

How to Fix Flying: A New Approach to Regulating the Airline Industry

William J. McGee
Ganesh Sitaraman

January 2024



TABLE OF CONTENTS

ABOUT THE AUTHORS 3

ACKNOWLEDGEMENTS 3

INTRODUCTION 4

PART I: COMPETITION, GEOGRAPHIC ACCESS, AND RESILIENCE 5

Bring Competition to Airports 5

Expand Geographic Access and Reorder Airline Economics 10

Eliminate Anticompetitive Common Ownership 12

Require Airlines to Have Resilience Plans and Funding 12

Create a Resilient, Sustainable, Innovative Airline Industry 14

Require Airline Ticket Reciprocity (Interlining) 15

PART II: FAIR AND TRANSPARENT PRICING 15

Simplify Fares and Classes of Service 15

End Abusive Loyalty Policies and Programs 17

PART III: PROTECTING PASSENGERS AND ENSURING SAFETY 18

Eliminate or Address Foreign Maintenance Outsourcing 18

Fund Real Air Traffic Control Improvements 19

Adopt Sector-Wide Standards: For Workers and Airlines 20

Establish Air Passenger Protection Regulations 22

Standard Minimum Aircraft Seat Sizes 23

Protect Infants Inflight 24

Mandate Airline Telephone Call Centers 24

PART IV: OVERSIGHT AND ENFORCEMENT 25

Remove Constraints on DOT's Unfair and Deceptive Practices Authority 25

Empower State Attorneys General 26

ABOUT THE AUTHORS

William J. McGee is a Senior Fellow for Aviation and Travel at the American Economic Liberties Project. During his 22 years at Consumer Reports he testified before Congress numerous times on airline mergers, competition, safety, and passenger rights. He is an FAA-licensed aircraft dispatcher and was a Flight Release Officer in the U.S. Air Force Auxiliary. He is the author of *Attention All Passengers* (HarperCollins, 2012), and lectures at Vaughn College of Aeronautics.

Professor Ganesh Sitaraman holds the New York Alumni Chancellor's Chair at Vanderbilt Law School and is the Director of the Vanderbilt Policy Accelerator. He teaches and writes about constitutional law, the regulatory state, economic policy, democracy, and foreign affairs. Sitaraman's most recent book is *Why Flying is Miserable: And How to Fix It* (Columbia Global Reports, 2023).

ACKNOWLEDGEMENTS

The authors would like to thank *Will Dobbs-Allsopp*, *Kevin Mitchell*, and *Bharat Ramamurti* for comments and feedback in the drafting of this report. Thank you to *Vincent Dodge* for helpful research assistance.

INTRODUCTION

Air travel in the United States suffers from serious problems. For passengers, the flying experience has become a source of frustration — from smaller seats and junk fees to delays and cancellations. Passenger fury is often taken out on airline and airport workers, some of whom are overworked and face unsafe conditions. Meanwhile, the industry itself is unhealthy. Boom-and-bust cycles are common, leading to bankruptcies and bailouts. Competition has become more and more limited, both between carriers and at airports. The many carriers that existed in the 1990s have now consolidated down to a mere handful. Meanwhile, airlines are pulling out of small and even midsized cities, with serious downsides for their economic opportunities.

It doesn't have to be this way. We don't need to have an airline industry that gets taxpayer support while failing to serve important cities. And we don't need to have a concentrated airline industry that squeezes passengers financially — and literally. Fixing the problems with flying is fundamentally a question of public policy, because policy choices determine what the airlines do, the quality of the flying experience, and the structure of the industry itself.

For 40 years, from 1938 to 1978, airlines in the United States were comprehensively regulated by the Civil Aeronautics Board, which assigned routes and set fares for airlines operating domestically. Despite the shortcomings of this system, during those years the United States had a decentralized air travel industry with a dozen carriers, maintained reliable service to large and small regional markets, and did so without the intermittent need for the bailouts of the industry that we experience today.

In 1978, the industry was deregulated, on the promise that without regulation, competition would lower fares, allow for more airlines to enter, and offer a greater variety of flying options for passengers. Over the past several decades, however, we have seen a slew of airline bankruptcies and waves of consolidation, to the point where we now have only four major carriers, which use opaque and deceptive pricing systems and yet still depend on government support in bad times.

In this paper, we offer a menu of options for policymakers to reform and structurally regulate air travel and address the problems in the airline industry. The options we provide range from bold and transformative, such as expanding geographic access by assigning routes and airport slots, to incremental solutions like requiring airlines to have resilience plans.

Our aim is to expand the universe of ideas that policymakers can consider to restructure the airline industry. We offer a set of policies that take seriously the problems in the industry and are designed to address them. These policies fall into four categories:

(1) Resilience, Competition, and Geographic Access, (2) Fair and Transparent Pricing, (3) Protecting Passengers and Ensuring Safety, and (4) Oversight and Enforcement. In each of these areas, we offer concrete proposals for how policymakers can improve the flying experience for passengers, workers, communities, and the country.

PART I: COMPETITION, GEOGRAPHIC ACCESS, AND RESILIENCE

Air travel is a critical part of the transportation infrastructure in the United States. But it suffers from serious problems. Americans need stable, resilient service, but the airlines have fallen into a cycle of booms, busts, bankruptcies, and even bailouts, with taxpayers providing support twice in major crises. Meanwhile, a few times a year, weather events disrupt travel all across the country. Americans need fair prices and service, but there is neither competition nor serious regulation in the sector, meaning that the public is subject to abuses of power by the biggest airlines. Fortress hubs have little competition, meaning higher prices and fewer choices. Americans also need service all across our vast country, to ensure that cities and regions everywhere can flourish. But we don't have that either. As airlines abandon routes, midsized cities lose their hubs, and smaller cities can lose all service. In this part, we outline a series of policy ideas that can help make American air travel more resilient, competitive, and geographically accessible.

BRING COMPETITION TO AIRPORTS

Since deregulation in the 1970s, airlines have restructured their operations in two ways: (1) by shifting from a point-to-point system to a hub-and-spoke system and (2) by increasingly concentrating their operations into a smaller number of hubs, which are sometimes called “fortress hubs,” due to the dominance of a single carrier. The point-to-point system is a model that relies on passengers taking nonstop flights from Airport A to Airport B and is largely employed by smaller airlines and low-cost carriers. The hub-and-spoke model employed by legacy carriers such as American, Delta, and United involves fewer nonstop flights and more connections through a single hub. Passengers thus fly from Airport A to Airport C with a connection through a hub at Airport B. A hub-and-spoke system has significant scale economies and network effects for the airlines, as it concentrates operations in a small number of cities. As shown in table 1, hub concentration grew significantly after deregulation in the 1980s and has continued since.

Single carrier Concentration at Major Airports Pre- and Post-Deregulation

AIRPORT		1977		1987
Baltimore/Washington	24.5%	US Air	60.0%	US Air*
Cincinnati	35.0%	Delta	67.6%	Delta
Detroit Metropolitan	21.2%	Delta	64.9%	Northwest
Houston Intercontinental	20.4%	Continental	71.5%	Continental
Memphis	40.2%	Delta	86.7%	Northwest
Minneapolis/St. Paul	45.9%	Northwest	81.6%	Northwest
Nashville Metropolitan	28.2%	US Air	60.2%	American
Pittsburgh	43.7%	US Air	82.8%	US Air
St. Louis Lambert	39.1%	TWA	82.3%	TWA
Salt Lake City	39.6%	Western	74.5%	Delta

*includes Piedmont

Source: Andrew R. Goetz and Paul Stephen Dempsey, "Airline Deregulation Ten Years After: Something Foul in the Air." 54 J. Air L. & Com. 927, 941 (1989).

Hub concentration raises multiple concerns. It can mean higher prices for passengers whose origin or destination is the hub.¹ This is entirely predictable: Limited competition to the hub city means a virtual monopoly for the dominant airline. Hub concentration can also increase the fragility of airline networks. If extreme weather at a hub airport shuts down flights to or from that hub, the disruption can cascade through the entire country.

REDUCE HUB CONCENTRATION

To address this problem, Congress could place a 30% cap on the percentage of flights an airline can have at the biggest airports. Smaller airports may not have enough volume for three to four major carriers to serve them, so the 30% cap would likely be unworkable for them. This cap would mean that all four big carriers — American, Delta, United, and Southwest — could compete over service, for example, from Dallas to Chicago O'Hare. Or it would mean that three big carriers and a range of smaller ultra-low-cost carriers like Frontier or Spirit could operate.

Putting a cap on concentration at hubs would have a number of effects: It would increase competition between airlines, at hubs and overall. Even though airlines could lose some

¹ Ganesh Sitaraman, *Why Flying is Miserable And How to Fix It* 120-22 (2023).

efficiency in concentrating operations, increased competition should, over time, mean reduced prices. A cap would also make airlines less dependent on a small number of hubs, thereby increasing resilience. The airlines would also have to create more, smaller hubs, which would economically benefit the cities and regions that those new hubs serve.

Implementing the cap should be done in a phased-in manner, to achieve declining percentages over a multi-year period. Phasing in the change would allow competing carriers to redeploy assets to these airports. It would also give time for travelers dependent upon certain routes and flight frequencies to plan and adapt and for airline employees to transition by switching carriers or cities.

LIMIT SLOT SUB-LEASING AND FACILITATE GATE ACCESS

Airport concentration is also a function of a number of contractual agreements that the Federal Aviation Administration (FAA) has the power to oversee and regulate. At several of the largest “constrained” domestic airports, the FAA grants “slots” to airlines, which are authorizations to take off or land at an airport on a given day during a time period.² According to the FAA, “[s]lots may be withdrawn at any time to fulfill the Department [of Transportation’s] operational needs, such as providing slots for international or essential air service operations or eliminating slots.”³ There is also a two-month “use-or-lose” requirement.⁴ If a slot is not used 80% of the time over a two-month period, the FAA will recall it.⁵ While this provision seems like it would help address concentration issues, the airlines can sub-lease underutilized slots to competitors at above-market rates.⁶ This allows them to keep control of the slot, satisfy use requirements, make a profit, and control potential competitors.⁷ In short, subleases can facilitate control and concentration.

The Department of Transportation can address this problem by limiting the sub-leasing of slots. Sub-leasing appears to be allowed because of 14 C.F.R. § 93.227(f), a regulation that DOT could amend on the basis of increasing competition.⁸ New regulations could allow airlines to sublease a slot, but not count the sublease toward 14 C.F.R. § 93.227(a)’s usage requirements. This would still enable some de minimis subleasing — as in a case where an

2 *Slot Administration – Slot Definition*, Fed. Aviation Admin. (Apr. 24, 2010), https://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/perf_analysis/slot_administration/slot_definition.

3 14 C.F.R. § 93.223(a)

4 *Slot Administration – Compliance and Oversight*, Fed. Aviation Admin. (Feb. 1, 2021), https://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/perf_analysis/slot_administration/compliance_oversight.

5 14 C.F.R. § 93.227(a). The exceptions are found in 14 C.F.R. § 93.227(b)–(d), (g), and (l).

6 John Sabel, *Airline-Airport Facilities Agreements: An Overview*, 69 J. Air L. & Com. 769, 780 (2004); Federico Ciliberto & Jonathan W. Williams, *Limited Access to Airport Facilities and Market Power in the Airline Industry*, 53 J.L. & Econ. 467, 471-72 (2010).

7 Sabel, *supra* note 15, at 780. Subleases are permitted under 14 C.F.R. 93.227(f) (“Persons holding slots but not using them pursuant to the provisions of paragraphs (b), (c) and (d) may lease those slots for use by others. A slot obtained in a lottery may not be leased after the expiration of the applicable time period specified in paragraph (b) of this section unless it has been operated for a 2-month period at least 65 percent of the time by the operator which obtained it in the lottery”).

8 See 49 U.S.C. § 41714(e)(1)(D) (“The Secretary shall continue the Secretary’s current examination of slot regulations and shall ensure that the examination includes consideration of ... the impact of such allocation process on the ability of new entrant air carriers to obtain slots in time period that enable them to provide service”).

airline is unable to use a slot for a short period of time — while increasing the likelihood of reallocating slots to those airlines that will actually use them.

At the same time, improving access to slots is not sufficient, particularly since only seven U.S. airports are slot constrained. After landing, airplanes still must have access to gates, check-in space, baggage rooms, airport staff, and other services to facilitate arriving and departing passengers. The FAA should therefore align gate policies with slot allocation, as part of its nondiscrimination authorities.⁹ If an airline is allotted additional takeoff and landing slots, it should have access to corresponding gates, facilities, and staff to make the slots truly usable. There are multiple ways to address this issue. Airports could be restructured to operate more like those in foreign countries, in which gates do not have fixed airline usage, but are shared and can change between airlines as needed. Alternatively, if an airline has paid for capital improvements to its terminals or gates, other airlines that use the gates for particular flights could pay reasonable compensation for their use. However designed, policy should seek to align slot and gate usage.

Currently, major airlines are not fully utilizing airport gates, thus hampering access for smaller carriers, and these patterns have been documented. According to data from the National Air Carrier Association (the trade association for low- and ultra-low-cost carriers), gate usage has declined since COVID, as has access to airport gates by low-fare airlines.¹⁰ In other words, it appears that larger carriers are sitting on gates and other scarce resources, perhaps to keep out smaller low-cost carriers. Consider these comparisons of gate usage, based on the percentage of gates utilized for six or more aircraft “turns” (arrivals and departures) per day, between 2019 and 2022:

Gate Usage Data 2019-2022¹¹

Airport	2019 Gate Usage	2022 Gate Usage
Dallas/Love Field	100%	90%
Nashville	46%	37%
Boston	35%	14%
Atlanta	65%	28%
Fort Lauderdale	48%	11%

9 See 49 U.S.C. § 47107(a). For discussions of these provisions, see FAA/OST Task Force, *Airport Business Practices and their Impact on Airline Competition*, Fed. Aviation Admin. (Oct. 1999), <https://www.faa.gov/sites/faa.gov/files/airports/aip/airport-business-practices-and-their-impact-on-airline-competition.pdf>; see also *Airport Improvement Program Assurances for Airport Sponsors*, Fed. Aviation Admin. (Mar. 2014), https://www.faa.gov/sites/faa.gov/files/airports/aip/grant_assurances/airport-sponsor-assurances-aip.pdf.

10 *Reauthorization 2023 ULCC Priorities*, Nat'l Air Carrier Ass'n. 13 (2023), <https://www.wefly4you.com/Reauthorization2023ForWeb.pdf>.

11 Id.

ENSURE FAIR INVESTMENT IN AIRPORTS

Another potentially problematic contractual provision is majority-in-interest (MII) clauses. An MII allows an airline with more than a certain percent of an airport’s business to block capital expenditures at the airport.¹² While airlines with significant business do have an interest in ensuring the airport is well run, it is easy to see how an MII allows a dominant airline to block growth that might facilitate competition by refusing to allow expansion that would be used by a competitor or new entrant.

Here too, the Department of Transportation could increase its oversight of such clauses, to ensure they are not used for anticompetitive purposes, or potentially ban such clauses altogether. Under 49 U.S.C. § 41712(a), the Secretary of Transportation can take “initiative” to “decide whether an air carrier ... has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation.” If the Secretary “after notice and an opportunity for a hearing” determines the practice or method to be unfair, the Secretary “shall order [the offending entity] to stop the practice or method.”

Such an action would be consistent with other statutory directives. § 155(d) of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (“Aviation Reform Act”) instructs the Secretary of Transportation to “ensure that gates and other facilities are made available at costs that are fair and reasonable to air carriers at covered airports (as defined in section 47106(f)(4) of title 49, United States Code) where a ‘majority in interest clause’ of a contract or other agreement or arrangement inhibits the ability of the local airport authority to provide or build new gates or other facilities.”¹³ Indeed, the justification for this provision was concern about concentration. As Congress observed, “15 large hub airports today are each dominated by one air carrier, with each such carrier controlling more than 50 percent of the traffic at the hub” and that “such levels of concentration lead to higher air fares.”¹⁴ Congress found that “[t]he United States Government must take every step necessary to reduce those levels of concentration.”¹⁵

Congress should direct that a national program directed at reducing single-airline dominance at airports should concurrently include directives on how to sensibly share other airport resources. In many cases, airports are funded at least jointly, if not almost entirely, by taxpayers. Congress should ensure that airport resources — including gates, ramp space, aircraft hardstand and maintenance facilities, airport terminal space, check-in counters and kiosks, passenger lounges, crew lounges, baggage rooms, jet bridges, ground

12 See, e.g., *Airline-Airport Use and Lease Agreement*, Airports Council 20-21 (2009), <https://airportscouncil.org/wp-content/uploads/2018/08/msy.pdf>.

13 49 U.S.C. § 47101 note (Availability of Gates and Other Essential Services).

14 Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. 106-181, § 155(a) (2000).

15 *Id.*

equipment storage, and so on — are allocated in the same proportion that flight slots are allocated.

Recommendations

- Congress should place a 30% cap on the amount of flights an airline can have from a large airport.
- The Federal Aviation Administration should reform slot regulations to prevent sub-leases from counting toward usage requirements and align slot usage with gate and other infrastructural and staffing needs.
- The Department of Transportation should increase oversight of, and consider banning, majority-in-interest (MII) clauses in airport contracts as an unfair method of competition.
- Congress should take action to reduce airport concentration and align airport infrastructure usage with takeoff and landing slots.

EXPAND GEOGRAPHIC ACCESS AND REORDER AIRLINE ECONOMICS

For small and midsized cities and lower population regions, losing air service can be devastating. It makes tourism more difficult and saps the potential for economic growth. Current airline policy is failing to ensure reliable access across the country. Some small and midsized cities and less populated regions have little access to air service. Since the pandemic, the biggest airlines have dropped dozens of cities from service — places like Flint, Michigan, and Lincoln, Nebraska. Some cities — like Dubuque, Iowa, and Toledo, Ohio — have even lost all major-carrier service. At the same time, the Essential Air Service (EAS) subsidy program, in which the federal government directly subsidizes service for certain smaller communities, is a failure. It covers very small towns, like Cody, Wyoming, but not small cities, like Cheyenne, Wyoming. Cheyenne — the state capital — has lost service on and off over the last decade and has had to guarantee the revenue of a major airline merely to secure regularly scheduled service to a single hub. The EAS has also regularly been on the political chopping block, with politicians seeking to end or cut the program, declaring it wasteful.

The challenge in serving smaller cities is fundamentally economic. There is less volume to these places, which means that flights might not be full enough to be profitable for the airline to serve them. This means one of two things: either higher prices for people who live in smaller markets (which also dissuades travel and economic growth) or less frequent service. Of course, these two problems go together: Higher prices dissuade travelers, which

pushes airlines to offer less frequent service. If only one airline serves the market, high prices can also be a problem.

Congress should take action to ensure geographic access to air service. Without going back to full regulation of routes, this could take one of two forms, both of which would restructure the economics of air travel in the United States by ensuring continuous and reasonably priced service to smaller markets while also guaranteeing a reasonable profit for airlines.

Under the “Draft Pick” system, Congress would require the biggest airlines to choose the lower-volume cities that they would serve at regulated, affordable rates. Here’s how it would work: Congress would establish some criteria for draft-eligible cities and towns, such as status as a state capital, minimum and maximum population, and distance from another city. The Department of Transportation would then compile a list of eligible cities and inquire with the leaders of eligible cities if they would like to participate. Congress would require that the largest airlines participate in an “airline draft” in which they would each get a draft-pick number and then get to choose from the list of participating eligible cities. The draft would continue until all cities have been chosen. The airlines would be required to serve draft-pick cities at regulated, affordable prices and with daily frequency. They would have flexibility on where to fly (most likely, a nearby hub), so they could choose cities that complement their overall network.

Under the “Regional Conference System,” Congress would designate in each region a single carrier as the exclusive provider of scheduled air service to smaller markets — e.g., “Southern Airlines” might operate in the South. This airline would fly from large cities (e.g., Atlanta, Charlotte, Nashville) to smaller markets like Chattanooga, Tennessee, or Birmingham, Alabama. The biggest airlines would be entirely competitive between large cities (e.g., Chicago to Atlanta, or Atlanta to Miami). Every big airline would be fully interoperable and would code-share with the regional carrier, so that flights could be booked to any city that the regional carrier serves on the same ticket. Prices on the regional flight would be regulated to prevent monopolistic exploitation. This approach would retain competition between cities that have higher volumes, in which airlines can be more assured of filling planes. But it would create a utility-like service for the lower-volume flights. By allowing every airline to send passengers to the regional airlines, it would also maximize the ability of passengers to get where they want to go on their preferred major carrier.

Recommendation

- Congress should replace the EAS program with either the Draft Pick or Regional Conference System to ensure greater geographic access to air service.

ELIMINATE ANTICOMPETITIVE COMMON OWNERSHIP

Researchers have shown that airlines have common ownership — that is, investors with a significant percentage of ownership in one airline have significant ownership in a competitor airline. A growing body of economic evidence shows that common ownership reduces competition between airlines, both by lowering the barriers to direct collusion and by structurally reducing the incentives of airline executives to compete vigorously with other airlines.¹⁶ Knowing their shareholders would prefer to avoid direct price competition, and often given compensation packages that reward them for the industry’s overall value rather than that of their own airlines, executives will avoid price-competitive business strategies. According to leading antitrust scholars, this form of “horizontal shareholding” is a straightforward violation of existing antitrust laws.¹⁷

Recommendations

- The Department of Justice should declare that it will, as a matter of policy, start enforcing existing laws with respect to horizontal shareholding and should bring suit if ownership changes do not happen as a result of its policy declaration.
- Congress should also reaffirm and strengthen existing laws against anticompetitive common ownership in the airline industry by passing a law prohibiting investors from having more than 1% ownership in two or more U.S. air carriers.¹⁸

REQUIRE AIRLINES TO HAVE RESILIENCE PLANS AND FUNDING

For air travel to be resilient, airlines need to be able to bounce back to full capacity after a crisis. In a major crisis that reduces demand, many airlines may be inclined to cut costs by laying off or furloughing workers, pausing hiring, or reducing their flight frequency or number of locations. But when demand returns, it will take time to hire new workers, train them, and restart operations. In the meantime, airlines will offer subpar, congested, infrequent service, leading to inconvenience and higher prices for travelers and stunted

16 M. C. Schmalz, *Common-Ownership Concentration and Corporate Conduct*, 10 *Ann. Rev. of Fin. Econ.* 413 (2018); M. C. Schmalz, *Recent Studies on Common Ownership, Firm Behavior, and Market Outcomes*, 66 *The Antitrust Bull.* 12 (2021); Miguel Antón, Florian Ederer, Mireia Giné, and Martin Schmalz, *Common Ownership, Competition, and Top Management Incentives*, 131 *J. Pol. Econ.* 1294 (2023).

17 Einer Elhauge, *Horizontal Shareholding*, 129 *Harv. L. Rev.* 1267 (2016).

18 William J. McGee and Lee Hepner, *How to Address the Air Travel Crisis: Eliminating the Airlines’ Legal Liability Shield*, *Am. Econ. Liberties Proj.* (Sept. 2022), https://www.economicliberties.us/wp-content/uploads/2022/09/2022-9-07-AirTravelCrisis_Quick-Take-FINAL.pdf.

economic activity for the country. In a minor crisis, like a winter storm or hurricane, airlines also need to bounce back swiftly to avoid as many cancellations and delays as possible.

Until the 1990s, it was common for major U.S. airlines to maintain spare crews and even spare aircraft. Today such practices have all but disappeared, even at the nation's largest carriers. Flights on average are also fuller than they have been in more than half a century. The combination of these two features — no spare crews or aircraft, and fuller flights — means that a problem with one plane or crew timing out can quickly domino and produce lengthy flight delays and cancellations.

In addition, there have been reports that airlines are overscheduling, meaning that they are selling tickets for flights they know they do not, and will not be able to, operate.¹⁹ The Department of Transportation is currently investigating this potentially fraudulent behavior, which is a major inconvenience for passengers who depend on reliable scheduled flights.²⁰

To address these challenges, the biggest airlines and their regional partners should be required by law to develop crisis management plans that specify how they would operate in the event of a crisis: a pandemic, war, cyberattack, failure of IT systems, terrorist attack, or serious weather event. The Department of Transportation would need to review these crisis management plans to ensure they are sufficient to ensure resilient, stable, reliable service through the crisis or demand shock and after it passes.

As part of its resilience directives, Congress should require that for major, longer-term crises, the plan include provisions on how the airline will handle preserving employment (including training employees) through the crisis, and scheduling flights so that they can return to full operations after the crisis. Congress should also require that the biggest airlines have spare aircraft and on-call crews at the highest-volume airports to ensure that they can provide reliable, resilient service in the event of a single plane or crew issue, without significant delays. To ensure honest scheduling, Congress should create severe penalties for airlines that cancel more than a de minimis number of flights without a reasonable justification (e.g., mechanical issues, weather).

In a major crisis, airlines also need funding. After both 9/11 and during the COVID-19 pandemic, Congress stepped in to pass legislation financially supporting the airlines. To

19 Claire Bushey, *Passengers to keep 'paying the price' of aviation chaos, says United CEO*, *Fin. Times* (Jan. 18, 2023), <https://www.ft.com/content/6102c431-f2ee-4b90-876d-c09b0e2a2692> (noting that competing airlines had “sold more flights than they can realistically operate”).

20 Kyle Arnold, *DOT investigating if 'unrealistic scheduling' at Southwest Airlines led to meltdown*, *Dallas Morning News* (Jan. 25, 2023), <https://www.dallasnews.com/business/airlines/2023/01/25/dot-investigating-if-unrealistic-scheduling-at-southwest-airlines-led-to-meltdown/>.

prevent the need for future bailouts or support programs, the airlines should be required to create a rainy day fund that can be used to cover necessary costs in a crisis. The fund could be designed on a per-airline basis or as a pooled fund across all of the airlines. The minimum amount of the fund would be calculated to adjust with inflation and cover airline operations for a period of time (say, six months). Although it is possible that a crisis would cost more or last longer, the rainy day fund would, in the first instance, mean that bailouts or support programs would not be necessary.

Recommendations

- Congress should require airlines to develop crisis management plans and give the Department of Transportation the authority to review them.
- Congress should require resilient staffing and honest scheduling rules, as a legal directive and as part of the airlines' crisis management plans.
- Congress should require airlines to create rainy day funds to prevent future bailouts and taxpayer support programs.

CREATE A RESILIENT, SUSTAINABLE, INNOVATIVE AIRLINE INDUSTRY

Airlines' dependence on fossil fuels is itself a crisis. Fossil fuels are a large contributor to airline costs, which leaves the airlines vulnerable because geopolitical crises shape global prices. Airlines' reliance on fossil fuels also makes them a major contributor to climate change. While the Department of Transportation and the airlines themselves have committed to achieve net-zero emissions by 2050,²¹ Congress should also create an Air Innovation Fund. This fund would support the research and development of new technologies, including for clean energy airplanes.

Recommendation

- Congress should create an Air Innovation Fund to support the research and development of new technologies.

21 *Working to Build a Net-Zero Sustainable Aviation System by 2050*, Fed. Aviation Admin., <https://www.faa.gov/sustainability> (last visited Oct. 20, 2023); see also *Our Commitment to Fly Net Zero by 2050*, Int'l Air Transp. Ass'n, <https://www.iata.org/en/programs/environment/flynetzero/> (last visited October 20, 2023).

REQUIRE AIRLINE TICKET RECIPROCITY (INTERLINING)

Historically, airlines honored the tickets of their rivals when they had an available seat and the rival had a passenger who missed a flight and needed another. This practice was called “interlining,” and it helped passengers get to their final destination with fewer delays.

Congress should require that the airlines reinstate this practice. As part of a system of simplified pricing (see recommendations below), reestablishing this practice would be relatively easy for the airlines to administer, as the airline with problems would simply reimburse the airline that honors its tickets. Even without the system of simplified pricing, airlines could still implement this requirement by reimbursing interlining ticket costs based on their purchase price.

Recommendation

- Congress should require interlining when seats are available and passengers are in need.

PART II: FAIR AND TRANSPARENT PRICING

Over the last few decades, buying airplane tickets has become more and more complicated. Airlines have created more fare and service classes. They price dynamically, with fares changing day by day. Fees are proliferating — for baggage, food, seat selection. And points systems have shifted over time from frequent flyer programs to co-branded credit-card systems that focus more on the dollars spent than miles traveled. The proposals in this part outline some ways in which policymakers can create fairer and more transparent pricing and points systems.

SIMPLIFY FARES AND CLASSES OF SERVICE

Buying airline tickets is now more complicated than ever. There are a proliferating number of classes of service — from basic economy to economy to premium to business. Within each class of service, there are now multiple types of tickets, or “fare classes,” with codes that consumers never see but that shape whether the ticket is changeable or upgradable. Depending on when a traveler buys a ticket, prices can also fluctuate, even based on the day of the week. With improvements in technology and profiling of individual travelers, airlines now use dynamic pricing and could even develop a system of “personalized”

pricing to ensure that specific travelers are offered flights at the highest price they will pay.²²

Congress should end the airlines' policy of price discrimination. In other parts of the transportation sector, prices are fair, uniform, and transparent. The price of a subway ride in Washington, D.C., for example, is the same regardless of whether you buy the ticket weeks in advance or days in advance. Prices are the same if you're sitting facing forward, backward, or sideways — or are standing. Prices only differ based on distance traveled, and for specific groups (seniors, students, and children).

To achieve fair, uniform, and transparent pricing, Congress should require that airlines offer no more than three fare classes, and should set minimum uniform standards, such as for seat sizes and food and drink, for each class of service. Low- and ultra-low-cost carriers could offer flights entirely in the lowest fare class if they wanted, but they would not be able to go below those minimum requirements. Traditional airlines could offer flights with up to three classes and would be free to go above and beyond the requirements to compete for passengers.

Congress should also mandate that prices for a flight be set at a fixed amount per fare class that does not change based on seat location, personal characteristics, or dynamically over time. Differential prices within an airplane should only be allowed for a severely limited number of groups that conventionally get discounts in other settings, such as small children and seniors.

Recommendations

- Congress should ban price discrimination within airplanes.
- Congress should simplify classes of service and set minimum uniform standards for each class.
- Require Transparency on Fares and Fees

If Congress does not require a system of simplified, fair, uniform, and transparent pricing, then Congress should direct DOT to collect and disseminate on a monthly basis all airfare and fee data for all domestic flights. DOT collects detailed fee data for only one category of airline “ancillary” or “junk” fees: checked baggage.²³ But there are other unreported fees,

22 Andrew Curran, *Passengers Learn to Adapt as Airlines Adopt Dynamic Pricing*, Simple Flying (Jun. 18, 2022), <https://simpleflying.com/dynamic-pricing-airlines/>.

23 Bureau of Transportation Statistics, *Baggage Fees by Airline 2022*, U.S. Dep't of Transp. (Apr. 20, 2023), <https://www.bts.gov/topics/airlines-and-airports/baggage-fees-airline-2022>.

and in the case of some ULCC bookings, such fees are easily and often greater than the “base” fares. Doing so would help Congress and the Department understand airline pricing better — and identify abusive, fraudulent, or anticompetitive practices.

Recommendation

- If Congress does not require a system of simplified, fair, uniform, and transparent pricing, then Congress should direct the DOT to collect and disseminate on a monthly basis all airfare and fee data for all domestic flights.

END ABUSIVE LOYALTY POLICIES AND PROGRAMS

Since the widespread launch of domestic airline frequent flyer programs in the early 1980s, these “loyalty” programs have locked consumers into flying with a given carrier, even at the expense of better or lower fare options with rival airlines. Loyalty programs have increasingly become abusive. Airlines can change the rules, terms, and value of points or benefits whenever they want — severely limiting the ability of consumers to use their points or earn them. They sometimes charge more to purchase points than the points are worth. They charge fees for transferring points. And, perhaps most importantly, points systems take airlines away from improving their core service: flying planes.

Congress could take a number of approaches to address abusive points programs and policies. The most comprehensive approach to addressing all the practices above would be for Congress to ban airline loyalty programs altogether as an anticompetitive practice and prohibit airlines from engaging in credit card co-branding systems that take away from their core business. The Departments of Transportation and Justice could also investigate the anticompetitive nature of points systems and potentially bring lawsuits against them under existing antitrust laws.

If Congress does not want to take this bold step, it could pursue a number of more limited actions. It could standardize the terms of points programs, creating a uniform set of provisions (or minimum set of standards) for all programs. This approach would prevent a whack-a-mole scenario in which Congress bans specific bad practices, but then needs to revisit the issue every time airlines develop a workaround or find a loophole.

Alternatively, Congress could prohibit a range of abusive practice with respect to these programs. This includes (1) banning changes to airline programs that have retroactive effects, such that airlines cannot devalue points, (2) mandating a fixed, transparent exchange rate between points and dollars, (3) banning charging more for points than their value, (4) banning charging fees for using or transferring points, and (4) requiring that all

seats and other fees (e.g., upgrades, baggage) can be paid via points or dollars, with no blackouts or limits. The Department of Transportation may also be able to adopt some of these solutions under its authority to address unfair or deceptive practices and unfair methods of competition.

Recommendations

- Ban anticompetitive loyalty programs and confine airlines to air service (while calculating what existing loyalty program members are owed and paying them out).
- Standardize terms for points programs.
- Ban retroactive changes to points programs.
- Require a fixed, transparent exchange rate between points and dollars.
- Ban charging more for points than their value.
- Ban charging fees for using or transferring points.
- Require that all airline fares and fees be available with dollars or points.

PART III: PROTECTING PASSENGERS AND ENSURING SAFETY

ELIMINATE OR ADDRESS FOREIGN MAINTENANCE OUTSOURCING

Starting in the 1990s, U.S. air carriers began outsourcing significant amounts of their “heavy maintenance” of aircraft to outsourced companies, both within and outside the United States. Today every single U.S. airline outsources much, most, or virtually all of its maintenance, often to locations such as El Salvador, Mexico, Brazil, China, and Singapore. Importantly, the FAA can provide no meaningful oversight in foreign countries. As a result, foreign repair stations are not subject to frequent and periodic FAA inspections. “Technicians” at foreign repair stations are often not mechanics licensed by the FAA or equivalent foreign agencies. Employees at foreign repair stations are not subject to periodic drug and alcohol screening, as mandated at U.S. repair stations.

In addition, there is substandard Transportation Security Administration oversight of foreign repair stations, leaving U.S. aircraft vulnerable. Following its formation after the

9/11 attacks in 2001, the TSA provided no oversight of repair stations outside the U.S., leading to chronic security lapses, including U.S. airliners used to transport duffel bags of cocaine from repair facilities in Latin America.²⁴ In 2014 the TSA announced that for the first time it would provide oversight of foreign repair stations,²⁵ but such oversight does not include the critical need to screen employees at these repair stations, as is required within the United States, and TSA and FAA access to foreign facilities is subject to budgetary and personnel restrictions.²⁶

Congress should take action to address foreign maintenance outsourcing. The simplest way would be to direct that all aircraft maintenance work undertaken on behalf of U.S. air carriers take place in the United States, so that it is in compliance with FAA regulations and is subject to FAA and TSA oversight.

If Congress does not or cannot pass reforms along these lines, it could pass the Global Aircraft Maintenance Safety Improvement Act,²⁷ which would create one set of maintenance standards to apply equally at home and abroad. However, given limitations on oversight and monitoring abroad — and the ease of evasion of the standards — Congress should also require an oversight agency to review compliance with this law every three years. In the event that compliance falls below 90%, the law should provide stiff penalties. A second violation should come with an automatic, mandatory order to return maintenance operations to the United States.

Recommendation

- Congress should put an end to foreign maintenance outsourcing, or barring that, establish uniform standards for maintenance, coupled with oversight and automatic mandatory penalties for noncompliance.

FUND REAL AIR TRAFFIC CONTROL IMPROVEMENTS

For decades now the United States has lagged many nations worldwide in updating and modernizing its air traffic control network — despite being the world’s busiest. Although

24 William J. McGee, *Attention All Passengers*, 266-267 (2012); see also Actions Needed to Improve Safety Oversight and Security at Aircraft Repair Stations: Hearing Before the H. Subcomm. On Transp. Sec. and Infr. Protection, 111th Cong. (2009) (statement of The Honorable Calvin L. Scovell III), www.oig.dot.gov/sites/default/files/H_Hmlnd_Sub_Hrg_For_Rep_Stations_11.18.09.pdf.

25 Rebecca MacPherson, *TSA Issues New Security Rule for Aviation Repair Stations—What Does this Mean for Aircraft Maintenance Providers?* Jones Day (Jan. 2014), <https://www.jonesday.com/en/insights/2014/01/tsa-issues-new-security-rule-for-aviation-repair-stations-what-does-this-mean-for-aircraft-maintenance-providers>; see 449 C.F.R. §1554.3.

26 *The Impact of Offshoring Aircraft Maintenance to Foreign Repair Stations*, Transp. Workers of America AFL-CIO (Apr. 2018), <https://twu514.org/files/2018/05/The-Impact-of-Offshoring-Aircraft-Maintenance-to-Foreign-Repair-Stations.pdf>.

27 S.1256, 118th Cong. (2023).

the FAA long ago introduced the Next Generation Air Transportation System (“NextGen”), adoption has been limited by insufficient federal funding and the airlines failing to make the necessary investments in equipment. The failures to update the system have significant consequences, not just for congestion and delays but also for safety — as a series of recent “near-misses” has shown.²⁸

Congress should direct the FAA to implement state-of-the-art technological advancements at airports and ATC centers nationwide. Furthermore, the long-standing feuding over costs must be ended by a binding declaration over how airlines; airports; passengers; and local, state, and federal government agencies will provide funding. A 2017 report from the U.S. Government Accountability Office cited “challenges” in the FAA’s implementation and “uncertainties regarding future funding,” specifically noting “whether aircraft owners [i.e., airlines] equip their aircraft to use NextGen improvements.”²⁹ Airlines are direct beneficiaries of ATC modernization, and Congress should end the funding stalemate and direct each U.S. air carrier to invest in NextGen on a proportional basis tied to usage.

Recommendation

- Congress should fully fund the NextGen Air Traffic Control system and allocate costs between airlines; airports; passengers; and local, state, and federal government agencies.

ADOPT SECTOR-WIDE STANDARDS: FOR WORKERS AND AIRLINES

Airlines are currently allowed to maintain different standards, including minimum standards, for pay and benefits to their workers — and for policies ranging from training requirements, to maintenance standards, to seat sizes and access for persons with disabilities. Over the last 40 years, this has meant airlines compete by paying workers less, cutting safety and maintenance standards, and adopting in-airplane designs that are uncomfortable, unhealthy, and unsafe. There also has long existed a large pay disparity between the biggest airlines and regional carriers, despite both needing to meet the same

28 Sydney Ember & Emily Steel, *Airline Close Calls Happen Far More Often Than Previously Known*, N.Y. Times (Aug. 21, 2023), <https://www.nytimes.com/interactive/2023/08/21/business/airline-safety-close-calls.html>.

29 Gov’t Accountability Office, *Air Traffic Control Modernization: Progress and Challenges in Implementing NextGen* (Aug. 2017), www.gao.gov/assets/690/687072.pdf.

critical safety and support services.³⁰ This began as a disparity in pay between new hires and veteran employees at major airlines, a practice known as “B-scale wages” initiated within the industry in the 1980s, when existing labor contracts were grandfathered in at higher scales than the rates for subsequent employees.³¹ Regional carriers often partner with the major carriers to provide seamless itineraries, and their airplanes, gates, and staff are branded the same as big carriers — but their standards are often weaker. This also means that smaller and rural markets receive lower-quality service.

This makes little sense. Minimum airplane maintenance standards shouldn’t matter based on whether a plane is operated by the biggest airline or outsourced to a regional partner. Pilots need to be skilled to fly safely in all kinds of conditions, whether they fly the biggest or smaller aircraft. Flight attendants and ground crews provide critical services, regardless of the plane they are on. To the extent feasible, the Department of Transportation and Federal Aviation Administration should seek to set industry-wide standards for safety, training, and other policies, and should ensure that its regulatory regimes do not create loopholes that some airline companies can exploit to provide service without meeting robust standards that protect the public. This includes, for example, recent efforts to weaken regional airline standards by allowing flights to operate under a lesser section of the Federal Aviation Regulations, Part 380 (Public Charters) rather than Part 121 (Scheduled Air Carriers).³²

Congress should also pursue this approach. This means continuing to support minimum pilot standards (the FAA’s “1,500-hour rule”) for all commercial pilots, regardless of the size of the airline or the size of the aircraft.³³ Congress should also consider passing laws that create uniform minimum standards across the industry, including to ensure that workers receive good wages and benefits, and that their pension plans will not default, as has happened with major airlines.³⁴

30 Harry B. Williams, *Earnings of Employees in Certificated Air Carriers*, Bureau of Lab. Stats. (1985), www.bls.gov/opub/mlr/1985/11/rpt1full.pdf (noting that “Employees of major air carriers nearly always averaged more than their counterparts in national or regional carriers”); Robert W. Van Giezen, *Occupational Wages and Employee Benefits in the Airline Industry*, Bureau of Lab. Stats. (1996), <https://www.bls.gov/opub/mlr/cwc/occupational-wages-and-employee-benefits-in-the-airline-industry.pdf>; Flex Air, *Airline Pilot Salary 2023: How Much do Pilots Make? (2023)*, <https://aviex.goflexair.com/blog/airline-pilot-salary> (showing major carrier wages are approximately double those of regional carriers).

31 David J. Walsh, *Accounting for the Proliferation of Two-Tier Wage Settlements in the U.S. Airline Industry, 1983-1986*, 42 *Indus. Lab. Rel. Rev.* 50 (Oct. 1988).

32 In August 2023, the FAA issued a notice of intent to initiate a rulemaking that would strengthen standards for Part 380 and Part 135 (Commercial On-Demand Operations). Revisions to the Regulatory Definitions of “On-Demand Operations,” “Supplemental Operation,” and “Scheduled Operation,” 88 *Fed. Reg.* 59, 480 (proposed Aug. 29, 2023) (to be codified at 14 C.F.R. pt. 110).

33 This rule was mandated after the fatal crash of Colgan Air/Continental Connection Flight 3407 in 2009, but airline lobbyists are attempting to have it rescinded. Tammy Duckworth, *Congress Can’t Erode Airplane Safety Rules That Save Lives*, *Time* (Aug. 30, 2023), <https://time.com/6309503/congress-airplane-safety-rules-1500-hours/>.

34 151 *Cong. Rec.* 11,959 (2005) (statement of Rep. George Miller).

Recommendations

- The Department of Transportation and Federal Aviation Administration should, as far as possible, try to standardize minimum requirements and prevent evasion of those standards. The FAA should establish a single high level of safety for all scheduled flight operations, regardless of carrier or size of aircraft. This extends to security standards as well, since some smaller regional partners operate aircraft that do not adhere to FAA requirements for cockpit secondary barriers.³⁵
- Congress should consider measures that standardize policies across airlines, regardless of whether the airline is a major carrier or regional provider.

ESTABLISH AIR PASSENGER PROTECTION REGULATIONS

Airline passengers have few rights in the United States. Significant issues, like compensation for flight delays and involuntary bumping, are not mandatory.³⁶ And there are too few requirements for airlines to make flying convenient, such as ensuring that families can sit together, and providing accessible seating for persons with disabilities. Airlines sometimes offer credits or vouchers in place of cash when there are delays or cancellations — and many do not have a policy of offering anything at all.³⁷

Congress should establish air passenger protection regulations, which would require mandatory and prompt compensation for flight delays, cancellations, involuntary bumping, and mishandled baggage, and it should mandate convenience rules including for families traveling with children and persons with disabilities.

Recommendation

- Congress should pass air passenger protection regulations, complete with mandatory compensation and convenience rules, similar to the current optional policies the DOT has captured in its “Airline Customer Service Dashboard.”³⁸ This would include specific provisions addressing flight delays, cancellations,

35 Installation and Operation of Flightdeck Installed Physical Secondary Barriers on Transport Carrier Airplanes in Part 121 Service, 88 Fed. Reg. 41, 295 (Jun. 26, 2023) (to be codified at 14 C.F.R. pts. 25 and 121).

36 *Airline Customer Service Dashboard*, U.S. Dep’t of Transp. (May 6, 2023), <https://www.transportation.gov/airconsumer/airline-customer-service-dashboard>.

37 *DOT to Propose Requirements for Airlines to Cover Expenses and Compensate Stranded Passengers*, U.S. Dep’t of Transp. (May 8, 2023), <https://www.transportation.gov/briefing-room/dot-propose-requirements-airlines-cover-expenses-and-compensate-stranded-passengers>; see also *Refunds*, U.S. Dep’t of Transp., <https://www.transportation.gov/individuals/aviation-consumer-protection/refunds> (last visited Oct. 20, 2023); see also Teresa Murray and Mike Litt, *Can’t get a refund from your airline? Here’s what you can do.*, PIRG, <https://pirg.org/articles/cant-get-a-refund-from-your-airline-heres-what-you-can-do/> (last visited Oct. 20, 2023).

38 *Airline Customer Service Dashboard*, *supra* note 30.

involuntary bumping, mishandled baggage, mistreatment of persons with disabilities and wheelchairs, and family seating.

STANDARD MINIMUM AIRCRAFT SEAT SIZES

Over the last 25 years all of the airlines have reduced both the width and legroom of seating in their economy classes, down from an average of 35 inches of legroom (seat “pitch”) to 31 inches and in some cases 28 inches, and in width from 18.5 inches to 17 inches.³⁹ Shrinking seat sizes raise a variety of problems. Even as seats are getting smaller, Americans are getting larger, according to data on body-mass index and obesity from the Centers for Disease Control.⁴⁰ This can lead to comfort issues both for passengers and for those sitting next to them. Small seats also mean less room to maneuver, which can be problematic for travelers’ health, especially on long flights.⁴¹ They are a safety issue, in case an evacuation is necessary. Smaller seats are also a source of conflict and frustration between passengers, which can lead to disruptions.⁴² In recent years media reports have detailed passenger conflicts and even fights over tight confines.⁴³ In fact, the FAA’s call for public comments on this issue in 2022 generated more than 26,000 mostly angry responses, with many commenters describing sitting in small seats as “torture.”⁴⁴

The Department of Transportation should require minimum standards for economy-class seat sizes. This standard should address issues of comfort, health, and safety, in line with the needs of the traveling public. The FAA has the authority to address the need for such regulations under a 2018 directive from Congress, but unfortunately has not followed

39 Kate Gibson, *FAA flooded with complaints over shrinking airline seats: “Torture,”* CBS News (Nov. 2, 2022), <https://www.cbsnews.com/news/airline-seat-size-faa-complaints/>.

40 Nat’l Ctr. for Health Stats. *Health, United States – Data Finder*, Ctrs. for Disease Control and Prevention, <https://www.cdc.gov/nchs/health-data-finder.htm?year=2019&table=Table%20026> (last visited June 26, 2023) (showing normal weight, overweight, and obesity among adults aged 20 and over, by selected characteristics: United States, selected years 1988-1994 through 2015-2018).

41 For example, some studies have suggested that air travel can contribute to deep vein thrombosis, especially for travelers with high-risk factors. For a discussion, see, e.g., *Rulemaking Petition: The Case of the Incredible Shrinking Airline Seat*, FlyersRights.org (Oct. 5, 2022), <https://img1.wsimg.com/blobby/go/2b7ac7a8-3914-4be3-a69a-dbd59cb43a84/downloads/Minimum%20Seat%20Size%20Standards%20Rulemaking%20Petitio.pdf?ver=1664991510160>.

42 *Southwest Airlines plane returns to LAX after fight between passengers*, ABC-7 (Oct. 19, 2015), <https://abc7.com/southwest-lax-flight-fight-plane/1040155/>.

43 Aimee Ortiz, *Recline in Your Airplane Seat? A Debate Rages in the Skies and Online*, N.Y. Times (Feb. 15, 2020), www.nytimes.com/2020/02/15/travel/airplane-seat-recline-video.html; see also Jared Leone, *2 passengers detained at Austin airport after fight over reclined seat*, Kiro7 (Aug. 2, 2021), <https://www.kiro7.com/news/trending/2-passengers-detained-austin-airport-after-fight-over-reclined-seat/AUPRWFUJL5FVNE77Y7QOABEPW4/>.

44 Fed. Aviation Admin., *Minimum Seat Dimensions Necessary for Safety of Air Passengers (Emergency Evacuation)*, Regulations.gov (Aug. 2, 2022), www.regulations.gov/document/FAA-2022-1001-0001/comment?filter=torture (showing comments filtered by search term “torture”).

up effectively.⁴⁵ If the FAA does not act in a timely fashion, Congress should impose the requirement by statute.

Recommendation

- The DOT should require minimum seat size standards, under its 2018 authority.⁴⁶
- Congress should impose minimum seat sizes by statute.

PROTECT INFANTS INFLIGHT

For decades the National Transportation Safety Board, flight attendant unions, pediatrician organizations, and aviation safety experts worldwide have universally concluded that the only safe way for children under 2 to travel on a commercial aircraft is to be in an FAA-approved child seat during takeoff, landing, turbulence, and emergencies.⁴⁷ In fact, the FAA itself acknowledges this on its website: “The safest place for your child under the age of two on a US airplane is in an approved child restraint system (CRS) or device, not in your lap.”⁴⁸ But the FAA has repeatedly refused to close the “lap child” loophole that has existed in federal aviation regulations since 1953, even after the U.S. DOT’s Future of Aviation Advisory Committee recommended addressing the issue in 2010.⁴⁹ The FAA should mandate child seats for all passengers under 2.

Recommendation

- The FAA should mandate child seats for all passengers under 2.

MANDATE AIRLINE TELEPHONE CALL CENTERS

45 FAA Reauthorization Act of 2018, Pub. L. 115-254 §577; Press Release, Congressman Steve Cohen, *Congressman Cohen Expresses Disappointment at FAA Airplane Seat Safety Study* (Apr. 1, 2022), <https://cohen.house.gov/media-center/press-releases/congressman-cohen-expresses-disappointment-faa-airplane-seat-safety>.

46 FAA Reauthorization Act of 2018, Pub. L. 115-254 §577; Request for Comments in Minimum Seat Dimensions Necessary for Safety of Air Passengers (Emergency Evacuation), 87 Fed. Reg. 47,494 (Aug. 3, 2022).

47 Patricia A. Friend, Int’l President, Association of Flight Attendants-CWA, Written Submission, NTSB Child Passenger Safety Forum (Dec. 9, 2010), http://ashsd.afacwa.org/docs/CRSForum9Dec2010_Friend_Written.pdf; *Safety Alert: Child Passenger Safety on Aircraft*, National Transportation Safety Board (Dec. 2015), <https://www.nts.gov/Advocacy/safety-alerts/Documents/SA-015.pdf>; Committee on Injury and Poison Prevention, *Restraint Use on Aircraft*, 108 Pediatrics 1218-1222 (2001), <https://doi.org/10.1542/peds.108.5.1218>; *Child Restraint Systems and Airline Travel*, Aerospace Medical Association (Jul. 3, 2013), <https://www.asma.org/asma/media/asma/Travel-Publications/Child-Restraint-Systems-and-Airline-Travel-3-July-2013.pdf>. For data on injuries, see Paulo M. Alves MD, Neil Nerwich MD, Alexandre T. Rotta MD, 35 Pediatric Emergency Care 687 (Oct. 2019), https://journals.lww.com/pec-online/fulltext/2019/10000/in_flight_injuries_involving_children_on.7.aspx.

48 *Flying with Children*, Fed. Aviation Admin. (Sept. 8, 2023), www.faa.gov/travelers/fly_children.

49 The Future of Aviation Advisory Committee, Final Report, U.S. Dep’t of Transp. 61 (Apr. 11, 2011), <https://www.transportation.gov/sites/dot.gov/files/docs/faac-final-report-for-web.pdf>.

Frontier Airlines recently shut down its call center and passengers can no longer interact with the company other than through online channels. What’s more, during the summer of 2022, there were constant media reports of delays exceeding five and even 10 hours for passengers attempting to call domestic airlines.⁵⁰

DOT should direct all U.S. air carriers to maintain 24/7 call center access, including limits for reasonable wait times and access for passengers with disabilities.⁵¹

Recommendation

- DOT should direct all U.S. air carriers to maintain 24/7 call center access, including limits for reasonable wait times and access for passengers with disabilities.

PART IV: OVERSIGHT AND ENFORCEMENT

REMOVE CONSTRAINTS ON DOT’S UNFAIR AND DECEPTIVE PRACTICES AUTHORITY

In November 2020, the DOT under the Trump Administration issued a rule that greatly restricted the Department’s own enforcement and rulemaking authority overseeing the airline industry’s unfair and deceptive practices.⁵² In January 2022, under the Biden Administration, the DOT issued a new rulemaking to restore such authority, but this proposal fell short of repealing the Trump-era regulation.⁵³ Restoring full authority is critical for two key reasons: The unfair and deceptive practices rule is one of the DOT’s only tools to reign in bad behavior by the airlines, and the Airline Deregulation Act’s federal preemption clause (see below) effectively makes the Secretary of Transportation the only enforcer for this industry.

50 Ramishah Maruf, *Frontier Airlines no longer has a customer service phone line*, CNN Business (Nov. 26, 2022), <https://www.cnn.com/2022/11/26/business/frontier-airlines-customer-service-call-center/index.html>.

51 This could be mandated under 14 C.F.R. 399, subpart G.

52 Anna Laitin & Michael McCauley, *DOT’s new rule leaves consumers more vulnerable to unfair and deceptive airline industry practices*, Consumer Reports (Nov. 30, 2020), https://advocacy.consumerreports.org/press_release/dots-new-rule-leaves-consumers-more-vulnerable-to-unfair-and-deceptive-airline-industry-practices/. 49 U.S.C. § 41712 addresses “unfair and deceptive practices and unfair methods of competition” by U.S. airlines.

53 William J. McGee & George Slover, *CR applauds DOT for new rule that helps restore its authority to protect consumers from unfair and deceptive airline practices*, Consumer Reports (Jan. 25, 2022), https://advocacy.consumerreports.org/press_release/cr-applauds-dot-for-new-rule-that-helps-restore-its-authority-to-protect-consumers-from-unfair-and-deceptive-airline-practices/.

Recommendation

- DOT should repeal the Trump-era rulemaking that weakened its ability to protect passengers from unfair and deceptive practices.

EMPOWER STATE ATTORNEYS GENERAL

When President Carter signed the Airline Deregulation Act in 1978,⁵⁴ the law included a preemption clause that effectively eliminated most oversight by state courts, state attorneys general, and state legislatures. In 2022 American Economic Liberties Project documented how all three branches of state governments have been blocked from protecting competition and consumer rights since 1978 and proposed legislation to rescind the preemption clause and give authority to states to engage in law enforcement over airline issues.⁵⁵ A bipartisan coalition of 38 state attorneys general also supports authority for states to enforce consumer protections for airline travelers.⁵⁶ Sen. Ed Markey adapted the state attorney general clause of AELP's proposal as part of the FAA Reauthorization Act, and it awaits approval in the Senate.

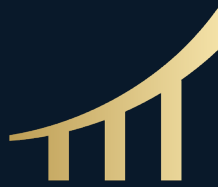
Recommendation

- Congress should pass Markey Amendment #26 and empower state attorneys general with authority over U.S. airlines.

⁵⁴ Airline Deregulation Act, Pub. L. 95-504 (1978).

⁵⁵ *Economic Liberties Releases Model Legislation to Eliminate Airlines' Liability Shield*, American Economic Liberties Project (Sept. 20, 2022), www.economicliberties.us/press-release/economic-liberties-releases-model-legislation-to-eliminate-airlines-liability-shield/.

⁵⁶ *Bipartisan Coalition of Attorneys General Fight to Protect Airline Customers*, National Association of Attorneys General (Aug. 31, 2022), www.naag.org/press-releases/bipartisan-coalition-of-attorneys-general-fight-to-protect-airline-customers/.



Vanderbilt
Policy Accelerator
for Political Economy & Regulation

VANDERBILT UNIVERSITY

The Vanderbilt Policy Accelerator for Political Economy and Regulation (VPA) at Vanderbilt University focuses on cutting-edge topics in political economy and regulation, bringing research, education, and policy proposals in these areas from infancy to maturity.

vu.edu/vpa

**AMERICAN
ECONOMIC
LIBERTIES
PROJECT**

The American Economic Liberties Project is a non-profit and non-partisan organization fighting against concentrated corporate power to secure economic liberty for all.

We do not accept funding from corporations. Contributions from foundations and individuals pay for the work we do.

economicliberties.us

[@economicliberties](https://twitter.com/economicliberties)

info@economicliberties.us