



Airlines for America®

We Connect the World

February 10, 2025

Gregory (Greg) Cote
Principal Deputy General Counsel
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Re: Comments to DOT's ANPRM, *Airline Passenger Rights* (DOT-OST-2024-0062)

Dear Mr. Cote:

Airlines for America ("A4A"), on behalf of its members,¹ submits these comments to the Biden Administration's advance notice of proposed rulemaking, *Airline Passenger Rights* ("ANPRM").²

At the outset of our inaugural comments to the U.S. Department of Transportation ("Department" or "DOT") under the leadership of Secretary Duffy, we express our earnest interest in collaborating with the Department on rulemakings that implement President Trump's agenda and the Department's focus "on ushering in a golden age of transportation while prioritizing the Department's core mission of safety and delivering innovative projects that move America." We fully support President Trump's policy to be prudent and financially responsible in the expenditure of funds, from both public and private sources, and alleviate unnecessary regulatory burdens placed on the American people.³ We also look forward to working closely with Secretary Duffy's Department to meet Congress's limited mandates for new rules for an industry that Congress deregulated in 1978 and, as a result, made air transportation more accessible than ever to the American public.

Consequently, we submit that the ANPRM—which Secretary Buttigieg issued at the eleventh hour of the Biden Administration and after the American public elected President Trump—is irreparable because it fails to recognize the remarkable services provided by the airline industry; runs directly contrary to President Trump's regulatory policies and directives—including the policy to alleviate the American people from unnecessary regulatory burdens and reduce private expenditures required to comply with Federal regulations; and is significantly flawed in fact and law. Basing any rulemaking, including proposed rules, on Secretary Buttigieg's flawed ANPRM will result in uninformed final rules and will only further serve the Biden Administration's agenda, while failing to improve customer service. Accordingly, the ANPRM should be terminated.

¹ A4A's members are Alaska Air Group, Inc.; American Airlines Group, Inc.; Atlas Air Worldwide Holdings, Inc.; Delta Air Lines, Inc.; FedEx Corp.; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines Holdings, Inc.; and United Parcel Service Co. Air Canada is an associate member.

² 89 Fed. Reg. 99,760 (Dec. 11, 2024) (hereinafter "ANPRM").

³ See Executive Order 14,192, 90 Fed. Reg. 9,065 (Feb. 6, 2025) ("Deregulation EO").

As a preliminary and procedural matter, we respectfully reiterate that the ANPRM fits squarely within President Trump's January 20, 2025 rulemaking memorandum, *Regulatory Freeze Pending Review* ("Freeze Memo")⁴ and raises substantial questions of fact, law, and policy.⁵ First, the ANPRM is a rule within the scope of the Freeze Memo, which explicitly defines a "rule" to include advance notices of proposed rulemaking.⁶ Second, the Freeze Memo instructs that advanced notices of proposed rulemaking should be considered for postponement "for 60 days from the date of [the] memorandum the effective date for *any rules* that have been published in the *Federal Register*, or *any rules* that have been issued in any manner but not taken effect, for the purpose of reviewing any questions of fact, law, and policy that the rules may raise."⁷ Having been published in the Federal Register with an effective date for comments, or in the alternative, having been otherwise issued "in any manner" but not having taken effect, the ANPRM is subject to consideration for postponement for review. Moreover, because the ANPRM raises substantial questions of fact, law, or policy, as explained further herein, the DOT should notify and take further appropriate action in consultation with the OMB Director.⁸

The clear purpose of the Freeze Memo is to ensure that new Department heads (or their designees) have an opportunity to review and approve any new or pending regulatory actions. Because the ANPRM is now governed by a significantly different regulatory landscape under President Trump's recently issued Executive Orders, memoranda and other policies, we respectfully submit that it is critical the Department terminate this ANPRM and conduct any limited rulemaking that is Congressionally mandated under strict accordance with the President's agenda and regulatory directives. President Trumps' regulatory directives include, but are not limited to:

- EO 14,192, Unleashing Prosperity Through Deregulation;⁹
- Executive Orders ("EO") regarding regulatory policy and processes that were reinstated by President Trump's EO 14,148, including:¹⁰
 - EO 13,771 (Reducing Regulation and Controlling Regulatory Costs);¹¹
 - EO 13,777 (Enforcing the Regulatory Reform Agenda);¹²
 - EO 13,893 (Increasing Government Accountability for Administrative Actions by Reinvigorating Administrative PAYGO);¹³
 - EO 13,979 (Ensuring Democratic Accountability in Agency Rulemaking);¹⁴
- Rulemaking policies changed by President Trump's revocation of EO 14,094 (Modernizing Regulatory Review); and
- EO 14,158, Establishing and Implementing the President's "Department of Government Efficiency."¹⁵

⁴ 90 Fed. Reg. 8,249 (Jan. 28, 2025) (hereinafter "Freeze Memo").

⁵ See Letter from P. Vercelli, Senior Vice President and Chief Legal Officer, to G. Cote, Principal Deputy General Counsel, DOT (Feb. 5, 2025).

⁶ See *supra* note 4, Freeze Memo at 8,250.

⁷ *Id.* at 8,249.

⁸ *Id.*

⁹ See *supra* note 3, Deregulation EO.

¹⁰ 90 Fed. Reg. 8,237 (Jan. 28, 2025) (hereinafter "EO 14148").

¹¹ 82 Fed. Reg. 9,339 (Feb. 3, 2017) (reinstated by revocation of EO 13,992).

¹² 82 Fed. Reg. 12,285 (Mar. 1, 2017) (reinstated by revocation of EO 13,992).

¹³ 84 Fed. Reg. 55,487 (Oct. 16, 2019) (reinstated by revocation of EO 13,992).

¹⁴ 86 Fed. Reg. 6,813 (Jan. 22, 2021) (reinstated by revocation of EO 14,018).

¹⁵ See *supra* note 10, EO 14148 at 8,239.

If the ANPRM had been issued in this new regulatory landscape, we submit that this ANPRM would be materially different in form and substance and, thus, comments in response to this ANPRM would be significantly different and change the basis of a regulatory proposal.

We also submit that the irreparable errors in the ANPRM were inevitable because the Biden Administration rushed the release of the ANPRM. In fact, after the Office of Information and Regulatory Affairs (“OIRA”) commenced its review of the ANPRM, A4A requested a meeting with OIRA to take place on the seventh day of OIRA’s review. A meeting would have given A4A the opportunity to raise important positions, facts, and questions that Secretary Buttigieg’s Department could have considered for inclusion in the ANPRM, thereby producing a more informed public comment process and data collection for a future regulatory proposal. However, after OIRA scheduled a meeting with A4A for October 28, 2024 (18 days after it started its review), the Biden Administration thwarted A4A’s opportunity to present its positions, facts, and questions, by concluding the OIRA review on October 24 (four days before A4A’s scheduled meeting with OIRA). Thereafter, despite rushing to complete OIRA’s review before the Presidential election and cancelling the meeting with A4A, the Biden Administration then delayed issuance of the ANPRM until December 11, which was more than adequate time for OIRA to meet with A4A and other stakeholders before conclusion of its review and Secretary Buttigieg’s issuance of the ANPRM. Considering this tortured procedural history, it is undeniable that the ANPRM is a product of political chicanery by the Biden Administration.

Airlines Provide Excellent Customer Service and Have Competitive Policies on Delay and Cancellation Services

Secretary Buttigieg’s underlying premises for the ANPRM—e.g., significant consumer harm caused by airlines—are entirely wrong or significantly flawed. A4A members annually transport hundreds of millions of passengers to, from and within the United States in a safe, affordable manner and continually strive to provide the highest levels of customer service. Airlines’ entire business model is based on satisfied, repeat customers. In other words, in an industry that the Biden Administration’s expert report characterized as “highly competitive,”¹⁶ airlines do not need further incentive to provide quality service. Moreover, despite airlines having to operate in a complex and difficult environment, consumer satisfaction with airlines is at an all-time high and Secretary Buttigieg tweeted during periods of record air travel in 2024 that U.S. airlines’ operational reliability was excellent.¹⁷

Regardless of already putting customers first and achieving these customer service accomplishments, airlines are not stopping or slowing their efforts to improve customers’ experience: “Airlines today face more challenges than perhaps any other industry but *are rising to the task*.”¹⁸ A4A members abide by—and frequently exceed DOT’s regulations regarding consumer protections. A4A members provide automatic refunds if the passenger chooses not to be rebooked—regardless of whether the significant delay or cancellation is within the airline’s control. In fact, the 11 largest U.S. passenger airlines issued \$43 billion in customer refunds, \$900 million per month, between January 2020 and December 2023, in addition to issuing other forms of compensation. Additionally, A4A members, for significant delays and cancellations that are within the control of the airline, rebook passengers on the same airline at no additional cost

¹⁶ See Silke Forbes, Ph.D., *Expert Report on the Current Status of Family Seating Fees and the Potential Economic Impacts of a Prohibition* 17 (Oct. 2023) (stating that “the airline industry is highly competitive”)

¹⁷ See **Appendix A**. See P. Buttigieg, Secretary, DOT, X.com (Dec. 18, 2024) (regarding historically low cancellation rates).

¹⁸ See American Customer Satisfaction Index, Airlines (2025) (emphasis added) *available at* <https://theacsi.org/industries/travel/airlines/>.

and provide meals or meal cash/vouchers, complimentary hotel accommodations, and/or complimentary ground transportation in accordance with their customer service commitments.¹⁹

Although services for passengers during operational disruptions may vary between airlines, this simply reflects a highly competitive marketplace that gives the American public more choices than ever in air transportation,²⁰ not a failure in the marketplace. The position and consumer-focus of airline competition was recently characterized by Jackson Shedelbower, Executive Director of The Center for Transportation Policy: “The U.S. airline industry remains one of the *most competitive and consumer-oriented markets* in the world, ensuring passengers benefit from choice, convenience, and increasingly affordable options.”²¹

The ANPRM is Irreparably Flawed

Distracting from more pressing efforts that will produce actual benefits for the American public, such as safety and the improvement of air traffic control, Secretary Buttigieg issued the ANPRM to forge ahead with additional rules for airlines that will not improve the customer experience and will make air travel less accessible. The ANPRM’s irreparable flaws, which will inevitably skew public comments and negatively impact DOT’s collection of data and information and its objective analysis for a future proposal, include, but are not limited to:

- Applying Biden administration policy that misconstrues DOT’s statutory authority;²²
- Cherry-picking statutory authorities to circumvent the Department’s obligations under the Airline Deregulation Act of 1978—most notably by omitting any consideration of Congress’s instruction that the Department shall consider “as being in the public interest and consistent with public convenience and necessity . . . placing *maximum reliance* on competitive market forces and on actual and potential competition”—and to initiate an overly broad rulemaking;²³
- Seeking to unlawfully regulate airlines beyond DOT’s statutory authority, while continuing to ignore other longstanding statutory mandates to protect consumers;²⁴

¹⁹ DOT, Airline Customer Service Dashboard (last updated Dec. 10, 2024) *available at* <https://www.transportation.gov/airconsumer/airline-customer-service-dashboard>. We submit that DOT’s Airline Customer Service Dashboard is misleading and fails to accurately reflect the services that airlines provide to customers and exceed those reflected on the dashboard. We look forward to working with the Department to improve the dashboard.

²⁰ See **Appendix A**.

²¹ Letter from J. Shedelbower, Executive Director, The Center for Transportation Policy, to K. Lubell, Section Chief, U.S. Department of Justice, and A. Petsonk, Assistant Secretary for Aviation and International Affairs, DOT (Dec. 12, 2024) (emphasis added).

²² See e.g., *supra* note 2, ANPRM at 99,763 (quoting Executive Office of the President, Statement of Administration Policy, Senate Substitute Amendment to H.R. 3935-FAA Reauthorization Act of 2024 (May 8, 2024)).

²³ See e.g., *id.* at 99,765 – 766 (omitting Congress’s mandate under 49 U.S.C. § 40101) (emphasis added).

²⁴ See e.g., *id.* at 99,765 – 766 (asserting authority under 49 U.S.C. § 41702 to require reimbursement for flight disruptions, rather than require airline policies for reimbursement in accordance with Congress’s mandate, while failing to recognize its obligation to regulate large ticket agents under Section 427 of the FAA Reauthorization Act of 2018 (Pub. L. 115-254 (Oct. 5))).

- Asserting a false negative narrative about consumers' air travel experiences;²⁵
- Adopting incorrect assumptions that skew DOT's questions and considered approaches;²⁶
- Presenting misleading facts and facts without context, or omitting facts;²⁷
- Posing leading or biased questions;²⁸
- Failing to request significant data and information;²⁹ and
- Failing to recognize international implications of the Department's considerations.³⁰

The ANPRM is replete with these errors. Given the breadth and depth of these issues, Secretary Buttigieg's issuance of an advance notice of proposed rulemaking in lieu of a notice of proposed rulemaking cannot save this rulemaking. By issuing this ANPRM, Secretary Buttigieg has tainted the rulemaking process such that any rulemaking process based on this ANPRM must be terminated.

The Department Should Strictly Follow Congress's Rulemaking Mandates and Abandon Unauthorized Regulation Considered in the ANPRM

In the FAA Reauthorization Act of 2024 (the "Act"),³¹ Congress mandated two rulemakings that relate to this ANPRM.

1. New Standards for Reporting Causes of Delays and Cancellations

Section 511 of the Act ("Section 511"), Congress mandated that "[n]ot later than 60 days after the enactment of this Act, the Director of the Bureau of Transportation Statistics [(“BTS”)] shall initiate a rulemaking to revise section 234.4 of title 14, Code of Federal Regulations.”³² Specifically, Congress required BTS to change the standards for reporting causes of delay and cancellation, as well as explicitly excluded some causes from the airline categorization.³³ Having not followed Congress's mandate and having failed to change the reporting of causes of delays and cancellations, the data on which the Department relies upon justify its consideration of customer service requirements in the ANPRM is fundamentally flawed. In fact, the ANPRM

²⁵ See e.g., *id.* at 99,761 (claiming, without data, that all cancellations and lengthy flight delays pose “significant inconvenience, stress, and financial cost” on all “impacted passengers,” without recognizing airlines current and successful mitigations that address impacts).

²⁶ See e.g., *id.* at 99,768 (assuming that the Department defining what constitutes a “controllable” cancellation or delay is consistent with Section 512 of the FAA Reauthorization Act of 2024).

²⁷ See e.g., *id.* at 99,762 (not presenting data regarding non-controllable causes of delays and cancellations, such as air traffic control-related delays and cancellations; omitting available 2024 performance data and DOT's failure to meet its Congressional mandate that DOT shall not attribute certain delay causes to airlines; failing to recognize potential issues with DOT's data on flight delays and cancellations as noted in the DOT Office of Inspector General Report, *The Bureau of Transportation Statistics Verifies the Accuracy of Flight Delay and Cancellation Data but Can Do More to Assess Its Completeness and Consistency* (Report AV2025003, Oct. 23, 2024)).

²⁸ See e.g., *id.* at 99,768 (only asking “how,” not whether the Department should treat a delay caused by a late arriving aircraft for purposes of determining which delays are controllable under any rule).

²⁹ See e.g., *id.* at 99,766 – 781 (failing to request any information or data regarding travel insurance coverage and impacts on passengers experiencing cancelled or delayed flights).

³⁰ See e.g., *id.* at 99,767 (considering extraterritorial application of regulations).

³¹ Pub. L. 118-63, 138 Stat. 1025, 1195 (2024) (“2024 FAA Reauthorization”).

³² *Id.*

³³ *Id.*

explicitly relies on delay and cancellation data reported in previous years and under the regime that Congress mandated to be changed.³⁴ The failure also undermined the public's opportunity to comment on the Department's justification because the Department failed to correct the standards and prevented the public from having data that reflected Congress's mandate. In sum, the "Need for Rulemaking" in Secretary Buttigieg's ANPRM is fundamentally flawed because his Department did not follow Congress's mandate to change the reporting requirements as to cause of delay and cancellation. We also submit that the Section 511 rulemaking is foundational to Congress's second mandate, as described further below.

Remarkably, Secretary Buttigieg's Department also attempted to sidestep the Congressional mandate in Section 511 by asserting that cancellation and delay cause reporting requirements are authorized pursuant to a different authority than those authorities asserted in the ANPRM. This reflects Secretary Buttigieg's cherry-picking of statutory authorities in the ANPRM to advance the Biden Administration's agenda. However, Secretary Buttigieg's Office of Aviation Consumer Protection explicitly applied BTS's reporting standards to enforce airlines' customer service commitments for controllable delays and cancellations,³⁵ which the Department enforces under the same statutory authority that the Buttigieg DOT asserts in the ANPRM (*i.e.*, 49 U.S.C. § 41712). Also, while claiming that action on Section 511 is not required for the purposes of the rulemaking, the ANPRM repeatedly conflates potential airline obligations for controllable delays and cancellations to BTS's reporting regulations and mandatory instructions for reporting delay and cancellation causes. For example, Section 511 requires that BTS changes its rules and technical directives to exclude specific causes from the airline cause categorization—*e.g.*, aircraft damage cause by extreme weather.³⁶ But, Secretary Buttigieg offered the existing BTS reporting framework to consider establishing a definition of what constitutes a controllable delay or cancellation, while also claiming that the new standards under Section 511 are not required to be applied.³⁷ In sum, Secretary Buttigieg's Department wanted it both ways—ignoring the obligation under Section 511 to change the delay and cancellation cause reporting standards, while seeking information to consider a proposal based on a legacy reporting regime that should have fundamentally changed under Section 511. Such acrobatics require termination of the ANPRM.

Notably, Secretary Buttigieg could have cured this error but chose not to. In fact, on October 18, 2024, A4A petitioned BTS to conduct the Section 511 rulemaking with expedited action requested,³⁸ but BTS has not acted on our petition. On President Biden's last day in office, BTS and DOT were more than 6 months overdue to meet Congress's mandate. In addition to terminating this ANPRM, we strongly recommend that the Department expeditiously issue a notice of proposed rulemaking pursuant to A4A's petition.

³⁴ See *supra* note 2, ANPRM at 99,762.

³⁵ See Email from B. Workie, Assistant General Counsel, Office of Aviation Consumer Protection, DOT, to Various Airline Representatives (July 19, 2024) ("First, DOT has determined that delays and cancellations resulting from this outage are controllable. BTS's Technical Directive identifies "Computer outage – carrier equipment" as carrier caused. . . . As you know, the ten largest U.S. airlines guarantee meals and free rebooking on the same airline and nine guarantee hotel accommodations when they cause flight delays or cancellations as part of the Department's Airline Customer Service Dashboard."

³⁶ See *supra* note 31, 2024 FAA Reauthorization § 511(b).

³⁷ See *supra* note 2, ANPRM at 99,769.

³⁸ See Petition for Rulemaking to Revise On-Time Performance Reporting Regulations Under 14 CFR Part 234 (Oct. 18, 2024) (expedited action requested) *available at* <https://www.regulations.gov/document/DOT-OST-2024-0123-0001>.

2. Airline Policies for Reimbursements

Section 512 of the Act contains Congress's explicit instruction for the Department to:

Not later than 1 year after the date of enactment of [the] Act, direct all air carriers providing scheduled passenger interstate or intrastate air transportation to establish policies regarding reimbursement for lodging, transportation between such lodging and the airport, and meal costs incurred due to a flight cancellation or significant delay directly attributable to the air carrier.”³⁹

A4A continues to support the Act and, accordingly, this mandate. We look forward to the Duffy Department conducting a new rulemaking that strictly follows this mandate.

The Department, however, should abandon the ANPRM in a future effort to accomplish this rulemaking mandate. Most notably, Secretary Buttigieg's application of Section 512 in the ANPRM is tainted by application of the Biden Administration's view that Section 512, and the Act more generally, “set a floor that the Department of Transportation could build on as deemed appropriate by the Secretary of Transportation.”⁴⁰ Nothing in Section 512's text suggests that Congress intended for the Department to set standards beyond this requirement. In fact, subsection (c) of Section 512 explicitly states that “[n]othing in this section shall be construed as providing the Secretary with any additional authorities beyond the authority to require air carriers establish the policies referred to in subsection (a).”⁴¹ Not surprisingly and as another example of Secretary Buttigieg's statutory cherry-picking to advance the Biden Administration's agenda, the ANPRM entirely omits this limitation and the fact that it prevents reading Section 512 as a floor.

Secretary Buttigieg's proposed reliance on other statutory authorities—*i.e.*, 49 U.S.C. §§ 41712 and 41702—also fails.⁴² His tortured reading of these authorities fails upon closer examination of the statutory text and the context of the authority.⁴³

Moreover, Secretary Buttigieg's egregious failure to apply, let alone the ANPRM's entire omission of, Congress's mandate that the Department place “**maximum reliance** on competitive market forces and on actual and potential competition” further demonstrates that the ANPRM's consideration of reimbursement standards lacks sound statutory authority. Accordingly, the ANPRM's various considerations of service standards for meals, lodging, and transportation to and from lodging lack any rational statutory authority.

Other Regulatory Considerations in the ANRRM Lack Statutory Authority and Should Be Abandoned

The Section 512 mandate only justifies a small portion of the ANPRM—*i.e.*, requiring airline policies on meal, lodging and ground transportation for controllable delays and cancellations.

³⁹ See *supra* note 31, 2024 FAA Reauthorization § 512.

⁴⁰ See *supra* note 2, ANPRM at 99,777.

⁴¹ See *supra* note 31, 2024 FAA Reauthorization § 512(c) (emphasis added).

⁴² Section 41712 of title 49 of the U.S. Code (49 U.S.C.) authorizes DOT to “stop” airline practices that are unfair or deceptive, but does not confer authority to prescribe particular fair or honest practices. Section 41702 of 49 U.S.C., which requires an air carrier to “provide safe and adequate interstate air transportation,” cannot be read to require services beyond the ordinary meaning of “adequate,” in context and the common-carrier obligation that the provision codifies.

⁴³ *Id.*

The most important attribute of Section 512 is that it does not mandate the many other considerations in the ANPRM, including required rebooking or “cash” compensation for cancellations or delays due, in whole or in part, to any circumstance within the control of the airline.⁴⁴

As with the ANPRM’s consideration of requiring reimbursement standards, discussed above, these prescriptive rebooking and compensation requirements under consideration in the ANPRM lack any statutory authority.⁴⁵ Moreover, the assertion of authority under the Air Carrier Access Act (49 U.S.C. § 41705) also fails because the prescriptive rebookings under consideration are not based circumstances that would constitute an airline discriminating against a passenger with a disability in the provision of air transportation—*e.g.*, substitution of aircraft; changes not within the airlines control; and not rebooking passengers on the next flight or other airlines.

Again, Secretary Buttigieg’s blatant omission of his obligation to consider “as being in the public interest and consistent with public convenience and necessity . . . placing maximum reliance on competitive market forces and on actual and potential competition” is also remarkable for these considerations. Nowhere does the Secretary ask the public how its consideration of standardizing these services meets this statutory mandate.

In consideration of the foregoing, the ANPRM is fundamentally flawed and must be terminated.

We also submit that the consideration of compensation for passengers is directly contrary to President Trump’s policy to alleviate unnecessary regulatory burdens and significantly reduce the private expenditures required by Federal regulations.⁴⁶ In fact, it is estimated that the implementation of a compensation framework, like that imposed in Europe or Canada, would result in costs of \$5 billion or more. See **Appendix B**. Such framework would also reduce operational reliability, as evidenced by the European system that has not improved operations in Europe. Moreover, Secretary Buttigieg’s intention to align with other rebooking and compensation frameworks around the world further illustrates the “ever-expanding morass of complicated Federal regulation” that “hampers our global competitiveness.”⁴⁷

In full conclusion, we strongly recommend that the Department immediately terminate Secretary Buttigieg’s substantially flawed ANPRM and not proceed with any rulemaking based upon the tainted rulemaking and comment process generated by the Biden Administration’s political agenda.

Thank you for consideration of these comments.

Very respectfully,



Graham Keithley
Vice President and Deputy General Counsel, Regulatory Legal Affairs
AIRLINES FOR AMERICA

⁴⁴ See note 2, ANPRM at 99,770 – 773 (considering required rebookings); and *id.* at 99,773 – 777 (considering required cash compensation).

⁴⁵ See *supra* note 42.

⁴⁶ See *supra* note 3, Deregulation EO.

⁴⁷ *Id.*

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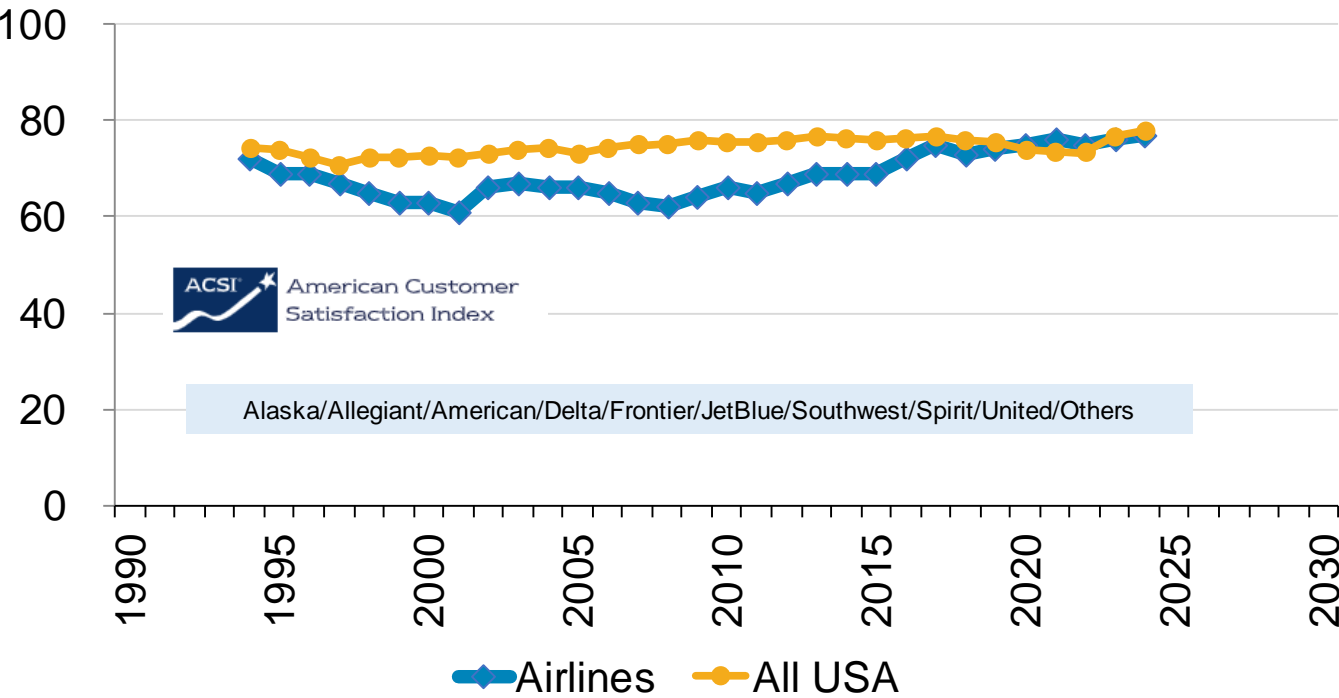
Appendix A

ACSI Airline Customer Satisfaction Index Reached an All-Time High in 2024

Airlines Scored 80+ on 14 of the 19 Satisfaction Benchmarks; Scores Rose on All 19 From 2019-2024

“Carriers have bounced back strongly, showing that **innovations and service improvements implemented during the last two years have resonated with customers.**”

Forrest Morgeson, Dir. of Research Emeritus, (April 23, 2024)

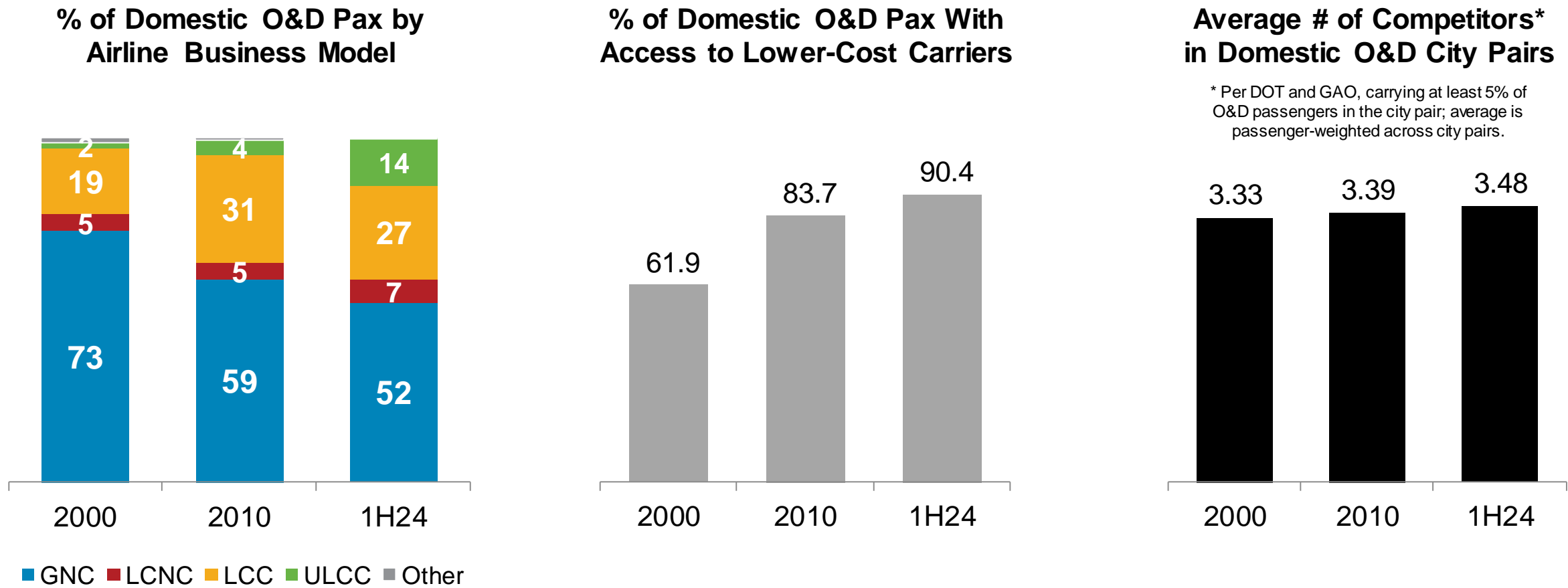


Satisfaction Benchmark	2019	2024	Diff
Ease of making reservation	81	84	+3
Mobile app quality	82	84	+2
Mobile app reliability	82	84	+2
Ease of check-in	82	83	+1
Website satisfaction	80	83	+3
Cabin and lavatory cleanliness	78	82	+4
Courtesy: flight crew	80	82	+2
Baggage handling	79	81	+2
Boarding experience	79	81	+2
Call center satisfaction	78	81	+3
Courtesy: gate staff	80	81	+1
Timeliness of arrival	80	81	+1
Loyalty program	75	80	+5
Range of flight schedules	77	80	+3
Overhead storage	73	79	+6
Food and beverage: purchased	73	78	+5
Inflight entertainment	71	78	+7
Food and beverage: free	73	76	+3
Seat comfort	69	76	+7

Source: The American Customer Satisfaction Index (ACSI®), the only national cross-industry measure of customer satisfaction, measures the satisfaction of U.S. household consumers with the quality of products and services offered by firms with significant share in U.S. markets. The ACSI Travel Study 2023-2024 reflects interviews with 16,352 customers, chosen at random and contacted via email between April 2023 and March 2024.

From 2000-1H 2024, the Number of Competitors per Domestic Air Trip Rose From 3.33 to 3.48

Global Network Carrier Share of Domestic Passengers Fell From 73% in 2000 to 52% in 1H 2024



Source: DOT Data Bank 1B and Compass Lexecon. Global network carriers (GNCs) include AA/DL/UA and predecessor airlines (e.g., US Airways, America West, TWA, Northwest, Continental) and defunct legacy network carriers (e.g., Eastern, Braniff). Low-cost carriers includes Southwest, JetBlue, Breeze, Reno Air, Midway, Pro Air, Kiwi International, AirTran, Accessair, Independence, Eastwind, National, ValuJet, ATA, Skybus, People Express, Vanguard, Virgin America, Western Pacific, Air South, and Morris Air). Lower cost network carriers include Alaska, Hawaiian and Aloha. Ultra low-cost carriers (ULCCs) include Allegiant, Frontier, Spirit, Sun Country, and Avelo.

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Appendix B



Impact of Enhanced Passenger Protection Regulations for Significantly Delayed and Cancelled Flights

410	B21	8:00A	On Time	Columbus	American Airlines	5388	E30	On Time	Los Angeles	American Airlines	1275	D39	8:30A	On Time	Philadelphia	American Airlines	5239	D43B	10:00A	On Time		
DELTA	4353	D35	8:32A	On Time	Dallas Love Field	Southwest	3088	A4	9:05A	On Time	Los Angeles	Allegiant	5	B16	9:10A	On Time	Phoenix	American Airlines	1218	C25	10:08A	On Time
DELTA	967	B17	9:00A	On Time	Dallas-Ft. Worth	American Airlines	796	C32	8:45A	On Time	Louisville	American Airlines	4484	D36	8:21A	On Time	Pittsburgh	American Airlines	5522	E46	8:20A	On Time
DELTA	392	B21	10:00A	On Time	Dallas-Ft. Worth	American Airlines	2101	C33	9:45A	On Time	Manchester	American Airlines	5319	E46	10:01A	On Time	Portland, ME	American Airlines	4369	D45	10:04A	On Time
American Airlines	5120	E35	10:08A	On Time	Dayton	American Airlines	5143	D43A	7:59A	On Time	Memphis	American Airlines	5168	E58	8:30A	On Time	Providence	American Airlines	5363	D43A	9:01A	On Time
American Airlines	5181	D43B	8:32A	On Time	Des Moines	American Airlines	5388	D43A	10:11A	On Time	Miami	American Airlines	458	D38	8:32A	On Time	Providence	American Airlines	5477	E49	10:06A	On Time
JetBlue	1554	C24	7:30A	On Time	Detroit	American Airlines	4388	E49	8:45A	On Time	Miami	American Airlines	381	C29	10:05A	On Time	Raleigh/Durham	DELTA	5085	B15	8:16A	On Time
DELTA	5815	B19	8:30A	On Time	Detroit	DELTA	2476	B19	10:05A	On Time	Minneapolis	DELTA	2309	B20	7:45A	On Time	Raleigh/Durham	American Airlines	4630	E59	8:43A	On Time
JetBlue	1854	C24	8:30A	On Time	FL Lauderdale	JetBlue	379	C30	10:00A	On Time	Minneapolis	American Airlines	3884	E50	8:45A	On Time	Savannah	American Airlines	5087	E54	8:29A	On Time
American Airlines	4255	D37	9:00A	On Time	FL Walton Beach	American Airlines	1614	D41	9:40A	On Time	New Orleans	American Airlines	4366	C31	8:37A	On Time	Seattle	Allegiant	1	B18	8:00A	On Time
JetBlue	1954	C26	9:30A	On Time	FL Myers	JetBlue	581	C28	7:35A	On Time	New Orleans	American Airlines	624	C31	10:11A	On Time	St. Louis	American Airlines	4459	E51	7:30A	On Time
American Airlines	4379	C27	10:10A	On Time	FL Myers	American Airlines	2192	D45	8:25A	On Time	New York-LGA	American Airlines	413	D35	7:00A	Departed	St. Louis	Southwest	957	A6	8:35A	On Time
American Airlines	4359	C34	10:03A	On Time	Grand Rapids	American Airlines	5039	E56	10:02A	On Time	New York-LGA	DELTA	5631	B22	8:45A	On Time	Tampa	American Airlines	1863	C34	8:36A	On Time
American Airlines	5490	E58	10:05A	On Time	Greensboro	American Airlines	5237	E47	8:27A	On Time	New York-LGA	DELTA	5811	B20	9:55A	On Time	Toronto	AIR CANADA	8783	A3	9:35A	On Time
American Airlines	5023	E51	8:36A	On Time	Greenville	American Airlines	5251	D44A	8:23A	On Time	New York-LGA	American Airlines	2717	C23	10:00A	On Time	Toronto	American Airlines	5665	E53	10:07A	On Time
American Airlines	739	B11	8:30A	On Time	Hartford	American Airlines	5609	D44A	10:12A	On Time	Newark	UNITED	4471	B10B	7:00A	Departed	West Palm Beach	American Airlines	1172	C29	8:20A	On Time
American Airlines	978	D42	9:40A	On Time	Hilton Head Island	American Airlines	4652	C27	8:30A	On Time	Newark	UNITED	3666	B10C	10:07A	On Time	West Palm Beach	JetBlue	2433	C28	9:00A	On Time
UNITED	4098	B14	9:45A	On Time	Houston-IAH	UNITED	697	B14	8:30A	On Time	Norfolk	American Airlines	5509	E47	10:09A	On Time	White Plains	American Airlines	5282	D44A	9:39A	On Time
Southwest	2470	A5	9:00A	On Time	Huntsville	American Airlines	5442	E56	8:24A	On Time												
DELTA	4685	B15	9:30A	On Time	Indianapolis	American Airlines	4701	D35	10:06A	On Time												
					Jacksonville	American Airlines	5451	E55	7:55A	On Time												

PREPARED FOR
Airlines for America®

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Impact of Enhanced Passenger Protection Regulations for Significantly Delayed and Cancelled Flights

On May 8, 2023, the U.S. Department of Transportation (DOT) announced its intent to initiate a Rulemaking to address several aspects of airline passenger protection, which would include: compensation where there is a controllable airline cancellation or significant delay; a meal or meal voucher, overnight accommodations, ground transportation to and from the hotel, and rebooking for controllable delays or cancellations; timely customer service during and after periods of widespread flight irregularities; and a definition of a controllable cancellation or delay.¹

While the Notice of Proposed Rulemaking (NPRM) has not yet been issued, the key elements identified in the DOT press release are similar to passenger protection regulations currently in place in Europe and Canada. Airlines for America® (A4A) engaged InterVISTAS to study the impacts of a potential application of these passenger protection regulations to U.S. airline operations. InterVISTAS examined the rules and impacts of three regulatory frameworks: (a) Europe's passenger protection regulation (commonly known as EU261) that has been in place since 2005; (b) a potential revision to EU261 first proposed in 2013 that is a priority pending file in the European Commission's 2024 work program; and (c) Canada's Air Passenger Protection Regulation (APPR) that has been in place since late 2019, as modified by proposals currently under active consultation by the Canadian Transport Agency (CTA). This study relied exclusively on actual historical data on delays, cancellations, costs of customer care, passenger demand and fares, and data from a published European Commission funded study of EU261.

Nearly all U.S. carriers already provide care assistance to passengers when there is a cancellation or long delay attributable to the carrier. The European and Canadian passenger protection rules generate significant material costs because of the requirement for monetary compensation for long delays/cancellations (due to the carrier) and the mandate to provide customer care even when the carrier is not at fault.

Delayed and Cancelled Flights Are Rare for U.S. Airlines

U.S. airline operations have strong on-time arrival rates. Between 2013 and 2023, close to 80% of all operated flights arrived within 15 minutes of the scheduled flight arrival time, and 90~95% of passengers experienced flights that were either on time or delayed less than 60 minutes.² Further, U.S. carrier flights typically arrive at or before scheduled arrival time (A0) about 10% of the time more than EU carriers and between 10-20% of the time more than Canadian carriers. While all carriers struggled to mount fully effective operational recovery in the post-COVID rebound, European and Canadian carriers experienced notable declines in 2022 and 2023.

¹ <https://www.transportation.gov/briefing-room/dot-propose-requirements-airlines-cover-expenses-and-compensate-stranded-passengers>

² Assumes delayed flights as a group have similar passengers carried per flight as non-delayed flights.

Cancellations in the U.S. are rare, constituting approximately 2% of U.S. flights in each operating year (excepting 2020 and its COVID-related unprecedented operational impacts and constraints). Very late flights—those arriving more than 180 minutes late—are even rarer, affecting approximately 1% of U.S. flights in each year. The high on time performance of U.S. carriers combined with the rarity of cancellations and long delays suggests that U.S. carriers already seek to maximize on-time performance independent of a passenger protection regulation. Further, available data suggests that U.S. airline cancellation and very-late arrival rates are mostly driven by factors outside carrier control. U.S. Bureau of Transportation Statistics reporting indicates that about 76% of U.S. carrier cancellations are attributable to factors outside a carrier's control (such as air traffic control, weather, and/or security issues), while about 55% of U.S. carrier flight delays of two hours or greater are attributable to non-controllable factors. Thus, a DOT passenger protection regulation may have limited practical benefit in reducing delays and cancellations in the U.S.

European flights have lower rates of cancellations (about 1% of flights) and very delayed flights (0.3% to 0.4% of flights), but available data reporting suggests a higher share of European cancellations and very delayed flights are carrier-controllable. A comprehensive European Commission study of EU261 estimated that only 33% of EU carrier cancellations are outside the carrier's control, and only 30% of EU carrier flights delayed by at least two hours are outside carrier control. While we caution against overreliance on direct comparisons between European and U.S. data reporting that may involve different reporting and/or attribution standards, the magnitude of reported differences in carrier controllability between regions suggests that some or all of the relatively higher U.S. carrier rates of very delayed and cancelled flights are due to factors that U.S. airlines cannot control.³

Passenger Protection Regulations Could Unintentionally Negatively Impact Consumers

Because cancellations and very late flights are rare, the pool of passengers who would benefit from a DOT compensation mandate would be small—only about 1% of total passengers are on affected flights and eligible for compensation under an EU261 regulation as applied to the U.S. About 2% of passengers would be eligible for customer care. However, the high compensation levels mandated by EU261 and alternative regulations results in substantial new costs to carriers, as summarized in the section below. Such a cost elevation would then have significant unintended consequences as airlines react to the new costs, thus undermining the consumer gains purportedly intended by the passenger protection regulation:

- **Risk of fare increases.** Airlines are likely to increase fares to counteract the cost increase from the new regulation. To recover the incremental costs of EU261 completely (at a 100% claim rate), fares in all U.S.-related markets would need to increase by 2.8%. Total air-travel demand may decline as much as 3.1% in response to the fare increase for a loss of 29.4 million passengers, of whom 28 million would be lost in domestic U.S. markets. If airlines were to seek to preserve pre-regulation margins, available seats would likely decline by a similar percentage.
- **Risk to U.S. ULCC and hybrid carrier growth and potentially sustainability.** With lower average fares, fewer longer haul international flights and premium cabins, and generally higher rates of

³ European and U.S. standards of carrier attribution differ, as do assumptions on the attribution of flight delays that impact subsequent flights.

irregular operations, ULCC and hybrid carriers would be proportionally more impacted by EU261. Only one of the six ULCC and Hybrid U.S. carriers profiled would have an incremental cost burden of EU261 that is consistently below 50 percent of the carrier's historic operating income between 2013 and 3Q2023. All other carriers are close to or above 50 percent in all years. Unless airlines ultimately recover EU261 costs through higher fares, higher costs would undermine future ULCC and Hybrid carrier growth – thus harming future competition in the U.S. airline industry.

- **Risk of higher cancellation rates.** Passenger compensation for very delayed flights is quite high under both EU261 and Canada APPR—in the case of EU261, required compensation is twice the average U.S. fare for similar stage lengths. As a result, once passenger compensation is triggered, there may be little economic incentive for an airline to continue attempts to operate a very delayed flight. Cancelling the very delayed flight allows the carrier to avoid variable flight costs such as fuel, landing fees, and potentially crew costs. This may increase the likelihood of flight cancellations, which is an inferior outcome for airline customers that likely involves greater total time displacement versus their original schedule. There is some evidence from EU carriers that EU261 is associated with relatively elevated cancellations of very late flights. Compared to U.S. carriers, European carriers had a higher ratio of cancellations versus 180+ minute late arriving flights in every year between 2013 and 2023.
- **Risk of reduced aircraft utilization and fewer seats for sale.** In reaction to EU261, European carriers may seek to enhance operational resilience through a higher spare-aircraft rate and/or fewer daily operating hours per aircraft. Systematic differences between EU and U.S. carriers in aircraft utilization not explainable by other known factors could suggest a risk in imposing a passenger protection regulation in the U.S. After adjusting for stage-length differences, U.S. network carriers operate aircraft about 3.1% longer (about 20 minutes/day longer) each day than their European network carrier counterparts. Among regional aircraft operations, U.S. carriers operate about 36 minutes/day longer, for a 4.5% utilization gap. While we caution that systematic differences in operational environments could also explain such aircraft utilization differences, if due to EU261 then imposing a passenger protection regulation creates a risk of either fewer flights and seats, or higher costs to operate current schedules. For example, if U.S. carriers reduced aircraft utilization to EU levels following an EU261-style regulation, then 35 million fewer annual seats would be operated and U.S. carrier revenue would decline by over \$5 billion annually, negatively impacting reinvestments in product and human capital.

Passenger Protection Regulations Would Impose Significant Costs on Carriers

The three regulatory frameworks (current EU261, proposed EU261, and Canada APPR) each provide compensation for very late or cancelled flights, passenger care, and the right to a refund and rerouting of a passenger back to his or her point of origin under certain circumstances. U.S. carriers already provide options to affected passengers. Two elements of the regulations are new and would drive substantial increases in U.S. carrier costs:

- Compensation is required where there is a substantial delay or cancellation that is carrier attributable. Under EU261 for example, a carrier must pay between €250 / \$265 and €600 / \$636 depending on

flight distance. For U.S. passengers, these penalty amounts are approximately double the current average fares paid for flights with a similar length of haul.

- Passenger care and overnight hotels must be provided for all substantial flight delays and cancellations, *regardless of cause*. Today, U.S. airlines typically provide these care elements for *airline-attributable* flight disruptions.

Applying EU261 to U.S. operations imposes a total cost to the U.S. airline industry of up to \$7.1 billion annually, of which at least \$5.2 billion is incremental to the passenger care, reimbursement, and rerouting cost that U.S. airlines already voluntarily bear today. The EU261 2013 proposed revisions would cost the industry up to \$4.5 billion, an increase of \$2.6 billion relative to today. Canada's APPR applied to U.S. operations would cost up to \$7.0 billion, of which \$5.0 billion is incremental to current customer care costs.

Based on current EU261, the total cost of passenger care and protection would account for up to 46% of *total* U.S. airline industry operating income for the four quarters ending 3Q2023. Incremental costs alone account for up to 33% of total industry operating income. Impacts would fall disproportionately on hybrid and ULCC carriers, because of their lower average fares (a fixed-dollar amount penalty has a greater percentage impact) and operational performance differences. The magnitude of these cost increases is likely to result in lower airline investments in human capital, product, and future capacity initiatives.

We conclude that DOT's passenger protection regulation would harm consumers with:

- **Higher fares negatively impacting consumers**, as airlines seek to recover the considerable costs imposed by the regulation, thus reducing demand and, commensurately, the supply of seats
- **Up to 30 million fewer passengers** annually due to higher fares tied to the incremental costs of passenger compensation
- **Less competition**, with the compensation requirements raising lower-cost carriers' costs disproportionately, thereby reducing economically viable flights to the detriment of consumers
- **Risk of more flight cancellations**, as the large compensation penalty eliminates economic incentives for airlines to operate flights that would otherwise be significantly delayed, creating additional traveler delay
- **Risk of fewer flight options** for travelers, as airlines add schedule buffer (more downtime between departures) to minimize the risk of significant delays
- **A material new cost** for U.S. carriers, up to \$5.2 billion annually or one-third of 2023 operating income, resulting in lower investment in employees, product and future capacity and ultimately hurting consumers
- **Little influence on reducing very delayed flights and cancellations**

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