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U.S. Department of Transportation
Docket Management Facility
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Washington, D.C. 20590-0001
Submitted via www.regulations.gov

Further Comments of Consumers Union
To the U.S. Department of Transportation
Notification of Regulatory Review – Response to
Proposals Regarding Aviation Regulations
Docket No. DOT-OST-2017-0069

Consumers Union (CU), the policy and mobilization division of Consumer Reports,¹ respectfully submits these further comments to the U.S. Department of Transportation (DOT) in the above-referenced matter, in light of proposals DOT has received from the commercial airline industry. CU previously submitted comments in this matter, focused primarily on auto safety and fuel economy regulations. These additional comments supplement those previous comments, but focus on airline passenger protections.

In the area of aviation regulation, CU has been constructively engaged with DOT for many years to improve passenger protections. DOT has received numerous supportive submissions from us, including in recent years, encouraging DOT's safety and consumer protection efforts. We submit these additional comments because we are concerned by a number

¹ Consumers Union is the policy and mobilization division of Consumer Reports, an expert, independent, non-profit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. Consumers Union works for pro-consumer policies in the areas of transportation, financial services, food and product safety, health care, telecommunications and technology, privacy and data security, antitrust and competition policy, and other consumer issues, in Washington, D.C., in the states, and in the marketplace. Consumer Reports is the world's largest independent product-testing organization, using its dozens of labs, auto test center, and survey research department to rate thousands of products and services annually. Founded in 1936, Consumer Reports has over 7 million subscribers to its magazine, website, and other publications.

of the proposals submitted by some in the commercial airline industry, from individual airlines as well as Airlines for America, the industry's lobbying organization.

Last spring's shocking United Express incident, in which Dr. David Dao was violently removed from a seat for which he held a paid ticket, re-opened a window into the airlines' shoddy treatment of their passengers and shoppers. It starkly brought home, once again, that consumers are at the mercy of powerful airlines in an ever-more-concentrated industry – an industry facing increasingly less competition, and showing less interest in how their passengers are treated than in how their passengers can be taken advantage of to increase profits. Congressional hearings came soon after, and proposed legislation. Congress made clear that it expected improvements, and the airlines vowed they were committed to delivering them.

Barely six months later, it was as if this shocking incident, and these expectations and commitments, had been completely forgotten. In response to DOT's broad Federal Register notice inviting proposals to revise or remove transportation regulations, the airlines submitted comments in which they complained of being oppressively overregulated, and called on DOT to take a minimalist approach and broadly to scale back existing requirements.

The changes proposed by the airlines would eliminate or weaken fundamental and essential consumer protections, and therefore call for this further response.

These proposals include, for example:

- Removing requirements that an airline inform consumers of the full price of a fare, including all fees, early in the shopping process.
- Eliminating restrictions on post-purchase fare and fee increases.
- Relaxing requirements that cabin temperatures be kept at comfortable levels when passengers are stranded in planes being held on the tarmac.
- Removing restrictions against arbitrary denial of boarding or forced removal of a ticketed passenger.
- Eliminating requirements to collect and provide basic information on airline performance.

Many of the requirements that the airlines now complain of as being unnecessarily detailed have been developed in response to airline complaints about lack of specificity, or in response to persistent refusal by the airlines to provide the consumer protections they should unless required to do so in specific detail.

Following receipt of these proposals, DOT announced it was abandoning two pending rulemaking proceedings that would have given consumers clearer information on air fares and fees.² These important rulemakings had been underway for several years, and Consumers Union had strongly supported them. Our response to this announcement was immediate:

We strongly disagree that these proposed rules are of “limited public benefit” or would cause airlines to incur significant costs. In fact, enhanced pricing transparency benefits both consumers and competition within the airline industry.³

We are concerned that the airline comments, and the subsequent abandonment of the fare and fee transparency rulemakings, are indicative of a profound misconception: that the airline industry is excessively and unjustifiably regulated.

It is certainly evident that Congress sought in the 1978 Airline Deregulation Act to bring the beneficial forces of competition more strongly into play in airline decision making. But it is simply not the case, as the airlines suggest, that Congress intended for federal oversight of the commercial passenger aviation industry to be reduced to a minimum. On the contrary, Congress entrusted the Department of Transportation with primary responsibility for ensuring not only safety, but the full range of consumer protections. Some observers, including Consumers Union, have raised concerns that giving this responsibility entirely to DOT was done to an unwise extreme, at the expense of state law that should – and would – appropriately also apply in some of these areas.

In any event, the critical importance of DOT actively exercising its authority should not be discounted. (And in this regard, although DOT’s statutory authority to stop unfair and deceptive practices and unfair methods of competition may be modeled to some degree on that of the Federal Trade Commission (FTC), the airlines’ characterization of the FTC’s regulatory and enforcement authority is erroneously restrictive.)

We agree that in developing new regulations, or reviewing existing regulations, one important objective should always be to reduce unnecessary costs and burdens on business. However, the principal and overriding objective must always be to ensure effective protections for the public. Certainly, federal rules should achieve their purposes in an appropriately effective and cost-effective manner, and should be periodically reviewed, and strengthened or revised as warranted, with that goal in mind.

² www.transportation.gov/briefing-room/dot9117.

³ consumersunion.org/news/consumers-union-strongly-disagrees-with-dots-move-to-scuttle-airline-passenger-protection-rules/.

But it is essential that any regulatory revision occur as part of a well-considered process that has the advancement of consumer protection and other public interest priorities at its core. Focusing disproportionately on minimizing compliance costs undervalues those public interest priorities. The focus should be on ensuring the most effective protections to the public while avoiding burdens that are truly unnecessary for the regulation to achieve those protections.

We would urge DOT to turn to the unfinished business of ensuring that effective consumer protections are in place, beginning with the following key components of a meaningful Passenger Bill of Rights, as we outlined in our May 2017 testimony before the House Committee on Transportation and Infrastructure,⁴ such as:

- clear and consistent guidelines for compensation for flight delays, flight cancellations, and mishandled baggage;
- complete airfare transparency – including all taxes, surcharges, and ancillary fees – via all booking channels, both online and offline, and through both the airlines and third parties;
- minimum seat capacity standards to ensure reasonable passenger comfort; address health concerns, including the risk of deep vein thrombosis; and promote safety, including adequate space for effective evacuation; and
- clear and consistent guidelines for *voluntary* relinquishment of ticketed seats and a clear prohibition on *involuntary* relinquishment of such seats.

In this regard, we would urge DOT to comply with Congress's explicit pending directives in the FAA Extension, Safety, and Security Act of 2016, all more than 6 months overdue:

- Section 2305 – automatic refund of baggage fees when baggage is lost or delayed
- Section 2309 – guaranteed family seating for children under the age of 13
- Section 2108 – air travel accessibility issues, including medical oxygen, service animals, lavatories, seating assistance, and other assistance to persons with disabilities

⁴ [transportation.house.gov/uploadedfiles/2017-05-02_-_mcgee_testimony.pdf](https://www.transportation.house.gov/uploadedfiles/2017-05-02_-_mcgee_testimony.pdf).

An important benefit of effective regulations is that they help give Americans confidence that there are appropriate consumer safeguards behind products and services they are offered in the marketplace. We urge DOT to recommit itself to ensuring that such confidence is warranted as to passenger air travel, that consumers' interests are squarely at the forefront of its decisions regarding the rules that airlines must follow.

We look forward to working with you to further this objective.

Respectfully submitted,



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