

The Honorable Elaine Chao  
Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

October 6, 2020

Dear Secretary Chao:

The undersigned consumer advocacy organizations are writing in the aftermath of the September 24 meeting of the Aviation Consumer Protection Advisory Committee (ACPAC) to express our disappointment and frustration at its failure to address serious consumer concerns with commercial passenger airline travel.

The ACPAC was established to “evaluate current aviation consumer protection programs and provide recommendations to the Secretary for improving them, as well as recommend any additional consumer protections that may be needed.” In November 2018, consumer organizations wrote to you expressing concerns that the interests of consumers would not be well-represented given the pro-industry makeup of the ACPAC’s membership.<sup>1</sup> Unfortunately, those fears appear to have been well-founded. Despite mounting concerns about consumer treatment by airlines – particularly during this pandemic – the Committee is not focusing on timely, essential issues.

The COVID-19 pandemic has created uncertainty and concern about the danger of air travel as passengers worry about the risk of contracting the coronavirus from fellow travelers and crewmembers. Meanwhile, the disruption in travel plans brought on by the pandemic has led many consumers to seek refunds for tickets that they were unable to use, and has led more than 50,000 consumers to complain to DOT about airlines’ refusal to provide such refunds.

Stunningly, the recent ACPAC meeting – only the second in the two years since it was reconstituted in September 2018 – did not touch on any of the topics that have arisen during the seven months of the pandemic. Instead, the meeting was limited to three topics – in-flight sexual assaults against passengers and crewmembers, transparency of ancillary fees, and involuntary rescheduling – none of which was adequately addressed. ACPAC refused to discuss, or to entertain any questions on, any other topic.

In its discussion of sexual assaults on airlines, the ACPAC members considered a recent report from the National In-Flight Sexual Misconduct Task Force. While this task force was formed to address a critical safety and security issue, the discussion omitted any mention of a particularly vulnerable group – children separated from their families in aircraft cabins during flight. We had multiple discussions with the Department in 2019 and 2020 about children as young as three and four years old being assigned seats rows

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<sup>1</sup> “Consumer groups: DOT’s aviation consumer protection advisory committee tilted in favor of industry,” press release, Nov. 28, 2018, [https://www.nclnet.org/dot\\_advisory\\_committee](https://www.nclnet.org/dot_advisory_committee).

away from family members. Consumer Reports even addressed this topic in testimony before the House Transportation Committee in March 2020 noting the risks to safety inherent in policies that seat children far from their families.<sup>2</sup> Despite the gravity of this problem, at last week’s ACPAC meeting, it was clear that there had been no discussion by the task force about ensuring families are able to sit together.

Hidden and confusing ancillary fees have been a growing problem in airline pricing, particularly as they make it difficult for consumers to comparison shop or understand the true cost of a ticket. We have repeatedly called for full pricing transparency for airline passengers – including in comments Consumer Reports and U.S. PIRG submitted to the Department in January 2017, in a proceeding that the Department subsequently abandoned.<sup>3</sup> Unfortunately, despite ongoing consumer frustration about fees, the ACPAC members declared at the meeting that they are “aligned” on agreeing that the marketplace had solved the problem. It has not.

Finally, the meeting covered the issue of airlines making involuntary changes to passenger itineraries, a topic that had already been discussed at the first ACPAC meeting 18 months ago. At that meeting, and at this one, the Department representatives made clear that such changes comprise only a small fraction of consumer complaints. It is not clear why this issue remained on the agenda rather than other, more pressing, issues.

The formation of the ACPAC’s predecessor, the Advisory Committee on Aviation Consumer Protection, in 2012 included one representative from the airlines, one from the airports, one from state or local government, and one from a consumer organization. It is clear to us that this model is now broken, as all four Committee members are in virtual lockstep in advocating for the interests of the airline industry, even when those interests conflict with the interests of consumers. During the meeting last week, there was never any hint of any member having a view different from that of the airline representative; no one was advocating on behalf of consumers – not even the representative ostensibly appointed to represent the viewpoint of consumers, whose focus was on the profitability of the airline industry, and on letting market forces determine consumer protections.

This is unfortunately symptomatic of a general unresponsiveness of the Department to consumer interests and concerns under your leadership. While periodic informal meetings organized for consumer organizations have been helpful in giving us a forum for presenting our concerns, we see little indication that our concerns are being heard at the decision-making levels at the Department.

Just this past week, the Department rejected a petition calling for an interim final rule requiring all passengers and employees to wear masks onboard airplanes. In its letter

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<sup>2</sup> [advocacy.consumerreports.org/press\\_release/consumer-reports-urges-major-airlines-to-let-kids-sit-with-parents-without-extra-fees/](https://advocacy.consumerreports.org/press_release/consumer-reports-urges-major-airlines-to-let-kids-sit-with-parents-without-extra-fees/).

<sup>3</sup> <https://advocacy.consumerreports.org/research/comments-of-consumers-union-and-us-pirg-to-dept-of-transportation-re-ensuring-access-to-reliable-airline-flight-information/>;  
<https://www.regulations.gov/document?D=DOT-OST-2017-0007-0065>;  
<https://www.regulations.gov/document?D=DOT-OST-2017-0007-0069>.

explaining the rejection, the Department stated that it “embraces the notion that there should be no more regulations than necessary,” and asserted that a mask requirement would not be “cost-justified” or “address an identified market failure.”<sup>4</sup>

Among other issues we have raised but on which your Department has been slow or silent are: oversight of aircraft design and testing, particularly in the wake of the Boeing 737 MAX disasters; oversight of outsourcing of aircraft maintenance and repair to foreign countries; standards for emergency evacuation testing to ensure realistic simulations under current-day cramped seating and cluttered cabins; and fair access by competing airlines to slot-constrained airports.

As to the current urgent concerns brought on by COVID-19 – ensuring safe travel for consumers who choose to fly, or must; and ensuring refunds to financially stressed consumers who cannot safely fly – your non-binding best practice recommendations and vague exhortation to be fair are no substitute for uniform enforceable requirements that consumers can rely on.

The two most prominent actions the Department has taken under your tenure in relation to the interests of consumers have been (1) abruptly abandoning consumer protection rulemakings that had been years in development,<sup>5</sup> and (2) commencing a new rulemaking to erect new procedural and substantive hurdles to new rulemakings and enforcement actions against unfair and deceptive practices.<sup>6</sup> Both of these actions came at the behest of the airlines – seeking to *shield* themselves from accountability to consumers.

Due to the federal preemption clause of the 1978 Airline Deregulation Act, and how it has been applied, consumers are entirely dependent on your Department to protect them and their interests. So your Department’s vigilant oversight of passenger air travel and the commercial aviation industry is all the more important. That is why it is so distressing to see it so lacking now.

Sincerely,

Consumer Reports  
Business Travel Coalition  
Consumer Action  
Consumer Federation of America  
EdOnTravel.com  
FlyersRights.org  
National Consumers League  
Travelers United  
Travel Fairness Now  
U.S. PIRG

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<sup>4</sup> <https://flyersrights.org/wp-content/uploads/2020/10/DOT-Denial-of-Mask-Rulemaking-Petition.pdf>.

<sup>5</sup> <https://www.regulations.gov/document?D=DOT-OST-2017-0007-0069>.

<sup>6</sup> <https://www.regulations.gov/document?D=DOT-OST-2019-0182-0016>.