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May 31, 2017

The Honorable John Thune
Chairman
The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Bill Shuster
Chairman
The Honorable Peter DeFazio
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

Passengers with Disabilities: Air Carriers' Disability-Training Programs and the Department of Transportation's Oversight

According to the most recent census, 57 million Americans (roughly 1 in 5) have a disability, more than half of whom have mobility issues.[1] Without effective accommodations—such as effective communication of flight information, accessible seats, appropriate boarding assistance, and careful handling and stowage of wheelchairs and other assistive devices—people with disabilities may face challenges when flying on a commercial air carrier.[2] The original Air Carrier Access Act (ACAA), which was enacted in 1986, prohibited only U.S. air carriers from discriminating against individuals on the basis of disability in the provision of air transportation.[3] In 1990, the Department of Transportation (DOT) promulgated the ACAA's implementing regulations.[4] Among other things, these regulations require air carriers to provide disability training to their employees and contractor staff who deal with the traveling public. Additionally, the regulations require air carriers to respond to written disability-related complaints and to report annually to DOT all such complaints received during the prior calendar year. On April 5, 2000, the Wendell H. Ford Aviation Investment Act for the 21st Century amended the ACAA

[1] U.S. Census Bureau, Americans with Disabilities, 2010.

[2] In title 49 of the U.S. Code, "air carrier" refers to U.S. carriers only. 49 U.S.C. § 40102(a)(2). For purposes of this report, when we use the term "air carrier," we are referring to both U.S. and foreign air carriers, unless we specifically state otherwise.

[3] Pub. L. No. 99-453, 100 Stat. 1080 (Oct. 2, 1986); codified as amended at 49 U.S.C. § 41705. Air carriers are prohibited from discriminating against disabled individuals on the following grounds: (1) the individual has a physical or mental impairment that substantially limits one or more major life activities; (2) the individual has a record of such an impairment; and/or (3) the individual is regarded as having such impairment. 49 U.S.C. § 41705(a).

[4] 14 C.F.R. § 382.

specifically to include foreign carriers.[5] The regulations have been amended a number of times. In 2008, DOT amended the regulations to apply them to foreign air carriers for flights beginning or ending at a U.S. airport and aircraft used for these flights.[6]

Some disability rights advocates and other stakeholders have raised questions about air carriers' compliance with the ACAA and its implementing regulations. In 2015, U.S. and foreign air carriers received more than 30,000 disability-related complaints, which they reported to DOT's Office of Aviation Enforcement and Proceedings, which is responsible for oversight and enforcement of air carriers' compliance. To conduct this oversight, DOT receives and investigates complaints directly from passengers; reviews the annual complaint reports from air carriers; conducts onsite inspections of air carriers' headquarters and air carrier operations at airports; and takes enforcement actions against air carriers when necessary (e.g., imposing fines and seeking corrective actions).

The Federal Aviation Administration (FAA) Extension, Safety, and Security Act of 2016 included a provision that we submit a report to Congress assessing required disability-training programs for air carriers' and contractors' personnel.[7] This report discusses:

- how selected air carriers' disability-training programs vary, if at all, in addressing federal requirements, and
- how DOT oversees air carriers' compliance with the ACAA and what enforcement actions DOT has taken, including corrective actions sought, with regard to air carriers' training programs, since 2005.

On March 27 and March 30, 2017 we provided your offices with a briefing on the results of our review. This report formally transmits the briefing slides (see encl. I). Your office concurred that the briefing and the report meet Section 2107's requirements for the Comptroller General to submit a report within 270 days of the enactment of this Act.[8]

To describe the variation in U.S and foreign air carriers' disability-training programs, we examined the training programs of 12 air carriers that accounted for nearly 75 percent of passenger enplanements in 2015.[9] We included air carriers that represent a variety of types of carriers (four large network, two regional, two foreign, and four low cost) and that had the most passenger enplanements per category in 2015. We requested that air carriers provide us with sufficient documentation outlining their disability-training programs.[10] We reviewed these

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[5] Pub. L. No. 106-181, § 707, 114 Stat. 61, 158 (Apr. 5, 2000).

[6] 73 *Fed. Reg.* 27,614 (May 13, 2008) (amending 14 C.F.R. part 382).

[7] Pub. L. No. 114-190, § 2107 130 Stat. 615, 622 (July 15, 2016).

[8] We were required to report by April 11, 2017.

[9] The following 12 air carriers were selected: Alaska Airlines, American Airlines, British Airways, Delta Airlines, Frontier Airlines, ExpressJet, JetBlue Airlines, Lufthansa Airways, SkyWest Airlines, Southwest Airlines, Spirit Airlines, and United Airlines. Passenger enplanements refer to the number of passengers who boarded a commercial carrier flight that departed from or arrived in the United States.

[10] We did not visit each air carrier nor did we review all training materials but instead we asked each air carrier to submit outlines or summaries that described its disability-training regime. In some instances air carriers provided full manuals and some provided a course syllabus. We also did not assess air carriers' compliance with their respective

materials to identify similarities and differences in how carriers sought to address disability-training requirements, such as training of employees and contractors who deal with the traveling public regarding the awareness of different disabilities, training of complaint resolution officers (CRO),[11] and consultation with a disability organization in the development of their disability-training programs. We also interviewed representatives of the 12 air carriers to discuss the content and format of their disability-training programs. We met with a representative from two companies that provide wheelchair assistance and other services to air carriers and with employees of these companies in Seattle and Washington, D.C., to discuss the scope of training provided to wheelchair assistants.[12] We also conducted a literature review and reviewed air carrier websites to identify any services related to passengers with disabilities, such as special service requests or other accommodations that persons with disabilities may request. Finally, we met with five disability advocacy groups to gain their perspectives on air carrier disability-training programs.[13] We judgmentally selected these groups based on recommendations from stakeholder groups and our literature review.

To describe how DOT oversees and enforces air carrier compliance with the ACAA and DOT's implementing regulations, we examined its oversight efforts from 2005 through 2017, including reviewing passenger complaint data submitted directly to DOT and directly to air carriers from 2005 through 2015, and analyzing trends and patterns in that complaint data.[14] As required by law, air carriers annually submit to DOT a report summarizing the disability-related complaints received during the prior calendar year.[15] We determined that the air carrier data were sufficiently reliable by reviewing related documentation and performing electronic testing of obvious errors in accuracy and completeness and that DOT data were sufficiently reliable by interviewing knowledgeable DOT officials and performing electronic testing of obvious errors in accuracy and completeness. In addition, we reviewed all 51 disability-related enforcement cases since 2005, of which we identified 13 as involving training-related corrective actions. We then reviewed these 13 enforcement cases to determine the origin of the enforcement action, the violation DOT found, and any airline-initiated or DOT-required training-related corrective actions. We also reviewed the process by which DOT verifies that air carriers implement the required corrective actions. In addition to analyzing complaint data and enforcement actions, we reviewed the process by which DOT conducted on-site and airport inspections of air carriers, their frequency, and the results of those inspections. Additionally, we interviewed DOT officials regarding their role in: (1) ensuring compliance with and enforcing the ACAA and its

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training programs (e.g., we did not assess whether covered personnel in fact took the training or did so with the required frequency).

[11] U.S. air carriers (and foreign air carriers for airports serving flights beginning or ending in the U.S.) must make a CRO available at each airport, either in person or via telephone. If a customer alleges that an air carrier has violated the ACAA or its implementing regulations and requests access to a CRO, the CRO determines whether a violation has occurred. CROs must have the power to overrule the decision of any other personnel, except for safety based decisions made by the pilot-in-command of an aircraft. 14 C.F.R. §§ 382.151, 382.153.

[12] We selected these locations because of their proximity to GAO staff offices conducting this review.

[13] These groups included the Disability Rights and Defense Fund, Food Allergy Research and Education, National Association for the Deaf, Paralyzed Veterans of America, and the National Council on Disability.

[14] At the time of our review, the 2015 data were the most recently available. In general, passengers can submit written disability-related complaints directly to air carriers, and air carriers must respond to each complaint. Additionally or alternatively, passengers can submit formal or informal disability-related complaints directly to DOT, and DOT must investigate each one.

[15] 14 C.F.R. § 382.157(d).

implementing regulations, (2) the analysis of complaint data to detect potential violations, and (3) the selection process for air carrier audits. We interviewed officials from FAA about their role at airports in regard to passengers with disabilities and officials from the Transportation Security Administration about training they provide to their screening employees related to passengers with disabilities. We also conducted a literature review of ACAA-related studies to identify existing or potential challenges passengers with disabilities may encounter when traveling by air. Finally, we gathered views from the five selected disability groups concerning ACAA compliance and enforcement issues.

We conducted this performance audit from October 2016 to May 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In summary:

- We found that all 12 selected air carriers have training programs that address disability-related training requirements, with some variations in the specific content and format. Each air carrier demonstrated that it has in place initial and recurrent training for its employees, including its contractors who interface with passengers with disabilities (see slides 15 and 16).[16] All 12 air carriers also demonstrated that they have annual CRO training and recurrent training programs, both of which are ACAA requirements.[17] Typically, an initial CRO training includes an 8-hour class with situational scenarios and hands-on training, such as wheelchair handling and lifting passengers into aisle seats to assist in boarding. Our review revealed a few variations among air carriers' disability-training programs and related efforts. For example, we found that some air carriers voluntarily implemented quality assurance programs to improve and sustain their disability-training programs' performance. Another step some carriers have taken, though not required by the ACAA or its implementing regulations, is the creation of a disability board, which serves as a forum for increasing awareness among the workforce about disability issues.
- We found that DOT uses a variety of oversight methods to ensure ACAA compliance by air carriers, including analyzing passengers' complaint data, conducting compliance inspections, and pursuing additional enforcement actions. We also found that since 2008, DOT has pursued more avenues for oversight, for example by adding visits to foreign air carriers' headquarters and conducting airport inspections.
    - DOT analyzes passenger complaint data for trends and patterns and for potentially egregious violations. For example, in 2015, of the total disability-related complaints submitted directly to DOT and to air carriers, the two largest

[16] Air carriers operating aircraft with 19 or more passenger seats must provide training for all personnel who deal with the traveling public, as appropriate to the duties of each employee. Additionally, air carriers must provide, or ensure that their contractors provide, training to the contractors' employees who deal directly with the traveling public, as appropriate to the duties of each employee. 14 C.F.R. § 382.141.

[17] 14 C.F.R. § 382.143. Air carriers that operate aircraft with 19 or more passengers must provide training concerning the requirements of 14 C.F.R. § 382, and the duties of a CRO to all employees designated as CROs. 14 C.F.R. § 382.141(a)(7).

complaint categories were "failure to provide assistance" for a wheelchair and "failure to provide other disability assistance" (see slide 21).[18]

- DOT also conducts compliance reviews at air carrier headquarters for air-traveler consumer issues, including disability-related issues. DOT compliance inspection data show that due to these reviews, DOT has pursued a number of disability-related enforcement actions. Since 2008, DOT has conducted 38 reviews at air carrier headquarters, and 24 reviews found possible consumer violations, including 12 ACAA violations. Eleven of the 12 air carriers we selected have been reviewed since 2011, and 8 have been reviewed multiple times since 2008.
- In 2015, DOT initiated consumer-related compliance reviews of air carriers, including ACAA compliance, at small, medium, and large hub airports. Since DOT started conducting inspections of air carriers at airports, DOT has conducted 108 reviews at 33 airports, which have resulted in DOT issuing 18 warning letters and the opening of 5 disability-related enforcement actions.

DOT's enforcement cases generally result in consent orders, a type of settlement in which DOT may require air carriers to pay civil penalties or complete specified corrective actions in order to avoid future litigation. Since 2005, disability-related enforcement cases accounted for about 12 percent of DOT's consumer-related enforcement cases (51 of 433 total cases). Of these 51 cases, we determined 13 involved training-related corrective actions (see slide 24), all of which resulted in consent orders. Many of these consent orders required air carriers to pay civil penalties; however, some stipulated that the air carrier had to pay only part of the penalty initially, and the air carrier would have to pay the remaining penalty amount only if it violates the order within a specified period of time. Other consent orders stipulated that the air carrier had to pay only part of the penalty and must apply the rest of the penalty amount toward the implementation of actions that go above and beyond compliance with the rule to directly benefit consumers (slide 25). Additionally, we found that, in some enforcement cases, the air carrier initiated corrective actions on its own, without DOT's requiring those actions in the consent order. In total, for these 13 cases, air carriers were assessed $1,675,000 in civil penalties and paid $887,500 of that amount to the U.S. Treasury. The balance, $787,500, was either not paid at all because air carriers complied with their consent orders, or was used by air carriers toward corrective actions. Some corrective actions from these 13 cases included additional disability-training expenditures to retrain employees, compensation to affected customers, and implementation of wheelchair tracking systems. To ensure required corrective actions are implemented, DOT monitors and verifies these consent orders, in part by using its data-tracking system. As of April 2017, 10 of the 13 enforcement cases were closed. For the 10 closed cases, we confirmed that all fines were paid and that the air carrier completed the required corrective actions.

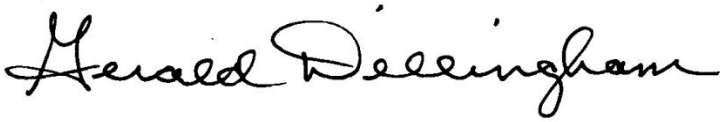
Agency Comments

We provided a draft of this report to DOT for review and comment. DOT provided technical comments, which we incorporated as appropriate.

[18] While most air carriers tend to contract with other providers for wheelchair assistance or attendants, air carriers are ultimately responsible for providing or ensuring that the contractors provide the required training. 14 C.F.R. § 382.141(a)(6).

We are sending copies of this report to the Secretary of Transportation. In addition, the report is available at no charge on the GAO website at http://www.gao.gov.

Should you or your staff have questions concerning this report, please contact me at (202) 512-2834 or dillinghamg@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Paul Aussendorf (Assistant Director), Nick Nadarski (Analyst-in-Charge), Lacey Coppage, Kevin Egan, Delwen Jones, Sara Ann Moessbauer, and Joshua Ormond.



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Enclosures – 1