

**CARRIER RESPONSE TO ADVOCATES' SERVICE ANIMAL PROPOSAL**  
**July 29, 2016**

The carriers very much appreciate the Service Animal Proposal (SAP) put forward by the disability advocates. It is obvious that much hard work and thought were involved, and the decision tree documentation concept is innovative and intriguing.

The carriers also very much appreciate the time and effort of the disability advocates during the “small room” meetings with the carriers at the last plenary. We think that conversation may have been among the most useful of the entire reg-neg process to date, in that it demonstrated that the interests of the carriers and the disability community are fully aligned on the big picture objective of preventing fraud.

As a level setting preface to our comments and thoughts about the SAP, the carriers offer the observation that the current ACAA service regulatory scheme is unprecedented – in virtually no other context are the service animal air travel rules as liberal and loose as they are in the ACAA.

The foreign law/regulation matrix provided by the carriers (presented at the last plenary by Larry Mullins) shows that other countries limit service animals to dogs, do not recognize Emotional Support Animals (ESAs), and require third-party-generated documentation in all instances.

Many of the countries also require third-party training of service animals.

Even within the U.S., the ACAA approach is much more liberal than the ADA, which essentially limits service animals to dogs and does not recognize ESAs.

Against that background, the carriers offer the following thoughts and observations:

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As currently drafted, the carriers cannot agree to the SAP. The single most significant and overriding provision of the SAP that the carriers are concerned with is its approach to ESAs.

As has been recognized by all stakeholders, ESAs are by far the source of most of the fraud and other problems with the current regulatory scheme, yet from the carrier’s perspective the SAP ESA approach would make it *easier* for passengers to fraudulently travel with purported ESAs, not harder.

Currently, carriers may require third party licensed mental health care professional documentation for ESAs. Under the SAP approach, documentation, while still required, is passenger generated. The third party aspect of the current scheme is designed to prevent fraud, and however problematic and easily circumvented that scheme may be (internet letters, etc.) it is *something* to protect the carriers, and it goes away under the SAP.

The SAP ESA proposal does not offer anything to offset the problems with passengers generated documentation for ESAs.

Oddly, while the SAP proposes to limit service animals to dogs, it includes no species restriction for ESAs. Turkeys and other unusual animals would still be allowed in the cabin.

While the SAP purports to offer carrier protection for non-canine ESAs by providing that they must be kept in a pet carrier, that pet carrier requirement is subject to the exception of “unless providing disability mitigation during flight”. That exception completely swallows the rule – any passenger willing to fraudulently claim he or she is disabled and needs to travel with an ESA would certainly be wise enough to also claim that the animal provides disability mitigation during flight.

Bottom line: the ESA aspect of the SAP is unacceptable to the carriers. It would exacerbate the entire ESA problem rather than mitigate it.

From the carrier’s perspective, the proper approach would be to align the ACAA with other countries and the ADA and not recognize ESAs at all. Although the carriers recognize that fraudsters might simply then claim their animal to be service animal rather than an ESA (as the savvy fraudster does today), eliminating ESAs is still the best approach from the carriers’ perspective, and would certainly maximize the likelihood of carrier agreement to a reg-neg consensus.

If the disability advocates insist on continuing to allow ESAs as part of a proposal, at a minimum that provision should have the same species limits as applies to service animals, and the ESA should be required to remain in a pet carrier during flight. Even that approach, however, would make carrier agreement less likely.

### **Regarding Options 1 and 2.**

The carriers could not agree to option 2, where documentation is voluntary.

### **Passenger generated nature of the decision tree documentation.**

As discussed extensively at the small room meetings, and as noted above, the SAP eliminates the third party generated documentation feature of the current scheme which, as problematic as it may be, offers some protection to the carriers in the PSA/ESA context.

Given that under the decision tree approach documentation would be wholly passenger generated, such documentation approach must be crafted in a manner to dissuade fraudsters. With that in mind, the documentation requirement should be beefed up.

A conceptual approach to a beefier representation would include adding the concepts that are included in the following three paragraphs. *Please note this particular language should not be viewed as final language the carriers propose– this language is just meant to capture the concepts therein so that the disability advocates may consider them. Word smithing of final language would be down the line.*

“I affirm and represent that as of today’s date I have been diagnosed with a disability as the result of an in person evaluation by a qualified, licensed medical or mental health professional and that such diagnosis included a determination that I need a service animal as an accommodation to mitigate my disability during air travel and/or for activity at my destination. If asked to do so, I agree to provide documentary proof of such diagnosis and my disability. I further represent that my disability condition and need for a service animal during air travel and/or at my destination continue to exist as of today’s date. I understand that I am making this affirmation and representation in order to obtain service animal related air travel disability accommodations under regulations issued under

federal law by the United States Department of Transportation. I further understand that the United States Department of Transportation has approved this form and the airline's requirement for me to affirm and make the representations and statements in this form. I also understand that the airline may provide to the Department of Transportation this document in which I am making these representations. I have also been advised by the airline that some state laws provide criminal penalties for fraudulently representation of disability status.

I further understand that fraudulently obtaining service animal related disability accommodations may be deemed by the airline to be a breach of its applicable contract of carriage, tariff, or frequent flyer program terms, and that the carrier may seek to avail itself of the any contractual remedies to which it may be entitled under those documents.

I attest that the representations and statements herein are true and that I am aware I am committing fraud if I knowingly make false representations statements in order to secure disability accommodations provided under regulations of the United States Department of Transportation.

Additionally, the forms should include an acknowledgment by the passenger that if the animal does not comply with public access standards before flight the passenger will not be allowed to travel with the animal except in accordance with the carrier's pet policies (which might require a pet carrier, transport in the cargo hold, or may not be available at all). The form should also include an agreement by the passenger that if after travel has begun the animal does not comply with public access standards the passenger would be allowed to continue travel with the animal only if the carrier's pet fee is paid.

#### **Time and frequency of decision tree documentation**

Passengers must complete the documentation at the time of ticketing absent some compelling reason not to (details of the "compelling" standard would have to be worked out).

Passengers must complete each time they travel (consistent with foreign countries).

#### **Documentation process must be automated**

The service animal documentation process cannot be handled through phone calls with carriers RES reps. It has to be furnished to the carriers online, with maybe some extraordinary exceptions (e.g., ticketing at a ticket counter on day of travel)

#### **Lots of documentation details that would have to be assessed**

Costs of creating an online documentation process has not been assessed and would have to be.

Bookings through Online Travel Agents and traditional Travel Agents would have to be figured out.

#### **Foreign government requirements, both U.S to foreign country, and ongoing travel beyond U.S. to a foreign gateway**

Foreign government documentation requirements would be in addition to the decision tree documentation (as they are in addition to PSA/ESA letters today).

### **Multiple Service animals**

All stakeholders have recognized that multiple service animals seems problematic. Default approach should be a single animal in the cabin, and if a passenger asserts a need to travel with more than one service animal in the cabin there needs to be some sort of heightened proof of that need (heightened proof of need standard would have to be figured out)

### **Information regarding weight/size of the animal**

Requiring information regarding the size of the service animal would be useful so that carriers could alert passengers to the possibility that the animal might not be accommodated on a full flight.