



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St. S.W.
Washington, D.C. 20590

Implementing the Air Carrier Access Act (ACAA): A Status Report From the Department of Transportation

January 2004

This Status Report is the first of what we hope becomes a biannual update, covering the ACAA implementation activities of the Department of Transportation's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings. This report will soon be available and a wide range of other disability-related air travel information is currently available on the World Wide Web at <http://airconsumer.ost.dot.gov>.

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INTRODUCTION

The purpose of this initial status report is to provide an overview of the various steps being taken by the Department to protect the rights of air travelers with disabilities. More specifically, the purpose of the status report is to provide general information about the disability-related outreach efforts, compliance monitoring, rulemaking, and enforcement activities of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) and its Aviation Consumer Protection Division under the Air Carrier Access Act (ACAA). The summary below, briefly describes the actions taken by the Enforcement Office since the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) was signed into law on April 5, 2000, but focuses primarily on actions taken after the FY 2001 appropriations law was enacted, which provided DOT additional funding to carry out its responsibilities toward air travelers with a disability. While this particular edition is a reflection on past accomplishments, future editions will focus solely on current issues and events that occurred in the prior six months.

ENFORCEMENT ACTIONS

The Department, primarily through its Enforcement Office, has vigorously pursued its statutory mandate to protect air travelers with a disability from unlawful discrimination. Generally speaking, the Enforcement Office pursues enforcement action on the basis of a number of complaints on which it may infer a pattern or practice of discrimination. In recent years, the Enforcement Office has undertaken investigations and analyses of the causes of noncompliance with its ACAA regulations. For example, the Enforcement Office has instituted an in-depth investigation of eight major air carriers for violations of the ACAA relating to boarding and wheelchair assistance based on formal and informal complaints. Seven of those investigations have resulted in separate consent orders under which Continental Airlines (Order 2000-3-24, March 27, 2000), Northwest Airlines (Order 2002-3-10, March 13, 2002), American Airlines (Order 2003-3-1, March 4, 2003), US Airways (Order 2003-3-19, March 26, 2003), Trans World Airlines (Order 2003-7-12, July 11, 2003), Delta Air Lines (Order 2003-11-4, November 10, 2003), and United Airlines (Order 2003-12-6, December 5, 2003) have been directed to cease and desist from further violations of the ACAA and Department regulations prohibiting discrimination against air travelers with a disability and to the assessment of civil penalties of as much as \$1.35 million. Investigations and settlement negotiations involving other major airlines are in various stages of completion.

Where one or a few complaints describe particularly egregious conduct on the part of a carrier and those complaints are supported by adequate evidence, the Enforcement Office will pursue enforcement action as its resources permit. For example, the Department issued a cease and desist order and assessed a civil penalty of \$5,000 against Atlantic Southeast Airlines (Order 2001-8-17, August 21, 2001) for denying boarding to one passenger based on an incorrect determination that the passenger with a disability required an attendant to travel. Federal regulations require a passenger with mobility impairment to be accompanied by an attendant only when that passenger has “a mobility impairment so severe that the person is unable to assist in his or her own evacuation of the aircraft.” Additionally, the Department recently issued an order against a charter air carrier for particularly serious violations of the ACAA. Ryan

International Airlines was fined \$400,000 based on three complaints that indicated a number of serious violations (Order 2003-9-4, September 8, 2003).

The Enforcement Office has also instituted in-depth investigations of ten carriers' compliance with the aircraft accessibility provisions in 14 CFR Part 382 concerning in-cabin stowage of folding wheelchairs. Five of those investigations have resulted in separate consent orders under which Southwest Airlines (Order 2003-8-30, August 28, 2003), America West Airlines (Order 2003-8-29, August 28, 2003), JetBlue Airlines (Order 2003-8-28, August 28, 2003), AirTran Airways (Order 2003-10-11, October 8, 2003), and Frontier Airlines (Order 2003-11-15, November 13, 2003) have been directed to cease and desist from further violations of the ACAA and Department regulations prohibiting discrimination against air travelers with a disability and to the assessment of civil penalties of as much as \$500,000. The Enforcement Office will continue working to reach settlements with the other airlines involved as appropriate, and will file formal complaints if settlements cannot be reached.

Overall, since April 5, 2000, the Department has assessed air carriers civil penalties totaling almost \$7 million for violations of the ACAA as part of its ongoing effort to ensure nondiscrimination in air travel based on disability. Importantly, a large portion of these civil penalties have been offset by measures to improve the carriers' services to air travelers with disabilities above what is required by DOT rules. For instance, Northwest which was assessed a civil penalty of \$700,000 received a partial offset for the implementation of a Compliance Quality Assurance Program under which volunteers from the pool of passengers with disabilities that utilize Northwest services on a regular basis will provide Northwest with written reports regarding observed ACAA compliance on trips that they take. American which was assessed a civil penalty of \$1.2 million received offsets for an improved and lengthened training program American is providing to its local Complaint Resolution Officials.

Other examples of how offsets are being used to improve services for disabled air travelers involve JetBlue, Southwest, and AirTran which were all assessed civil penalties for failing to provide a stowage space for a passenger's standard-size folding wheelchair inside the cabin of their aircraft. JetBlue which was assessed a civil penalty of \$100,000 will use \$90,000 of its penalty to create a quality assurance team to learn more about providing service to passengers with disabilities, to provide information on its web site about DOT's toll-free disability hotline, and to install teletypewriter machines to accommodate individuals who are deaf and hard of hearing at its ticket counters; Southwest which was assessed a civil penalty of \$500,000 will receive a credit of \$450,000 of its penalty to cover part of the cost associated with retrofitting all its older Boeing 737s with a closet to be used for stowing folding wheelchairs, even though DOT rules do not require such an accommodation for those aircraft; and AirTran, which was assessed a civil penalty of \$125,000, was allowed to offset part of the civil penalty by developing training materials addressing service to air travelers with disabilities and by providing a link from the carrier's website to information regarding DOT's toll-free disability hotline to educate and assist travelers in resolving disability-related air travel problems.

RULEMAKING

One of the Department of Transportation's major responsibilities in working to improve the travel environment for persons with disabilities is issuing regulations containing standards for improving access to transportation facilities and services. For example, on June 1, 2000, the Department's Enforcement Office issued a notice advising foreign air carriers of their coverage under the ACAA effective on April 5, 2000, and informing them of the Department's plan to institute a rulemaking proceeding to revise the ACAA regulations to apply to foreign air carriers. The Department expects to issue a Notice of Proposed Rulemaking (NPRM) in the coming months proposing to amend DOT's Air Carrier Access Act regulations to cover foreign air carriers operating to and from the United States or code sharing with U.S. carriers. On May 3, 2001, the Department issued a final rule requiring airports and air carriers to provide boarding assistance to individuals with disabilities by using ramps, mechanical lifts, or other suitable devices where level-entry boarding by loading bridge or mobile lounge is not available on any aircraft with a seating capacity of 31 or more passengers. On July 8, 2003, the Department issued a final rule requiring certain U.S. and foreign air carriers to file with DOT detailed statistics on the disability-related complaints they receive.

GUIDANCE DOCUMENTS

Additionally, the Department issues guidance materials when there appears to be confusion or ambiguity about what is required by our rules. After the terrorist hijackings and tragic events of September 11, many were uncertain about the accessibility requirements in air travel in light of strengthened security measures. As a result, on October 29, 2001, the Department issued a DOT Fact Sheet that provided a few examples of the types of accommodations and services that must be provided to passengers with disabilities. For instance, the Fact Sheet states that air carriers must ensure that qualified individuals with a disability, including those with vision or hearing impairments, have timely access to information, such as new security measures, the carriers provide to other passengers. The examples listed on the Fact Sheet are not all-inclusive and simply answer frequently asked questions since September 11 concerning the air travel of people with disabilities. This Fact Sheet was updated on December 6, 2001, and June 27, 2002. Another guidance document that was recently issued by the Department involves service animals. Specifically, on May 8, 2003, the Department issued a revised guidance document on service animals to assist airline personnel and the public better understand how to apply the ACAA rules involving service animals, clarifying that dangerous animals may be kept off aircraft and that documentation for service animals, which is generally not required, may be required for emotional support animals.

COMPLIANCE REVIEWS

In addition to its regulatory and enforcement efforts, the Department uses compliance reviews to address problems encountered by persons with disabilities when they travel. The Enforcement Office conducts informal compliance reviews of airlines' disability programs by visiting carrier offices and airport locations and reviewing carrier procedures and complaint data. Representatives of the Enforcement Office also speak regularly by telephone and meet monthly in Washington with representatives of the major airlines to discuss their particular problems and

questions, particularly those involving disability issues. Furthermore, representatives of the Enforcement Office have also recently visited the headquarters of all major airlines, as well as other smaller carriers, to monitor their respective disability-related training courses for airline employees.

COLLABORATIVE POLICYMAKING

Other ways the Department has tried to achieve the goal of accessibility in air travel is through collaborative policy making. The Department has tried to encourage collaborative policymaking and enhanced cooperation between carriers and disability community organizations by convening forums for the purpose of exchanging ideas and exploring ways of making accessibility in air travel a reality for all. Since the enactment of Air-21, there have been three such forums and the Department expects to continue to convene these forums once or twice a year. The Air Transport Association, the Regional Airline Association, and the National Council on Disability (NCD) have all played a critical role in making these forums a success. As an outgrowth of these forums, representatives of the airlines and disability groups met independently and developed a joint recommendation to the Department regarding service animals. They have also had several meetings to discuss available, state of the art oxygen systems and how best to accommodate this technology within the existing regulatory structure. Additionally, the Department has entered into a Memorandum of Understanding (MOU) with the NCD to assist the Enforcement Office in organizing and developing the agenda for future disability forums concerning air travel and to work with DOT on several other disability-related projects such as accommodations needed in air travel by deaf and hard of hearing individuals.

MISCELLANEOUS

In August 2002, the Department established a toll-free telephone number (including a toll-free TTY number) that consumers who experience disability related air travel service problems might use to obtain information and assistance. The hotline is operational from 7:00 a.m. to 11:00 p.m. seven days a week. The hotline operators, who are trained contractor employees, respond to complaints of past problems and procedural types of questions from consumers and refer more time sensitive complaints that need to be resolved in “real time” to a DOT duty officer. To increase awareness of the existence of the hotline, the Enforcement Office has produced 10,000 business cards with information about the hotline operating hours, as well as its toll-free numbers. The hotline business card, which is in text form on the front and Braille superimposed on the back, is being distributed to disability rights organizations and passengers who file disability complaints with the Department.

To ensure that members of the public understand their rights under the ACAA, the Enforcement Office has also taken a number of other steps. For instance, the Enforcement Office has available a toll-free fax-on-demand system to enable members of the public to obtain by fax disability-related as well as general consumer protection documents issued by the office. Furthermore, the Enforcement Office has had a TTY installed to accommodate persons who are unable to use regular telephone service. To ensure that a wider audience can use the materials that the Enforcement Office issues, the Enforcement Office has translated its complaint form and disability-related guidance documents into Spanish and Braille. Officials in the Department have

also been participating in outreach efforts. For example, on July 7, 2002, staff from the Enforcement Office participated in a panel discussion on access to the air travel system for people who are deaf or hard of hearing. The panel discussion, which was sponsored by the National Association of the Deaf (NAD), was one event among a number of events held in Washington, D.C. that weekend by NAD for its members.

In addition, in September 2003, DOT awarded a two-year contract to the Key Bridge Foundation (KBF) of Washington, D.C., to support DOT's mission of ensuring nondiscrimination in air transportation. Under the contract, KBF, along with its subcontractor AZI Consulting, will develop materials outlining federal requirements that prohibit discrimination in air transportation to assist air carriers in training their employees and to make it easier for air travelers to understand their rights. Among other things, KBF will develop an easy-to-understand technical assistance manual and model training program describing the ACAA and related rules.

It is also noteworthy that airline disability complaints received by DOT are now tracked and listed separately for each airline in the monthly Air Travel Consumer Report published by the Enforcement Office to provide air travelers with disabilities useful comparative information for travel planning. Since the enactment of Air-21 on April 5, 2000, in which the Enforcement Office received a congressional mandate to investigate each disability-related complaint, through December 1, 2003, the Enforcement Office has received 1,771 such complaints. The Enforcement Office has investigated and closed 1,247 complaints. Members of the Enforcement Office are working hard to not only address concerns raised in older complaints, but to also quickly investigate and respond to current complaints. Most of the outstanding complaints are of recent vintage or are involved in enforcement settlement negotiations.

Complaints alleging discriminatory treatment on the basis of disability by **air carrier personnel** should be directed to the Department of Transportation's Aviation Consumer Protection Division. This office provides complaint forms for consumers to download and print on its website at <http://www.dot.gov/airconsumer/problems.htm>. The Aviation Consumer Protection Division accepts complaints via e-mail to airconsumer@ost.dot.gov or via postal mail to the following address: Aviation Consumer Protection Division, U.S. Department of Transportation, 400 7th Street, S.W., Room 4107, Washington, DC 20590.

Air travelers who experience disability-related air travel service problems that need to be addressed in "real time" should call the DOT hotline at **1-800-778-4838** (voice) or 1-800-455-9880 (TTY) to obtain assistance. The hotline is staffed from 7 a.m. to 11 p.m. Eastern time, seven days a week.