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December 31, 2020

The Honorable Elaine Chao
Secretary of Transportation
United States Department of Transportation
1200 New Jersey Ave SE
Washington, DC 20590

Re: Report of the ACPAC

Dear Secretary Chao:

I am pleased to provide you with the recommendations of the Aviation Consumer Protection Advisory Committee (ACPAC). In spite of the difficult circumstances, the committee was able to meet virtually on September 24, 2020, in order to hear testimony and to make recommendations aimed at addressing aviation consumer protection issues impacting travelers. Enclosed you will find brief summaries of the information presented to the committee as well as recommendations adopted by the ACPAC during the public meeting.

We are grateful for the opportunity to serve and hope the report and recommendations will serve to benefit consumers within the aviation industry.

Sincerely,

Christopher M. Carr
Georgia Attorney General

Enclosures

cc: Frances Smith, Adjunct Fellow, Competitive Enterprise Institute
Patricia Vercelli, General Counsel, Airlines for America
Mario Rodriguez, Executive Director, Indianapolis Airport Authority
Blane Workie, Assistant General Counsel, U.S. Department of Transportation

Report of the Aviation Consumer Protection Advisory Committee

Summary

The public meeting of the Aviation Consumer Protection Advisory Committee (ACPAC) took place from 9:30 am to 5:00 pm Eastern Time on September 24, 2020 using a virtual platform. The following members of ACPAC were present and participated: (1) Christopher Carr, Attorney General of Georgia, as the State or local government representative and Chair of the Committee; (2) Frances Smith, Adjunct Fellow, Competitive Enterprise Institute, as the consumer representative; (3) Patricia Vercelli, General Counsel, Airlines for America, as the airline representative; and (4) Mario Rodriguez, Executive Director of the Indianapolis Airport Authority, as the airport operator representative.

Three topics were discussed at that meeting: (1) the report of the National In-Flight Sexual Misconduct Task Force (Task Force), available [here](#); (2) transparency of airline ancillary service fees; and (3) involuntary changes to travel itineraries. The agenda and presentation materials that were provided at the meeting are available for public review at <https://www.regulations.gov>. After entering the docket number (DOT-OST-2018-0190), click the link to “Open Docket Folder” and choose the document to review. Additionally, recommendations to the Department of Transportation (DOT) were adopted during the public meeting and are included in this report.

ACPAC Recommendations

The ACPAC has reviewed the National In-Flight Sexual Misconduct Task Force (Task Force) report, considered testimony from the public, engaged in public discussion, and makes the following recommendations below by topic as follows: (1) National In-Flight Sexual Misconduct Task Force; (2) Transparency of Airline Ancillary Service Fees; and (3) Involuntary Changes to Passenger Itineraries.

National In-Flight Sexual Misconduct Task Force

1. Definition of Sexual Misconduct. Sexual misconduct is not defined by the 2018 FAA Act, so the Task Force looked at existing criminal statutes and definitions used by airlines and organizations that provide services to sexual assault victims.
 - a. The ACPAC recommends sexual misconduct be defined as follows:
 - i. Sexual misconduct is a broad term. It encompasses any behavior of a sexual nature that is committed without consent or with someone incapable of consent, or by force, intimidation, coercion, or manipulation. Sexual misconduct also includes physical or verbal advances or harassment of a sexual nature, or public indecent exposure.
2. Awareness Campaigns. The 2018 FAA Act states that airlines should have policies and procedures in place to inform personnel and passengers of their rights with respect to

sexual misconduct. The Task Force determined that many passengers were not aware that sexual misconduct may be a crime and that it should be reported.

- a. The ACPAC recommends the following as it relates to awareness campaigns:
 - i. Airlines, airports, and appropriate Federal agencies should engage in awareness campaigns. The Task Force recognizes that there are various methods for the airlines to do so and encourages airlines to consider the methods mentioned in Chapter 3 and use the methods that best fit with their policies and practices on sexual misconduct. Federal agencies should also take steps to ensure that passengers, airports, and airlines are aware that acts of sexual misconduct are punishable under federal law and how incidents involving in-flight sexual misconduct should be reported.
 - ii. It would be helpful for DOT to provide an example of how federal agencies can increase awareness by sending a letter to entities such as airports.
3. Reporting. The 2018 FAA Act provides that airlines should have policies and procedures in place to report incidents of sexual misconduct to law enforcement. With respect to reporting, the Task Force discussed and analyzed what airlines currently do, how flight attendants report the data, how airlines address privacy concerns, how to deal with passengers who were not comfortable with reporting an incident or who delay reporting, and how other entities such as DOT and local law enforcement respond to allegations of reports of in-flight sexual misconduct.
- a. The ACPAC recommends the following as it relates to reporting:
 - i. The Task Force encourages airlines to establish clear policies and procedures around reporting methods to enable airlines to accept and appropriately respond to passenger reports of sexual misconduct, regardless of the time, manner or method that the airline receives the report. Airlines are encouraged to establish clear policies and procedures around disseminating the information as appropriate.
 - ii. Airlines should have a procedure to identify and obtain contact information of the alleged offender and any witnesses to provide to law enforcement. Employees should be trained on policies and procedures of collecting this information.
 - iii. In order for airlines to better track the handling of sexual misconduct allegations, airlines should segregate sexual misconduct incidents in airline records, such as documenting whether the incident involved a minor or whether law enforcement was requested.

- iv. Airlines should have a policy and procedures of informing law enforcement when incidents of sexual misconduct are reported to the airline, regardless of when the incident occurred. Policies may be developed in consultation with local law enforcement.
 - v. Government entities should forward any complaints of in-flight sexual misconduct to the FBI.
4. Data Collection. In the Joint Explanatory Statement of the Transportation Housing and Urban Development and Related Agencies Appropriations Act for Fiscal Year 2018 (the Joint Statement), Congress noted that there is limited data on the prevalence of incidents of sexual assault and harassment onboard aircraft. The Task Force was charged with providing recommendations on best practices and protocols for airlines relating to data collection, to enable a better understanding of the frequency and severity of this conduct.
- a. The ACPAC recommends the following as it relates to data collection:
 - i. The FBI should maintain data on the number of reported in-flight sexual misconduct incidents received from members of the public, airlines, local law enforcement, other Federal agencies, airports or other interested parties. The Department (the Office of the Secretary and the FAA) should refer all incidents of in-flight sexual misconduct to the FBI.
 - ii. The FAA should review its complaint intake process and ensure that incidents of in-flight sexual assault can be identified.
 - iii. Law Enforcement Referrals: Airlines are encouraged to have a policy and procedures to identify the victim, alleged offender, and any witnesses and obtain their contact information to provide to law enforcement.
 - iv. Airline Training: Airlines are encouraged to utilize data on incidents of sexual misconduct that are reported to the airline to inform the airline's training and policy development on in-flight sexual misconduct. The Task Force also encourages airlines to share their data, and resulting policies and procedures, with their regional airline partners.
5. Training. In the 2018 FAA Act, Congress noted that airline personnel should be trained to recognize and respond to incidents of in-flight sexual misconduct and to notify law enforcement. The Task Force was charged with making recommendations on how airlines should address and respond to incidents of in-flight sexual misconduct through training.
- a. The ACPAC recommends the following as it relates to training:
 - i. Airlines should train employees on how to address incidents of in-flight sexual misconduct.

- ii. The key elements of training should include (appropriate to the duties of the employee):
 1. the definition of “sexual misconduct” (adopted by the airline);
 2. sensitivity training;
 3. policies and procedures on responding to incidents of in-flight sexual misconduct; and
 4. policies and procedures on airline reporting (internal and external) and data collection practices.

Transparency of Airline Ancillary Service Fees

1. Transparency of Ancillary Fees. In March 2018, in the Joint Statement, Congress directed DOT to work in collaboration with stakeholders to establish guidelines which “should lead to airlines or any for-profit seller of commercial air transportation displaying, on an airline’s website or any travel metasearch website with which the airline is partnered, full ticketing charges, including, but not limited to, seat price, any additional fees the consumer will pay per piece of baggage or per seat upgrade, and optional flight insurance costs. As a result, all the charges should be clear to the consumer, at the time of the initial search, and the anticipated total charges fully disclosed.” While Congress asked for transparency on airline websites and partnered metasearch sites, Congress also noted that consumers should have clear and accurate pricing information “whether consumers are purchasing directly from the airlines or through ticket agents.”

Prior DOT advisory committees have addressed the issue of ancillary service fee transparency. In 2010, the Future of Aviation Advisory Committee advised generally that DOT “should ensure transparency in air carrier pricing, including ancillary fees.” In 2012, the Advisory Committee on Aviation Consumer Protection adopted this recommendation and added that all participants in the airfare and fee distribution system should be guided by principles of transparency, providing choices and offers that meet consumer needs, and knowing the full price before purchase.

Additionally, there are regulations that currently exist which address the issue of ancillary service fees. In 2011, DOT issued a regulation (14 CFR 399.85), providing that U.S. and foreign carriers must: (1) disclose on their home web site any recent increases to their baggage fees; (2) list on their web site all ancillary service fees in one page, linked to the home page; and (3) disclose, upon displaying the result of an itinerary search, that baggage fees may apply, and where the consumer can see those fees. With respect to the third requirement, the disclosure must appear on the first screen in which the airline offers a fare selection for a specific itinerary. The third requirement also applies to ticket agents.

Next, in 2012, the Department issued the “full fare rule” (14 CFR 399.84(a)), which provides that it is an unfair and deceptive practice for an air carrier or ticket agent to advertise a price for air transportation “unless the price stated is the entire price to be paid by the customer to the carrier, or agent, for such air transportation” (emphasis added). While the full fare rule does not apply to ancillary service fees because those fees are for services that are separate from air transportation, pursuant to 14 CFR 399.84(b), if a carrier or ticket agent chooses to display the components of a fare (including ancillary fees), then the displayed components must be accurate. Finally, 14 CFR 399.84(c) provides that airlines and ticket agents may not offer ancillary services using an “opt out” system, where the services are automatically included unless they are affirmatively refused. Instead, ancillary services must be displayed using an “opt in” system, where the consumer affirmatively chooses the services.

Also in 2012, DOT approved IATA’s New Distribution Capability (NDC). The NDC is a standard for transmitting data about airline products and services to all players in the distribution system, and in 2014, the Department issued a Notice of Proposed Rulemaking (NPRM) titled “Transparency of Airline Ancillary Fees and Other Consumer Protection Issues,” available at Docket DOT-OST-2014-0056.

- a. Due to the existing requirements in place, the ACPAC recommends the following as it relates to transparency of ancillary fees:
 - i. DOT should remain vigilant to ensure compliance with the transparency requirements that currently exist.

Involuntary Changes to Passenger Itineraries

1. Involuntary Changes to Passenger Itineraries. Section 414 of the 2018 FAA Act requires the Department to review U.S. airline policies and practices on providing compensation or alternate transportation when carriers (i) change passenger itineraries more than 24 hours before departure, and (ii) those changes involve an additional stop or a departure time plus or minus three hours from the originally scheduled time. The 2018 FAA Act stated that the Department should consult with the ACPAC during its review of this topic.

The Department has statutory authority to prohibit unfair and deceptive practices and unfair methods of competition by U.S. and foreign air carriers and ticket agents found at 49 U.S.C. § 41712. Current Departmental regulations based on § 41712 require airlines to:

- Timely inform passengers of known delays, cancellations, and diversions (14 CFR 259.8)
- State the carrier’s cancellation policy and allow for prompt refunds in its customer service plan (14 CFR 259.5)
- Maintain a realistic flight schedule (14 CFR 399.81)

The Department does not require airlines to provide compensation or alternate transportation in the event of a delay, however, the Department has previously stated in the preamble of the 2011 rule related to enhancing airline passenger protections, that passengers would be due a refund, including a refund of non-refundable tickets and associated optional fees, due to certain significant delays. The Department further stated in that preamble that it is manifestly unfair for a carrier to fail to provide the transportation contracted for and then refuse to provide a refund if the passenger finds the offered rerouting unacceptable. While no regulation specifically covers this area, the Department's Office of Aviation Consumer Protection continues to monitor airline practices and will assess on a case by case basis whether § 41712 is violated.

It was reported that during 2017 and 2018, the number of consumer complaints regarding involuntary itinerary changes reported to the Department was 140 complaints out of a total number of complaints of 32,410, or approximately 0.43%.

Additionally, airlines have taken steps to address involuntary itinerary changes, including but not limited to, providing refunds if requested, waiving any change fees if the new itinerary is not acceptable to the passenger, permitting the passenger to accept the change, rebooking the passenger without a change fee, and providing a travel credit or refund if the passenger does not accept changes. Airlines are also required to disclose their performance statistics so that passengers can make an informed decision about which carrier to select in consideration of the potential for an involuntary itinerary change. Finally, pursuant to Department rules and guidance, a passenger is entitled to a refund of fees paid for optional services if the passenger was unable to use the optional service due to a flight cancellation, delay or schedule change. *See* Section 259.5 and <https://www.transportation.gov/individuals/aviation-consumer-protection/refunds>. Accordingly, the passenger is made whole if they are not able to select seats after the flight change.

Further, the 2018 FAA Act only directed the Department to study the issue and consult with the ACPAC and report back to Congress the results of its study. The 2018 FAA Act does not require any additional action.

- a. The ACPAC makes no specific recommendation as it relates to involuntary changes to passenger itineraries:
 - i. Due to the scope of the ACPAC's review and actions already taken in this area, the ACPAC makes no specific recommendation at this time.