



Record of Meeting

April 2015

Seventh Meeting of the Advisory Committee on Aviation Consumer Protection

*Prepared by CENTRA Technology, Inc.
Arlington, Virginia 22203*

RECORD OF MEETING
Seventh Meeting of the Advisory Committee on Aviation Consumer Protection

Meeting Date: April 14, 2015

Scheduled Meeting Time: 9:00 a.m. to 2:50 p.m., Eastern Time

Meeting Location: US Department of Transportation, 1200 New Jersey Avenue SE.
 Washington, DC

Public Notice: The Office of Public Affairs, Department of Transportation (DOT) informed the public of the Advisory Committee meeting in a News Digest published March 30, 2015.

Attendees:

Last Name	First Name	Affiliation
Ale Flint	Deborah	Oakland International Airport (ACACP member)
Atwood	Tristan	Kirstein & Young, PLLC
Barnicle	Mary	United
Baxley	Richard	FlyersRights.Org
Berg	David	Airlines for America (ACACP member)
Berman	Marc	The Mallett Group
Blaney	James	British Airways
Blank Riether	Kathleen	DOT
Bricker	Jude	Allegiant Air (sent regrets days before meeting – did he attend?)
Cacioppo	Peter	DOT
Chapman, Jr	Livaughn	DOT, Aviation Civil Rights Compliance Branch Chief
Corbett	Cynthia	Federal Aviation Administration Civil Aerospace Medical Institute (via video conference)
Derco	Drew	Eckert Seamans Cherin & Mellot, LLC
Dols	Jonathan	DOT, Deputy Assistant General Counsel
Donahue	James	Attorney General's Office, State of Pennsylvania
Douglas	Lavin	International Air Transport Association
Dover	Josh	Jet Blue
Fell	Jacqueline	Cox Media
Foglia	Jonathon	Zuckert, Scutt & Rasenberger LLP
Frederick	Julie	Association of Professional Flight Attendants
Goldman	Ira	Right Brain, Ltd; Knee Defender, LLC
Graber	Kimberly	DOT Staff, Consumer Protection and Competition Law Branch Chief
Hainbach	Don	Garofalo Goerlich Hainbach PC
Hammond	Karla	DOT
Hevener	Mary	Morgan, Lewis & Bockius LLP
Ilich	Jessica	DOT
Jacobs	Rachel	DOT

Kane	Kathleen	Attorney General of Pennsylvania (ACACP chairperson)
Kirstein	David	Kirstein & Young, PLLC
Kronon-Schertz	Renee	Travelers United
Lenahen	Heather	Spirit Airlines
Leocha	Charlie	Consumer Travel Alliance
Little	Cathy	DOT
Mackenzie	Lorne	WestJet
Maddux	Jason	Garofalo Goerlich Hainbach PC
Mayerowitz	Scott	Associated Press
McQuillen	Brian	DOT
Minardi	Philip	Travel Tech
Nadel	Judy	DOT
Nguyen	Vinh	DOT
Patanaphan	Ryan	DOT
Pickup	Simon	AIRBUS Americas
Przybyla	Amy	CENTRA Technology, Inc.
Radosevich	Marsha	Spirit Airlines
Reyes	Nimia	Centers for Disease Control and Prevention (via teleconference)
Rodgers	Laura	Jet Blue
Ruddy	Robert	Attorney General's Office, State of Pennsylvania
Ruden	Paul	American Society of Travel Agents
Russo	Annie	Airports Council International - North America
Sanchez	Kelly	Spirit Airlines
Schmidt	Eric	ExitRowForTheTall (via video)
Simmons Kendale	Lynora	DOT
Smith	Charles	Office of Aviation Enforcement and Proceedings
Strickman	Norman	DOT, Aviation Consumer Protection Division
Swafford Brooks	Lisa	DOT, Chief, Aviation Licensing Compliance Branch Chief
Thompson	Fred	Southwest Airlines
Thomson	Jennifer	Attorney General's Office, State of Pennsylvania
Thumpston	Jim	Zuckert, Scoutt & Rasenberger LLP
Westfall	Sara	CENTRA Technology, Inc.
Williams	Jeffrey	Cox Media
Winship	Tim	FrequentFlier.com (via teleconference)
Workie	Blane A.	DOT, Assistant General Counsel for Aviation Enforcement and Proceedings (Designated Federal Officer)

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SUMMARY OF MEETING PROCEEDINGS
Seventh Meeting of the Advisory Committee on Aviation Consumer Protection (ACACP)

Welcome and Housekeeping Matters

Blane A. Workie, Assistant General Counsel for Aviation Enforcement and Proceedings

The ACACP Designated Federal Official (DFO) Ms. Blane A. Workie called the meeting to order at 9:11 a.m. She introduced the committee members, welcomed Committee Chairperson Kathleen Kane, and gave an overview of the Committee's history and purpose. The Committee was established by the Federal Aviation Administration (FAA) Modernization Act of 2012 and is charged with evaluating aviation consumer protection programs and providing recommendations to the Secretary of Transportation for improving existing programs and establishing new programs if needed. The statute also directs the Secretary to report to Congress each year on the Committee's recommendations.

Introductory Remarks of Committee Members

Committee Chair Kathleen Kane welcomed the participants and thanked Ms. Workie for all of her work and Secretary Foxx for appointing her as the chair of the Committee. Ms. Kane noted her appreciation for those in attendance and the distinguished members of the Committee representing all areas of the aviation industry. She commented on the importance of the Committee hearing all view points and working out any differences of opinion. She expressed her anticipation of a lively meeting and encouraged attendees' participation.

Committee member David Berg welcomed the attendees, stating that he looked forward to a good meeting with interesting presentations that will shed light on important topics.

Committee member Charlie Leocha stated that over the past two years, the Committee has accomplished many good things and provided a unique forum in Washington, DC where interested parties can discuss topics traditionally relegated to written comments on rulemakings. Among the issues that the Committee has discussed are consumer privacy, cell phone use on airplanes, government-imposed taxes on air transportation, passenger facility charges, security fees, ancillary fees, and Customs and Border Protection wait times and procedures at airports. The Committee has also created a list of contract of carriage terms and definitions in collaboration with the airlines. Due to the Committee's work, the DOT consumer complaints process has become more consumer-friendly. Consumers now are given case numbers for their complaints to track whether DOT or the airline is handling their complaint.

Committee member Deborah Ale Flint stated that last year, airports generated over \$1 trillion in economic activity and that she is happy to represent the voice of airports on the Committee. She added that she looks forward to continuing the Committee's mission, which is to ensure that as the airline industry evolves, it maintains its economic impact, while balancing and protecting the needs of consumers.

SPACE ALLOCATED PER PASSENGER ON AIRCRAFT

Safety and Health Concerns

Government Perspective

Cynthia Corbett, Senior Human Factors Research Specialist, Principal Investigator for Cabin Safety Research, Protection and Survival Research Laboratory, Federal Aviation Administration, Civil Aerospace Medical Institute (via video conference)

In regards to seats, there are a lot of safety aspects that are addressed in Federal Regulations. Seats play an important role in protecting occupants in the event of an accident. Substantiation for compliance with most FAA requirements is by test. Evacuation demonstrations at maximum seat density are performed by aircraft manufacturers under prescribed test conditions—dark of night, range of demographics of participants, carry-on baggage strewn throughout the cabin, and half of the exits blocked. Additionally, seats are required to be fire resistant. Flammability tests are required on the seat cushions and upholstery, as well as the plastic panels throughout the plane.

The maximum number of passengers on an aircraft is determined by the type and number of emergency exits. Testing can only confirm or reduce this number. In the case where the full-scale evacuation demonstration shows that the maximum number of occupants cannot be evacuated within 90 seconds, the maximum number of occupants would be reduced. In the event a carrier would want to increase the number of seats, it would have to show by demonstration or analysis that the evacuation standard could still be met.

The FAA conducts evacuation research and includes new types of seats and configurations in its simulators and modeling because aircraft interior configurations are changing all the time. While the FAA has not studied seat pitch, per se, studies have shown that evacuation speed depends on the ability of passengers to move down the aisles and through the exits. Researchers have found that, in terms of evacuation—especially on narrow-body single-aisle airplanes—once a queue has formed in the aisle, any passengers not in the queue will have to wait until there is a space for them to move into. At the same time, test arrangements in which seat pitch does not exceed 31 inches may be required for other safety and survival equipment.

Flight Attendant Perspective

Julie Frederick, Government Affairs, Association of Professional Flight Attendants

When discussing health issues and space allocation, the number one issue is the ability to evacuate during an emergency. In FAA certification tests, all passengers must be able to evacuate the plane in 90 seconds with half the exits blocked. But there are problems in the real world when passengers do not follow instructions, keep baggage around their seats, are not securely buckled in their seats, and are unaware of the closest emergency exits. This lack of attention is only exacerbated by the use of electronic devices during takeoff and landing.

Furthermore, new industry standards regarding seat space push the limit of people being able to assume the preferred brace position in an emergency landing.

Flight attendants face serious challenges regarding medical emergencies on a full aircraft. Sometimes just reaching the passenger in need as well as finding space to isolate and treat the passenger is a challenge. The APFA believes that as the population ages, these types of events will increase.

One can go to any number of websites to read a litany of complaints or anecdotes highlighting “air rage.” Some people are now referring to it as “leg room wars.” Flight attendants have seen an increase in air rage and passenger misconduct incidents that correlates to the reduction of personal space for passengers. Unfortunately for the FAA and the industry, it will likely take a high profile incident for remedial action to occur.

Recommendations:

- Both regulators and air carriers will need to look closely at the causes and effects that increased passenger density have on safety and security, not just on passenger experience. They need to consult with flight attendants as they consider further actions.
- Ongoing analysis and more rigorous testing are needed to ensure that the 90 second evacuation test can be met every time.
- The FAA should step up enforcement against passengers for “air rage” and misconduct.

During a question and answer session, the following points were discussed:

- It is difficult to simulate the effects of panic or water rushing into the cabin. The 90 second limit is a number that has been used for a number of years and is based loosely on the approximate two minute burn rate during a fire event. If a manufacturer takes 91 seconds to evacuate, it fails and must identify the problem, fix it, and repeat the test.
- For research and testing, the participants in the evacuation represent a range of age groups and gender mix. The researchers do not add on seconds to account for non-simulated real world factors. The average evacuation time for most aircrafts is well below the 90 second rule.
- During testing, participants do not know in advance which exits are blocked and may have to reroute to an open one. When the lights go off in the cabin during a test, even for those that are frequent travelers, it causes people to freeze instead of panic. It is simulating reality to a certain extent, but in an actual emergency with baggage and children, it is not going to be exactly the same. The APFA would like to see more realistic testing.
- Smoke is not simulated during testing. However, smoke inhalation is often the biggest threat after the initial crash and why there is the 90 second rule. The biggest hurdle in an evacuation is passenger education. The FAA recommends that briefings be novel and

interesting, but it is hard to judge a briefing by that criteria and engaging passengers will always be a concern.

Health Concerns

Government Perspective

Nimia L. Reyes, MD, MPH, Medical Officer, Division of Blood Disorders, Centers for Disease Control and Prevention (via teleconference)

Deep vein thrombosis (DVT) occurs when a blood clot develops in the deep veins, most commonly in the lower extremities. Pulmonary embolism (PE) then occurs when the clot or a piece of it is carried through the bloodstream and lodges in the pulmonary artery or one of its branches which supplies blood to the lung. Approximately 350,000 - 900,000 individuals are affected by VTE each year in the U.S. and about one-third of those cases are fatal in the U.S. Estimates vary on the incidence of travel-related VTE. There is no consensus in the medical field on the definition of travel-associated VTE and there are differences in measured outcomes. The overall incidence though is low. Based on two studies, the absolute risk of VTE for flights more than four hours was 1 in 4,656 flights and 1 in 6,000 flights.

Increased risk for VTE is due to venous stasis caused by sitting for a long time while traveling. The increased risk is independent of mode of transportation—long distance air, bus, train, and car travel have similar risk. The risk is the same for economy-class and business-class travel, increases with increasing travel duration and with preexisting risk factors, and decreases with time after air travel. In the majority of patients who developed travel-related VTE, most had preexisting risk factors. For travelers without preexisting risk factors, the risk of travel-associated VTE is low. The risks also increase with height greater than six feet three inches perhaps because taller passengers have less leg room. There is evidence that immobility while flying is a risk for VTE and indirect evidence that maintaining mobility may prevent it.

Recommendations:

- All long-distance passengers with pre-existing risk factors should do frequent calf exercises and ambulation, as well as sitting in an aisle seat when able.
- Additionally, for passengers already at an increased risk for VTE, they should use properly fitting graduated compression stockings (GCS) and using anticoagulants only in particularly high-risk cases.
- Passengers need enough space on aircrafts to move around either in their seats or in the cabin to reduce their risk of developing DVT.

Consumer Perspective

Ira Goldman, President, Right Brain, Ltd; Knee Defender, LLC

Airlines and manufacturers believe that all airline seat widths and pitches are comparable. However, a wider seat with less pitch is not the same as a narrower seat with more pitch to someone with long legs. Unfortunately, airlines do not publish seat dimensions or leg room information. If a passenger does not fit in their seats, they are forced to disembark and do not receive a refund.

Today there is often zero leg room and the person in front cannot recline at all, even if they have a right to it. There are standards for how much space a dog on an aircraft should have, but there are no rules regarding space for humans on aircraft. If a passenger gets VTE and dies after not being able to move on a plane, even if there is direct proof that immobility on the plane was a cause, the airline will say it is not liable because of the Warsaw Convention and FAA regulations which limit airlines damages liability to harm that occurs to passengers in-flight—. However, if environmental factors on a plane cause a dog to die, there would be a large public relations issue and the airline is liable. The definition of a safe flight should not just be limited to takeoff, flying, and landing.

Passengers cannot do leg exercises on most seats on these aircraft to try and prevent DVT. Even though passengers are encouraged to move in their seats, it is physically impossible for many people. In many recent lawsuits, airlines barred passengers from being able to move around despite the fact that they were at risk for DVT or had symptoms. In one case, a judge ruled that an airline was not liable for a passenger developing DVT because FAA regulations recommend that passengers have their seatbelts on during the duration of the flight.

Recommendations:

- The FAA should reconsider guidance regarding seatbelt use during non-turbulent flying. The airline should not be held responsible for injuries due to turbulence if flight crews warn passengers of the risk of being injured by turbulence.
- Airlines should be required to provide other room for passengers to move around if they cannot move around the aisles, such as in their seats. This may require federal standards for minimum seat pitch.
- If there is no right to recline for passengers, then airlines need to state that clearly.
- The FAA should require a safety announcement for passengers to look behind them before they recline their seats.
- FAA safety certification should also include space-related safety issues.
- DOT should establish policies that if a passenger does not fit into the seat, they should get their money back if the airline does not provide seat measurements beforehand.

Eric Schmidt, ExitRowForTheTall (via pre-recorded video)

Mr. Schmidt is six feet six inches tall and started a Twitter account called ExitRowForTheTall. He argues that airlines should not be allowed to charge tall people extra money for exit row seats that have extra leg room. In the past, passengers were able to talk to a gate agent and ask for an exit row seat if available and the gate agent could give them one based on their judgment and availability. But now airlines are charging a tall tax for those who are able and willing to help in the event of an emergency. Mr. Schmidt stated that airlines can address this issue by giving tall passengers the space they need without gouging them for profits.

During a question and answer session, the following points were discussed:

- Most airline passengers have one or more of the risks for VTE. Sitting in an aisle seat greatly reduces the risk of developing DVT, mostly due to the fact that on average, passengers sitting in aisle rows get up more frequently.
- If a passenger takes multiple flights back to back, they are at a higher risk of developing DVT. But time between flights is a more important determinant for increased risk.
- Mobility is the key factor determining risk for DVT. While business or first class seats may have more room, a person is still increasing their risk if they do not get up during their flight, regardless of what class they are seated in.

Economic and Cost Concerns

Aviation Industry Perspective

Simon Pickup, Strategic Marketing Director, AIRBUS Americas

Airline business models play a big role in seat capacity and space allocation per passenger. The trend for the past few years has been increasing market segmentation to create products for specific traveler groups. Much of the innovation has taken place in the economy cabin, which has seen the growth of hybrid and ultra-low cost carrier economy cabins for price sensitive passengers and economy plus seating, which offers higher seat pitch for a moderate price increase. Different market segments have different cabin layouts. A high density layout has 28-inch pitch seats, except for high comfort seats at the front. This allows for 20 percent more seats than the typical layout, reducing costs by about the same amount. This is optimal for an ultra-low cost carrier that needs to be able to offer low fares for their target passenger, who is focused on lowest ticket price. Premium products such as first and business class are more expensive for an airline to produce and they use more real estate in the cabin. Assuming these products have significant demand, airlines will receive a good return on them.

New seat designs maintain knee clearance at higher seating densities than in the past. They are thinner and have a higher pivot point for seat recline, as well as a higher placement for seat back literature pockets, allowing for increased shin and knee clearance. New seats offer two inches more knee and shin clearance than older models. When discussing passenger space, it is important to also examine shin and knee clearance.

Passenger motivation drives the airline product and passenger yields. Seating density is a direct result of the business model of the airline. Ultra-low and low cost carriers require higher seating densities to cater to their price sensitive passenger base.

Keith Hansen, Director of Government Affairs, Allegiant Air

The results of a survey of Allegiant's customers and from airlines across the country, shows that the most important factor in determining travel for most passengers is cost. Eighty-seven percent said lower fare was the most important factor and 17 percent said it is getting the best value for the money. Only a small percent of travelers value in-flight service and seat dimensions over low fare. The only way Allegiant can offer the lowest fare is to increase the seat density. When companies increase seats, inevitably the fares come down. Allegiant's customers are looking for a way to go on vacation and still have money left to spend at their destination.

During the question and answer session, the following points were discussed:

- DOT has only received a very small number of complaints related to seat pitch.
- Airlines are trading more space for income. On the passenger yield curve, as it moves from first class seats to economy seats, lower ticket prices equal lower yields. Therefore companies are balancing yields per number of square feet of use in an airplane.
- Spirit Airlines—which uses 28-inch pitch seat—found that there was an increase in customer complaints for flights over two and a half hours. Allegiant Air has not noticed a similar issue. Most Allegiant flights are between two and three hours. With the exception of flights to Hawaii, Allegiant does not have any flights over four hours.
- Seat Guru does not list if seats on aircrafts are the traditional size or the new thin seats. Passengers would have to look up each plane model to find that out.
- While revenue margins have not increased dramatically between the increase in passenger capacity and lower airfares, when seats are added, generally fares are lowered and margins are decreased.
- Airlines and aircraft manufacturers believe that higher seat density does not negatively affect emergency evacuations and all models have to go through the FAA's tests.
- If seating density decreases due to DOT regulations, then prices would have to increase and could price out a lot of the traveling public who cares about low fares.
- Aircraft manufacturers offer a wide variety of seat width, pitches, and cabin layouts to best fit their customer's business models. All new Airbus models have thinner seats.

AIRLINE'S FREQUENT FLYER PROGRAMS

Tax Treatment of Frequent Flyer Miles

Aviation Industry Perspective

Mary B. Hevener, Partner, Morgan, Lewis & Bockius

The taxation of frequent flyer miles has generated interest lately due to a case in the tax court called *Shankar v. Commissioner* in which the court held that a Citibank customer had to report taxable income due to his use of frequent flyer miles received from Citibank as a premium for opening a new bank account. The *Shankar* case did not reflect a big change in the taxation treatment of frequent flyer miles. The IRS has never tried to tax miles and there is not any basis for taxing them now.

When an airline awards frequent flyer miles to a passenger for flying, the miles are simply a mechanism for awarding the passenger a discount. The tax law since the inception of income tax has not taxed rebates and discounts. The one circumstance where there could potentially be a tax issue is that the IRS could require recognition of taxable income is if a passenger uses miles earned on a business trip to pay for a personal trip. The IRS, however, determined that it was impossible to track how passengers receive miles.

Shankar v. Commissioner is a different case involving miles awarded by a bank when an account was opened. There is an extremely specific regulation, statute, and announcement stating that when banks pay interest, they have to report to the IRS all interest in excess of \$10. It is a completely different economic situation when the banks are simply awarding miles to account holders as opposed to an airline that wants people to fly more and are offering a discount on fares. It is also distinct from the credit card situation where the banks award miles for people who charge a dollar and get a mile. That is a business decision and an accrual of miles. The case did not say anything new about the nature of frequent flyer miles nor changed the taxation of them.

Consumer Perspective

Charlie Leocha, Travelers United

Mr. Leocha stated that he spent the previous week speaking with the IRS about this and what Ms. Hevener said does not match what the IRS chief counsel told him. The IRS told him that it is not taxing the award of frequent flyer miles, but rather taxing the redemption of them. The IRS claimed that even if the thank you miles Mr. Shankar received were put into a general pool of other miles, the miles would be taxable to the extent that they were used to buy the ticket. The IRS also stated that it did not know in this situation how it could differentiate between the miles from the bank and the miles from other sources.

The IRS said that the court that decided the *Shankar* case is precedential so this case will affect future laws. The Committee needs to take action on this issue as soon as possible. Now, what the IRS determined in 2002 does not correspond with the *Shankar* case ruling. The IRS repeatedly stated that the agency does not make any rules. This issue has to be resolved at the policy level—with Congress. Consumers are going to be confused if some miles are taxable and others are not.

Once consumers have purchased tickets with frequent flyer miles, the tickets should be treated just as though they had been paid for with cash.

Recommendations:

- The Committee needs go to Congress and figure out what kind of wording is needed to be included in a bill so that frequent flyer miles will not be taxed.
- The Committee should send an immediate letter to Congress saying that it would like to see this issue resolved.

During a question and answer session, the following points were discussed:

- It is important to understand that in the Shankar case, in response to the IRS' regulations, the bank had taxed the award of the miles rather than the use of the miles.
- Controversy was created by the Shankar case because the valuation of the taxed miles was considered to be higher than the value of the trip that Mr. Shankar took. That was something that the tax court took into account—which it is often asked to value property and services. One of the issues Mr. Shankar complained about was that he was taxed on a high value of the miles and he had used them to take a trip in the same year that was less in value. In this case, the award of the miles and the purchase of the trip was easy to trace. In the complicated situation where “thank you miles” are in a pool of other miles, it is difficult to determine the value of mile.
- Congress may be willing to say that frequent flyer miles are not taxable even when awarded by a bank. It would take an act of Congress to do it because if you make any particular item suddenly tax exempt everyone would switch to paying in that item. Even if Congress would be able to act in terms of these “thank you miles,” it would have to define strict limitations so that the tax exemption would only be for this particular situation.

Changes to Frequent Flyer Programs

Aviation Industry Perspective

Marc Berman, CEO, The Mallett Group

Loyalty programs are voluntary marketing programs using highly structured contracts with explicit limits and discounts. These programs were originally about perks offered to best customers. They are another way to differentiate airlines and programs the same way fares do. American Airlines started with the first frequent flyer program in 1981. The goal was to reward and retain the best customers.

Changes are necessary to maintain the program and corporate profitability. Programs always reserve the right to change—with or without notice—reflecting company needs and objectives.

The rights of programs to do this have been upheld by the Supreme Court. Marketplace realities and airline interests in maintaining loyalty usually result in adequate notice of changes. Communication reduces stress and that is the balance between giving enough time and not giving too much time. However, it is a complex task to find a balance. Managing customer expectations through communication is key. The terms and conditions of frequent flyer programs need to be direct and not leave room for much interpretation. In the end, the company is invested in building, not harming customer loyalty. Thus reasonable notice is more the norm than not.

Consumer Perspective

Tim Winship, FrequentFlier.com (via teleconference)

Airlines' frequent flyer program terms and conditions states that the company has the right to terminate the program or change the program rules, benefits, and conditions of participation at any time with or without notice. Airlines can do whatever they want, whenever they want and are not bound by considerations of good faith or fair dealing.

Several airlines—including American, US Airways, and Delta—made significant changes to their frequent flyer program in the past year with no advanced notice. Each one of these changes negatively affected the mile value of the loyalty member accounts. This is legal and within the rules set out by the programs themselves. However, it is not fair and reasonable. The kinds of changes that are being discussed take months to enact, so they are not emergency measures implemented quickly. Simple fairness and decency would dictate that airlines let consumers know ahead of time that changes are coming.

The question then is not whether they should give advance notice, but rather how much advance notice airlines should give. In the 1980s and 90s, airlines routinely gave program members 12-month notice of any changes that negatively affected their programs. Both the airlines and their customers were comfortable with the 12 month rule. It would help the airlines recover the public trust and certainly travelers would welcome better communication even if it is in the service of delivering news that negatively impacts their awards accounts. There is no sign that the airlines are willing do this unilaterally.

Recommendations:

- DOT should implement regulations requiring carriers to provide consumers with 12-month advanced notice of changes in current frequent flyer program to allow a reasonable time for the vested members to obtain and use an award.

Government Perspective

Charles Smith, Senior Attorney, Office of Aviation Enforcement and Proceedings

There is no explicit regulatory regime that specifically addresses frequent flyer programs. Instead the enforcement office looks to its statute on unfair and deceptive practices. The FAA Modernization Act of 2012 states that the enforcement office of DOT has the authority to evaluate frequent flyer programs under the unfair and deceptive practices statute. DOT does

require airlines to disclose a certain list of items on their websites, one of which is frequent flyer rules. The enforcement office received 184 complaints in 2014 regarding frequent flyer programs, accounting for 1.18 percent of all complaints received. This number has remained fairly constant since 2010. This is not a major area of concern for the enforcement office.

The enforcement office is often asked about the amount of notice that is required to tell consumers about a change to terms and conditions. They do not have a specific time period. They have stated that this is a very facts-specific inquiry that has to be reasonably noted so that the consumer has time to use their miles. DOT does not regulate specific seat allocations either, only that carriers must disclose in program terms and conditions that seats are limited. When DOT receives a complaint about availability, the enforcement office reminds the consumer that they must have a lot of flexibility when using their miles.

The office has never taken enforcement actions against an air carrier for an unfair and deceptive practice as it relates to the terms and conditions or availability of awards. They have taken actions for other violations regarding frequent flyer programs. For example, DOT's full fare rule requires that prices include all the taxes and fees also apply to award travel. Similarly, co-branded credit cards cannot advertise free award tickets without disclosing the taxes and fees. The office has taken action on two of these incidents.

During a question and answer session, the following points were discussed:

- Mr. Winship stated that members need advance notice on changes to terms and conditions for frequent flyer programs and not for regular fares. The difference is that the changes to frequent flyer programs negatively impact of the value of miles members have earned to date whereas changes in published fares have no such effect. He believes this is an important distinction. Committee member Berg disagrees.
- Ms. Workie noted that DOT does take notice of changes made to frequent flyer programs and if changes are significant, it does require airlines to notify passengers.
- These programs are called frequent flyer programs because they are meant to reward the most frequent travelers. Therefore, it is reasonable to keep revising a program to address these customers. The terms airlines set regarding their ability to change their program are necessary. It is a fair opt-in policy.
- Ms. Workie reiterated that DOT has no regulations regarding how many deep discount seats must be available on an airline when airline announces an airfare sale. But under deceptive practice regulations, DOT expects the airline to have a number of seats available at the price advertised and when those seats are taken, they are expected to stop advertising the sale. Airlines are also required to disclose if there is limited availability or no availability in certain locations. The definition of limited just means that there has to be some seats available.
- If a consumer flies 10,000 miles in order to earn a free trip as advertised in a brochure, then it does not seem fair that after the consumer has flown the miles, airlines can change the terms. This seems analogous to an airline changing the terms after a ticket is

purchased. Airlines can, however, make changes to award levels up until the point a ticket is purchased using them and that is clearly spelled out in all the programs' terms and conditions.

- Ms. Workie noted that airlines have flexibility in establishing priorities regarding who will be denied boarding if there are no volunteers in oversales situations. DOT rules state they must have rules that are already set prior to denying any boarding. In terms of what regulations the department is looking into, DOT is open to considering regulating aspects of this issue, but no rulemaking decisions have been made.

Availability of Seats and Upgrades

Consumer Perspective

Randy Peterson, Frequent Flyer Services

Mr. Peterson did not attend the meeting.

Airline Industry Perspective

Marc Berman, CEO, The Mallett Group

Airlines reserve an estimated six to eight percent of capacity for award seating on an annual basis. This percentage is a balance between revenue management and the frequent flyer program for seats. The compromise that airlines have come to is that there is a percentage of seats they can allocate to meet the obligation of the program and make frequent flyers happy as well as balance their books. The move to revenue-based programs will result in fewer miles in currency, but will allow truly loyal customers to redeem more easily. This is what a marketing program is meant to do.

At 25 of the world's largest airlines, seats were available for frequent flier redemption on 72.4 percent of the flights. In 2014, Southwest awarded 6.2 million flight awards at 11 percent of total revenue passenger miles, United awarded 4.8 million awards at 7.1 percent of total revenue, Delta had 12.5 million award redemptions at 7.4 of total revenues, and JetBlue allows for family pooling of accounts. There is an astonishing amount of availability of seats for frequent flyer awards.

Award seat availability and upgrades are balanced and benefits will become more equitable as airlines tailor their frequent flyer programs to the true "frequent flyer," per their original intent. However "frequent buyers" will still have ample opportunity for redemptions. Dynamic pricing of awards is the next evolutionary step to make programs more balanced and reasonable. In the end, mile accumulation and aspirational awards drive behavior and both the airlines and customers benefit.

During a question and answer session, the following points were discussed:

- There is a difference between small business travelers and those working for large corporations. Large corporations have travel managers, who set rules to which business

people have to adapt. There is an acceptance that the mindset of the frequent flyer has changed in that they understand these programs have changed significantly. This as a healthy development for the industry.

- Southwest's frequent flier program has no limitations on what tickets members can buy and they reported flight awards as 11% of total revenue passenger miles. Other carriers with more limitations on seats reported flight awards at closer to 7% of total revenue passenger miles, presumably because there are more restrictions on members redeeming frequent flier miles. So presumably there would be a higher percentage of flight awards as total revenue passenger miles on other carriers if there were no restrictions. It will be interesting to see how these programs evolve into revenue-based programs and how the seat allotment numbers change over time.

Closing remarks

Blane A. Workie, Assistant General Counsel for Aviation Enforcement and Proceedings

The Committee's DFO Blane A. Workie thanked all the speakers for their very informative presentations, the Committee members for their questions, and the DOT staff that worked hard to make this meeting possible.

The meeting adjourned at approximately 2:45 PM.

COMMITTEE MEMBER BIOGRAPHIES

The Honorable Kathleen Kane

Ms. Kathleen G. Kane is Attorney General (AG) of Pennsylvania and officially chairs the Advisory Committee on Aviation Consumer Protection. AG Kane serves as a representative of state and local governments with the Committee. She was the first Democrat and first woman elected as Pennsylvania's attorney general in 2012. As Attorney General, her priorities have included protecting consumers from abuse and fraud, as well as protecting senior citizens.

Deborah Ale Flint

Ms. Ale Flint serves as a representative of airport operators with the Advisory Committee on Aviation Consumer Protection. She was appointed Oakland International Airport's Director of Aviation in 2010. Ms. Ale Flint is the primary executive responsible for the operation, management, and development of the airport. She previously served as manager of the airport's airside operations, where her responsibilities included noise abatement and environmental compliance.

David A. Berg

Mr. Berg serves as a representative of air carriers with the Advisory Committee on Aviation Consumer Protection. He was named Senior Vice President, General Counsel, and Corporate Secretary for Airlines for America (A4A) in 2011. At A4A, Mr. Berg is responsible for the association's legal affairs and has been involved in a variety of aviation issues, including passengers with disabilities and airport landing fees.

Charles Leocha

Mr. Leocha serves as a representative of aviation consumers with the Advisory Committee on Aviation Consumer Protection. He is Director of the Consumer Travel Alliance (CTA) which he formed in 2009, following a career in journalism where he specialized in reporting on travelers' rights. Since beginning CTA, his advocacy for travelers has included meeting government officials, testifying before Congress, and developing travel information and resources.

SPEAKER BIOGRAPHIES

Marc Berman

Mr. Berman is the CEO and a Managing Partner of The Mallett Group (TMG), a loyalty and relationship marketing consultancy. Prior to joining TMG, Marc had an established career in healthcare as a psychotherapist. With over 35 years of experience, Marc still maintains a small private practice, but his full-time focus is on TMG. Marc has combined his business development and consulting acumen with his psychology background, and applied them to the airline, hospitality, retail and co-brand credit card industries. He is currently the Executive Chairman of both the Co-Brand Conference and Mega Event Track organized by Airline Information. Marc has recently been interviewed about frequent flyer programs by Rolling Stone magazine and by Bloomberg News on co-brand credit cards.

Cynthia Corbett

Ms. Corbett is the Senior Human Factors Research Scientist for FAA Cabin Safety Research at the Civil Aerospace Medical Institute in Oklahoma City. She has BA and MA degrees in Experimental Psychology, with emphasis in human factors, research design, and statistics. Her research has included: behavioral techniques for emergency aircraft evacuations with infants, aircraft passenger safety awareness, and comprehensibility of briefing card pictograms and safety symbols. Ms. Corbett is also Chair of the SAE International S-9 Cabin Safety Provisions Technical Committee, which addresses all facets of aircraft cabin safety and is dedicated to creating, preparing, and maintaining all relevant specifications, standards, and requirements for cabin safety systems.

Julie Frederick

In April of 2009, Ms. Frederick joined the staff at APFA to coordinate the Government Affairs program. As a 35-year purser flight attendant for American Airlines, she has held several positions within the company. Her early years at American included in-flight curriculum development and training, later helping to start the NASA-based crew resource management program at American. In addition, from 2003-2007, she served as Mayor of Keller, Texas, a suburb in north Texas. While mayor, she hosted the FCC who came to Keller for an open commission hearing to receive public comment on competition in the changing cable industry. Ms. Frederick has previously provided testimony to the ACACP regarding the potential use of voice calls on board commercial aircraft and the impact on the cabin environment.

Ira Goldman

Mr. Goldman is President of Right Brain, Limited – an IP development company in Washington, DC. Prior to that, he was a special assistant to the Governor of California. That followed his 14 years on Capitol Hill as counsel to members of the House and Senate, and to the House Intelligence Committee. While on the Hill, he worked with various agencies, including the FTC, FCC, Export-Import Bank, and the Consumer Product Safety Commission. Mr. Goldman has a bachelor's degree, summa cum laude, from Boston University's School of Management, and a law degree from Temple University.

Keith Hansen

In July of 2010, Mr. Hansen left full time litigation and joined Allegiant Air as the Manger of Airport Planning. Previously, Hansen was employed at Nevada's largest litigation law firm, where he practiced medical malpractice defense, as well as premises liability for hospitals and small businesses. Keith Hansen graduated from Brigham Young University with a degree in English Literature in 2006. Shortly thereafter, Hansen attended the William S. Boyd School of Law at the University of Nevada Las Vegas, graduating in May 2009.

Mary Hevener

Ms. Hevener helps US and multinational enterprises minimize corporate payroll taxes and maximize benefits-related tax deductions. She focuses her practice on the tax treatment of employee and independent contractor benefits outside qualified retirement plans, including stock options and other stock-based compensation; executive income deferrals; golden parachutes; and fringe benefits that range from health and life insurance, to employee loans, cars, planes, and prizes.

Simon Pickup

Mr. Pickup is Strategic Marketing Director at Airbus Americas Sales, Inc. Mr. Pickup joined Airbus in 1988 and spent the first part of his career as a Toulouse-based Customer Marketing Manager, working primarily on sales and marketing campaigns in the Indian subcontinent and South East Asia. He transferred to the United States in 1995 and has played three roles since his arrival in the United States: as Airline Marketing Director, as Director of Business Operations and since late 2013, as a Strategic Marketing Director. In his current function Mr. Pickup liaises with Airbus' Toulouse headquarters on market strategy, product developments, research and forecasting. In addition to his internal functions, Mr. Pickup has also represented Airbus at a variety of external finance, raw materials, transportation, supplier, forecasting and valuation conferences in both the United States and Canada. He holds a Bachelor's degree from Leeds University and a Master's degree in Air Transport Management from Cranfield University—both in the United Kingdom.

Nimia L. Reyes

Dr. Reyes is a Medical Officer in the Division of Blood Disorders, Centers for Disease Control and Prevention (CDC). Dr. Reyes joined CDC in 2003 as an Epidemic Intelligence Service Officer and later joined the Division of Blood Disorders in 2007. She is the lead author of the "Deep Vein Thrombosis & Pulmonary Embolism" section in the 2014 edition of CDC Health Information for International Travel (commonly called The Yellow Book).

Charles Smith

Mr. Smith is a senior trial attorney with the U.S. Department of Transportation's Office of Aviation Enforcement and Proceedings. Since joining the Department in 2011, Mr. Smith has served as lead staff attorney on multiple rulemaking projects, participated in and led several on-site audits of airlines, and negotiated 24 consent orders assessing over \$3.5 million in civil penalties. Prior to joining the Department, Mr. Smith worked for King & Spalding LLP, United Airlines, and Airlines 4 America. His passion for aviation began in high school when he volunteered as a Portuguese interpreter at the Dallas/Fort Worth International Airport.

Tim Winship

Mr. Winship founded FrequentFlier.com in 1997 after a 20-year corporate career developing and managing loyalty programs for Singapore Airlines, All Nippon Airways, and the Hilton Hotel Corporation. He is the co-author of "Mileage Pro - the Insider's Guide to Frequent Flyer Programs," and an Active member of the Society of American Travel Writers.