

September 3, 2025

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RE: Regulatory Reform RFI, Docket No. DOT-OST-2025-0026

The five undersigned public interest organizations have advocated on behalf of airline passengers before Congress, the U.S. Department of Transportation (“DOT” or “Department”), and in the courts for decades. We appreciate DOT’s interest in regulatory efficiency and ensuring lawful regulation. We are grateful for DOT’s consideration of our views on these critical safety and consumer protection matters.

Recent Guidance and Regulatory Processes Are Unnecessarily Complicated and Should Be Streamlined to Achieve Statutory Obligations More Efficiently

Executive Order 14192 contains an arbitrary requirement for the elimination of 10 prior regulations for each new regulation.¹ This condition significantly increases Departmental labor costs and waste, greatly reduces governmental efficiency, and impedes the faithful execution of DOT’s statutory obligations. For example, §516 of the 2024 FAA (Federal Aviation Administration) Reauthorization requires DOT to conduct a rulemaking to allow families to sit with their young children at no extra cost.

Increasing the Department’s work ten-fold to implement a single section of a statute is unnecessarily complicated—and frankly, bad public policy. This requirement should be streamlined, if not eliminated, so that DOT can efficiently fulfill its legal mandates.

The Flying Public Suffers When DOT Fails to Faithfully Execute Federal Law

As DOT seeks to comply with recent White House directives, it is crucial that DOT remembers its unique role in the consumer protection space. DOT has multiple statutory obligations under federal law meant to defend consumers—legal mandates that cannot be waived by executive order.

49 USC §40101(a)(1) requires DOT to assign and maintain “safety as the highest priority in air commerce.” §41702 requires the provision of “safe and adequate interstate air transportation.”

¹ 90 FR 9065

§40113 authorizes DOT and the FAA to prescribe regulations to carry out these provisions of federal law. Despite these statutory requirements and authorities, critical safety issues remain unaddressed. Examples include:

- A lack of family seating requirements that jeopardize the health and safety of children as young as a few months old;
- 20-year-old evacuation standards that fail to reflect the modern cabin environment; and
- A lack of minimum seat sizes, impeding timely evacuations and exacerbating passenger health risks.

§40101(a)(4) states that it is a public necessity for the availability of “adequate” air service without “unfair or deceptive practices.” §40101(a)(9) states that it is a public necessity for DOT to prevent “unfair, deceptive, predatory, or anticompetitive practices in air transportation.” §41712 again provides for the prohibition of “an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation.” §41702 requires the provision of adequate air transportation.

Despite these clear statutory obligations, DOT does not currently enforce final rules prohibiting unfair and deceptive ancillary fee practices, eliminating unfair family seating policies (creating serious safety risks and generating economic harm to the public), or targeting unfair or deceptive airline practices regarding passenger compensation and care for controllable flight disruptions.

§40101(a)(7) requires DOT to consider “developing and maintaining a sound regulatory system that is responsive to the needs of the public” as a matter of public necessity. For nearly a decade, DOT has failed to faithfully execute this statute by allowing airlines to charge unfair and deceptive fees when families wish to sit with their young children. §40101(a)(5) obligates DOT to encourage “fair wages and working conditions.” §40101(a)(10) mandates the avoidance of “unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier or foreign air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation.” Despite this, the airline industry has reached record levels of consolidation previously unseen in the modern era of flying.²

² The four largest carriers directly make up 68% of the market but control roughly 80% of the industry when accounting for their regional partners. See “Airline Domestic Market Share May 2024 - April 2025,” Bureau of Transportation Statistics. <https://www.transtats.bts.gov>; “Findings of Fact and Conclusions of Law; United States v. American Airlines Group Inc and Jetblue Airways Corporation,” U.S. Government Publishing Office, May 19, 2023. https://www.govinfo.gov/app/details/USCOURTS-mad-1_21-cv-11558/USCOURTS-mad-1_21-cv-11558-2/context; “How the ‘big five’ airlines came to dominate the skies,” *Axios*, December 8, 2023. <https://www.axios.com/2023/12/08/airline-mergers-us-airline-industry>

Critically, DOT is the only agency in the nation with oversight authority of commercial airline service.³ If DOT fails to faithfully execute the laws as Congress passed, the American public bears the burden as no other agency can fill the gap. In the wake of airlines' poor handling of consumer protection issues following the COVID-19 pandemic, a bipartisan coalition of 38 state attorneys general highlighted the urgent need to reduce the law enforcement bottleneck at DOT.⁴ State attorneys general received thousands of complaints from outraged passengers, claiming airlines have failed in their service responsibilities, causing significant frustrations and challenges, yet states are largely preempted from protecting their citizens when they fly. In response, DOT established memoranda of understanding with a bipartisan slate of state attorneys general.⁵ Protecting the American public from law violations is a nonpartisan issue. Given recent staffing shortages at DOT,⁶ these memoranda must be preserved (and potentially expanded) to ensure continued enforcement of federal law.

Abandoning Critical Safety and Consumer Protection Rulemakings Would Violate Numerous Federal Laws and Congressional Intent

DOT has initiated a Family Seating Rulemaking in accordance with §2309 and §516 of the 2016 and 2024 FAA Reauthorizations, respectively. The separation of children from accompanying adults jeopardizes the health and safety of isolated children as well as their caregivers in the event of an emergency evacuation. This rulemaking should be completed to faithfully execute §§ 40101, 41702, 41712, §2309 of the 2016 FAA Reauthorization, and §516 of the 2024 FAA Reauthorization. For more information, see consumer advocates' comments in response to DOT's docket on family seating.⁷

DOT has documented extensive harms associated with unfair, deceptive, and anticompetitive ancillary fees. After upholding DOT's rulemaking authority under §41712, a panel in the U.S. Court of Appeals for the Fifth Circuit remanded the Ancillary Fee Transparency Rule due to a procedural issue that the Department can easily remedy. DOT should do so without further delay to faithfully execute its mandates under §§ 40101 and 41712.

³ 49 USC §41713, 15 USC §45(a)(2)

⁴ "Bipartisan Coalition of Attorneys General Fight to Protect Airline Customers," *National Association of Attorneys General*, August 31, 2022. <https://www.naag.org/press-releases/bipartisan-coalition-of-attorneys-general-fight-to-protect-airline-customers/>

⁵ "Secretary Buttigieg Launches Bipartisan Partnership with State Attorneys General to Protect Airline Passengers," *U.S. Department of Transportation*, April 16, 2024. <https://www.transportation.gov/briefing-room/secretary-buttigieg-launches-bipartisan-partnership-state-attorneys-general-protect>

⁶ DOT has lost at least 4,127 public servants as of July 2025, including 16% of the secretary's office. See "7 percent of DOT staff taking early-buyout offers," *Politico*, July 17, 2025. <https://www.politico.com/news/2025/07/17/7-percent-of-dot-staff-taking-early-buyout-offers-00460550>

⁷ "Comments of the National Consumers League et al. Regarding Family Seating in Air Transportation," *National Consumers League*, November 7, 2024. <https://nclnet.org/wp-content/uploads/2024/11/Consumer-Coalition-Family-Seating-Comments.pdf>

The Delay Compensation Rulemaking would require airlines to adequately compensate passengers for controllable flight disruptions, which can cost the U.S. economy up to \$34 billion annually.⁸ Airlines' stranding of passengers without compensation and care does not constitute adequate air transportation under §41702. Certain flight disruptions are likely unfair or deceptive practices or an unfair method of competition under §41712. Precedent for this rulemaking has existed since the 1950s in analogous consumer protections, such as the rule providing for denied boarding compensation (a type of controllable delay) and the rule prohibiting unrealistic scheduling (another type of controllable flight disruption). For more information, see consumer advocates' comments in response to DOT's docket on airline passenger rights.⁹

Minimum dimensions for seat sizes must be enacted to protect public safety as directed by Congress through §577 and §519 of the 2018 and 2024 FAA Reauthorizations, respectively. Airlines have shrunk seat sizes over the years, crowding flights, endangering emergency evacuation speeds, and exacerbating passenger health problems.¹⁰ If the FAA continues to ignore Congressional directives on this issue, DOT still has obligations under §§ 40101, 41702, and 41712 to establish minimum seat dimensions.

Eliminating Existing Safeguards Contravenes Federal Law and the Public Interest

The Full Fare Advertising Rule enables basic market forces to function. Without price transparency, consumers cannot make informed decisions and competition fails. Acceding to airline lobbyists' requests to dismantle this protection—a rule enforced by bipartisan administrations, including President Trump's first term—would contravene statutory obligations found under §§ 40101 and 41712.

The Automatic Refunds Rule is explicitly codified in §42305. The 2024 FAA Reauthorization, passed by bipartisan supermajorities in Congress, contained this provision after airlines violated longstanding DOT policy regarding passenger refunds protections. Consumers should not be subject to losses of thousands of dollars because airlines wish to avoid accountability. Efforts to weaken this safeguard will not benefit a single passenger or member of the flying public and would circumvent—if not directly violate—legal mandates found in §§ 40101, 41712, and 42305.

⁸ "In numbers: The economic impact of flight disruptions." <https://www.airhelp.com/en/blog/in-numbers-the-economic-impact-of-flight-disruptions/>; "U.S. Passenger Carrier Delay Costs," *Airlines for America*, July 12, 2024. <https://www.airlines.org/dataset/u-s-passenger-carrier-delay-costs/>

⁹ "Comments of the National Consumers League et al. Regarding Airline Passenger Rights" *National Consumers League*, February 10, 2025. <https://nclnet.org/wp-content/uploads/2025/02/Consumer-Advocates-Delay-Compensation-ANPR-Comments.pdf>

¹⁰ "Comments of the National Consumers League et al. Regarding Minimum Seat Dimensions Necessary for Safety of Air Passengers (Emergency Evacuation)," *National Consumers League*, November 1, 2022. <https://nclnet.org/wp-content/uploads/2022/11/NCL-et-al-SS-RFC-Comments-FINAL-AS-FILED.pdf> *Leag*

DOT's airline customer service dashboards are explicitly codified in §42308. Without regulating prices, and by promoting market competition, these dashboards provide consumers with critical information related to airline services while encouraging carriers to improve their offerings. If airlines seek to reduce the number of customer service dashboards hosted by DOT, carriers should encourage the Department to complete its Family Seating Rulemaking. Once that rulemaking is effectuated, DOT may remove its Family Seating Dashboard in accordance with § 42308(a)(5).

Airline performance data published by the Bureau of Transportation Statistics ("BTS") provides invaluable information to the Department, Congress, researchers, advocates, and the American public. Carriers may wish to distort BTS data to better obscure information related to their performance. However, protecting airlines' reputation by hiding information is not one of the 16 conditions stipulated under § 40101(a) as being in the public interest and consistent with public convenience and necessity.

DOT should reject efforts to implement a two-year statute of limitations. Such a statute of limitations has no legal basis. Self-imposing such a restriction would effectively eliminate aviation law enforcement given the Department's resource and staffing constraints. For example, DOT's historic fine against JetBlue for violating the prohibition on unrealistic scheduling was issued in 2025, while the prohibited conduct began in 2022.¹¹ There is no valid public interest reason for self-imposing a two-year statute of limitations for enforcing federal law and the Department should reject such requests as clearly outside of its statutory mandate of acting in the public necessity.

Numerous Protections Remain Absent, Despite Statutory Obligations and Documented Harms

§512 of the 2024 FAA Reauthorization imposed a May 16, 2025 deadline for the establishment of policies regarding passenger reimbursement for certain costs associated with controllable delays and cancellations. The Secretary appears to have ignored this statutory mandate, placing the Department out of compliance with its stated goal of lawful regulation. Recent controllable delays and cancellations have cost the flying public exorbitant amounts of money, especially when traveling with multiple children. One family reportedly lost more than \$7,500 in the wake

¹¹ "JetBlue Airways Order – 2024-12-21," *U.S. Department of Transportation*, January 3, 2025.
<https://www.transportation.gov/airconsumer/jetblue-airways-order-2024-12-21>

of the 2024 CrowdStrike incident.¹² A 2023 survey found that travelers lose an average of \$385 per flight disruption.¹³

DOT should continue to enforce §41712's prohibition on unfair or deceptive practices regarding airlines' collection of Americans' sensitive information. These invasive data collection practices jeopardize the safety of fliers, particularly women¹⁴ and servicemembers.¹⁵ DOT should ensure that carriers abide by their own privacy policies and only collect passenger data in a responsible, non-excessive manner. For more information, see consumer advocates' letter to DOT following the Department's announcement of its privacy review.¹⁶

The Department should continue its work to enforce §41712's prohibition on unfair or deceptive practices regarding airlines' use of frequent flyer rewards. These rewards systems can be worth billions of dollars, representing tremendous desirability and monetary value to both consumers and airlines. The devaluation of these rewards, often without extensive warning, should be considered an unfair and deceptive practice.

DOT should prevent further industry consolidation and anticompetitive behavior, in accordance with §40101(a)(10) and §41712. Despite the Airline Deregulation Act's procompetitive intentions, the industry is the least competitive in the modern era of flying, with four large carriers controlling roughly 80% of the market.¹⁷ To protect the flying public and the thousands of aviation industry workers, the Department should enforce the law and prosecute anticompetitive mergers, partnerships, and conduct.

DOT Has Neither a Statutory nor Popular Mandate to Acquiesce to Airline Lobbyist Requests

¹² Tran, Louie. "Seattle Family Stranded Multiple Days after Delta Cancels Flights amid CrowdStrike Outage." *KIRO 7 News*, 14 Sept. 2024, www.kiro7.com/news/local/seattle-family-stranded-multiple-days-after-delta-cancels-flights-amid-crowdstrike-outage/CFNOKCMRGRB5FNL2ZIUUVW5ZW5A/

¹³ "AirHelp Survey: What does flight disruption cost passengers?" *AirHelp*, September 19, 2023.

<https://www.airhelp.com/en-gb/press/airhelp-survey-what-does-flight-disruption-cost-passengers/>

¹⁴ "FTC alleges data broker exposes users to violent threats by selling location data," *The Hill*, August 29, 2022.

<https://thehill.com/policy/technology/3619515-ftc-alleges-data-broker-exposes-users-to-violent-threats-by-selling-location-data/>

¹⁵ "For sale: Data on US servicemembers — and lots of it," *Politico*, November 6, 2023.

<https://www.politico.com/news/2023/11/06/us-military-member-data-for-sale-00125345>

¹⁶ Letter from the National Consumers League et al. Regarding Airline Privacy Practices, *National Consumers League*, April 29, 2024. <https://nclnet.org/wp-content/uploads/2024/04/Advocates-DOT-Privacy-Letter.pdf>

¹⁷ The four largest carriers directly make up 68% of the market but control roughly 80% of the industry when accounting for their regional partners. See "Airline Domestic Market Share May 2024 - April 2025," Bureau of Transportation Statistics. <https://www.transtats.bts.gov>; "Findings of Fact and Conclusions of Law; United States v. American Airlines Group Inc and Jetblue Airways Corporation," U.S. Government Publishing Office, May 19, 2023. https://www.govinfo.gov/app/details/USCOURTS-mad-1_21-cv-11558/USCOURTS-mad-1_21-cv-11558-2/context; "How the 'big five' airlines came to dominate the skies," *Axios*, December 8, 2023. <https://www.axios.com/2023/12/08/airline-mergers-us-airline-industry>

On May 5th, 2025, Airlines for America (“A4A”) filed extensive comments on this RFI.¹⁸ A4A represents the largest U.S. carriers, including Alaska Airlines/Hawaiian Airlines, American Airlines, Delta Air Lines, JetBlue Airways, Southwest Airlines, and United Airlines.¹⁹ According to OpenSecrets.org, A4A reported spending \$5.7 million lobbying government officials and candidates in 2024.²⁰

The organization’s comments are revelatory in that they read like a “wish list” that would eliminate nearly all meaningful DOT rulemakings and potential rulemakings that protect airline passengers. If fulfilled, A4A’s requests would obfuscate airfare pricing for the public, weaken rights for passengers with disabilities, hamper refund processes, increase the chance of controllable flight delays, perpetuate unsafe seating arrangements for young children, and largely weaken oversight of airlines. These extreme demands come even as Congress has directed DOT to rein in carriers’ practices on most—if not all—of these issues. To be clear, the Department has no statutory mandate to fulfill A4A’s requests.

We urge the Department to dismiss these unreasonable and draconian suggestions. Consider that if airline lobbyists had their way, American travelers would be denied fundamental protections, such as access to basic fare and fee information prior to booking flights. Nor would they continue to benefit from one of the most basic consumer rights, immediate cash refunds when services are not provided as per the airlines’ own Contracts of Carriage. And A4A would even deny input from state attorneys general in supporting consumer claims, a right Americans can invoke when dealing with virtually all other companies in all other industries, but which is prohibited by the Airline Deregulation Act of 1978’s federal preemption clause that forbids state attorneys general, state courts, and state legislatures from overseeing airline issues.²¹

Conclusion

Thank you for your attention to these matters. For questions regarding these comments, please contact National Consumers League Vice President of Public Policy, Telecommunications, and Fraud John Breyault (johnb@nclnet.org) and National Consumers League Senior Public Policy Manager Eden Iscil (edeni@nclnet.org).

Sincerely,

¹⁸ “Comment from Airlines for America,” *U.S. Department of Transportation*, May 6, 2025.

<https://www.regulations.gov/comment/DOT-OST-2025-0026-0845>

¹⁹ “Who We Are,” *Airlines for America*, accessed August 27, 2025. <https://www.airlines.org/who-we-are/>

²⁰ “Airlines for America,” *OpenSecrets*, accessed August 27, 2025. <https://www.opensecrets.org/orgs/airlines-for-america/summary?id=D000000545>

²¹ §41713

American Economic Liberties Project
Consumer Action
Consumer Federation of America
FlyersRights
National Consumers League