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Navigating Passenger Compensation: Implications for Airlines and Consumers

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**NAVIGATING PASSENGER COMPENSATION:
IMPLICATIONS FOR AIRLINES AND CONSUMERS**

NOOR U. AIN*

ABSTRACT

Amid winter’s icy grip, as frigid December storms swept across the nation, a distressing scenario unfolded for countless airline passengers. In the realm of air travel, a ticket represents more than just a mere document. It embodies a contract, a covenant between passengers and airline companies. It symbolizes an agreement made by airlines—a commitment to delivering timely and uninterrupted travel experiences. Following the pandemic, which brought about technological failures, system outages, and staffing shortages, many travelers found themselves stranded due to prolonged flight delays or cancellations. Currently, the absence of viable options for passengers to seek recompense in the form of refunds, compensation, or expense reimbursements only compounds the challenges faced during such inconveniences. In light of the widespread disruptions gripping the commercial aviation industry, the U.S. Department of Transportation has introduced a proposed rule to provide restitution to affected passengers. This proposed rule mandates that airlines take on the responsibility of covering specific expenditures incurred by passengers and extend compensation as redress for the difficulties resulting from flight delays and cancellations. This comment seeks to examine the contours of the proposed rule and delineate the arguments both in support of and against its potential implementation.

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I. INTRODUCTION & OUTLINE

In the aftermath of the COVID-19 pandemic, the aviation industry confronted an unparalleled upheaval characterized by a tumultuous confluence of factors.¹ This confluence included a

¹ *COVID-19 Pandemic: Observations on the Ongoing Recovery of the Aviation Industry*, U.S. GOV'T ACCOUNTABILITY OFF. (Oct. 21, 2021), <https://www.gao.gov/products/gao-22-104429> [<https://perma.cc/EPL8-YFBY>].

cascade of technological failures, system outages, and the crippling impact of staffing shortages.² These circumstances merged to create a pressing issue—countless travelers who had little influence over these unforeseen circumstances found themselves stranded due to existing flight delays and abrupt cancellations.³ The upheaval in air travel resulted in a myriad of financial and emotional challenges, underscoring a profound need for redress and fair compensation.⁴ In particular, compounding with the past December Southwest Airlines meltdown, the span from December 21 to 29, 2022, bore witness to one of the most profound disturbances in recent history.⁵ This period was characterized by the cancellation of over 16,700 flights and events that reverberated nationwide, leaving an indelible mark on the nation’s collective experience.⁶

The disruptions experienced during the pandemic and, notably, the staggering impact of cancellations by major airlines like Southwest Airlines have brought this matter to the forefront of discussions on passenger compensation.⁷ As travelers face substantial financial burdens and emotional distress, the urgency of addressing this issue is more apparent than ever.⁸

On May 8, 2023, the Department of Transportation (DOT) announced that it would be issuing a new Notice of Proposed Rulemaking that, if made final, will require airlines to provide compensation and cover expenses for meals, hotels, and other

² *See id.*

³ Olivia Land, *The Real Reasons Behind US Flight Cancellations, Delays: Don’t Blame Mother Nature*, N.Y. POST (June 29, 2023), <https://nypost.com/2023/06/29/the-real-reasons-behind-us-flight-cancelations-delays/> [<https://perma.cc/PC79-CYCV>].

⁴ *See* Leslie Josephs, *Southwest CEO Maps Out a Recovery After Holiday Meltdown: ‘We Have Work to Do’*, CNBC (Jan. 27, 2023), <https://www.cnbc.com/2023/01/25/southwest-airlines-tries-to-improve-its-system-after-holiday-meltdown.html> [<https://perma.cc/NY2K-VKSR>].

⁵ Isabella Simonetti & Peter Eavis, *Southwest’s Debacle, Which Stranded Thousands, to be Felt for Days*, N.Y. TIMES (Dec. 29, 2022), <https://www.nytimes.com/2022/12/27/business/southwest-flights-canceled-travel.html> [<https://perma.cc/S5RJ-R42X>].

⁶ Josephs, *supra* note 4.

⁷ *Id.*; Valerie Yurk, *Biden Administration Drafting Airline Passenger Protection Rules*, ROLL CALL (May 8, 2023), <https://rollcall.com/2023/05/08/biden-administration-drafting-airline-passenger-protection-rules/> [<https://perma.cc/8RER-DZQA>] (“Lawmakers in Congress have been pressing the Federal Aviation Administration to address passenger protections after what critics have called a Southwest Airlines Co. ‘meltdown’ in December when delays and cancellations stranded thousands of passengers across the country during the holiday season.”).

⁸ Josephs, *supra* note 4.

amenities when their passengers are stranded.⁹ The White House issued an official statement addressing the same initiative on the same day.¹⁰ President Biden articulated a deep concern regarding disruptions in air service, particularly during holiday travel seasons.¹¹ This comment argues that the DOT's proposed rule, which will provide restitution to passengers affected by flight delays and cancellations, is a significant step towards safeguarding passenger rights and rectifying the imbalances in the current compensation landscape.

Part II of this comment discusses the history of regulating the airline industry, tracing its evolution from the early days of aviation to the present. It also examines subsequent regulatory changes and their implications for passenger rights. Part III introduces the three levels of airline passenger protection. Part IV introduces the proposed rule introduced by the DOT and provides a detailed explanation of the proposed rule, outlining its key provisions and requirements. Part IV also examines the regulatory landscape that paved the way for its inception, thus providing a crucial context for understanding the rationale behind the DOT's latest proposal. Furthermore, Part IV sheds light on the critical issues that have led to the need for such regulatory measures. Part V briefly explains the current regulatory landscape regarding the proposed rules.

Part VI analyzes arguments in favor of the proposed rule, highlighting how it could improve passenger rights and protections. This includes discussions about compensation for specific expenditures and redress for the difficulties faced by passengers. Part VI also explores how the rule may enhance accountability for airlines and align with international standards and practices.

⁹ Press Release, Pete Buttigieg, Secretary, DOT, *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> [<https://perma.cc/7RSZ-NBTQ>] [hereinafter *DOT to Propose Requirements for Airlines*] (“For the first time in U.S. history, DOT initiates a rulemaking that would require airlines to compensate passengers and cover certain expenses for controllable delays and cancellations.”).

¹⁰ *Remarks by President Biden on Airline Accountability*, WHITE HOUSE (May 8, 2023), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/05/08/remarks-by-president-biden-on-airline-accountability/> [<https://perma.cc/R9YE-6QT6>] [hereinafter *Remarks by President Biden*].

¹¹ *Id.* (“Last holiday season, travelers were stranded for days and had to scramble to find other ways to—for reaching their destinations. Many missed family gatherings, spent Christmas at an airport, waited countless hours in line or on the phone because there weren’t enough pilots, there weren’t enough personnel. That’s unacceptable.”).

Part VII examines arguments against the proposed rule and addresses concerns such as the potential economic burden on airlines, the complexity of implementing compensation, and the possibility of increased ticket prices for passengers. Lastly, Part VIII analyzes the potential impacts of the proposed rule by evaluating the benefits and drawbacks of the rule considering its implications for passengers, airlines, and the aviation industry as a whole.

II. HISTORY OF REGULATING THE AIRLINE INDUSTRY

In the early stages of aviation history, safety measures were largely constrained by the technological limitations of that era.¹² As aviation pioneers took flight in elementary aircrafts, the absence of comprehensive regulations left passengers and aviation personnel vulnerable to a range of risks.¹³ As the aviation industry's potential became increasingly evident, so did the need for regulatory oversight.¹⁴ In fact, “[t]he present-day protections for airline passengers are the result of a long history of regulating the aviation industry.”¹⁵ Following initial government involvement in the 1920s, federal regulations gradually expanded throughout the 20th century, ultimately leading to various federal agencies supervising aviation safety.¹⁶

A. THE AIR COMMERCE ACT OF 1926 AND THE CIVIL AERONAUTICS ACT OF 1938

In 1926, Congress passed the Air Commerce Act, marking a pivotal moment in the early history of aviation regulation.¹⁷ This legislation represented the first federal regulation to improve and maintain safety standards for the aviation industry.¹⁸ Simultaneously, within the Department of Commerce, a new Aeronautics Branch “assumed primary responsibility for aviation oversight.”¹⁹

¹² *A Brief History of the FAA*, FED. AVIATION ADMIN. (Nov. 15, 2021), https://www.faa.gov/about/history/brief_history [<https://perma.cc/9KRB-YYWB>].

¹³ *See id.*

¹⁴ *See id.*

¹⁵ Hannah Foote, Comment, *Delayed Flights and Delayed Rights: It is Time for the United States to Follow the European Union's Lead and Enact More Regulations to Protect Airline Passengers*, 88 J. AIR L. & COM. 919, 924 (2023).

¹⁶ *A Brief History of the FAA*, *supra* note 12.

¹⁷ *Id.* (explaining that the Air Commerce Act was a “landmark” piece of legislation that entrusted the “Secretary of Commerce with fostering air commerce, issuing and enforcing air traffic rules, licensing pilots, certifying aircraft, establishing airways, and operating and maintaining aids to air navigation.”).

¹⁸ *See id.*

¹⁹ *Id.*

In 1938, President Franklin D. Roosevelt signed the Civil Aeronautics Act, resulting in the establishment of the independent Civil Aeronautics Authority (CAA).²⁰ This Act was a crucial step in ensuring a federal emphasis on aviation safety.²¹ The CAA was entrusted with substantial power. It was empowered to closely regulate the business operations of airlines, with a particular focus on preventing “unfair business practices and unfair methods of competition.”²² This encompassed the authority “to regulate airline fares and determine the routes individual carriers served.”²³ This multifaceted approach underscored the government’s determination to ensure the safety and integrity of the aviation industry.

B. THE FEDERAL AVIATION ACT OF 1958

The 1950s witnessed a series of midair collisions involving both military and commercial aircrafts, underscoring the necessity for a coordinated system to manage airspace for both military and civilian purposes.²⁴ Concurrently, the rapid growth of the airline industry led to increasingly congested conditions at commercial airports and posed various challenges.²⁵ In response to these pressing concerns, President Dwight D. Eisenhower signed the Federal Aviation Act into law in 1958.²⁶ This pivotal legislation led to the creation of the Federal Aviation Agency (FAA), tasked with overseeing and regulating safety within the airline industry.²⁷ Under the authority of this Act, the Civil Aeronautics Board (CAB) assumed the role of stringent regulation over air carriers, exerting control over overseeing various critical aspects such as routes, fares, and services.²⁸

²⁰ *Id.*

²¹ *Id.*

²² Clinton M. Hester, *The Civil Aeronautics Act of 1938*, 9 J. AIR L. & COM. 451, 454 (1938).

²³ *A Brief History of the FAA*, *supra* note 12.

²⁴ *Id.* (“The accident dramatized the fact that, even though U.S. air traffic had more than doubled since the end of World War II, little had been done to mitigate the risk of midair collisions.”).

²⁵ *See id.*

²⁶ Federal Aviation Act of 1958, Pub. L. No. 85-726, 72 Stat. 731 (current version at 49 U.S.C. § 40101).

²⁷ The stated purpose of the FAA was “to best foster [civil aviation’s] development and safety, and to provide for the safe and efficient use of the airspace by both civil and military aircraft, and for other purposes.” Federal Aviation Act of 1958, *supra* note 26, Preamble.

²⁸ Federal Aviation Act of 1958, *supra* note 26, § 204.

Furthermore, the Federal Aviation Act included a saving provision that preserved pre-existing statutory and common law remedies.²⁹ As a result, individual states retained their capacity to regulate intrastate airfares and enforce their own regulations pertaining to deceptive trade practices.³⁰ This dual approach ensured federal oversight and state-level flexibility in the realm of aviation regulation.

C. THE DEPARTMENT OF TRANSPORTATION ERA

In response to the need for a well-coordinated transportation system, President Lyndon B. Johnson advocated for the establishment of a single, unified department responsible for developing and implementing comprehensive transportation policies and programs across all modes of transportation.³¹ Therefore, in 1966, Congress authorized the creation of the Department of Transportation (DOT).³² With this newly formed agency, the original FAA was absorbed under the DOT umbrella and adopted a new name, the Federal Aviation Administration.³³ The DOT's fundamental mission was to develop "efficient, convenient, safe and low-cost transportation" solutions that catered to the public's needs, an objective explicitly outlined by Congress during the establishment of the DOT.³⁴ Throughout the late 1950s and 1960s, the FAA faced the considerable challenge of managing scheduling delays by a substantial 112% increase in the number of aircraft operations monitored by FAA air traffic control towers.³⁵ These

²⁹ See *Trinidad v. Am. Airlines Inc.*, 932 F. Supp. 521, 524 (S.D.N.Y. 1996).

³⁰ *Id.*

³¹ *A Brief History of the FAA*, *supra* note 12; *Documentary History of the Creation of the U.S. Department of Transportation*, ENO CTR. FOR TRANSP. (Oct. 13, 2015), <https://enotrans.org/eno-resources/usdot-50th-docs/> [<https://perma.cc/9SCG-MLSR>].

³² *About DOT*, U.S. DEP'T OF TRANSP. (Mar. 28, 2022), <https://www.transportation.gov/about> [<https://perma.cc/JB3U-UB4B>].

³³ *A Brief History of the FAA*, *supra* note 12.

³⁴ John A. Volpe, *The Department of Transportation and the Consumer*, 8 SAN DIEGO L. REV. 4, 5 (1971) (citing Department of Transportation Act, 49 U.S.C. § 1651 *et seq.* (1966)); see also WebFX, *The History of Aviation Safety*, HRD AERO SYS., INC. (June 15, 2022), <https://www.hrd-aerosystems.com/blog/history-of-aviation-safety/> [<https://perma.cc/JGL8-MSGV>] ("Since the 1960s, the FAA's responsibilities have continued to grow. Currently, their safety programs include: Creating systems for military and commercial air traffic control, such as airport towers and flight service stations; establishing airways and air traffic rules; licensing pilots and maintenance technicians; certifying repair stations, technicians, mechanics and flight crews; participating in international conferences and exchanges with regulatory bodies in other countries; [and] developing manufacturing standards for airworthiness.").

³⁵ *A Brief History of the FAA*, *supra* note 12.

delays incurred significant financial costs for air carriers and caused extensive inconveniences and expenses for passengers.

D. THE DEREGULATION AND THE AIRLINE DEREGULATION ACT OF 1978

The Airline Deregulation Act, signed into law by President Carter on October 24, 1978, ushered in a transformative era of a highly competitive airline industry.³⁶ Prior to 1978, the federal government exercised authority over airline rates, routes, and service terms, much like its oversight of public utilities, leading to elevated airline travel expenses.³⁷ However, the Airline Deregulation Act of 1978 marked a significant departure from this model. The Deregulation Act phased out the government's control over fares and services.³⁸ It allowed market forces to dictate the price and quality of domestic airline services in the United States while empowering the DOT to oversee and enforce consumer protection requirements for air travel.³⁹ The underlying premise was that deregulation would incentivize new carriers to enter the market, fostering competition, reducing fares, and improving services.⁴⁰

Despite deregulation, the Airline Deregulation Act (ADA) preserved federal preemption over any law related to the price, route, or service of an air carrier concerning interstate air transportation, maintaining regulatory control in an otherwise deregulated industry.⁴¹ This preemption clause aimed to ensure uniformity in compliance with the ADA and to implement federal economic deregulation policies insulated from state regulation.⁴² Notably, the ADA did not eliminate the preexisting savings clause of the 1958 Federal Aviation Act, which safeguarded state statutory and common law remedies.⁴³ This clause remained in effect,

³⁶ *Id.*

³⁷ U.S. GOV'T ACCOUNTABILITY OFF., GAO-06-630, AIRLINE DEREGULATION: REREGULATING THE AIRLINE INDUSTRY WOULD LIKELY REVERSE CONSUMER BENEFITS AND NOT SAVE AIRLINE PENSIONS 1 (2006) ("The Airline Deregulation Act of 1978 phased out the government's control over fares and service and allowed market forces to determine the price and level of domestic airline service in the United States."). *See also* Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705 (1978) ("To amend the Federal Aviation Act of 1958, to encourage, develop, and attain an air transportation system which relies on competitive market forces to determine the quality, variety, and price of air services, and for other purposes.").

³⁸ GAO-06-630, *supra* note 37, at 8.

³⁹ *Id.*

⁴⁰ *See id.*

⁴¹ 49 U.S.C. § 41713(b); *see also* U.S. CONST. art. VI, cl. 2; *New York Airlines, Inc. v. Dukes Cnty.*, 623 F. Supp. 1435, 1441-42 (D. Mass. 1985).

⁴² *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378-79 (1992).

⁴³ Airline Deregulation Act of 1978, *supra* note 37, §105(a) (1).

ensuring that states retained the authority to regulate intrastate airfares and enforce their own regulations pertaining to deceptive trade practices.⁴⁴ Indeed, this clause posed significant legal challenges for passengers seeking redress in tort and contract suits, and it seemingly limited remedies for issues like deceptive fare advertisements.⁴⁵

III. THREE LEVELS OF AIRLINE PASSENGER PROTECTION

“The rights of domestic airline passengers are set forth at three different levels: in federal laws, in regulations, and in the airlines’ own policies.”⁴⁶ To a significant degree, Congress plays a pivotal role in defining the rights of airline passengers due to its authority to regulate commerce both domestically and internationally.⁴⁷ The DOT is tasked with carrying out and upholding the airline consumer rights legislation established by Congress.⁴⁸ The last source of airline passengers’ rights is found within the “Contract of Carriage” established by each carrier.⁴⁹ These contracts serve as the legal agreement between the airline and ticket holders, outlining both parties’ rights, responsibilities, and liabilities.⁵⁰ These contracts of carriage are readily accessible for download through airline websites or at ticketing facilities.⁵¹ Passengers have the option to take legal action in federal courts based on the terms of these contracts.⁵²

These contracts of carriage have replaced the “pre-deregulation-era ‘tariffs,’” which were subject to approval by the CAB.⁵³ “The CAB could take action against an air carrier that violated its approved tariffs.”⁵⁴ However, with deregulation, “the federal government no longer has control over airlines’ prices or routes,

⁴⁴ *Trinidad*, 932 F. Supp. at 524.

⁴⁵ *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 228–29 (1995); Laynie Giles, *Interpreting the Airline Deregulation Act of 1978: Federal Preemption over State Deceptive Advertising Laws*, 22 *TRANSP. L. J.* 87, 99–100 (1994); Eric W. Maclure, *Morales v. Trans World Airlines, Inc.: Federal Preemption Provision Clips States’ Wings on Regulation of Air Fare Advertising*, 71 *N.C. L. REV.* 905, 926–27 (1993).

⁴⁶ RACHEL Y. TANG, CONG. RSCH. SERV., R43078 AIRLINE PASSENGER RIGHTS: THE FEDERAL ROLE IN AVIATION CONSUMER PROTECTION 1 (2016).

⁴⁷ *Id.*; U.S. CONST. art. I, § 8, cl. 3.

⁴⁸ TANG, *supra* note 46, at 2.

⁴⁹ *Id.* at 4.

⁵⁰ *Id.*

⁵¹ *Id.*; see generally *Southwest Airlines Co. Contract of Carriage – Passenger*, SW AIRLINES CO. (Dec. 14, 2023).

⁵² TANG, *supra* note 46, at 4.

⁵³ *Id.*

⁵⁴ *Id.*

and contracts of carriage are not subject to federal review or approval.”⁵⁵ Nevertheless, if any condition within a contract of carriage conflicts with federal laws or regulations, the airline may not be able to enforce that condition.⁵⁶ Thus, federal aviation regulations directly impact the provisions outlined in an airline’s contracts of carriage.⁵⁷ For example, federal regulations establish compensation guidelines when an airline involuntarily bumps a passenger from a flight due to overbooking.⁵⁸

In the pre-deregulation era, “the CAB had the authority to approve carriers’ proposed fares and even to set fares itself.”⁵⁹ This approach ensured airlines’ profitability by establishing price controls and imposing barriers to new competitors.⁶⁰ However, since deregulation, price competition has taken precedence as the primary means of attracting passengers, supplanting the past focus on service quality.⁶¹ Following deregulation, airlines gained the ability to determine flight fares based on market demand, and they were no longer restricted in their choice of routes.⁶² As competition intensified, airlines adopted the hub-and-spoke system as a strategic approach for success.⁶³ However, this deregulation evolution towards affordability through price competition has come at the expense of passenger convenience and the availability of equitable treatment.⁶⁴ Even today, “[a]ccording to the market research firm, J.D. Power, customer satisfaction has dropped each of the last two years since the pandemic, driven in large part by ‘soaring demand, limited supply[,] and surging airfares,’ which have nonetheless led to a ‘golden age of enhanced revenues’ for airlines.”⁶⁵

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Richard Ritorto & Stephan A. Fisher, *Exploring Airline Contracts of Carriage and European Union Flight Delay Compensation Regulation 261 (EU 261)—A Bumpy But Navigable Ride*, 82 J. AIR L. & COM. 561, 564 (2017).

⁵⁸ *Id.* at 572.

⁵⁹ TANG, *supra* note 46, at 4.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Airline Deregulation: When Everything Changed*, SMITHSONIAN (Dec. 17, 2021), <https://airandspace.si.edu/stories/editorial/airline-deregulation-when-everything-changed> [<https://perma.cc/6HFW-4TAT>].

⁶³ John Sabel, *Airline-Airport Facilities Agreements: An Overview*, 69 J. AIR L. & COM. 769, 775–76 (2004).

⁶⁴ Alana Semuels, *Airlines are Terrible. Small Cities are Still Paying Them Millions of Dollars to Stick Around*, TIME MAG. (Jan. 17, 2023), <https://time.com/6247052/airlines-deregulation-american-inequality/> [<https://perma.cc/Y2LM-6RDX>].

⁶⁵ Jeff Neal, *Why Flying is Miserable*, HARV. L. TODAY (Nov. 14, 2023), <https://hls.harvard.edu/today/airline-deregulation-may-be-why-flying-is-such-a-miserable->

IV. THE U.S. DEPARTMENT OF TRANSPORTATION'S PROPOSED RULE

Amidst mounting passenger frustration stemming from pandemic-related flight cancellations and delays, the Biden administration unveiled on May 8, 2023, a proposed rule to compensate passengers for these travel disruptions.⁶⁶ Simultaneously, the DOT announced that it would be issuing a new Notice of Proposed Rulemaking on the same day for the upcoming rule designed to enhance passenger compensation and amenities.⁶⁷ Under this proposed rule, airlines would be held responsible for covering expenses such as meals, hotel accommodations, and re-booking when they are the cause of passengers being stranded due to flight cancellations or significant delays.⁶⁸ Importantly, these proposed rules exclude any weather-related issues, focusing on compensating and protecting U.S. passengers when their flights are canceled or significantly delayed due to factors within the airlines' control, such as mechanical problems or computer glitches.⁶⁹

If enacted, these rules would bring the rights and protections for U.S. passengers more in line with those already offered to passengers in the European Union and Canada.⁷⁰ This initiative

part-of-holiday-travel/ [https://perma.cc/RL2V-E637] (“Ahead of the holiday travel season, Harvard Law graduate Ganesh Sitaraman argues in a new book that deregulating the airline industry has led to higher costs, less choice, and more misery for the flying public.”).

⁶⁶ *Remarks by President Biden*, *supra* note 10.

⁶⁷ *DOT to Propose Requirements on Airlines*, *supra* note 9.

⁶⁸ *Id.*; *Remarks by President Biden*, *supra* note 10.

⁶⁹ Jessica Puckett, *With This New Federal Rule, You Could Be Paid for Your Next Flight Delay*, *CONDÉ NAST TRAVELER* (May 8, 2023), <https://www.cntraveler.com/story/federal-rule-compensation-for-flight-delays> [https://perma.cc/X2NM-EXB3]; Janet Bednarek, *Passengers Whose Flights are Canceled or Delayed May Soon Get Better Treatment in the US – Where Airlines Have Long Set Their Own Rules*, *UNIV. OF DAYTON MAG.* (July 3, 2023), <https://udayton.edu/magazine/2023/07/passenger-treatment.php> [https://perma.cc/LBG4-6LGT].

⁷⁰ *DOT to Propose Requirements for Airlines*, *supra* note 9; Maureen Groppe, *Biden Administration Proposing Rule Changes to Compensate Passengers for Flight Delays*, *USA TODAY* (May 9, 2023), <https://www.usatoday.com/story/news/politics/2023/05/08/biden-compensation-passengers-flight-delays/70193157007/> [https://perma.cc/T9JN-2F39]; Victor Reklaitis, *Biden Proposes Cash Compensation from Airlines for Flight Cancellation or Major Delays*, *MARKETWATCH* (May 8, 2023), <https://www.marketwatch.com/story/biden-proposes-airlines-offer-cash-compensation-for-flight-cancellations-or-big-delays-86c749ec> [https://perma.cc/T3X6-AX6F] (“Biden said his administration will propose a new regulation later this year that would require airlines to provide cash compensation in addition to refunds and amenities for stranded passengers. ‘Airline passengers in Canada, for example—in the European Union and other places—already get these compensations,

follows a two-year effort by the DOT to enhance the overall passenger experience, resulting in commitments from the ten largest airlines to provide meals, free rebooking on the same airline, and hotel accommodations, as outlined in the Department's Airline Customer Service Dashboard.⁷¹ The proposal signifies a notable departure from the current U.S. aviation regulations, which solely mandate ticket refunds.⁷²

The DOT has also expanded its Airline Customer Service Dashboard in an effort to provide greater transparency and information to travelers.⁷³ This dashboard now highlights which airlines currently offer specific compensation options, including cash compensation, travel credits or vouchers, and frequent flyer miles when they are responsible for flight delays or cancellations.⁷⁴ The forthcoming rulemaking aims to make these passenger compensation and amenity provisions mandatory, ensuring that passengers receive adequate support when airlines are accountable for

and guess what? It works,' Biden said during a brief speech on the issue. He said one study found that flight delays decreased after the EU required airlines to give payouts to passengers for them."); Suzanne Rowan Kelleher, *DOT Says U.S. Airlines Should Be Required To Pay Passengers For Flight Disruptions*, FORBES (May 8, 2023), <https://www.forbes.com/sites/suzannerowan-kelleher/2023/05/08/dot-us-airlines-required-pay-passengers-for-flight-disruptions/?sh=14e5c2628c69> [<https://perma.cc/7AGM-T6CK>] ("In Canada, for example, large airlines must pay \$400 CAD (\$300 U.S.) to a passenger who arrives between three and six hours late. The compensation rises to \$1,000 CAD (\$750 U.S.) for delays of nine or more hours. A passenger in Europe whose flight is canceled or delayed for more than three hours is entitled to between 250 (\$280 U.S.) and 600 (\$662 U.S.), depending on the distance of the flight.").

⁷¹ DOT to Propose Requirements on Airlines, *supra* note 8; See Airline Customer Service Dashboard, U.S. DEP'T OF TRANSP. (May 31, 2024), <https://www.transportation.gov/airconsumer/airline-customer-service-dashboard> [<https://perma.cc/NN7A-JCV8>] ("Secretary Buttigieg has called upon airlines to improve their customer service commitments to passengers, which all have done to varying degrees. The dashboards below provide information for air travelers on airlines' commitments to families flying with young children and customers experiencing significant flight disruptions due to circumstances within the airline's control. DOT encourages airlines to continue to strengthen their customer commitments. DOT will update and expand these dashboards as needed.").

⁷² Ian Duncan & Lori Aratani, *Biden Proposes Airlines Cover Passenger Expenses for Canceled Flights*, WASH. POST (May 8, 2023), <https://www.washingtonpost.com/transportation/2023/05/08/airlines-canceled-flights-passengers-compensation/> [<https://perma.cc/4AX7-TWAK>] ("The Department of Transportation will examine whether to require airlines to provide cash payouts, a major shift in aviation rules.").

⁷³ Airline Customer Service Dashboard, *supra* note 71.

⁷⁴ *Id.*

flight disruptions.⁷⁵ U.S. Transportation Secretary Pete Buttigieg emphasized the importance of this rulemaking, stating:

When an airline causes a flight cancellation or delay, passengers should not foot the bill. This rule would, for the first time in U.S. history, propose requiring airlines to compensate passengers and cover expenses such as meals, hotels, and rebooking in cases where the airline has caused a cancellation or significant delay.⁷⁶

A. DOT'S OFFICIAL COMMENTARY OF KEY ASPECTS OF THE PROPOSED RULE

The DOT's proposed rulemaking aims to address several critical aspects related to air travel.⁷⁷ These include providing "compensation for passengers when there is a controllable airline cancellation or significant delay," offering essential amenities such as "[a] meal or meal voucher, overnight accommodations, ground transportation to and from the hotel, and rebooking [options] for controllable delays or cancellations."⁷⁸ Additionally, the rulemaking seeks to ensure "[t]imely customer service during and after periods of widespread flight irregularities" and establish a clear "definition of [what constitutes] a controllable cancellation or delay."⁷⁹

To further bolster transparency and consumer protection, the DOT has launched initiatives such as FlightRights.Gov and expanded its Airline Customer Service Dashboard.⁸⁰ These efforts provide travelers with "more transparency about the types of compensation, if any, airlines currently guarantee when they are the cause of a cancellation or delay."⁸¹ Indeed, three compensation categories have been incorporated into the Commitments for Controllable Cancellations and Controllable Delays section to begin clarifying the definition of "controllable cancellation or delay."⁸² This includes "[c]ash compensation when a cancellation or delay results in passengers waiting for three hours or more

⁷⁵ *Id.*

⁷⁶ *DOT to Propose Requirements on Airlines*, *supra* note 9.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*; *Airline Customer Service Dashboard*, *supra* note 71.

⁸¹ *DOT to Propose Requirements on Airlines*, *supra* note 9; *Airline Customer Service Dashboard*, *supra* note 71.

⁸² *DOT to Propose Requirements on Airlines*, *supra* note 9; *Airline Cancellation and Delay Dashboard*, U.S. DEP'T OF TRANSP. (May 7, 2023), <https://www.transportation.gov/air-consumer/airline-cancellation-delay-dashboard> [<https://perma.cc/696Y-573H>].

from the scheduled departure time,” “[c]redit/travel voucher when cancellation results in [a] passenger waiting for 3 hours or more from the scheduled departure time,” and “[f]requent flyer miles when cancellation results in [a] passenger waiting for 3 hours or more from the scheduled departure time.”⁸³ At present, only Alaska Airlines provides assurance of frequent flyer miles.⁸⁴ In contrast, two airlines, Alaska and JetBlue, offer travel credit or vouchers as compensation in cases where passengers encounter substantial delays or cancellations due to factors “within the airline’s control, such as a mechanical issue.”⁸⁵ Importantly, “[n]o airline guarantees cash compensation when an airline issue causes the significant delay or cancellation.”⁸⁶ The Department’s overarching goal with this proposed rulemaking is to significantly improve the protection of passengers facing controllable delays and cancellations, ultimately preventing them from suffering financial losses.⁸⁷ Additionally, the Department anticipates that implementing these rules will lead to “improved airline on-time performance.”⁸⁸

B. FACTORS THAT LED TO THE DOT PROPOSAL

The recent announcement by the DOT represents the culmination of efforts and actions taken over the past two years to enhance consumer protection and improve the air travel experience.⁸⁹ The proposed rule is part of the Biden administration’s broader “consumer-oriented push” to eliminate “junk fees” in travel and other industries.⁹⁰ Notably, Secretary Buttigieg’s involvement prompted

⁸³ *Airline Cancellation and Delay Dashboard*, *supra* note 82.

⁸⁴ Alexandra Skores, *What Do the New DOT Rules Mean for Stranded Passengers?*, AVIATION PROS (May 9, 2023), <https://www.aviationpros.com/airlines/news/53059843/what-do-the-new-dot-rules-mean-for-stranded-passengers> [<https://perma.cc/TT8P-FPAE>]; *Airline Cancellation and Delay Dashboard*, *supra* note 81.

⁸⁵ *Id.*; *DOT to Propose Requirements for Airlines*, *supra* note 9.

⁸⁶ *DOT to Propose Requirements for Airlines*, *supra* note 9.

⁸⁷ *Id.* (“The Department’s rulemaking proposes to ensure that passengers experiencing controllable delays and cancellations are better protected from financial losses than is the case today.”); Greg Iacurci, *Canceled, Delayed Flights are Likely Over July 4 Holiday Weekend. What to Know About Your Rights*, CNBC (June 30, 2023), <https://www.cnbc.com/2023/06/30/delayed-and-canceled-flights-what-to-know-about-your-rights.html> [<https://perma.cc/HD7Y-LH57>] (“Travelers affected by a flight disruption may have some recourse. But the rules differ depending on the situation and airline. Federal law doesn’t require airlines to pay compensation to passengers for delays. . .”).

⁸⁸ *DOT to Propose Requirements for Airlines*, *supra* note 9.

⁸⁹ *Id.*

⁹⁰ Kelleher, *supra* note 70.

significant responses from airlines.⁹¹ Last summer, Secretary Buttigieg urged airlines to enhance their customer service plans prior to the release of the Airline Customer Service Dashboard.⁹² Prior to his intervention, “none of the 10 largest U.S. airlines guaranteed meals or hotel accommodations when they were at fault for a delay or cancellation.”⁹³ Now, “all 10 guarantee meals and nine guarantee hotel accommodations when an airline issue causes the delay or cancellation.”⁹⁴

During this two-year period, the DOT reports that it has undertaken several “unprecedented action[s]” to safeguard the interests of the traveling public.⁹⁵ Notably, the department “issued the largest fines in the history of the Department’s Office of Aviation Consumer Protection,” resulting in substantial monetary returns to affected passengers.⁹⁶ Since 2021, the DOT has facilitated “more than \$1 billion in refunds to travelers.”⁹⁷ Furthermore, Secretary Buttigieg advocated for fee-free family seating, a measure that previously had no commitment from any airline.⁹⁸ As a result, three airlines have pledged to guarantee fee-free family seating, which guarantees “a parent or caregiver could sit next to a child aged 13 or under without paying junk fees.”⁹⁹ Even more, the DOT is pursuing a rulemaking to mandate this practice for all airlines, and Secretary Buttigieg has also submitted a legislative proposal to Congress.¹⁰⁰ DOT introduced a family seating dashboard to

⁹¹ *DOT to Propose Requirements on Airlines*, *supra* note 9; Heather Murphey & Niraj Chokshi, *Pete Buttigieg Is Trying to Fix Air Travel With a ‘Dashboard.’ What’s on It?*, N.Y. TIMES (Sept. 2, 2022), <https://www.nytimes.com/2022/09/02/travel/airline-dashboard-flights-cancellations.html> [<https://perma.cc/A9FY-2Q8X>].

⁹² *DOT to Propose Requirements for Airlines*, *supra* note 9; Murphey & Chokshi, *supra* note 91.

⁹³ *DOT to Propose Requirements for Airlines*, *supra* note 9.

⁹⁴ *Id.*

⁹⁵ *Id.*; *see generally* *Rulemaking Process*, U.S. DEP’T OF TRANSP. (June 7, 2022), <https://www.transportation.gov/regulations/rulemaking-process> [<https://perma.cc/BQ39-Y63F>].

⁹⁶ *DOT to Propose Requirements for Airlines*, *supra* note 8; *see also* Bailey Berg, *Airline Passengers to Receive Cash Payments for Delayed Flights, Biden Says*, AFAR (May 8, 2023), <https://www.afar.com/magazine/new-rule-will-make-airlines-pay-travelers-for-delayed-flights> [<https://perma.cc/AQG3-UBV7>].

⁹⁷ *DOT to Propose Requirements for Airlines*, *supra* note 9.

⁹⁸ *Id.*; *Airline Family Seating Dashboard*, U.S. DEP’T OF TRANSP. (July 20, 2023), <https://www.transportation.gov/airconsumer/airline-family-seating-dashboard> [<https://perma.cc/9XNR-KXA9>]; Kelleher, *supra* note 70.

⁹⁹ *DOT to Propose Requirements for Airlines*, *supra* note 9.

¹⁰⁰ *Id.*; Press Release, Pete Buttigieg, Secretary, DOT, *Buttigieg Urges Congress to Pass Legislation to Ensure Fee-Free Family Seating for Parents* (Mar. 13, 2023), <https://www.transportation.gov/briefing-room/secretary-buttigieg-urges-congress-pass-legislation-ensure-fee-free-family-seating> [<https://perma.cc/4UP2-SQVB>].

assist consumers in evaluating airline fee-free family seating commitments, highlighting airlines offering this benefit.¹⁰¹

The DOT has also proposed other rules that encompass various aspects of air travel, including ticket refunds,¹⁰² disclosure of fees upfront,¹⁰³ and protection against services not provided.¹⁰⁴ Despite passenger volumes returning to pre-pandemic levels, concerns within the travel industry persist.¹⁰⁵ Experts warn that many of the issues that led to disruptions in the previous year, often referred to as the “airport chaos,” have not yet been fully addressed.¹⁰⁶ These issues include airline supply-chain problems, pilot shortages, and systemic weaknesses in aviation infrastructure.¹⁰⁷ Nonetheless, the Department views the proposed rules as a means to empower passengers by granting them rights and access to crucial information, ultimately fostering a more transparent and equitable air travel industry.¹⁰⁸

¹⁰¹ DOT to Propose Requirements for Airlines, *supra* note 9 (“... making it easier for parents to avoid paying junk fees to sit with their children when they fly.”); *Airline Family Seating Dashboard*, *supra* note 98.

¹⁰² DOT to Propose Requirements for Airlines, *supra* note 9 (“The Department’s proposed rule on Airline Ticket Refunds, if adopted, would: 1) require airlines to proactively inform passengers that they have a right to receive a refund when a flight is canceled or significantly changed, and 2) define a significant change and cancellation that would entitle a consumer to a refund as more than three hours for a domestic flight; and more than six hours for an international flight. The rule would also 3) require airlines to provide non-expiring vouchers or travel credits when people cannot travel because they have COVID-19 or other communicable diseases; and 4) require airlines that receive significant government assistance in the future related to a pandemic to issue refunds instead of non-expiring travel credits or vouchers when passengers are unable or advised not to travel because of a serious communicable disease.”).

¹⁰³ *Id.* (“The Department has proposed a rule that would significantly strengthen protections for consumers by ensuring that they have access to certain fee information before they purchase their airline tickets. Under the proposed rule, airlines and travel search websites would have to disclose upfront—the first time an airfare is displayed—any fees charged to sit with your child, for changing or cancelling your flight, and for checked or carry-on baggage. The proposal seeks to provide customers the information they need to choose the best deal. Otherwise, surprise fees can add up quickly and overcome what may look at first to be a cheap fare.”).

¹⁰⁴ *Id.* (“The Department has proposed a rule to refund passengers for services they paid for that are not actually provided (e.g., broken WiFi”).”).

¹⁰⁵ Kelleher, *supra* note 70; Suzanne Rowan Kelleher, *Why 20,000 Delayed Flights A Day Are Not Going Away Anytime Soon*, FORBES (July 19, 2022), <https://www.forbes.com/sites/suzannerowankelleher/2022/07/19/why-delayed-flights-not-going-away-soon/?sh=10b989057271> [<https://perma.cc/VGZ5-BHFC>].

¹⁰⁶ Kelleher, *supra* note 70; See *TSA Checkpoint Travel Numbers (Current Year Versus Prior Year/Same Weekday)*, TRANSP. SEC. ADMIN., <https://www.tsa.gov/travel/passenger-volumes> [<https://perma.cc/YL3U-4WTG>].

¹⁰⁷ Kelleher, *supra* note 70.

¹⁰⁸ DOT to Propose Requirements for Airlines, *supra* note 9.

V. THE CURRENT REGULATORY LANDSCAPE REGARDING AIRLINE COMPENSATION IN THE UNITED STATES

Currently, there are no federal rules requiring that airlines offer financial reimbursement or compensation to passengers in the event of flight delays.¹⁰⁹ Similarly, there are no existing regulations that require airlines to cover expenses beyond refunding the cost of the airline ticket when flight cancellations occur.¹¹⁰ There is no U.S. law or regulation compelling airlines to provide passengers with alternative flight options or to reimburse expenses related to food and accommodation in cases of flight cancellation or delay.¹¹¹ Nevertheless, some airlines voluntarily opt to provide these amenities to passengers due to prior commitments outlined in their contracts of carriage.¹¹² The only protection where U.S. law mandates compensation is when passengers are involuntarily bumped from flights that have been oversold (also known as “denied boarding”).¹¹³ Consequently, airlines have significant leeway to delay or cancel flights without facing substantial legal repercussions.

VI. PROPONENTS OF THE PROPOSED RULE: CONSUMER ADVOCATES AND POLICY EXPERTS

Advocates of the proposed rule view it as a crucial initiative in safeguarding passenger rights and ensuring equitable treatment within the airline industry.¹¹⁴ They argue that by implementing this

¹⁰⁹ *See Flight Delays*, U.S. DEP’T OF TRANSP. (May 15, 2024), <https://www.transportation.gov/airconsumer/flight-delays> [<https://perma.cc/K4P4-WTHY>].

¹¹⁰ *See id.*

¹¹¹ *See id.*

¹¹² *See Fly Rights*, U.S. DEP’T OF TRANSP. (May 6, 2023), <https://www.transportation.gov/airconsumer/fly-rights> [<https://perma.cc/6UK2-3XT2>] (“Each airline has its own policies about what it will do for delayed passengers waiting at the airport; there are no federal requirements. If you are delayed, ask the airline staff if it will pay for meals or a phone call. Some airlines, often those charging very low fares, do not provide any amenities to stranded passengers. Others may not offer amenities if the delay is caused by bad weather or something else beyond the airline’s control. Contrary to popular belief, for domestic itineraries airlines are not required to compensate passengers whose flights are delayed or canceled.”).

¹¹³ *See id.*; *Bumping & Oversales*, U.S. DEP’T OF TRANSP. (Apr. 15, 2021), <https://www.transportation.gov/individuals/aviation-consumer-protection/bumping-oversales> [<https://perma.cc/ZLF9-NB84>] (“An airline is required to compensate you after involuntarily bumping you from an oversold flight in certain situations. However, there are many situations where you are not entitled to compensation.”).

¹¹⁴ David Shepardson & Nandita Bose, *Biden Wants Airlines to Pay Passengers in U.S. for Lengthy Delays*, REUTERS (May 8, 2023), <https://www.reuters.com/business/>

rule, passengers will have more robust protections against flight delays, cancellations, and other disruptions, ensuring they receive appropriate compensation and assistance when faced with such issues.¹¹⁵ Additionally, advocates emphasize the importance of enhancing accountability for airlines, asserting that the proposed rule will hold carriers responsible for disruptions caused by their actions, ultimately leading to proactive measures to prevent delays and cancellations.¹¹⁶ Moreover, proponents highlight the significance of aligning U.S. regulations with international standards, particularly referencing the EC 261 regulation, to ensure consistency and coherence in passenger rights across different jurisdictions.¹¹⁷

A. IMPROVED PASSENGER PROTECTION AND ENHANCED ACCOUNTABILITY FOR AIRLINES

William McGee, a senior fellow for aviation and travel at the American Economic Liberties Project, emphasized the potential impact, claiming that “these proposed rules would have helped those 2 million passengers stranded all over the country.”¹¹⁸ McGee expressed confidence that had these rules been in place during the crisis, the situation for affected passengers would have been markedly improved.¹¹⁹ Indeed, McGee acknowledged these proposed regulations as a positive step forward.¹²⁰ He highlighted the potential for these rules to hold airlines accountable by publicly displaying their performance metrics, effectively encouraging carriers to prioritize passenger welfare.¹²¹ Tomasz Pawliszyn, CEO of AirHelp, echoed McGee’s opinions, considering the pro-

aerospace-defense/biden-plans-bolster-us-airline-consumer-protections-2023-05-08/ [https://perma.cc/8GK6-5BVW]; Mark Walker, *Biden Seeks Compensation for Passengers for Flight Delays and Cancellations*, N.Y. TIMES (May 9, 2023), <https://www.nytimes.com/2023/05/08/us/politics/flight-delays-cancellations-compensation-biden.html?searchResultPosition=1> [https://perma.cc/T3TE-UXZR]; Yurk, *supra* note 6.

¹¹⁵ Shepardson & Bose, *supra* note 114.

¹¹⁶ *Id.*

¹¹⁷ Christopher Elliot, *U.S. Flights Need More Consumer Protections. We Should Look to Europe*, WASH. POST (Nov. 2, 2022), <https://www.washingtonpost.com/travel/2022/11/02/canceled-flight-compensation-europe-us/> [https://perma.cc/AQ25-UKLS] (“After this summer’s airline customer service meltdown, consumer advocates and policy experts have seriously discussed adopting European-style consumer protection laws in the United States.”).

¹¹⁸ Skores, *supra* note 84.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* (“It can have the effect, quite frankly, of shaming some airlines when you go on there and you see that the airline has a lot of red X’s and very few green checkmarks,” he said, referring to the dashboard’s visualization of what airlines offer. “They may step up and voluntarily do the right thing.”).

posed changes as a “monumental step in the right direction” for passenger rights.¹²² Pawliszyn emphasized the necessity of aligning U.S. legislation with European standards to ensure adequate protection for passengers experiencing travel disruptions.¹²³ Citing recent incidents like the Southwest Airlines computer failure, Pawliszyn emphasized the importance of such regulations in securing financial compensation for affected travelers.¹²⁴ Notably, in introducing the proposed rule, the Biden administration argued stranded passengers must be “better protected from financial losses.”¹²⁵

B. ALIGNMENT WITH INTERNATIONAL STANDARDS AND PRACTICES

Advocates supporting the proposed rule also contend that it marks a significant step in aligning passenger protections in the aviation industry with international standards.¹²⁶ The EU has a longstanding precedent for regulations addressing flight cancellations and lengthy delays.¹²⁷ Notably, in the EU, “a similar regulation has been in place since 2004,” granting passengers specific rights when facing disruptions to their air travel plans.¹²⁸ The EU adopted Regulation 261/2004 (EC 261), which set uniform guidelines across the EU concerning compensation and passenger support in cases of denied boarding, flight cancellations, or extended flight delays.¹²⁹ Unless attributed to “extraordinary circumstances,” such as severe weather

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Remarks by President Biden, *supra* note 10; DOT to Propose Requirements for Airlines, *supra* note 9.

¹²⁶ See Ainara Tiefenthäler & Ceylan Yeginsu, *Cash for Delayed or Canceled Flights? What to Know About Biden’s Plan.*, N.Y. TIMES (MAY 9, 2023), <https://www.nytimes.com/2023/05/09/travel/airline-compensation-flight-delays-cancellations.html> [<https://perma.cc/FX66-KAJZ>]; Foote, *supra* note 15, at 938–47.

¹²⁷ Sarah J. Fox & Luis Martín-Domingo, *EU Air Passengers’ Rights Past, Present, and Future: In an Uncertain World (Regulation (EC) 261/2004: Evaluation and Case Study)*, 85 J. AIR L. & COM. 271, 275–76 (2020); *EC Regulation 261/2004*, AIRHELP, <https://www.airhelp.com/en/ec-regulation-261-2004/> [<https://perma.cc/4TNK-DZRY>] (“When it comes to EU Passenger Rights, EC 261/2004 is a regulation in European Union law that favors the passenger. It holds airlines financially accountable when air travel takes an unexpected turn, so long as the disruption was not caused by circumstances outside of the airline’s control.”).

¹²⁸ Tiefenthäler & Yeginsu, *supra* note 126.

¹²⁹ See Regulation 261/2004, of the European Parliament and of the Council of 11 February 2004 on Establishing Common Rules on Compensation and Assistance to Passengers in the Event of Denied Boarding and of Cancellation or Long Delay of Flights, and Repealing Regulation (EEC) No 295/91, 2004 O.J. (L 46) 2 (EC) [hereinafter EC 261/2004].

conditions or political unrest, this regulation empowers passengers to either receive a refund or be offered an alternative flight.¹³⁰ Significantly, this rule extends its coverage to all passengers, irrespective of their nationality, and encompasses flights originating within the EU, including those operated by U.S. airlines.¹³¹ However, when it comes to flights heading to EU countries, the regulation exclusively applies to carriers based within the EU.¹³²

Under EC 261, if flights experience late departures or are canceled less than 14 days before their scheduled departure, passengers may have the right to receive up to 600 euros, which is approximately equivalent to \$660 in compensation.¹³³ Additionally, passengers may also seek compensation if they are denied boarding.¹³⁴ Individuals can file their claims directly with the air carriers responsible for the disruptions or through online services to claim these entitlements.¹³⁵ Furthermore, EC 261 guarantees various rights and benefits to passengers affected by flight disruptions.¹³⁶ These include the right to assistance, such as meals, refreshments, and accommodations when necessary due to flight delays or cancellations.¹³⁷ The regulation also emphasizes the importance of informing passengers about their rights and providing clear information on flight status and options for re-routing.¹³⁸ Notably, in introducing the proposed rule, President Biden referenced research showcasing the positive influence of the EU's consumer rights regulations on air traffic in the region.¹³⁹ He cited a recent study published in the journal *Transport Policy* which demonstrates the tangible benefits of these regulations,

¹³⁰ *Id.* Preamble ¶ 12.

¹³¹ *Id.* Preamble ¶ 6.

¹³² *Id.*; Godwin N. Okeke & Bariyima Sylvester Kokpan, *Evaluation of the EU Regulation 261/2004 on Rights of Air Passengers in the Event of Delayed and Cancelled Flights*, 3 INT'L REV. OF L. & JURIS. 209, 210 (2021).

¹³³ EC 261/2004 art. 5(1)(c).

¹³⁴ *Id.* art. 4(3).

¹³⁵ *Air Passenger Rights*, YOUR EUROPE, https://europa.eu/youreurope/citizens/travel/passenger-rights/air/index_en.htm#compensation-delay-1 [<https://perma.cc/945R-CZRU>].

¹³⁶ EC 261/2004.

¹³⁷ *Id.* art. 9.

¹³⁸ Dylan Pearl & Jeffrey Brownson, *What Is EU 261 and How Does It Work?*, FORBES ADVISOR (May 14, 2024), <https://www.forbes.com/advisor/credit-cards/travel-rewards/eu-261/> [<https://perma.cc/ZDV3-XFJ8>].

¹³⁹ *Remarks by President Biden*, *supra* note 10 (“One study found that the European Union required airlines to compensate passengers for flight delays; the number of flight delays went down.”).

including the reduction of departure delays and improvements in airlines' punctuality performance.¹⁴⁰

VII. CHALLENGES TO THE PROPOSED RULE: INDUSTRY AND GOVERNMENT OPPOSITION

While consumer groups have praised the proposed rules, arguing that “the administration’s actions were overdue,” these proposed changes “face fierce opposition from the airline industry.”¹⁴¹ Additionally, lawmakers and academics have weighed in, expressing disapproval of the regulations.¹⁴² The arguments against the proposed rule revolve around the implication on various aspects of the airline industry and air travel experience, such as increased ticket prices, negative impact on competition, financial burdens on airlines, and aircraft safety and performance.¹⁴³

A. INCREASED TICKET PRICES AND COST IMPLICATIONS FOR AIRLINES

The International Air Transportation Association (IATA) criticized the DOT and the Biden Administration’s proposal to mandate airlines to provide financial compensation, citing the significant cost implications for airlines and the potential impact on ticket prices.¹⁴⁴ IATA argues that airlines already have financial incentives to minimize delays and cancellations and warns of the likelihood of increased ticket prices to offset the additional expenses.¹⁴⁵ In other words, the IATA explains that the proposed rule “would just add a layer of expense without doing anything to fix the flight delay and cancellation issues airlines are struggling with.”¹⁴⁶ IATA’s Director General, Willie Walsh, defends that:

¹⁴⁰ *Id.*

¹⁴¹ Duncan & Aratani, *supra* note 72; see also Robert Silk, *Government Agencies Propose Sweeping Changes for Airlines*, TRAVEL WEEKLY (Aug. 13, 2022), <https://www.travelweekly.com/Travel-News/Government/Government-agencies-propose-sweeping-changes-for-airlines> [<https://perma.cc/9J4K-UUA6>]; David Shephardson, *Refunds, Flights in U.S. Lawmaker Proposals to Protect Air Passengers After Meltdowns*, REUTERS (Jan. 31, 2023), <https://www.reuters.com/business/aerospace-defense/senators-propose-new-us-airline-passenger-protections-after-meltdowns-2023-01-31/> [<https://perma.cc/2JHJ-M2BT>].

¹⁴² Duncan & Aratani, *supra* note 72.

¹⁴³ *Id.*

¹⁴⁴ *US Proposed Passenger Compensation Rule Will Raise Costs but Not Solve Delays*, INT’L AIR TRANSP. ASS’N. (May 9, 2023), <https://www.iata.org/en/pressroom/2023-releases/2023-05-09-02/> [<https://perma.cc/JPT5-5WW2>].

¹⁴⁵ *Id.*

¹⁴⁶ Sue Pelletier, *Airline Compensation Rule Could Increase Ticket Prices*, PREVUE MEETINGS & INCENTIVES (May 22, 2023), <https://www.prevuemeetings.com/news/>

Airlines work hard to get their passengers to their destinations on time and do their best to minimize the impacts of any delays. Airlines already have financial incentives to get their passengers to their destination as planned. Managing delays and cancellations is very costly for airlines. And passengers can take their loyalty to other carriers if they are not satisfied with service levels. The added layer of expense that this regulation will impose will not create a new incentive, but it will have to be recouped—which is likely to have an impact on ticket prices.¹⁴⁷

Delta Air Lines' CEO, Ed Bastian, warned that any additional government regulation and associated costs in the airline industry would inevitably lead to increased ticket prices.¹⁴⁸ Citing "common business logic," Ed Bastian explains that "[t]here's no question if there is another layer of government regulation and cost that's introduced into the system, it'll eventually find its way back into ticket prices."¹⁴⁹

Senate Commerce, Science, and Transportation Committee Republicans, led by Sen. Ted Cruz, strongly opposed the proposed regulation.¹⁵⁰ Christian McMullen, speaking on behalf of the committee Republicans, criticized the Biden Administration's approach, arguing that instead of tackling crucial aviation challenges, the focus seems to be on imposing excessive regulations on every facet of passenger air travel.¹⁵¹ "These unnecessary regulations, [he argued,] will reduce competition, access to certain markets, and drastically increase costs for travel."¹⁵² Kerry Tan, an economics associate professor at Loyola University Maryland, provided additional insight.¹⁵³ While acknowledging the potential benefits of the proposed rules for consumers, Tan cautioned

airline-compensation-rule-could-increase-ticket-prices/ [https://perma.cc/W26Q-74S4].

¹⁴⁷ *US Proposed Passenger Compensation Rule Will Raise Costs but Not Solve Delays*, *supra* note 144.

¹⁴⁸ Analisa Novak, *Delta CEO: More Government Regulations on Airline Industry Could Lead to Higher Ticket Prices*, CBS NEWS (May 17, 2023), <https://www.cbsnews.com/news/delta-ceo-government-regulations-airline-industry-higher-ticker-prices-ed-bastian/> [https://perma.cc/5XFG-M9UQ] (explaining that the "additional layer of regulation and associated costs will inevitably trickle down to consumers.").

¹⁴⁹ *Id.*

¹⁵⁰ Duncan & Aratani, *supra* note 72; Yurk, *supra* note 7 ("Cruz has warned against 'regulatory overreach' in FAA reauthorization talks and argued that regulating prices would in turn drive up costs for passengers as airlines incur costs from nixing extra fees and pass them on to consumers via higher fares.").

¹⁵¹ Duncan & Aratani, *supra* note 72.

¹⁵² *Id.*

¹⁵³ *Id.*

against possible drawbacks.¹⁵⁴ Specifically, he expressed concern that airlines might increase prices to offset added expenses or reduce flight frequencies to enhance operational efficiency.¹⁵⁵

B. FACTORS OUTSIDE THE AIRLINES' CONTROL CAUSE DELAYS AND CANCELLATIONS

Airlines for America, a trade group representing the country's largest airlines—United Airlines, American Airlines, Delta Air Lines, and Southwest Airlines—indirectly addressed the proposal by emphasizing that factors outside the airlines' control, such as weather and air traffic control are contributing to flight cancellations and delays.¹⁵⁶ They stressed that U.S. airlines prioritize safety and competitiveness to ensure timely departures and arrivals.¹⁵⁷ The group explained, "U.S. airlines have no incentive to delay or cancel a flight and do everything in their control to ensure flights depart and arrive on time—but safety is always the top priority."¹⁵⁸ They clarified that weather and air traffic control issues significantly contributed to flight cancellations, with more than half attributed to extreme weather and air traffic control outages in 2022 and similar trends observed in 2023.¹⁵⁹ Airlines

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*; see also *Strengthening Airline Operations and Consumer Protections: Hearing Before the Comm. on Com., Sci., and Transp.*, 118th Cong. 1 (2023) (statement of Clifford Wilson, Senior Fellow, Economic Studies Program at the Brookings Institution).

¹⁵⁶ Duncan & Aratani, *supra* note 72; Recently, Airlines for America "urged U.S. transportation officials to do more to address the impact of private planes and air traffic controller staffing shortages on holiday flight delays and cancellations." David Shepardson, *Airlines Urge US to Do More to Address Flight Delays*, REUTERS (Jan. 2, 2024), <https://www.reuters.com/business/aerospace-defense/airlines-urge-biden-administration-do-more-address-flight-delays-2023-12-29/> [<https://perma.cc/L5NF-LU2Z>]. The group "urged Transportation Secretary Pete Buttigieg and Federal Aviation Administration (FAA) chief Michael Whitaker to 'take all possible actions to find the appropriate balance between commercial and private aviation traffic with the goal of minimizing delays and cancellations for the traveling public.'" *Id.* "The group in a letter also urged 'all possible steps be taken to avert additional staffing triggers, particularly in high volume centers' for air traffic control." *Id.*

¹⁵⁷ Duncan & Aratani, *supra* note 72.

¹⁵⁸ *A4A Statement on the Biden Administration's Proposal for Cash Compensation for Delayed or Cancelled Flights*, AIRLINES FOR AM. (May 8, 2023), <https://www.airlines.org/a4a-statement-on-the-biden-administrations-proposal-for-cash-compensation-for-delayed-or-cancelled-flights/> [<https://perma.cc/8JWC-CRLU>] [hereinafter *A4A Statement*] ("We have the safest air travel system in the world because we never compromise on safety.").

¹⁵⁹ *Id.* ("One of the biggest impacts on flight operations is weather, and in 2022, more than half of flight cancellations were caused by extreme weather. Thus far

have taken responsibility and are committed to improving operational reliability despite challenges.¹⁶⁰

Moreover, in 2022, when the DOT initially unveiled its “plans to update a government dashboard to show if carriers will voluntarily compensate passengers for lengthy delays within airlines control,” Airlines for America expressed opposition.¹⁶¹ They argued that the DOT’s “request would simply raise the cost of travel for everyone and goes beyond the scope and intent of the Dashboard by proposing punitive measures rather than offering improvements to transparency that would benefit the consumer.”¹⁶² Airlines for America emphasized that the DOT’s approach overlooks airlines’ progress and the impact of weather and air traffic control on flight delays.¹⁶³

The IATA also said, “the regulation could raise unrealistic expectations among travelers,” as many delays are caused by factors beyond airlines’ control, such as weather and air traffic controller shortages.¹⁶⁴ Supply chain issues in aircraft manufacturing also contribute to reliability issues.¹⁶⁵ Furthermore, the IATA acknowledges that while the DOT has clarified that airlines are only responsible for disruptions directly caused by their actions,

in 2023, the majority of flight cancellations have been because of severe weather in addition to ATC outages and staffing shortages during and following weather incidents.”); Walker, *supra* note 114 (“It said that more than half of cancellations last year were caused by weather, and it noted that airlines had reduced their schedules in response to Federal Aviation Administration staffing shortages.”).

¹⁶⁰ *AAA Statement*, *supra* note 158. (“This includes launching aggressive, successful hiring campaigns for positions across the industry and reducing schedules, notably in the busy Northeast region, in response to the FAA’s staffing shortages. In 2022, carriers reduced their schedules by about 15% to alleviate pressure on the National Airspace System (NAS), and U.S. airlines are currently accommodating record demand while operating 10% fewer flights than in 2019 to reduce pressure on the system.”).

¹⁶¹ David Shepardson, *Airlines Oppose U.S. Push on Flight Delay Compensation*, REUTERS (Oct. 21, 2022), <https://www.reuters.com/business/aerospace-defense/airlines-oppose-us-push-flight-delay-compensation-2022-10-21/> [https://perma.cc/4LSG-5VMC].

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *US Proposed Passenger Compensation Rule Will Raise Costs but Not Solve Delays*, *supra* note 144 (“Air traffic controller shortages played a role in last year’s delays and are also an issue in 2023, as the Federal Aviation Administration has acknowledged with its request that airlines reduce their flight schedules to the New York metropolitan area. Runway closures and equipment failures also contribute to delays and cancellations.”); *Passenger rights*, INT’L AIR TRANSP. ASS’N., <https://www.iata.org/en/youandiata/travelers/passenger-rights> [https://perma.cc/6WPR-NM4K].

¹⁶⁵ *US Proposed Passenger Compensation Rule Will Raise Costs but Not Solve Delays*, *supra* note 144.

external factors such as severe weather can significantly impact flight operations.¹⁶⁶ These external factors often result in cascading issues that can endure for extended periods, spanning days or weeks.¹⁶⁷ Consequently, identifying a singular cause for the disruption becomes challenging or even impossible.¹⁶⁸

C. EVIDENCE SHOWS EC 261 HAS INCREASED FLIGHT DELAYS AND CANCELLATIONS

Lastly, the IATA defends that while punitive regulations, such as those imposed by the EU's passenger rights regulation, EC 261, might improve airline accountability, they haven't necessarily reduced flight delays and cancellations.¹⁶⁹ Instead, the study cited indicates that under EC 261, cancellations and flight delays actually increased significantly over a period of several years.¹⁷⁰ Indeed, the study found that from 2011 to 2018, cancellations nearly doubled from 67,000 to 131,700, and flight delays rose from 60,762 to 109,396.¹⁷¹ This indicates a worsening rather than an improvement in flight punctuality.¹⁷² As an alternative, the IATA suggests that instead of focusing solely on airlines, efforts should be made to ensure a fully funded FAA and a well-staffed controller workforce to improve the overall air transport system.¹⁷³

VIII. ANALYSIS OF POTENTIAL IMPACTS

The proposal by the DOT to require airlines to provide compensation and cover expenses for meals, hotels, and other amenities for airline passengers in instances of flight cancellations and delays, while seemingly beneficial on the surface, raises concerns about potential adverse impacts on consumers and the aviation industry.¹⁷⁴

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Study On the Current Level of Protection of Air Passenger Rights in the EU*, EUR. COMM'N 21 (Jan. 2020), <https://op.europa.eu/en/publication-detail/-/publication/f03df002-335c-11ea-ba6e-01aa75ed71a1> [<https://perma.cc/U4QR-EVAG>].

¹⁷² *US Proposed Passenger Compensation Rule Will Raise Costs but Not Solve Delays*, *supra* note 144.

¹⁷³ *Id.*

¹⁷⁴ Sterling Wiggins, *How an Airline Compensation Requirement Could Result in Higher Fares and Fewer Choices*, U.S. CHAMBER OF COM. (June 8, 2023), <https://www.uschamber.com/infrastructure/transportation/how-an-airline-compensation-requirement-could-result-in-higher-fares-and-fewer-choices#:~:text=In%20>

A. ADVERSE IMPACTS ON CONSUMERS

Airlines may need to increase ticket prices to counterbalance the escalating expenses associated with compensating passengers for flight delays and cancellations.¹⁷⁵ The financial consequences of providing compensation, including cash refunds, meal vouchers, and accommodation costs, can pose a significant burden on airlines' operational budgets.¹⁷⁶ These costs directly affect airlines' profitability, contributing to higher operational expenses and diminishing profit margins.¹⁷⁷ Airlines already operate on tight profit margins, and any additional expenses can notably impact their overall financial health. To maintain profitability, airlines will most likely adjust ticket prices to offset the financial burden imposed by compensation requirements.¹⁷⁸ This rise in airfares could deter budget-conscious travelers and limit the range of flight options available to consumers.¹⁷⁹

Additionally, the integration of governmental regulations into the everyday interactions between consumers and airlines could result in delays in the disbursement of compensation.¹⁸⁰ Airlines would need to adhere to rigorous compliance protocols mandated by these regulations, which could extend the time it takes to resolve compensation claims for passengers.¹⁸¹ These stringent procedures may entail extensive documentation, review processes, and extra administrative duties for airlines, resulting in

addition%20to%20requiring%20refunds,time%20of%20already%20high%20inflation [<https://perma.cc/QY2S-A74W>] (“While this proposal appears laudable at first glance, the reality is that it ignores many facts about today’s passenger airline industry and could result in higher fares and fewer choices for many American travelers.”); Skores, *supra* note 84.

¹⁷⁵ Wiggins, *supra* note 174; Alison Fox, *The White House’s Airline Compensation Rule Is Meant to Protect Passengers — but Will It Ultimately Lead to More Expensive Airfare?*, TRAVEL + LEISURE (May 17, 2023), <https://www.travelandleisure.com/departments-of-transportation-airline-compensation-iata-airfare-7499318#:~:text=News-,The%20White%20House%27s%20Airline%20Compensation%20Rule%20Is%20Meant%20to%20Protect,cause%20prices%20to%20actually%20increase> [<https://perma.cc/J99D-A6YM>].

¹⁷⁶ Pelletier, *supra* note 146.

¹⁷⁷ Ben Schlappig, *Airline Labor Costs Are Increasing: Who Will Foot the Bill?*, ONE MILE AT A TIME (Sept. 27, 2023), <https://onemileatatime.com/insights/airline-labor-costs-increasing/> [<https://perma.cc/4F2G-94XY>]; Brett Holzhauer, *Airline Ticket Prices Are Up 25%, Outpacing Inflation — Here Are the Ways You Can Still Save*, CNBC NEWS (June 27, 2024), <https://www.cnbc.com/select/airline-ticket-prices-are-up-25-percent-why-and-how-to-save/> [<https://perma.cc/86M6-C3M3>].

¹⁷⁸ Wiggins, *supra* note 174.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

administrative obstacles.¹⁸² Consequently, the resolution process for compensation claims might worsen, causing frustration and inconvenience for affected passengers.¹⁸³ Indeed, in Europe, the lack of a defined timeline for compensating customers under EU 261 highlights the potential delays that a similar system in the U.S. could face.¹⁸⁴ Moreover, experts underscore emerging issues with these regulations, such as the absence of a standardized process for submitting claims and the challenges passengers encounter when doing so.¹⁸⁵

Experts say EU261 has spawned new challenges. . . . The government [] never established a consistent process to file claims, and many airlines make it difficult to do so. For airlines, there are also the added administrative costs of processing claims, as well as potentially more idle aircraft and schedule padding to help prevent delays. Some experts worry that financial pressure might compel staff to rush through or ignore potential issues, presenting unnecessary safety and technical risks.¹⁸⁶

Therefore, implementing a comparable compensation system in the U.S. may encounter similar obstacles to those observed in Europe.

Moreover, the proposal could hinder innovation and advancements in customer experience within the aviation industry.¹⁸⁷ If airlines are forced to focus primarily on complying with these rules, they might allocate resources away from improving customer services.¹⁸⁸ For example, investments that could have been directed towards innovations such as “mobile boarding passes, improved entertainment offerings, in-flight Wi-Fi, and an improved

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Elliot, *supra* note 117 (“That’s one of the weaknesses of the current European rule: There’s no specified timeline for compensating customers.”).

¹⁸⁵ Sally French, *Should U.S. Airlines Pay Passengers for Delays Like the EU?*, SEATTLE TIMES (Mar. 29, 2023), <https://www.seattletimes.com/business/should-u-s-airlines-pay-passengers-for-delays-like-the-eu/> [<https://perma.cc/ER9J-75SG>]; Sarah Jane Fox & Martín-Domingo, *supra* note 127, at 302–03, 305 (explaining that the EU’s claims process’s “effectiveness and consistency have been questioned”); Sara Drake, *Delays, Cancellations and Compensation: Why Are Air Passengers Still Finding It Difficult to Enforce Their EU Rights Under Regulation 261/2004?*, 27 MAASTRICHT J. OF EUR. & COMPAR. L. 230, 248–49 (2020).

¹⁸⁶ French, *supra* note 185.

¹⁸⁷ Wiggins, *supra* note 174; Yanmin Dong, et al., *Research on the Relationship Between Customer Satisfaction and Compensation Plan in U.S Airline Industry*, 203 ADVANCES IN ECON., BUS. AND MGMT. RSCH. 506, 509 (2021).

¹⁸⁸ Wiggins, *supra* note 174.

airport experience” might be curtailed.¹⁸⁹ This diversion of resources could slow down the pace of technological advancements and improvements in passenger experiences.¹⁹⁰

Additionally, enforcing compensation requirements could disproportionately impact smaller airlines, which may lack the financial elasticity of larger carriers to absorb the costs involved.¹⁹¹ By requiring compensation requirements, the “DOT is ensuring only the handful of large air carriers that can afford to bear the cost of those refunds survive, stifling smaller carriers that may have limited fleets but offer cost-competitive tickets to all travelers.”¹⁹² As a result, smaller airlines may struggle to remain competitive in the market, which could diminish diversity in the airline market and curtail options for travelers.¹⁹³ Lastly, many airlines voluntarily provide compensation for disruptions, suggesting that additional regulatory interventions may be unwarranted.¹⁹⁴

B. ECONOMIC BURDEN ON AIRLINES

“The most evident and immediate cost of disruptions is financial.”¹⁹⁵ Airlines face potential economic burdens from various factors, including increased operating costs, decreased revenue, and financial penalties.¹⁹⁶ The direct financial costs on airlines are notable, as they would necessitate allocating funds to cover compensation expenses, including cash reimbursements, meal vouchers, overnight accommodations, and transportation

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*; French, *supra* note 185 (“Some experts suggest that regulations especially hurt small airlines that can’t afford to have spare aircraft on standby or software to handle the compensation claims. The fixed payout amounts to passengers can have an outsized impact on shorter routes or budget fares. ‘Compensating 250 euros on a flight that costs 50 euros is clearly absurd,’ said former Flybe CEO Christine Ourmières-Widener in a testimonial generated for a 2019 report published by the European Regions Airline Association.”).

¹⁹² Wiggins, *supra* note 174.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *The Cost of Disruption to Airline Operations: Navigating Challenges and Solutions*, OSPREY FLIGHT SOLS. (Oct. 25, 2023), <https://www.ospreyflightsolutions.com/cost-of-disruption-airlines/> [https://perma.cc/L2PV-LDWL].

¹⁹⁶ *Id.*; *The Economic Impact of Flight Disruptions: Analyzing Airlines and Railways*, VALUE GRP. (Oct. 13, 2023), <https://valueg.com/the-economic-impact-of-disruptions/#:~:text=Disruptions%20in%20the%20airline%20industry,industry%20approximately%20%2430%20billion%20annually> [https://perma.cc/4YJ7-YP4B] (“Disruptions in the airline industry, such as flight cancellations or delays, have far-reaching economic consequences.”).

expenses for affected passengers.¹⁹⁷ “Even without government-required compensation, delays cost airlines \$8.3 billion in increased expenses, including crew, fuel and maintenance in 2019, according to the FAA Office of Aviation Policy and Plans.”¹⁹⁸ Therefore, it is evident that these additional costs will increase airlines’ operating expenses, which are already substantial.¹⁹⁹

Consequently, enforcing compensation requirements requires airlines to modify their operational frameworks.²⁰⁰ This includes adjustments in scheduling protocols, enhancements in passenger communication interfaces, and proficient personnel training to manage compensation proceedings adeptly.²⁰¹ Furthermore, the increased administrative burden associated with processing compensation claims and managing logistical challenges further adds to the economic strain on airlines.²⁰² Moreover, disruptions in the aviation industry can reduce passenger demand, impacting airlines’ profitability.²⁰³ Airlines may need to invest in technology

¹⁹⁷ DOT to Propose Requirements for Airlines, *supra* note 9; Ann Brody Guy, *Flight Delays Cost \$32.9 Billion, Passengers Foot Half the Bill*, BERKLEY NEWS (Oct. 18, 2010), https://news.berkeley.edu/2010/10/18/flight_delays [<https://perma.cc/857B-BZVK>].

¹⁹⁸ French, *supra* note 185.

¹⁹⁹ U.S. Passenger Carrier Delay Costs, AIRLINES FOR AM. (July 12, 2024), <https://www.airlines.org/dataset/u-s-passenger-carrier-delay-costs/> [<https://perma.cc/XFH3-76UD>] (“Delayed aircraft are estimated to have cost the airlines several billion dollars in additional expense. Delays also drive the need for extra gates and ground personnel and impose costs on airline customers (including shippers) in the form of lost productivity, wages and goodwill. Assuming \$47 per hour[] as the average value of a passenger’s time, flight delays are estimated to have cost air travelers billions of dollars. FAA/Nextor estimated the annual costs of delays (direct cost to airlines and passengers, lost demand, and indirect costs) in 2019 to be \$33 billion.”); Brian Beers, *Which Major Expenses Affect Airline Companies?*, INVESTOPEDIA (July 20, 2023), <https://www.investopedia.com/ask/answers/040715/what-are-major-expenses-affect-companies-airline-industry.asp> [<https://perma.cc/KAB4-GF46>].

²⁰⁰ French, *supra* note 185 (“For airlines, there are also the added administrative costs of processing claims, as well as potentially more idle aircraft and schedule padding to help prevent delays. Some experts worry that financial pressure might compel staff to rush through or ignore potential issues, presenting unnecessary safety and technical risks.”).

²⁰¹ *Id.*

²⁰² Ashmith Anupkumar, Thesis, *Investigating the Costs and Economic Impact of Flight Delays in the Aviation Industry and the Potential Strategies for Reduction*, CAL. STATE UNIV., SAN BERNARDINO 1653 (2023), https://scholarworks.lib.csusb.edu/etd/1653/?utm_source=scholarworks.lib.csusb.edu%2Fetd%2F1653&utm_medium=PDF&utm_campaign=PDFCoverPages [<https://perma.cc/J6BQ-FWYP>].

²⁰³ French, *supra* note 185 (“Some experts suggest that regulations especially hurt small airlines that can’t afford to have spare aircraft on standby or software to handle the compensation claims. The fixed payout amounts to passengers can have an outsized impact on shorter routes or budget fares.”).

and infrastructure to mitigate delays and improve operational efficiency, adding to their financial burdens.²⁰⁴ These economic challenges can strain airlines' resources and profitability, affecting their ability to invest in growth and innovation.²⁰⁵

IX. CONCLUSION

In conclusion, while the proposed regulations aim to protect consumer rights, careful consideration of their potential impacts on costs, choice, innovation, and competition within the aviation industry is essential. While the initiative to ensure fair compensation for passengers affected by flight delays and cancellations is commendable, there are concerns regarding its broader implications. Nonetheless, airlines in the U.S. strive to balance operational efficiency with passenger satisfaction, thus maintaining competitive ticket pricing while ensuring safety and reliability. As policymakers navigate these regulatory changes, it is crucial to foster an environment where both consumer protection and industry innovation can thrive.

²⁰⁴ *Id.*

²⁰⁵ *Economic Impact of Commercial Aviation*, AIRLINES FOR AM., <https://www.airlines.org/impact/> [<https://perma.cc/74US-5GL2>] (“Commercial aviation is a critical economic engine and helps drive more than 10 million American jobs.”); Duncan & Aratani, *supra* note 72 (“At the start of the pandemic, Congress swept in to rescue the airline industry, which saw demand for tickets all but evaporate in early 2020. Lawmakers ultimately provided \$54 billion in aid, funds they said would protect jobs and were an acknowledgment of the industry’s importance to the economy.”).