<sup>10</sup> Allowing state attorneys general to share enforcement of federal consumer protection laws with DOT will provide additional avenues for consumers to seek redress. A bipartisan coalition of state attorneys general has urged Congress to fulfill this request.<sup>11</sup>

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<sup>10</sup> U.S. Department of Transportation. *Air Canada Settlement Agreement*. (2021). <https://www.transportation.gov/individuals/aviation-consumer-protection/air-canada-settlement-agreement>

<sup>11</sup> National Association of Attorneys General. *Bipartisan Coalition of Attorneys General Fight to Protect Airline Consumers*. (2022). <https://www.naag.org/press-releases/bipartisan-coalition-of-attorneys-general-fight-to-protect-airline-customers/>

Establish a private right of action to allow consumers to enforce federal consumer protection laws. Empowering passengers to bring their own actions in response to unfair, deceptive, and discriminatory practices will help to hold air carriers accountable without waiting for federal intervention.

Direct the Government Accountability Office (GAO) to report on DOT rulemaking efficiency. DOT's failure to issue statutorily required regulations regarding passenger seat size is not an isolated instance. Congress should direct GAO to produce a report examining the reasons that DOT has not yet completed statutorily mandated regulations from previous FAA reauthorization bills.

### **Prioritize Consumer Voices and Experiences**

Renew the charter for the Aviation Consumer Protection Advisory Committee (ACPAC). The ACPAC has provided expertise on matters of consumer protection to DOT for over a decade. It will continue to play a critical role as the air travel industry recovers from the COVID-19 pandemic. The ACPAC has been an important venue for consumers to make their voices heard at DOT. Absent Congressional action, the authorization for the ACPAC will expire on June 28, 2023.

Require at least two passenger representatives on airport authority governing boards. Underrepresentation of passenger interests on airport authority governing boards has allowed many airports to deprioritize passenger convenience, faster travel time, and consumer expenses. Conditioning federal subsidies and licensure for airports on passenger representation on airport authority governing boards would incentivize airports to make travelers' airport experience a priority.

Ease the creation of new airports. The last major airport was built in 1995; increasing the number of airports would help with congestion and create new, possibly shorter flight paths. Ending the prohibition on federal ownership of airports would free up additional

resources for airport construction projects. Additionally, state and local governments should be encouraged to build new airports, especially at major hubs.

The undersigned consumer and travel advocacy organizations thank you for your attention to these important passenger protection issues as you begin the process of reauthorizing FAA.

Sincerely,

American Economic Liberties Project

Business Travel Coalition

Consumer Action

Consumer Federation of America

EdOnTravel.com

FlyersRights.org

National Consumers League

Travelers United

U.S. Public Interest Research Group