

**Unequal Protection Under Law: An Independent
Assessment
of Federal Enforcement of the Air Carrier Access Act**

**ENFORCING THE CIVIL RIGHTS OF
AIR TRAVELERS WITH
DISABILITIES:**

**RECOMMENDATIONS FOR
THE DEPARTMENT OF TRANSPORTATION
AND CONGRESS**

**NATIONAL COUNCIL ON DISABILITY
February 26, 1999**

National Council on Disability
1331 F Street, NW, Suite 1050
Washington, DC 20004-1107

**Enforcing the Civil Rights of Air Travelers with Disabilities:
Recommendations for the Department of Transportation and Congress**

This report is also available in braille and large print, on diskette and audiocassette, and on the Internet at the National Council on Disability's award-winning website (www.ncd.gov).

Publication date: February 26, 1999

202-272-2004 Voice
202-272-2074 TTY
202-272-2022 Fax

The views contained in this report do not necessarily represent those of the administration, as this document has not been subjected to the A-19 Executive Branch review process.

LETTER OF TRANSMITTAL

February 26, 1999

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

On behalf of the National Council on Disability (NCD), I am pleased to submit a report entitled *Enforcing the Civil Rights of Air Travelers with Disabilities: Recommendations for the Department of Transportation and Congress*.

This report is the first in a series on enforcement of federal laws protecting the civil rights of children and adults with disabilities. Title IV of the Rehabilitation Act requires NCD to gather information about the implementation, effectiveness, and impact of the Americans with Disabilities Act (ADA), among other duties. NCD was encouraged to monitor and evaluate federal enforcement efforts of ADA and other civil rights laws when we convened a diverse group of more than 300 leaders from the disability community for a policy summit in 1996. In response, we initiated the Disability Civil Rights Monitoring Project. In addition to this study of enforcement of the Air Carrier Access Act (ACAA), NCD will in the coming months issue reports evaluating enforcement of the Americans with Disabilities Act, the Fair Housing Act, and the Individuals with Disabilities Education Act.

As you know, air travel is an essential component of many jobs in the global economy. For people with disabilities to be part of that economy, participate in the world community, and compete effectively for jobs requiring air travel, air carriers and federal oversight officials must ensure that their right to travel with appropriate accommodations is taken seriously and honored. Unfortunately, NCD has found that although things have improved since ACAA was passed in 1986, people with disabilities continue to encounter frequent, significant violations of the statute and regulations. When they complain, they encounter an enforcement effort that is both inconsistent and limited in scope.

NCD stands ready to work with you and stakeholders outside the government to address the problems identified in this report and to advance the civil rights of all Americans with disabilities and their families.

Sincerely,

Marca Bristo
Chairperson

(This same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate and the Speaker of the House of Representatives.)

National Council on Disability Members and Staff

Members

Marca Bristo, Chairperson
Kate Pew Wolters, First Vice Chairperson
Hughey Walker, Second Vice Chairperson
Yerker Andersson, Ph.D.
Dave N. Brown
John D. Kemp
Audrey McCrimon
Gina McDonald
Bonnie O'Day, Ph.D.
Lilliam Rangel-Diaz
Debra Robinson
Shirley W. Ryan
Michael B. Unhjem
Rae E. Unzicker
Ela Yazzie-King

Staff

Ethel D. Briggs, Executive Director
Andrew J. Imparato, General Counsel and Director of Policy
Mark S. Quigley, Public Affairs Specialist
Jamal Mazrui, Program Specialist
Kathleen A. Blank, Attorney/Program Specialist
Lois T. Keck, Research Specialist
Janice Mack, Administrative Officer
Brenda Bratton, Executive Secretary
Stacey S. Brown, Staff Assistant

PREFACE

This report on federal enforcement of the Air Carrier Access Act (ACAA) is the first in a series on enforcement of federal laws protecting the civil rights of children and adults with disabilities. When the National Council on Disability (NCD) brought together a diverse group of disability community leaders from around the country in 1996, one of the strongest themes to emerge from three days of policy development in 11 different areas was the need for stronger and more consistent enforcement of federal civil rights laws for people with disabilities. In fact, the first overarching recommendation from the summit was that existing civil rights laws should be more vigorously enforced. In its role as an independent federal agency, NCD was encouraged by disability community leaders to monitor and evaluate federal enforcement efforts. Moreover, NCD is required by Title IV of the Rehabilitation Act to gather information on the implementation, effectiveness and impact of the Americans with Disabilities Act (ADA).

After NCD published the recommendations that emerged from the 1996 Disability Policy Summit in *Achieving Independence*, it began to study four key civil rights statutes for people with disabilities as part of the Disability Civil Rights Monitoring Project. The statutes selected were ACAA, Part B of the Individuals with Disabilities Education Act (IDEA), ADA, and the Fair Housing Act. This report is the first in a series of four that will evaluate the effectiveness of federal enforcement of disability civil rights laws.

Next year, the United States will celebrate the 10th anniversary of the passage of ADA and the 25th anniversary of the passage of IDEA. These milestones present an opportunity to retool and reinvigorate federal enforcement of disability civil rights laws so that more Americans with disabilities and their families can enjoy equal access to the American dream. Too many children and adults with disabilities and their families are unaware of their right under federal law to be free from discrimination and are often unable to enforce that right. The Disability Civil Rights Monitoring Project will assess federal civil rights enforcement in the past and evaluate how these important laws can be translated into real equality of opportunity for all Americans.

This report focuses on federal enforcement of ACAA. As the economy becomes increasingly global, the ability of employees with disabilities to travel by air is critical to their success and upward mobility. As the President has recognized, the employment rate of working-

age adults with disabilities is approximately 30 percent, and this is unacceptable. NCD commends the President for creating a Presidential Task Force on Employment of Adults with Disabilities to bring together cabinet leaders and agency heads to work on improving employment outcomes for this population. NCD supports the work of the task force and sees this report on ACAA implementation as an important call to action for members of the task force, including the secretary of transportation.

This report, like the others that will follow, is grounded in the real world experiences of people with disabilities who have endured countless violations of their rights as air travelers under ACAA. More accommodations are available for air travelers with disabilities today than ever before, but the availability of accommodations is inconsistent, and discriminatory treatment continues. It is important to recognize that the negative experiences of disabled travelers go beyond the typical hassles to which frequent travelers are accustomed. Notwithstanding the fact that ACAA has been the law for more than 12 years, people who use wheelchairs continue to encounter regular problems, from not being given a bulkhead seat to being mishandled and occasionally dropped by poorly trained or insensitive staff. Flight crews continue to refuse to stow adaptive equipment such as walkers and folding wheelchairs in the aircraft cabin. Travelers with disabilities who are accompanied by able-bodied friends, colleagues, or relatives often find that airline personnel have a tendency to direct questions and instructions to their travel partners rather than address them directly. In short, air travelers with disabilities frequently find air travel unnecessarily humiliating and upsetting. Many problems stem from the unwillingness of some airline staff to recognize that a request for an accommodation in air travel invokes civil rights protections. ACAA is a rights law, but it has been largely implemented with the consistency of a customer service policy.

NCD urges the President, Congress, the federal enforcement agencies, and covered entities to work together to address the inadequacies described in this report and the three reports to follow. For laws like ACAA to achieve the desired effect, they must be taken seriously and owned by government and industry. The ultimate test of any civil rights law is the extent to which people in the protected class can count on the law for real protection.

CONTENTS

ACKNOWLEDGMENTS	xiii
EXECUTIVE SUMMARY	xv
INTRODUCTION	1
Background	1
Purpose of this Report	1
Scope of the Report	2
Research Approach	2
Research Activities	2
Report Structure	3
 PART I. THE LAW, THE REGULATION, AND THE CONTEXT	5
1.0 The Law: The Air Carrier Access Act of 1986	5
1.1 Why the Air Carrier Access Act?	5
1.2 ACAA Impact: Progress but Persistent Problems	6
1.3 Background on the Air Carrier Access Act of 1986	9
2.0 The Implementing Regulation: 14 CFR Part 382—Nondiscrimination on the Basis of Disability in Air Travel	12
2.1 Definitions	12
2.1.1 Who is an "Individual with a Disability"?	12
2.1.2 Who is a "Qualified Individual with a Disability"?	12
2.1.3 Nondiscrimination: What It Means	13
2.2 Implementation Requirements	13
2.2.1 Implementation Issues	13
2.2.2 Airline Administrative Responsibilities	17
2.2.3 Department of Transportation Administrative Responsibilities	20
3.0 Recently Approved Changes to the Regulation and Proposed Changes to the Law	20
3.1 Final Rule Amending Part 382, Issued March 4, 1998	20
3.1.1 Clarification of the Definition of Nondiscrimination	20
3.1.2 Procedures for Providing Seating Accommodations	21
3.1.3 In-Cabin Stowage of Collapsible Electric Wheelchairs	21
3.1.4 Issues Not Addressed by the Final Rule	22
3.2 Proposed Amendments to the Air Carrier Access Act	22

3.2.1	Draft Miller Amendment	22
3.2.2	Inclusion of Code-Sharing Foreign Carriers	23
PART II.	THE ROLE OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION (DOT)	25
4.0	Background on DOT Enforcement Philosophy and Operations	25
4.1	Regulation of the Aviation Industry and Consumer Protection	25
4.2	The Transition to Industry Deregulation	25
4.3	Impact on the DOT Organization	27
4.4	Consumer Protection in a Postregulation Environment	27
4.5	Civil Rights Enforcement as a Function of Consumer Protection	28
5.0	DOT Organizational Components Involved in ACAA Enforcement	29
5.1	Office of General Counsel	29
5.2	Regulation and Enforcement	29
5.3	Aviation Enforcement and Proceedings	29
5.4	Office of Environment, Energy, and Safety	34
5.5	Departmental Office of Civil Rights	34
5.6	Analysis and Recommendations	35
6.0	Implementation and Enforcement Functions	36
6.1	Consumer Information Explaining the Law	36
6.1.1	Public Information: Print Material	36
6.1.2	Website Information	37
6.1.3	Available Formats	37
6.1.4	Methods of Dissemination	37
6.1.5	Analysis and Recommendations	38
6.2	General Guidance to the Aviation Industry	40
6.2.1	Letters to the Airline Industry	40
6.2.2	Consumer Complaint Review Meetings	42
6.2.3	General Compliance Review Meetings	43
6.2.4	DOT Presentations at Industrywide Conferences	44
6.2.5	Analysis and Recommendations	44
6.3	Technical Assistance to the Aviation Industry	48
6.3.1	Aircraft Accessibility Federal Advisory Committee	49

6.3.2	Analysis and Recommendations	50
6.4	Informal Complaints Alleging Potential Violations of 14 CFR Part 382	51
6.4.1	The Informal Consumer Complaint Process	51
6.4.2	Characteristics of Informal Complaints Received by DOT	53
6.4.3	Complaint Data from the Airlines: A Different Picture	55
6.4.4	Analysis and Recommendations	64
6.5	Formal Complaints and Enforcement Actions	70
6.5.1	Filing a Formal Complaint	70
6.5.2	The Formal Complaint Process	71
6.5.3	Informal Enforcement Strategy	72
6.5.4	Enforcement Orders	73
6.5.5	Formal Enforcement Proceedings	74
6.5.6	Amicus Briefs	79
6.5.7	Analysis and Recommendations	80
6.6	Compliance Monitoring	82
6.6.1	Review of Airline Compliance and Personnel Training Plans	82
6.6.2	Analysis and Recommendations	83
6.7	ACAA Rulemaking—14 CFR Part 382 and Modifications	84
6.7.1	The Rulemaking Process	85
6.7.2	Analysis and Recommendations	87
6.7.3	The Regulatory Negotiation Process	87
6.7.4	Analysis and Recommendations	88
6.8	Monitoring the Law	89
PART III. STAKEHOLDER VIEWS ON ACAA ENFORCEMENT		91
7.0	Aviation Industry Perspectives	91
8.0	Perspectives of Air Travelers with Disabilities	92
8.1	Accessibility of Air Travel—A Customer Perspective	92
8.2	Industry Compliance with ACAA and DOT Enforcement of ACAA: A Sample of Customer Complaints	93

8.3	Analysis	97
PART IV. CONCLUSIONS		99
9.0	Summary of Recommendations	99
9.1	Recommendations for Organizational Changes	99
9.2	Recommendations for Process Changes	100
9.3	Recommendations for Statutory Changes and Increased Appropriations	101
ENDNOTES		103
APPENDICES		
Appendix A	14 CFR Part 382 Requirements Summary	A-1
Appendix B	Summaries of Complaints Filed Directly with a Major Air Carrier	B-1
Appendix C	Summarized Selected Complaints from the Consumer Protection Division	C-1
Appendix D	Glossary of Acronyms	D-1
Appendix E	14 CFR 302.3 Filing of Documents	E-1
Appendix F	List of Interviews and Consultations	F-1
LIST OF FIGURES		
Figure 1	U.S. Department of Transportation Air Carrier Access Act Implementation and Enforcement Functions	30
Figure 2	U.S. Department Of Transportation Organizational Chart	32
Table 1	Summary of ACAA Informal Consumer Complaints— April 5, 1990–October 23, 1997	58
Table 2	ACAA Informal Complaints against Major U.S. Carriers Received by DOT Aviation Consumer Protection Division	59
Table 3	Informal ACAA Complaints: Disability Categories	60
Table 4	ACAA Informal Complaints: Types of Disability Complaints Received	61

Table 5	Complaints Filed Directly with a Major Air Carrier— January 1993–November 1996	62
Table 6	Complaints Filed Directly with a Major Air Carrier— January 1993–through November 1996—Rank Ordering of Recurring Complaints	63

ACKNOWLEDGMENTS

All research, data collection, and analysis for this study were conducted under contract for the National Council on Disability's (NCD) Disability Civil Rights Monitoring Project by the Disability Rights Education and Defense Fund (DREDF). Kathleen Blank, J.D., was the principal researcher and lead author for this report before she joined the NCD staff in the spring of 1998. Nancy Mudrick, Ph.D., senior data and methodological consultant; Mary Lou Breslin, project director; and Jane West, Ph.D., research director, were co-authors. Statistical analysis of complaint data was performed under the direction of Nancy Mudrick. Jennifer Thau and Anne Marie Sullivan, social work graduate students at Syracuse University, provided research assistance.

We wish to acknowledge the many individuals, including members of the support staff, at the U.S. Department of Transportation (DOT) who helped the researchers with this study. With few exceptions, DOT staff cooperated fully in providing information, recommending valuable alternative sources of information and facilitating internal access to key DOT personnel. We particularly appreciate the candor of the DOT interviewees and the opportunity to speak candidly with them about the Air Carriers Access Act (ACAA) enforcement from a disability community perspective. The thorough review and valuable comments on the final draft provided by the Office of General Counsel contributed significantly to the quality of this report.

Finally, we wish to thank the many stakeholder group representatives, from both the aviation industry and the disability community, who generously gave their time and expertise to provide information to our researchers. Their input helped to clarify where change is most critically needed and alternative strategies for achieving enforcement goals. In particular, we acknowledge the many members and representatives of the disability community who shared their firsthand knowledge and experience of ACAA implementation and enforcement. Their observations added a real-world perspective to our research.

EXECUTIVE SUMMARY

The Air Carrier Access Act (ACAA) became law in 1986, prohibiting discrimination against passengers with disabilities by air carriers in providing air transportation services.¹ Congress charged the Secretary of Transportation with promulgating the implementing regulations within 120 days of the statute's enactment. Following deadlocked regulatory negotiations and a notice of proposed rulemaking that produced more than 300 stakeholder comments, 14 CFR Part 382 went into effect on April 5, 1990, with many issues still unresolved.² These unresolved issues, coupled with a regulatory environment dating back to the Reagan administration that encourages voluntary compliance and minimizes federal oversight, have contributed to an enforcement effort that is both inconsistent and limited in scope.

The findings of this study show that the Department of Transportation (DOT) model for ACAA enforcement relies heavily on monitoring of complaints and voluntary compliance by air carriers. This approach does not emphasize traditional investigation and prosecution of complaints similar to other federal civil rights enforcement agencies. Accordingly, the National Council on Disability (NCD) believes that DOT's approach is critically lacking in the key areas of compliance monitoring, complaint handling, and leadership by the Department of Transportation. Despite DOT's stated commitment to ACAA enforcement, there is no regular monitoring program to ensure compliance in day-to-day airline operations. DOT's informal complaint-handling process serves more as a tool for monitoring general compliance across the industry than as a system for resolving individual discrimination claims. Even the formal complaint process focuses only on issues of broad public interest, so that individual complainants have no reliable administrative means to obtain satisfaction unless the airline voluntarily cooperates. Research data show that a long-standing lack of resources has substantially limited DOT's leadership in addressing difficult compliance problems (i.e., providing lifts and other boarding devices, providing regular training of airline personnel, and ensuring that new aircraft meet accessibility standards).

The problems of ACAA enforcement arise from inadequacies not only in DOT's enforcement mechanism but in the law itself. Unlike some other civil rights laws, the ACAA

does not establish a private right of action and contains no provisions for attorneys' fees and damages. Neither does the law extend the nondiscrimination mandate to foreign air carriers operating in the United States, including code-sharing partners of domestic airlines. The law's general language invites contradictory interpretations. In lieu of an adequate budget and specific enforcement provisions in the law, DOT has adopted a minimalist approach that has delayed full compliance and consistent implementation across the industry.

Although the regulations mandate clear requirements for services such as boarding assistance, teletypes in airports, and other accommodations to make air travel accessible for passengers with disabilities, widespread implementation and compliance problems persist 12 years after ACAA became law. Obtaining service accommodations continues to be a major challenge at airports, ticketing offices, and travel services across the nation. When they fly, people with disabilities still face uncertainty about whether air carriers will provide accommodations such as effective communication of flight information, accessible seats, appropriate boarding assistance, and careful handling and stowage of their wheelchairs and other assistive devices.

This study examines federal ACAA enforcement efforts and the impact of these efforts on the civil rights of persons with disabilities.

Key Findings

The key findings indicate that ACAA implementation and enforcement efforts over the past 12 years have been so lacking in several essential areas as to constitute nonenforcement. A significant part of the problem is an extreme lack of resources that has affected DOT's capacity to develop and maintain a credible enforcement program or to adequately support ACAA implementation.

- **DOT's budget and staff for ACAA enforcement are drastically inadequate.**

The impact of changing political and fiscal priorities on ACAA enforcement cannot be underestimated. Since the 1970s, Congress has steadily cut the budget of the Office of the Secretary within DOT. As a result, the staff required for a credible ACAA enforcement program is simply not there. The Consumer Protection Division, where most ACAA-related activity originates, has less than one full-time equivalent assigned to ACAA enforcement.

- **Most informal ACAA complaints are not individually investigated as are discrimination complaints filed with other federal agencies.**
- **DOT enforcement of ACAA is not within the purview of a civil rights office.**

The Office for Aviation Enforcement and Proceedings and the Aviation Consumer Protection Division are primarily responsible for ACAA enforcement, using an approach that combines customer service, consumer protection, and civil rights enforcement perspectives. Informal ACAA complaints are classified as "Category C" (Reservations/Ticketing/Boarding) consumer complaints and are reported monthly in DOT's *Air Travel Consumer Report* as an aggregate figure. Although ACAA complaints are subject to a higher standard of review (based on Part 382) than other consumer complaints, the vast majority are not individually investigated, like discrimination complaints filed with most other federal agencies.

- **DOT has taken little initiative to educate the public in general, and people with disabilities in particular, about their rights under the law.**

Most of the ACAA public information materials provided during October 1997 were sparse, giving only a general overview of ACAA provisions. *New Horizons*, the most detailed DOT consumer publication on ACAA, was still awaiting incorporation of new information resulting from the November 1996 amendment to Part 382. DOT staff reported that *New Horizons* was usually sent only on request and not routinely to ACAA complainants with their acknowledgment letters. Now it is available on DOT's website. On the other hand, DOT publishes and disseminates its monthly *Air Travel Consumer Report* to many aviation industry and consumer constituencies. The report provides performance rating information (i.e., on-time flights and consumer complaint statistics) for each of the major and national air carriers. Disability-related complaints, however, are reported in a single aggregate figure, precluding any comparisons among carriers.

- **DOT's informal complaint-handling system functions primarily to track, not investigate, complaints.**

Between April 1990 and October 1997, DOT received 1,831 disability-related complaints. DOT did not investigate the majority of these complaints, even though Part 382 directs complainants to contact DOT for assistance. The recorded message on DOT's

customer assistance line tells callers that DOT is not staffed to return phone calls or mediate individual complaints but will register their complaints in the database and send an acknowledgment letter for any complaints made in writing. In addition, DOT sends a letter of notification to the airline(s) cited in the written complaint instructing them to respond to the complainant and forward a copy of their response to DOT within thirty days. DOT personnel record the airline response in the complaint record, and followup with the airline if no response has been made within the 30-day time frame. However, DOT follow-up does not always occur, and a response by the airline does not mean that any resolution was reached from the complainant's point of view. Once the airline response is recorded in the complaint record, the complaint is typically closed, regardless of the result. Only complaints determined to involve an airline's established policy or procedure that is out of compliance with the ACAA receive additional follow-up. The majority of complaints are determined not to be matters of established policy or procedure.

- **DOT rarely evaluates the ACAA complaints passengers send directly to airlines.**

Under Part 382, passengers alleging an ACAA violation are first required to seek resolution directly with the airlines involved. Airlines are then required to take the necessary steps to correct the problem and inform complainants about their right to elevate their complaints to DOT. Our research showed conclusively that DOT receives only a fraction of the ACAA complaints actually registered with airlines. Despite its authority under the law to request any reports it requires to enforce DOT regulations,³ DOT does not request even summary data on the complaints received directly by an airline, unless investigating in connection with a potential enforcement action. An independent analysis of one major airline's complaint data conducted by our researchers showed a ratio of 36 to 1 for airline v. DOT complaints. By DOT's own account, an airline receives about 100 ACAA complaints for every 1 DOT receives. Furthermore, the yearly number of ACAA complaints received for the past eight years has either increased or remained constant each year. From a consumer perspective, these numbers would indicate marginal improvement in compliance.

- **The ACAA provides no private remedy for individuals alleging civil rights violations.**

The ACAA statute does not provide a private right of action, but Part 382 directs any consumer wishing to file a formal complaint to do so in accordance with 14 CFR Part 302. Part 302 sets forth an administrative enforcement process adopted during the 1950s for complaints alleging violations of federal aviation statutes and DOT rules or orders. Like the administrative enforcement mechanisms for adjudicating complaints brought under the Americans with Disabilities Act, the Rehabilitation Act (Section 504), and other disability civil rights laws, DOT cannot assess damages on behalf of successful complainants. DOT can only require air carriers to take prompt action to change policies

and procedures not in compliance with ACAA and assess civil penalties. The private right of action established through ACAA case law should be codified to ensure the individual plaintiff's right of redress.

- **DOT has yet to file a single amicus brief on an ACAA case.**

DOT is not authorized under ACAA to file amicus briefs in cases alleging ACAA violations but can petition the Department of Justice (DOJ) for permission to do so. DOT also reports that it has been asked only once to participate as an amicus. In this case, DOT intervened through private correspondence with both the plaintiff and defendant, resulting in the defendant agreeing to modify its policies and procedures to comply with the rule. DOT chose not to petition DOJ to file an amicus brief after the defendant failed to appeal the court's verdict of liability.

It should be noted that agencies with responsibility for enforcing civil rights statutes routinely request permission to file amicus briefs, and DOJ typically approves these requests. By not filing amicus briefs, DOT takes no initiative to influence the development of case law as it applies to ACAA enforcement. DOT's failure to take a position on the litigated issues has slowed the development of a positive and consistent body of case law.

- **DOT's ACAA compliance monitoring is infrequent, inconsistent, and largely ineffective.**

Under Part 382, DOT was required to review the ACAA compliance programs and training plans by December 1990. By 1992, DOT had reviewed the compliance and training plans of between 30 and 40 air carriers, and had required changes to any plans found out of compliance with Part 382. Since then, DOT has conducted no regular monitoring to ensure airline implementation of their ACAA compliance and training plans.

Part 382 requires airlines to train all new personnel and conduct periodic refresher training for all personnel with job duties affected by ACAA requirements. Initially, researchers were told that DOT typically does not review ACAA training programs or records, the complaint handling process, or complaint records when conducting routine on-site reviews with airlines, unless complaints received by DOT indicate a problem. Later, researchers were told that these on-site visits did include such reviews. Despite the request of researchers for reports documenting the scope and findings of these on-site reviews, none were provided.

- **DOT has not satisfactorily addressed significant gaps in the application of ACAA.**

Foreign air carriers operating in the United States are presently not bound either by the ACAA or by U.S. aviation safety laws and regulations. Although a general nondiscrimination provision of the Federal Aviation (FA) Act has applied to foreign carriers since the 1950s,⁴ DOT has generally invoked it in connection with rate or fare issues. As of the date of this report, DOT has based only two formal enforcement actions on this provision for discrimination on the basis of disability.⁵ Although consumers generally benefit from the competition resulting from the globalization of air travel networks, Americans with disabilities continue to encounter discrimination during international air travel. As the executive agency primarily responsible for international air transportation policy, DOT negotiates the terms of international agreements under which foreign carriers must operate in the United States. Foreign air carriers enjoying access to the U.S. airport facilities and air travel market, especially through code-sharing arrangements with U.S. carriers, must conform to the requirements of the same civil rights laws that bind U.S. carriers.

- **Part 382 lacks provisions requiring DOT to undertake implementation activities such as public education and to engage in enforcement activities regularly such as compliance monitoring and investigation of informal complaints.**

Other than the provisions to review airline compliance programs and training plans and ensure that they conform to the requirements of the regulation, Part 382 has no provisions requiring DOT to engage in implementation and regular compliance-monitoring activities to ensure airline follow-through. Without authorizing DOT to engage in proactive monitoring of airline compliance, the mandate to enforce ACAA carries little substance.

Below are key recommendations addressing organizational, process, and statutory changes needed to address and correct the deficiencies in ACAA enforcement.

Key Recommendations

DOT must make substantive organizational and process changes if ACAA enforcement is to become effective. It must

- Establish a discrete unit for ACAA civil rights enforcement that is independent of the Consumer Protection Division, within either the Departmental Office on Civil Rights or the Office of General Counsel.
- Request that Congress appropriate the funds necessary for adequate staff and resources to effectively run an enforcement office, including a line item for an aggressive public education initiative.

- Develop and carry out strategic ACAA education campaigns geared to persons with disabilities and to the general public.
- Further articulate and consistently apply the assessment criteria for determining when an ACAA violation has occurred and when enforcement action is appropriate.
- As for other civil rights laws, any ACAA complaint alleging a prima facie violation, including an informal complaint, should have standing. DOT should investigate all prima facie violations to determine whether a violation has likely occurred and take appropriate corrective action.
- Expand enforcement action for ACAA complaints beyond the Part 302 administrative process to allow remedies for individual plaintiffs. Administrative action under Part 302 was never intended as a means for redressing individual civil rights complaints.
- Redesign DOT's database dedicated to complaint processing and compliance monitoring to maintain the data necessary for an accurate picture of ACAA compliance.
- Require air carriers to submit to DOT at regular intervals their Part 382 complaint data in a standardized summary format that tracks and compares the numbers and types of complaints, as well as trends in their complaint data. Publish the results of the summarized complaint data for all major airlines in the DOT *Air Travel Consumer Report*.
- Undertake more extensive investigation and analyses of the causes of Part 382 noncompliance among air carriers and airports.
- Expand compliance monitoring and enforcement activities and commit more resources (both staff and funds) to them. Regularly analyze the summaries prepared by air carriers of their Part 382 complaint data to identify noncompliance areas and to monitor potential "pattern and practice" trends.
- Review noncompliance areas identified in the airline complaint data summaries with airline representatives at quarterly intervals and require airlines to submit correction plans, including objective measures of success and a time frame for achieving compliance.
- Provide more training and targeted technical assistance to the aviation industry in all aspects of ACAA implementation and compliance.
- Exercise leadership in facilitating resolution of the remaining technical issues impeding ACAA compliance as well as ongoing disagreements concerning appropriate accommodations.

The weaknesses of Part 382 and DOT's current enforcement mechanism make an effective private right of action especially important. DOT's efforts to create the necessary incentives for ACAA compliance have been grossly inadequate. If ACAA's nondiscrimination mandate is to be realized, the disability community will have to use private right of action to create effective incentives. For this reason, a private right of action must be made more accessible through the same statutory right to attorneys' fees and damages as plaintiffs under Title VII and the Americans with Disabilities Act. Such statutory rights have a common goal: to minimize the cost of litigation to plaintiffs and maximize the incentive of potential defendants to stop discriminatory policies and practices.

In light of the above, we recommend that Congress

- Amend the ACAA to establish
 - ▲ a statutory private right of action;
 - ▲ the award of plaintiffs' attorney's fees; and
 - ▲ the award of compensatory and punitive damages to successful litigants.
- Amend the ACAA to authorize the Access Board to develop standards in consultation with the Federal Aviation Administration (FAA) for accessible cabin interiors and for any equipment related to air travel access, including boarding assistance equipment.
- Amend ACAA to expand DOT's authority to:
 - ▲ conduct public education activities geared to consumers with disabilities and the general public;
 - ▲ conduct regular ACAA compliance monitoring with the airlines; and
 - ▲ levy fines when the finding of an individual informal complaint investigation indicates a violation has occurred, and impose civil penalties for findings of pattern and practice violations.
- Amend ACAA to include foreign air carriers operating in the U.S. travel market and using U.S. airport facilities within the scope of the law and its implementing regulation.

While the FA Act prohibits unreasonable discrimination by foreign air carriers in providing foreign air transportation, it has been applied only twice in cases of disability discrimination. In both cases, the foreign carrier disputed that their treatment of the passengers was discriminatory and challenged the statute's applicability on this and other grounds. The ACAA mandate of nondiscrimination, on the other hand, is clear in its legislative history: "to provide equal access to air transportation,"⁶ ensuring that people with disabilities are "treated equally when they [use] commercial air carriers"⁷ and not as "second class citizens when it comes to air travel."⁸ This mandate should apply equally to domestic and foreign air transportation service providers operating regularly within the U.S. air travel market.

This report candidly assesses current federal enforcement of the ACAA and recommends changes necessary to fully realize its mandate.

INTRODUCTION

Background

The Disability Civil Rights Monitoring Project is a policy initiative of the National Council on Disability (NCD) to research, evaluate, and report to Congress on federal implementation and enforcement of disability civil rights laws. The impetus for this project was the 1996 National Summit on Disability Policy, at which a diverse group of disability community leaders from across the country recommended that NCD

- work with the responsible federal agencies to develop strategies for greater enforcement of existing disability civil rights laws "consistent with the philosophy of...ADA (Americans with Disabilities Act)";⁹
- continue working "toward elimination of contradictory laws, regulations and programs"; and
- "promote coordination and commonality of goals across agencies."¹⁰

NCD responded to these directives with a request for proposals to assess the Federal Government's compliance, enforcement, and public information efforts for ADA, Part B of the Individuals with Disabilities Education Act (IDEA), the Fair Housing Act with 1988 Amendments, and the Air Carrier Access Act (ACAA).¹¹ NCD selected the Disability Rights Education and Defense Fund to assess and report on federal enforcement of each of the four laws and on the cumulative impact of federal enforcement of all four laws.

Purpose of this Report

This first report evaluates the effectiveness of the Department of Transportation (DOT) in implementing and enforcing ACAA. Areas of assessment include

- responsiveness of the regulation and approved modifications in addressing key areas of discriminatory practice;
- clarity of the provisions;
- timeliness in issuing and implementing the regulation;
- quality and availability of public information to consumers on the provisions of ACAA;

- quality and timeliness of guidance to the aviation industry in implementing the provisions of ACAA;
- effectiveness of compliance and enforcement activities in identifying and eliminating patterns of discriminatory practice, reducing the overall frequency of incidents of alleged violations, and creating equal access to quality air transportation service for persons with disabilities;
- overall effectiveness of the agency in orchestrating interdepartmental (intermodal) collaboration and coordination of resources to achieve industry compliance; and
- effectiveness of agency leadership in helping to resolve obstacles to the elimination of discriminatory practices and access barriers.

Scope of the Report

Although this report addresses federal enforcement of the ACAA carried out by DOT, it does not cover several significant aspects of implementation or enforcement. Specifically, it does not address private litigation or the activities of the federally funded protection and advocacy system. Nor does this report advocate specific solutions to the many unresolved ACAA implementation issues. Finally, the report does not attempt to evaluate DOT enforcement procedures in relation to the Administrative Procedures Act.

Research Approach

ACAA federal enforcement activities are assessed from two perspectives. The "whole agency" approach examines the effectiveness of DOT internal coordination and collaboration in achieving all enforcement objectives for which it is responsible. The "whole law" approach examines the overall effectiveness of external coordination and collaboration (i.e., interagency and with the private sector) in achieving all the enforcement objectives of the law.

Research Activities

The research activities for this study included the following:

- identifying the functions and organizational components of the overall federal ACAA enforcement mechanism;
- identifying, collecting, and analyzing data on ACAA implementation, compliance

monitoring, and enforcement activities of the agency;

- identifying, collecting, and analyzing data on ACAA public information activities of the agency and its contractors;
- conducting interviews with the responsible agency staff to validate understanding of the day-to-day operation of ACAA enforcement functions;
- analyzing interactions and interrelationship of enforcement functions and their net impact in addressing noncompliance;
- reviewing and evaluating overall enforcement operations in light of the requirements, legislative history, and judicial interpretations of the regulation;
- identifying issues and areas for improvement in the enforcement mechanism and operations (i.e., gaps, duplication, overlaps, inconsistencies);
- conducting a literature review to add dimension and perspective to research findings on identified issues, including model practices for enhancing compliance; and
- deriving conclusions and developing preliminary recommendations from the entire analysis.

Report Structure

The report is presented in four parts. Part I provides background on the enactment of ACAA, as well as a brief overview of the current law, regulation, and proposed amendments. An overview of DOT's role in implementing and enforcing ACAA is presented in Part II. This part includes research findings, analysis, conclusions, and recommendations with respect to each of the major ACAA enforcement functions. Part III presents feedback from representatives of the primary ACAA stakeholder groups (the aviation industry and the disability community) on DOT's role in implementing and enforcing ACAA. Part IV summarizes NCD's recommendations for strengthening federal ACAA enforcement.

PART I: THE LAW, THE REGULATION, AND THE CONTEXT

1.0 The Law: The Air Carrier Access Act (ACAA) of 1986

1.1 Why the Air Carrier Access Act?

Historically, air travel for people with disabilities has not been for the faint of heart. Often, people with certain disabilities either chose not to fly or traveled by air knowing they would probably face prejudice, hostility, disability stereotyping, as well as architectural and other physical barriers; sometimes they faced an outright denial of their right to travel.

Before enactment of ACAA, airlines commonly refused to transport motorized wheelchairs, alleging that the wet cell batteries were hazardous. Airline workers frequently either drained the acid from the batteries before loading the chair or left the batteries behind without notifying the passengers, who then were stranded when they arrived at their destination. Often travelers were required to sign liability waivers to protect the airlines from responsibility for damaging wheelchairs, scooters, and other assistive devices. Because aircraft lacked accessible lavatories, some people with mobility disabilities would limit fluid intake hours before and often during their flight to avoid needing to use the bathroom, especially for long flights. Assistance with boarding and deplaning the aircraft for people with mobility disabilities was often unavailable. When available, it was often unpredictable and even dangerous because of the lack of personnel training and uniform policies on boarding assistance.

Last-minute denials and capricious and arbitrary requirements were commonplace. A passenger told by a customer service representative that a guide dog would be allowed in the passenger cabin would be told at the airport that the dog must travel in the baggage compartment. Travelers with certain disabilities were commonly told they could fly only if accompanied by a person who did not have a disability, whether or not they needed or wanted assistance. Passengers were told on the phone that they could travel unaccompanied, only to learn at the airport that they would not be allowed to fly alone. People perceived as having HIV/AIDS were denied the right to board flights because of fears and misperceptions about their illness.

In the terminal and on the aircraft, deaf and hearing-impaired passengers had little or no access to publicly announced flight information and safety instructions. Access to information about flight delays or changes in departure gates and times often depended on the willingness of an airline worker or fellow traveler to pass on the necessary information. Telephone communication from an airport for a passenger with a hearing disability was virtually impossible.

Although passage of the Federal Aviation Act of 1958 (FA Act)¹² created a legal duty of nondiscrimination for air carriers, the will to implement and enforce both the spirit and letter of this provision concretely on behalf of persons with disabilities did not exist until much more recently. Airlines and airports did little or nothing to accommodate persons with disabilities. The inconsistency with which the same airline provided the meager accommodations available resulted in a denial of access to many disabled travelers.

The intent of Congress in legislating the ACAA was to mandate nondiscrimination by requiring the accommodations necessary for travelers with disabilities to have equal access to air travel and related services.¹³ Despite some significant improvements over the past 10 years, most of the scenarios described above could well have taken place in many airports around the country during the past six months. The remaining challenge is to remove the barriers to full implementation of ACAA's mandate of nondiscrimination.

1.2 ACAA Impact: Progress but Persistent Problems

More accommodations are available for air travelers with disabilities today than at any time in history. Yet the availability of accommodations is inconsistent, and discriminatory treatment continues. The following recent experiences of air travelers with disabilities were reported by several technical assistance organizations serving individuals with disabilities.

Wheelchair Delivery: "It's against our policy"

A woman with muscular dystrophy who uses a motorized wheelchair fractured her leg shortly before traveling from New Zealand to Los Angeles. She was experiencing much pain

when she boarded her flight. A frequent traveler, she requested that a tag be placed on her wheelchair instructing the Los Angeles ground crew to deliver it to the arrival gate immediately after the flight landed. Upon arriving, she was told by airline officials that airline policy prevented them from delivering wheelchairs to the gate. She would have to transfer into an airport chair and be pushed to the baggage claim area to retrieve her own chair. She refused, telling the officials she was in great pain and could not endure being lifted unnecessarily. The officials insisted their policy was valid and in force, and that she must deplane. She refused, citing the ACAA and drawing attention to the extenuating circumstances created by her recently fractured leg. An hour passed before the airline officials relented and arranged to have her chair delivered to the plane.

Following the incident, she wrote a letter to the airline complaining about her treatment citing ACAA violations. In a telephone interview, the complainant said, "I have never been so humiliated and embarrassed. They treated me with such hostility. At one point I broke down and cried, I was so frustrated and in pain."

"We do not provide escort service"

The parent of a 12-year-old child with a cognitive impairment made an advance request for airline personnel assistance to help her child travel between gates to make a connecting flight. The child had flown several times before, but on direct flights. On this occasion, there were no direct flights to the child's destination city. In various communications, including letters, airline agents repeatedly told the child's parent that they do not provide "escort service" (i.e., supervision to ensure that the passenger does not wander off) or "custodial assistance" for children. The parent had requested neither; she had simply requested that someone help her child travel from one gate to another to wait for her connecting flight.

"Sorry, no refunds for unused oxygen"

A woman with severe arthritis and heart problems was charged \$300 for six canisters of medical oxygen for in-flight use. According to FAA safety regulations, passengers may not bring their own oxygen on board and must pay for oxygen canisters provided by the airline. Two canisters of oxygen were unused at the conclusion of her trip. When she requested a refund, the airline said it was not their policy to issue refunds for unused oxygen. Another passenger who requested a refund for unused oxygen from a different airline complained that the price of oxygen canisters had tripled (from \$50 to \$150) between 1995 and 1997. This passenger received a modest refund for several unused canisters and assurances that the airline was working to reduce the cost.

"Sorry, we don't have time to board you"

A man who uses a manual wheelchair was en route from Houston to Billings with a plane change in Denver. He had notified the airline that he would require a boarding chair and boarding assistance for each leg of the trip. Upon arriving in Denver he reminded the gate agent for the departing flight that he required a boarding chair. The gate agent told him a boarding chair was not available and the airline did not have time to board him. He objected, informing the agent that he had provided advance notice that he required a boarding chair. The passenger missed his flight and was forced to spend the night in Denver. He elected not to file a complaint because he felt it would not result in any significant change in the system.

"Please deplane immediately"

A man and his wife, both of whom have Tourette syndrome, had boarded a flight from New York bound for San Francisco. Tourette syndrome is a condition characterized by involuntary vocalizations exacerbated by stress. Upon learning of their presence on the plane, the captain asked them to deplane because he believed they would be disruptive. They provided literature on Tourette syndrome to the captain, explaining that their vocalizations were involuntary and would subside when the stress of the moment had passed. The pilot refused to allow the passengers to remain on the flight. The couple filed a lawsuit against the airline.

Each of the incidents above describes a potential ACAA violation. The following section gives a brief history of the ACAA and explains the intent of Congress to remedy discrimination against air travelers with disabilities.

1.3 Background on the Air Carrier Access Act of 1986

The ACAA was enacted after an extended and unsuccessful struggle to establish through case law the illegality of discriminatory practices against air travelers with disabilities.¹⁴ The legal obligation of nondiscrimination created by the FA Act in 1958 was based on two provisions addressing air carriers' service. Section 404(a) required air carriers to provide "safe and adequate" service.¹⁵ Section 404(b), as originally written, prohibited "undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic."¹⁶

Gradually, the legal meaning of these two provisions became linked and any kind of unjustified discrimination toward air travelers was understood to be a violation of the air carriers' duty to provide adequate air transportation service. The Civil Aeronautics Board (CAB),¹⁷ however, generally invoked the provision in connection with rate or fare issues. While acknowledging section 404's potential application to cases of noneconomic discrimination that directly affected the provision of air transportation, CAB never applied it to any specific case involving alleged discrimination on the basis of disability, race, gender, or ethnicity.¹⁸ Consequently, these provisions had little actual impact on improving access to air transportation for persons with disabilities. Airline and airport policies, as a rule, remained unresponsive to the unique service requirements of persons with disabilities, justified on the basis of safety, economics, and the convenience of other passengers.¹⁹

Fifteen years after the FA Act was enacted, discrimination on the basis of disability was specifically prohibited by law with the passage of the Rehabilitation Act of 1973.²⁰ Section 504, as amended, prohibits discrimination on the basis of disability in any federally assisted program.²¹ This provision, along with the provisions of sections 404(a) and (b) of the FA Act, formed the legal basis for the original nondiscrimination regulation (old Part 382).²² Subpart A contained a general prohibition against discrimination on the basis of disability in providing air

transportation; subpart B contained specific requirements for service to disabled passengers; and subpart C outlined record-keeping, reporting, and enforcement responsibilities. The general prohibition contained in subpart A was based on section 404 of the FA Act and applied to all certificated air carriers. The specific requirements of subparts B and C, based on the Section 504 provisions, applied only to certificated carriers receiving direct federal subsidies under the Essential Air Service program.²³

The Paralyzed Veterans of America (PVA) challenged the limited application of subparts B and C in court, arguing that all carriers benefit from federal assistance in the form of Federal Aviation Administration (FAA) air traffic control services and federal grants for improving airport facilities. Therefore, PVA argued, Part 382 should be applied in its entirety to all air carriers, in accordance with section 504. Although the U.S. District Court agreed with PVA's reasoning,²⁴ the Supreme Court did not, holding that unsubsidized carriers were not recipients of federal assistance and thus outside the scope of section 504.²⁵ The Supreme Court's decision exempted most air carriers from the duty to make specific accommodations in providing services to passengers with disabilities.

In response to this decision, Congress enacted and President Reagan signed into law the Air Carrier Access Act of 1986.²⁶ Codified as section 404© of the FA Act, the amendment prohibits discrimination on the basis of disability by all air carriers, and authorizes DOT to issue regulations "to ensure nondiscriminatory treatment of qualified handicapped individuals consistent with safe carriage of all passengers on air carriers."

Congress's multiple objectives are clear in the statute's legislative history. First, all air carriers were to be bound by affirmative responsibilities similar to those set forth in subparts B and C of the existing regulation. Second, the statute was specifically intended to remedy "discriminatory, inconsistent and unpredictable treatment" of air travelers with disabilities. Finally, the statute affirmed that rules for accommodation were to be consistent with safety regulations, and that restrictions not based on safety and applied solely to passengers with disabilities were to be eliminated.

The new ACAA rule, replacing the old Part 382, took more than four years to develop. Stakeholders in the aviation industry and the disability community provided significant input to the final rule through a regulatory negotiation process. In promulgating the final rule, the Department of Transportation (DOT) clarified five core issues:

First, DOT applied the section 504 "undue burden" principle to strike a balance between requiring accommodations sufficient to enable equal access while containing the costs to the aviation industry in making those accommodations.²⁷

Second, DOT clarified that air carrier discretion in imposing additional requirements or restrictions on air travelers with disabilities is limited to what is required by FAA safety rules.²⁸

Third, DOT emphasized that the new Part 382 resulted from a regulatory negotiation requested by the parties.²⁹ DOT used much of the information generated through the process to develop the new, more detailed regulation to supersede the old Part 382.

Fourth, DOT declared that Part 382 should preempt state regulations protecting persons with disabilities in the area of air transportation services but should be applied on a case-by-case basis.³⁰

Finally, DOT declared its responsibility to implement the ACAA by prohibiting discriminatory practices. Given the continued prevalence of many discriminatory practices under the old Part 382, the new rule required greater clarity in establishing standards to ensure consistent practices by the airlines.³¹

The following section provides a summary of key Part 382 implementation provisions, as well as an overview of ongoing and unresolved ACAA implementation issues.

2.0 The Implementing Regulation: 14 CFR Part 382—Nondiscrimination on the Basis of Disability in Air Travel

The purpose of Part 382 is to implement the ACAA nondiscrimination mandate: "[N]o air carrier may discriminate against any otherwise qualified individual with a disability, by reason of such disability, in the provision of air transportation."³² Part 382 details the actions necessary for compliance. Although clear in many respects, the regulation's areas of uncertainty and stalemate continue to hamper its effectiveness. And clarity notwithstanding, many of the basic Part 382 requirements are poorly understood and not consistently implemented.

2.1 Definitions

2.1.1 Who is an "Individual with a Disability?"

Any individual who

- has physical or mental impairment that on a permanent or temporary basis substantially limits one or more major life activities;
- has a record of such impairment; or
- is regarded as having such impairment.

It should be noted that a person with a substantially limiting *temporary* impairment (e.g., broken limb, acute allergic reaction) is within the scope of the nondiscrimination provision.

2.1.2 Who is a "Qualified Individual with a Disability"?

Any individual with a disability who

- with respect to using airport terminal facilities and ground transportation or obtaining information, acts to avail himself or herself of facilities or services offered by an air carrier to the general public, with reasonable accommodations provided by the air carrier, as needed;
- with respect to obtaining an airline ticket, offers or makes a good faith attempt to offer to buy, or otherwise validly obtain, an airline ticket; and
- with respect to obtaining air transportation or other services or accommodations required by Part 382, possesses a valid ticket, presents himself or herself for travel at the airport for the ticketed flight, and meets reasonable, nondiscriminatory contract of carriage³³ requirements applicable to all passengers.³⁴

2.1.3 Nondiscrimination: What It Means

Air carriers are prohibited from

- excluding or denying passengers with disabilities the benefit of any air transportation or related services available to other persons, even if separate or different services are provided, except when specifically permitted by the regulation;³⁵
- requiring individuals with disabilities to accept special services they did not request;³⁶
- restricting the movement of passengers with disabilities in terminals or requiring them to remain in a special holding area in order to receive assistance, or mandating any other separate treatment, unless permitted or required by Part 382;³⁷
- requiring passengers with disabilities to sit on blankets;³⁸
- imposing charges on persons with disabilities for providing the facilities, equipment, or services required by Part 382;³⁹ or
- taking adverse action against an individual who asserts rights protected by the ACAA, whether on his or her own behalf, or through or on behalf of someone else.⁴⁰

Air carriers shall also ensure that their contractors who provide services to passengers are bound contractually by a nondiscrimination provision to

- perform their activities on behalf of the air carriers consistent with Part 382; and
- comply with directives issued by the air carriers' complaint resolution officers (CROs).⁴¹

2.2 Implementation Requirements

2.2.1 Implementation Issues

Detailed descriptions of the Part 382 nondiscrimination requirements are in Appendix A, organized under headings corresponding to those in the regulation. For many of these requirements, compliance has been uneven. In some instances, requirements are being challenged or disregarded by airline policies that effectively circumvent the intent of certain provisions and prevent their implementation. A brief commentary on some of the unresolved implementation issues follows.

Accessible Cabin Interiors

DOT has no design inspection program to ensure that all aircraft ordered after August 5, 1990, conform to the Part 382 accessibility requirements. It is difficult to imagine how compliance can otherwise be ensured. In 1997, 187 new aircraft were scheduled for delivery to Air Transport Association member airlines, which are mostly U.S. air carriers.⁴² By 2002, another 457 new aircraft will be delivered.⁴³ Most of these deliveries will be commercial passenger aircraft. If these new aircraft are not designed and built in compliance, retrofitting will be the only viable remedy. Because the cost will far exceed building the aircraft to correct specification, retrofitting will likely be viewed as an "undue burden" inconsistent with the legal standard for reasonable accommodation. The result will be further delays in access to service for air travelers with disabilities.

Lifting and Carrying Passengers

Lifting and carrying is an issue involving the safety and dignity of passengers, as well as air carrier personnel.⁴⁴ Although assistance from air carrier personnel in using ground wheelchairs, boarding wheelchairs, on-board chairs, ramps, and mechanical lifts is within the intended scope of the regulation, "hand-carrying" passengers onto small aircraft (fewer than 30 seats) is not. The reason is that in-door stairs, by which passengers enter aircraft not accessible by a mechanical lift, can safely accommodate only one person at a time.⁴⁵

In other circumstances, lifting and carrying assistance is required where such assistance is reasonable. The problem in implementing the "lifting and carrying" provisions is one of differing interpretations of what is required. Some air carrier personnel will help with transfers that involve lifting, and others will not. On the other hand, some personnel will refuse to allow even friends, family, or personal attendants to lift the passenger with a disability, insisting that air carrier personnel do the lifting. The unfortunate results have sometimes been injuries from being dropped or otherwise mishandled by personnel not well trained in lifting techniques, or refusals to provide needed assistance.

Inconsistencies in policy and practice add to the frustration and unpredictability encountered by air travelers with mobility impairments. More work is needed to define appropriate guidelines for limited physical assistance that minimizes the risk of injury to either passengers or air carrier personnel.

Traveling with an Attendant

Given the inconsistencies among airlines in their lifting/carrying policies, traveling with an attendant is the only way for persons with mobility disabilities to ensure such assistance while traveling. Many passengers with disabilities traveling with an attendant have experienced two major problems. First, persons whose health is unpredictable because of severe disabilities may not always be able to travel on the date they are scheduled to fly. Unless they have purchased full-priced tickets, they typically lose anywhere from \$150 (\$75 for each ticket to change their travel date) to the entire cost of two tickets upon canceling their trip. Exceptions are rarely made to allow the customer to reschedule, even with restrictions. More flexible ticketing policies are needed to accommodate passengers when circumstances related to their disabilities arise, impairing their ability to travel at the scheduled departure time.

A similar problem results when a person traveling with an attendant is notified at the last minute that a different attendant will accompany him or her. Because airline tickets are nontransferable, the passenger must purchase another ticket, usually at full price, for the new attendant. The cost of air travel, already far more expensive for the person who must travel with an attendant, becomes prohibitive without accommodations in airline ticketing practices for these special needs and circumstances.

Seat Assignments

In November 1996, DOT issued a notice of proposed rulemaking requesting comment on a number of issues, including seating accommodations. On March 4, 1998, DOT issued the final rule containing modifications responsive to the comments received from stakeholders. Effective as of April 3, 1998, the final rule details the requirements as well as the methods airlines can use to accommodate any individual who self-identifies to an airline as having a disability.⁴⁶

The final rule is a clear improvement over the very limited accommodation provided for in the NPRM. Yet the rule is complicated, requiring an automated tracking mechanism and personnel training to implement it effectively. As with other provisions of Part 382, successful implementation depends greatly on the initiative taken by air carriers in quickly issuing procedures explaining the new requirements and ensuring timely training of their personnel.

Preboarding

Under Part 382, passengers who wish to stow assistive devices in the aircraft cabin must preboard in order to have priority access to closet space. In the past several years, airlines have increasingly eliminated preboarding procedures. Ostensibly, this was a result of overuse of preboarding by passengers who simply wish to board the plane ahead of everyone else. Because several accommodations under the regulation are contingent upon the passenger with a disability preboarding the aircraft, without preboarding, this passenger must rely on the goodwill of flight attendants and other passengers to make already occupied storage space or an appropriate seat available. Preboarding is the mechanism by which people with disabilities can ensure that the priority access they are entitled to as an accommodation is in fact given.

Cost and Availability of Oxygen

Under the regulation, passengers who must travel with oxygen need give only 48 hours advance notice and 1 hour advance check-in when the carrier provides oxygen service. A significant number of problems have been reported concerning both the price and availability of oxygen. The cost of oxygen canisters, which must be supplied by the air carrier to comply with safety regulations, varies significantly depending on the carrier, the airport, and even the flight. (Prices are reported to vary from \$50 to \$250 per canister.) Some carriers do not permit passengers to return unused canisters for which they have paid a premium price. Other complaints document the failure of personnel to ensure that oxygen requested in advance is available at the gate for use while awaiting a connecting flight.

Inaccessible Websites

An issue that has received little attention is the accessibility of websites and other online means of communication between consumers and airline reservation systems. Airlines frequently offer incentives for making online reservations at websites, which often are inaccessible to consumers with visual and other impairments. Offering incentives without offering consumers with disabilities an alternative means to take advantage of them does not meet the regulation's program accessibility standard. Both consumers and airlines could benefit from a fully accessible web-based reservation system that allowed consumers to enter their own special needs information to their reservation at the point of sale.

2.2.2 Airline Administrative Responsibilities

Training

Under 14 CFR Part 382.61, air carriers *are required to*:

- provide training to all personnel dealing with the traveling public on the requirements of Part 382 pertinent to their duties, if the carrier operates aircraft having more than 19 seats.⁴⁷
- ensure that employees are proficient and knowledgeable concerning
 - ▲ Requirements of Part 382 and other DOT and FAA regulations affecting air transportation service to persons with disabilities and
 - ▲ The carrier's own procedures implementing these regulations, including the safe and proper operation of equipment used to accommodate persons with disabilities.⁴⁸
- train their employees in
 - ▲ Awareness of the different kinds of disabilities, including physical, sensory, mental, and emotional;
 - ▲ responding appropriately to persons with disabilities; and
 - ▲ Distinguishing among the differing abilities of persons with disabilities.⁴⁹
- consult with organizations representing persons with disabilities to develop programs for training employees in the policies and procedures for implementing federal requirements.⁵⁰
- ensure that the initial training of employees takes place as follows:

- ▲ All crew members subject to training under 14 CFR Part 121 or 135 and employed on the date the air carrier's program is established shall receive training as part of their next scheduled recurrent training.⁵¹
- ▲ All other personnel employed on the date the air carrier's program is established shall receive training within 180 days of that date.
- ▲ All crew members subject to training under 14 CFR Part 121 or 135 and employed subsequent to the date the air carrier's program is established shall receive training before they assume their duties.
- ▲ All other personnel employed subsequent to the date the air carrier's program is established shall receive training within 60 days after they begin employment.⁵²
- ensure that
 - ▲ all employees receive refresher training as needed to maintain proficiency regarding the requirements of Part 382 pertaining to their duties.⁵³
 - ▲ training, in accordance with the above requirements, is provided to every contractor employee who deals directly with the traveling public at airports.⁵⁴
 - ▲ employees who are designated CROs receive training on the requirements of Part 382 and CRO responsibilities by June 5, 1990 (within 60 days of the regulation's effective date). Employees subsequently designated as CROs must receive training before assuming their duties. All employees performing CRO functions must receive annual refresher training.⁵⁵
 - ▲ training is provided to flight crew members and other appropriate personnel to ensure their familiarity and compliance with the requirements of Part 382, if the carrier operates aircraft having 19 or fewer seats.⁵⁶

Compliance Programs

Under 14 CFR Part 382.63, air carriers are required to

- establish and implement a written program for carrying out the requirements of Part 382 by December 4, 1990, if the carrier operates aircraft having more than 19 seats.⁵⁷
- comply with Part 382 requirements before their programs are established.⁵⁸
- include a schedule for training personnel implementing Part 382 requirements on policies and procedures.⁵⁹
- submit their programs for review by December 4, 1990, and implement them immediately upon submission to DOT, if the carrier is a major or national carrier or shares a designator code with a major or national carrier.⁶⁰

- maintain their programs on file, make them available to DOT upon request, and incorporate changes into their programs as directed by DOT.⁶¹
- establish and maintain a complaint resolution mechanism that includes the availability of one or more CROs at each airport the carrier serves.⁶²
- make a CRO available to any person who complains of an alleged violation of Part 382 during all times the carrier is operating at the airport. If the CRO is not present in person at the airport at the time of the complaint, the air carrier shall make the CRO available via telephone or via teletype service for the hearing impaired at no cost to the customer.⁶³
- ensure that the CRO is thoroughly familiar with the requirements of Part 382.⁶⁴
- ensure that the CRO has authority to make dispositive resolution of complaints on behalf of the carrier⁶⁵ as follows:
 - ▲ If a complaint is made before an action has resulted in a violation, the CRO will take action or direct other carrier personnel to take the action necessary to ensure compliance. If the refusal to comply is based on safety, the CRO may not countermand a decision of the pilot in command of an aircraft.
 - ▲ If a complaint is based on an alleged violation that has already occurred and the CRO agrees that a violation has occurred, the CRO shall provide to the complainant a written summary of the facts and the steps the carrier proposes to take, if any, in response to the violation.
 - ▲ If the CRO determines that no violation has occurred, the CRO shall provide to the complainant a written summary of the facts and the reasons, under Part 382, for the determination.
 - ▲ The CRO's summary will inform the complainant of the right to pursue DOT enforcement action. The summary will be provided to the complainant at the airport or forwarded to him or her within 10 calendar days of the complaint.⁶⁶
- establish the following procedures for resolving written complaints alleging violations of Part 382:⁶⁷
 - ▲ Complaints postmarked more than 45 days after the alleged violation do not require a response.⁶⁸
 - ▲ Written complaints shall state whether the complainant has contacted a CRO, and shall include the CRO's name, date of contact, and any written summary or response received from the CRO.⁶⁹

- ▲ Written complaints alleging violations shall receive a dispositive written response within 30 days of receipt⁷⁰ as follows:
 - If the carrier agrees that a violation has occurred, the carrier shall provide a written statement setting forth the summary of the facts and the steps the carrier proposes to take, if any, in response to the violation.
 - If the carrier denies that a violation has occurred, the response shall include a written summary of the facts and the reasons, under Part 382, for the determination.
 - The written response shall inform the complainant of his or her right to pursue DOT enforcement action.⁷¹

Under 14 CFR Part 382.65, air carriers are obliged to inform complainants of their right to pursue DOT enforcement action.⁷²

2.2.3 Department of Transportation Administrative Responsibilities

Under 14 CFR Part 382.63, DOT is required to review the implementation plan of each air carrier and direct them to amend their plans as needed to comply with the requirements of Part 382.⁷³

Under 14 CFR Part 382.65, consumers with a complaint about an ACAA violation may contact the DOT Office of Consumer Affairs for assistance. Consumers may also file formal complaints for DOT administrative review in accordance with 14 CFR Part 302.⁷⁴

Since 1986, no ACAA amendments have been passed, but Part 382 has been modified several times. Section 3.0 summarizes recent changes and proposed amendments.

3.0 Recently Approved Changes to the Regulation and Proposed Changes to the Law

3.1 Final Rule Amending Part 382, Issued March 4, 1998

3.1.1 Clarification of the Definition of Nondiscrimination

In the final rule issued on March 4, 1998, to the November 1996 NPRM, DOT establishes the nondiscrimination standard set forth in the Rehabilitation Act, Section 504, as amended, as the applicable standard for ACAA implementation and enforcement. This standard requires that air carriers, in addition to meeting the specific requirements of Part 382, to modify policies,

practices, or facilities as needed to ensure nondiscrimination, unless making the modifications would constitute "an undue burden or fundamentally alter their program."⁷⁵

DOT's purpose in adding the Section 504 standard to Part 382.7 was to clarify that air carriers have a duty to proactively implement modifications in accordance with the *general* principle of nondiscrimination, and not limit accommodations to those enumerated in Part 382.⁷⁶

3.1.2 Procedures for Providing Seating Accommodations

Under the new amendment to the regulation, air carriers are required to make the following accommodations

- Any person who self-identifies to the carrier as having a disability and who cannot readily transfer over a fixed armrest from an aisle chair must be seated in a row with a moveable armrest.⁷⁷
- Personal assistants performing functions for a passenger that airline personnel are not required to perform shall be seated next to the person they are assisting.⁷⁸
- Air carriers shall provide either a bulkhead seat or another seat as requested by passengers traveling with service animals or passengers having a fused or immobilized leg;⁷⁹
- Air carriers that provide advance seat assignments shall use either a "seat blocking," a "designated priority seating," or some other mechanism approved by DOT to comply with seating accommodation requirements.⁸⁰

3.1.3 In-Cabin Stowage of Collapsible Electric Wheelchairs

Air carriers are required to accept a passenger's battery-powered wheelchair as checked baggage, subject to requirements such as timely check-in and proper labeling, securement and packaging.⁸¹ Air carriers shall not drain wheelchair batteries.⁸² Upon passenger request, collapsible wheelchairs shall be stowed in the cabin stowage area, subject to the Part 382 stowage guidelines.⁸³ Passengers also may provide written directions to airline personnel for disassembly and reassembly of their wheelchairs.⁸⁴

3.1.4 Issues Not Addressed by the Final Rule

In the 1996 NPRM, DOT also sought comment on additional accommodations for persons with hearing impairments and the provision of a smoke-free accessible path through airports for persons with respiratory disabilities. DOT deferred decisions on whether to propose rules on both of these matters until after further consideration.⁸⁵

3.2 Proposed Amendments to the Air Carrier Access Act

3.2.1 Draft Miller Amendment

Case law has established that a plaintiff has a private right of action for ACAA violations. However, guidelines regarding damages and legal fees have not been established. Sharon G. Miller, lead attorney in a recent ACAA case,⁸⁶ has proposed the following amendments to codify plaintiffs' standing and the terms of a private right of action:

- persons filing lawsuits pursuant to ACAA violations should have the same private right of action and private remedies as persons filing lawsuits regarding any other civil rights statutes;
- public remedies pursuant to violations of the ACAA should be assessed in the same amounts as violations of other civil rights statutes (\$50,000 for first violation and \$100,000 each for subsequent violations, with each discriminatory act counted as a violation);
- each airline should be required to forward copies of written complaints and its written summaries of oral complaints relating to disability to DOT within 30 days of receipt; and
- DOT should be required to investigate individual complaints against airlines, determine whether a violation has occurred, and penalize the airlines for each occurrence of an ACAA violation.⁸⁷

3.2.2 Inclusion of Code-Sharing Foreign Air Carriers

The number of Americans with disabilities who travel internationally is increasing. Because ACAA applies only to U.S. domestic carriers, passengers on international flights of foreign air carriers operating within the United States often experience discrimination in the form of inaccessible facilities and lack of reasonable accommodations such as wheelchair assistance. Although a general prohibition against discrimination applies to foreign carriers under the FA

Act, DOT has applied it to only two cases of discrimination involving a disability issue.⁸⁸ The economic advantages to foreign carriers operating in the U.S. market and using U.S. airport and air traffic control facilities are clear. Those advantages are further enhanced when foreign carriers enter into code-sharing arrangements with U.S. domestic carriers whose flight networks they share. Foreign carriers operating in the U.S. market must be required to comply with the same laws as U.S. domestic carriers in providing air travel services to the American public. The ACAA should be amended to include foreign carriers within its scope, and the necessary international agreements should be developed or revised to reflect these legal obligations.

In light of this background on ACAA's history and the continuing problems in realizing its goals, Part II begins the analysis of federal enforcement with a description of its organizational and functional components at the U.S. Department of Transportation.

PART II. THE ROLE OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION (DOT)

4.0 Background on DOT Enforcement Philosophy and Operations

4.1 Regulation of the Aviation Industry and Consumer Protection

Some history on the federal aviation enforcement function will aid in understanding the Air Carriers Access Act (ACAA) enforcement today. Informal complaints alleging ACAA violations are handled by the Consumer Protection Division within DOT's Office of General Counsel (OGC). Aviation consumer protection, initially established by the Civil Aeronautics Board (CAB) during the 1950s, was originally linked to the economic regulation of the airline industry.

CAB's mission as the agency for the regulation of aviation industry economic issues, including consumer protection, grew for two decades. At its peak, the CAB regulatory enforcement mechanism consisted of more than 100 enforcement and legal staff in Washington, DC,⁸⁹ in addition to a national network of field office auditors.⁹⁰ By the late 1970s, changes in the national political climate and fiscal priorities led to the phase-out of CAB and most of its organizational structure.

4.2 The Transition to Industry Deregulation

The Airline Deregulation Act of 1978 abolished CAB by calling for the gradual lapsing of its powers to set airline rates and routes and to exercise antitrust functions by 1984.⁹¹ The Deregulation Act also called for the elimination of all requirements of section 404(a), except the provision for "safe and adequate service" and the general nondiscrimination provision of section 404(b) as applied to domestic, but not foreign, air transportation by 1982. By the end of the sunset period in 1984, CAB had been entirely dissolved except for a few components transferred to DOT. Initially excluded from those organizations scheduled for transfer to DOT, the Aviation Consumer Protection Division was transferred into DOT's Office of Intergovernmental Affairs in 1985, as a result of the Civil Aeronautics Board Sunset Act of 1984.⁹² The Sunset Act amended and clarified the provisions of the Deregulation Act regarding the transfer of certain functions to

DOT, including the consumer protection function. The legislation was a reprieve, saving the entire division from the fate of its parent organization.⁹³

Although the Federal Aviation Act of 1958 (FA Act) mandated nondiscrimination in air travel,⁹⁴ the standard was interpreted in conjunction with the "safe and adequate" service provision of section 404 (a).⁹⁵ Nondiscrimination was understood more as a matter of fair and consistent commercial practices (e.g., ticketing, pricing) than of equal access to air travel. Enforcement of this provision did not extend to the protection of civil rights, though CAB affirmed that instances of race or age discrimination might come within the scope of section 404 if the alleged discrimination directly affected the provision of air transportation.⁹⁶

Not until the enactment of the Rehabilitation Act in 1973 was the issue of systemic discrimination against persons with disabilities addressed on a broad scale. Interpretation of the FA Act's nondiscrimination provision was broadened by the Rehabilitation Act, which created a stronger basis for legal challenges to discriminatory practices restricting access to air travel by passengers with disabilities. With the passage of the Deregulation Act in 1978, however, the nondiscrimination provision applying to domestic air transportation was abolished, undercutting the movement toward greater definition of the nondiscrimination standard.⁹⁷

To clarify the applicability of the general nondiscrimination provision to discrimination on the basis of disability, CAB promulgated Part 382, specifically prohibiting discrimination by certificated airlines on the basis of disability. Drawing on the Rehabilitation Act, Part 382 targeted systemic discrimination against air travelers with disabilities, starting with air carriers receiving federal assistance. It did so by spelling out the affirmative requirements of a policy of nondiscrimination and equal access for passengers with disabilities. The irony is that even as the original Part 382 went into effect in 1982, creating new CAB regulatory enforcement responsibilities, the Consumer Protection Division was reducing staff and curtailing operations in response to legislated cutbacks.

4.3 Impact on the DOT Organization

Significantly, Part 382 became effective as the CAB organization and functions were phasing out. In the eleventh hour of the CAB phase-out, the Consumer Protection Division got a reprieve and was transferred to DOT, where it resumed scaled-down operations with approximately 40 staff members in the Office of Intergovernmental Affairs.⁹⁸ In 1995, the staff was reduced again and transferred to OGC as a separate division under the Assistant General Counsel for Aviation Enforcement and Proceedings.⁹⁹

The scope of post-CAB consumer protection responsibility includes monitoring all categories of incoming aviation consumer complaints and working directly with the airlines to improve their service and compliance with commercial regulations. ACAA compliance monitoring is actually a very small subset of the larger aviation consumer protection function as it has evolved. The Deregulation Act shifted the government's role in the economics of aviation from strict control of competition and fare discounting to reliance on competitive market forces to promote both increased consumer choices and the financial viability of the industry. Yet as the emphasis on regulation waned, a new emphasis on the protection of consumer's civil rights emerged. CAB's dismantling weakened the role of government regulators just as new regulations having a different objective were being created. In a new era of deregulation, the scaled-down Consumer Protection Division became responsible for protecting consumer economic interests without imposing burdensome compliance requirements and for ensuring that aviation consumers were not denied their civil rights under Part 382.

4.4 Consumer Protection in a Postregulation Environment

Deregulation brought about a new approach to consumer protection. With far fewer resources at its disposal, DOT adopted a nonadversarial approach as more economically feasible and in keeping with the philosophy of deregulation. Consumer complaints were no longer routinely investigated on a case-by-case basis, and investigation was largely replaced by complaint monitoring.¹⁰⁰ With a staff of seven including administrative staff, Consumer Protection interfaces regularly with airline representatives on all consumer issues, including complaints and compliance with non-safety regulations.¹⁰¹ The actual resource level dedicated to handling all informal ACAA complaints is currently estimated at less than one full-time

equivalent (FTE) per year.¹⁰² Compliance monitoring activities generally have been scaled back in number and scope such that proactive monitoring of ACAA compliance is both inadequate and inconsistent.

4.5 Civil Rights Enforcement as a Function of Consumer Protection

The sweeping changes to consumer protection following the Deregulation Act affected DOT's approach to ACAA enforcement in three ways. First, the dismantling of the complaint investigation mechanism has meant fewer resources for follow-up on the complaints of persons with disabilities alleging discrimination. Like most complaints received by the Consumer Protection Division, informal ACAA complaints are usually not investigated on a case-by-case basis, although they are subject to a higher standard of review. Second, airline compliance monitoring became very limited in scope, in keeping with deregulation.

Finally, the filing of formal ACAA complaints seeking enforcement action has not been encouraged as it is in other agencies having civil rights enforcement responsibilities. All formal complaints by private individuals, as well as formal complaints DOT files on the basis of pattern and practice violations, are investigated by the staff of the Assistant General Counsel for Aviation Enforcement and Proceedings. Of the seven lawyers on staff (one of whom is part-time), two handle ACAA issues along with other matters.¹⁰³ Yet since 1990, startlingly few formal complaints have been filed, and the majority of these have been dismissed. The analysis below will address some of the features of both the informal and the formal complaint mechanisms that contribute to their limited role in ACAA enforcement. The following section briefly describes the functions performed by each organizational component involved in ACAA implementation and enforcement.

5.0 DOT Organizational Components Involved in ACAA Enforcement

Figure 1 identifies the ACAA/Part 382 implementation and enforcement functions carried out by DOT. Figure 2 shows DOT's organizational plan correlating the implementation and enforcement functions with the responsible organizations shown in bold. The Secretary of Transportation is ultimately responsible for Part 382 enforcement. Under the Secretary, OGC performs most of the ACAA enforcement activity, with some implementation responsibilities performed by other organizations. The overview of roles presented in this section will be followed by a more detailed description and analysis in sections 6.1 through 6.7.

5.1 Office of General Counsel

OGC oversees and ensures integration of ACAA implementation and enforcement activities carried out by the Assistant General Counsel for Regulation and Enforcement and the Assistant General Counsel for Aviation Enforcement and Proceedings. Regulation and Enforcement develops Part 382, and Aviation Enforcement and Proceedings monitors and enforces compliance. Communication and coordination between the two offices are intended to ensure that the regulation is effective in fulfilling its legislative mandate and is modified as needed in response to stakeholders' concerns.

5.2 Regulation and Enforcement

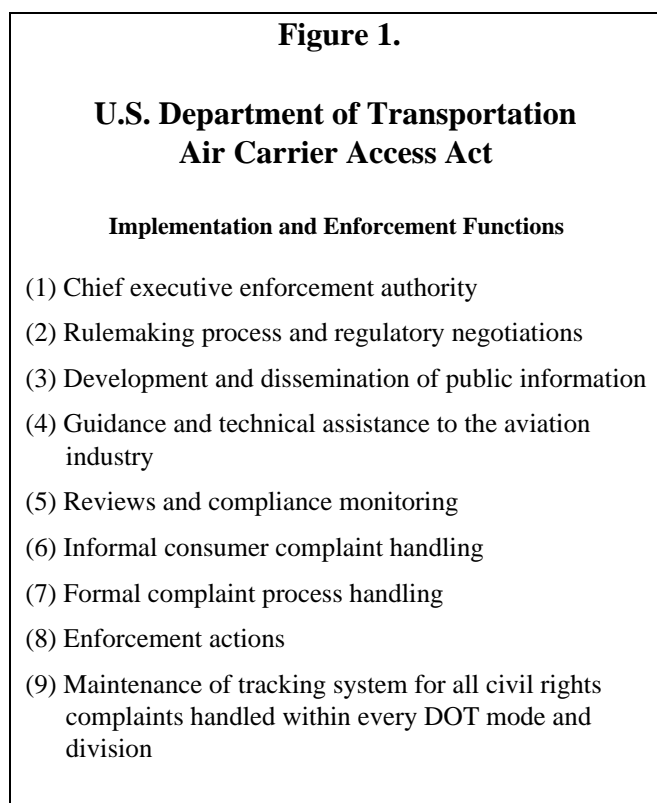
The Office of Regulation and Enforcement manages the standard and negotiated rulemaking processes. It acts as intermediary among the ACAA stakeholder groups in developing a regulation satisfying the goals of nondiscrimination and access to air travel, in accordance with applicable legal standards (e.g., reasonable accommodation).

5.3 Aviation Enforcement and Proceedings

The Office of Aviation Enforcement and Proceedings is responsible for activities relating to the enforcement of aviation economic laws under DOT's jurisdiction.¹⁰⁴ Consumer protection and legal support on aviation economic licensing matters are its two main spheres of responsibility. ACAA enforcement constitutes a very small subset of its consumer protection responsibilities, which include

- unfair and deceptive practices;
- unfair competition by air carriers and travel agents;
- deceptive advertising;
- denied boarding compensation;
- violations of rules pertaining to discrimination against air travelers on the basis of race, ethnicity, national origin, age, religion, gender, disability, and so forth;
- violations of rules pertaining to ticket refunds;
- violations of rules pertaining to lost baggage liability;
- violations of public charter rules; and
- violations of restrictions on ticket sales and service to countries posing security threats.¹⁰⁵

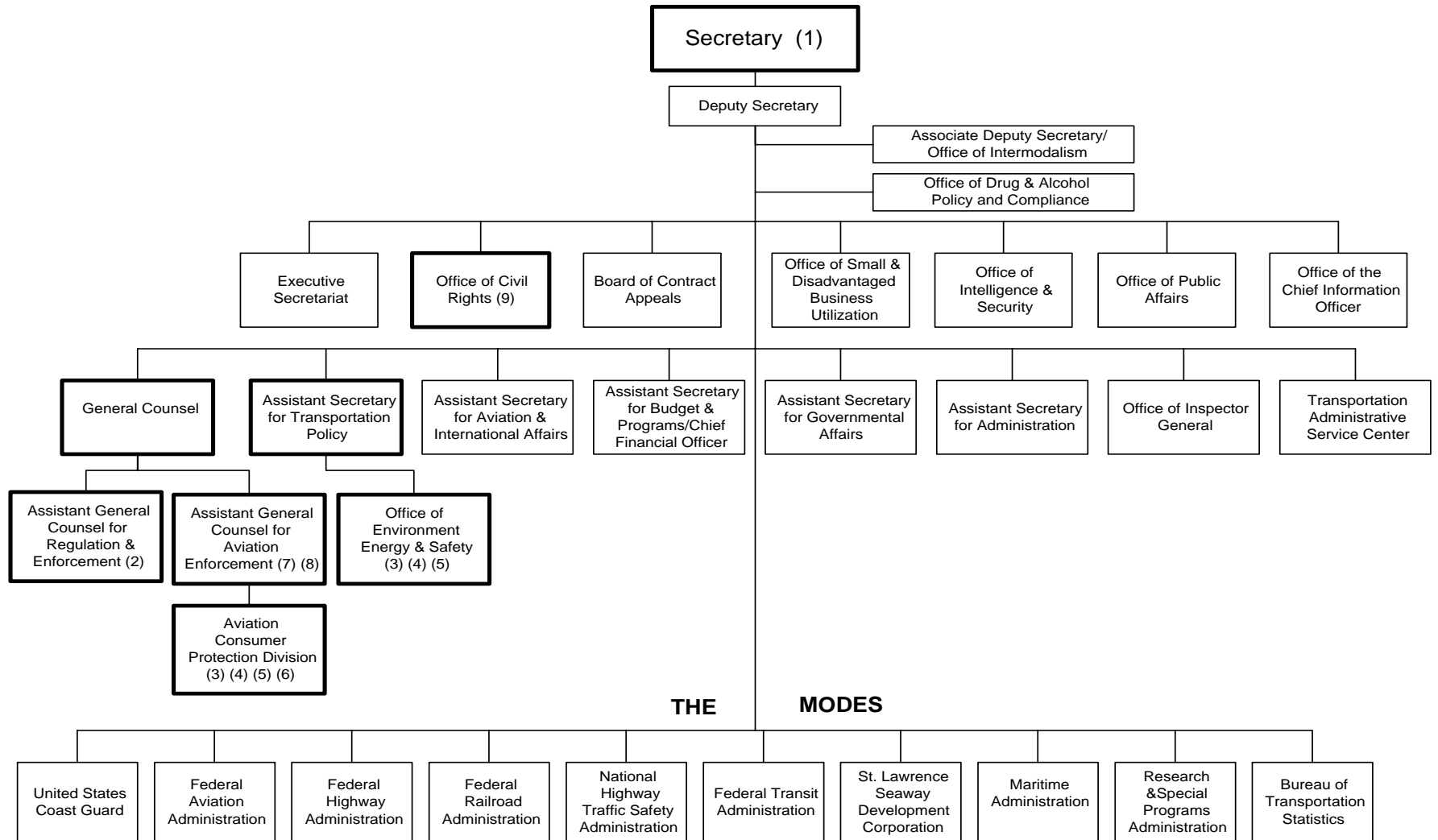
The Enforcement Office handles formal complaints alleging any of the above infractions that may result in enforcement action.¹⁰⁶



The Enforcement Office's responsibilities in the area of economic licensing are somewhat broader. The office provides legal review and investigative support to authorize all air

transportation concerns operating in the United States and their continuing fitness for service. The Enforcement Office is public counsel in formal proceedings involving carrier fitness and selection, and prosecutes to obtain civil penalties in cases involving fraudulent statements or claims made to the Office of the Secretary of Transportation (OST) under the Program Fraud Civil Remedies Act.¹⁰⁷

Figure 2. U.S. Department of Transportation Organizational Chart



NOTE: Organizations in **bold boxes** have ACAA implementation and/or enforcement responsibilities. See Figure 1 for key to associated functions.

Most ACAA activity originates within the Aviation Consumer Protection Division, a subdivision of Aviation Enforcement and Proceedings. The division's responsibilities are to

- receive informal complaints from members of the public regarding aviation consumer issues;
- verify compliance with DOT's consumer protection requirements;
- provide guidance to the industry and members of the public on consumer protection matters; and
- make available to the public information on consumer protection matters.¹⁰⁸

Of the division's seven full-time staff (including clerical), less than one FTE is dedicated to ACAA-related activity. As mentioned earlier, the current Enforcement Office has fewer than seven full-time attorneys, two of whom work on ACAA issues part time. These staffing constraints are part of continuing budget cutbacks affecting OGC's operations at every level.

For example, the entire OGC with a staff of about 85 had an annual travel budget of \$46,250 in Fiscal Year (FY) 98¹⁰⁹ and \$30,000 in FY99.¹¹⁰ There has been no training budget for some time.¹¹¹ The Office of Aviation Enforcement and Proceedings comprises less than 20 percent of OGC's entire operation and competes for funds with six other offices, including the Office of International Law; the Office of Environmental, Civil Rights, and General Law; and the Office of Regulation and Enforcement. In FY97, the Office of Aviation Enforcement and Proceedings spent less than \$4,000 on all business travel. For each of the past two years, only \$20,000 has been allocated to OGC for subscriptions and supplies.¹¹²

None of the subdivisions within OGC is funded for any specific compliance or implementation monitoring activities.¹¹³ OGC docketing facility, however, has a total annual budget of \$800,000 for all expenses related to litigation, rulemaking and DOT certification activities.¹¹⁴ Salaries are the only budget line items broken out by subdivision of OGC. Salaries and benefits for the Enforcement Office (including the Consumer Protection Division) total over \$1.4 million annually.¹¹⁵ The picture emerges of a small staff having a broad range of responsibilities with little or no budget authority and consequently few resources (or incentives)

to develop an effective system for monitoring compliance, supporting implementation, and enforcing the ACAA.

5.4 Office of Environment, Energy, and Safety

DOT's Office of Environment, Energy, and Safety operates under the Assistant Secretary for Transportation Policy. Although no official document was available describing the office's general responsibilities, an interview with staff members provided an overview of its ACAA implementation responsibilities. To date, these responsibilities have included review and comment on the initial Part 382 compliance plans submitted by major and national airlines, development of ACAA public information pamphlets, and sponsorship of a federal advisory committee on the feasibility of incorporating accessible lavatories in single-aisle airplanes with a seating capacity of between 100 and 199 seats.

5.5 Departmental Office of Civil Rights

DOT's Departmental Office on Civil Rights (DOT Civil Rights) plays no direct role in ACAA enforcement, but does maintain a website with links to public information on ACAA and Americans with Disabilities Act (ADA) transportation access provisions. ADA enforcement is the responsibility of the civil rights offices within the Federal Transit Administration, Federal Aviation Administration (FAA) and other modes responsible for regulatory enforcement (see Figure 1). The DOT Civil Rights website directs persons with disabilities to contact OGC for complaints against airlines (ACAA enforcement) and the FAA Office of Civil Rights for complaints against airports (Section 504 and ADA Title II enforcement).

The relationship between OGC and DOT Civil Rights is informal. OGC may consult with DOT Civil Rights concerning its ACAA enforcement cases and gives them advance notice concerning its enforcement actions.¹¹⁶ OGC has two civil rights staff attorneys serving as advisors on ACAA and other civil rights issues and as liaisons with DOT Civil Rights.

Because of the decentralized DOT environment, the civil rights offices in each mode have developed their own enforcement philosophies, methods, and priorities. As a step toward a more

unified departmental civil rights policy, DOT Civil Rights is developing a central database for tracking and analyzing trends among all civil rights complaints handled anywhere within DOT.¹¹⁷

5.6 Analysis and Recommendations

Finding No. 1: DOT enforces ACAA from a consumer affairs office, not a civil rights enforcement office.

Recommendation No. 1: DOT should establish a unit for ACAA civil rights enforcement that is separate from consumer affairs monitoring.

Such a unit might be located in OGC or DOT Civil Rights. Congress should appropriate funds for adequate staff and resources to run the enforcement office effectively.

Finding No. 2: There is little coordination and integration of activities among the many offices having ACAA implementation and enforcement responsibilities.

Recommendation No. 2: DOT should develop and carry out an integrated implementation and enforcement strategy with clearly defined roles and responsibilities for the various offices involved.

Effective implementation requires a relationship among compliance monitoring, technical assistance, public information, and enforcement. The many offices involved in these activities should develop an overall blueprint for implementing the law, and work with outside stakeholders to refine the blueprint and see that the law is implemented effectively.

Finding No. 3: DOT has perpetuated nonaction by taking away fiscal control from the offices responsible for ACAA enforcement, removing both the resources and the incentives to effectively perform their assigned enforcement role.

Recommendation No. 3: DOT must realistically reassess its fiscal priorities and budget strategy in light of its responsibilities under the law.

As part of a comprehensive ACAA enforcement strategy, DOT must identify ways to more effectively use resources. When additional funds are unavailable, DOT must encourage the

offices involved to collaborate, seek outside resources, share resources internally, and find alternative ways to meet the objectives of their integrated enforcement strategy.

6.0 Implementation and Enforcement Functions

6.1 Consumer Information Explaining the Law

Unlike some other disability rights statutes, ACAA contains no statutory requirements for the development or dissemination of public information about the rights of people with disabilities under the law and its regulation. Nonetheless, since the enactment of the law in 1986, DOT has developed a variety of public information materials related to ACAA.

6.1.1 Public Information: Print Material

Fly-Rights: A Consumer Guide to Air Travel—September 1994 (tenth revised edition). This 58-page brochure explains the rights and responsibilities of air travelers. Topics include air fares, overbooking, frequent-flyer programs, and travel scams. The brochure includes two pages on the ACAA and its regulations.

New Horizons: Information for the Air Traveler with a Disability—July 1995 (second edition). This 40-page brochure describes the rights and responsibilities of air travelers with disabilities under the ACAA. It includes directions on how to file an informal complaint.

Plane Talk on Passengers with Disabilities—This one-page fact sheet provides highlights of the provisions of the ACAA and its regulations.

Air Travel Consumer Report—Published monthly, this reports presents statistics on airline performance in baggage handling, oversales and on-time flights. Complaint statistics are reported for the following categories: customer service, flight problems (including delays, cancellations, and misconnections), ticketing/boarding (including "disabled"), baggage, refunds, oversales, other (including frequent flyer), fares, tours, advertising, smoking, and credit. ACAA disability complaints are included in this report subsumed under Category C complaints regarding ticketing/boarding.

6.1.2 Website Information

Information about ACAA and the disability discrimination complaint process is available on the Internet at www.dot.gov/ost/ogc/subject/consumer/aviation/index.html (Aviation Consumer Protection Division publication page); www.dot.gov/ost/docr/HOME.HTM (DOT Civil Rights home page); and www.faa.gov/acr/disabemp.htm (Federal Aviation Administration Civil Rights Office page).

6.1.3 Available Formats

New Horizons is available on audiotape and in large print. *New Horizons*, *Fly-Rights*, *Plane Talk*, and the *Air Travel Consumer Report* are available on the websites listed above.

6.1.4 Methods of Dissemination

Copies of *New Horizons* are usually sent only upon request. Copies of *Fly-Rights* are routinely provided to all consumers who send complaints and inquiries to DOT. Thus, consumers who send disability complaints are routinely sent a copy of *Fly-Rights* but not *New Horizons*.

The monthly *Air Travel Consumer Report* is disseminated by DOT's Public Affairs Office and the Consumer Protection Division. On the mailing list are approximately 400 individuals, primarily airline and airport officials, but also academics and consumer organizations. The *Report* is provided to the media, which report selected statistics. Upon request, anyone can be placed on the mailing list. The mailing list is updated annually, purging names and addresses that are defunct and people who no longer wish to receive the *Report*. Because many publications are available on the Internet, DOT plans eventually to phase out some of its mailing lists, although the Consumer Protection Division does not plan to do so.

Airlines use the data in the monthly reports to rate their performance relative to that at their competitors and to analyze their industry status in corporate management reports. Airline representatives review the consumer complaints received by DOT every month for a quality assurance check on their customer service.

Data from specific complaint areas, such as on-time performance for specific flights, are also available on the computerized reservation systems used by airline ticket offices and travel agents to advise customers.

6.1.5 Analysis and Recommendations

Finding No. 4: DOT has done little to educate people with disabilities about either their rights under ACAA or how to exercise them.

Since the inception of ACAA in 1986, DOT has published only one brochure fully dedicated to explaining the law. There have been no public service announcements, no videos, no outreach campaigns, and no grants to nonprofits for public education. In contrast to the ADA public education materials and programs developed by the Department of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC), DOT has done little to train people with disabilities about their rights and responsibilities under the law and how to use them.

Recommendation No. 4: DOT should request that Congress appropriate funding for a comprehensive ACAA public education effort geared to informing air travelers with disabilities about their civil rights.

DOT should seek a budget appropriation to develop and carry out a strategic ACAA education campaign geared to developing ACAA awareness among air travelers with disabilities. Many people with disabilities remain unaware of their rights under ACAA or have limited information about how it works. DOT should develop a plan for training adults with disabilities and parents of children with disabilities about their rights under the law, the obligations of airlines, and the procedures for carrying out the law.

The plan should include development of regular ACAA publications and updates of materials for consumers with disabilities. As regulations change and procedures and practices evolve, DOT should ensure that its publications reflect current practice. DOT should also develop a dissemination strategy targeting adults with disabilities and parents of children with disabilities. Materials should be available at airports, through the airlines, from disability organizations, on-line, and in libraries. All materials should be in accessible formats.

Finding No. 5: DOT has done little to educate the public about the rights of people with disabilities and ACAA's nondiscrimination mandate.

Recommendation No. 5: DOT should request that Congress appropriate funds for a general public education campaign on the ACAA's nondiscrimination mandate.

Public awareness of disability rights laws is generally low, particularly as it relates to air travel. Public education campaigns can be most effective in promoting changed attitudes in relation to important social justice issues, such as disability rights.

Finding No. 6: The disability community has yet to be viewed as a market to be sought by the airlines industry.

Private industry always seeks new markets to enhance competitive advantages. People with disabilities and their families offer a potentially lucrative market for air carriers. However, uneven ACAA compliance would suggest that they are not yet viewed in this manner.

Recommendation No. 6(a): DOT should develop an explicit category for tracking disability complaints in the consumer complaint database and should publish the statistics monthly in the *Air Travel Consumer Report*.

Currently, data about disability complaints are reported as a subcategory of ticketing/boarding. This categorization provides no information for assessing the airlines' performance regarding disability issues. Airline customers who have access to on-time performance statistics can use the information in deciding which airlines to patronize. Creating a distinct category for disability complaints would provide an opportunity for people with disabilities, federal officials, advocates, and researchers to monitor airline performance in serving customers with disabilities. Disability organizations could widely disseminate such information for consumers with disabilities to use in determining where to take their air travel business.

Recommendation No. 6(b): DOT should ensure that disability community organizations and researchers with an interest in disability policy are part of the target audience for monthly dissemination of the *Air Travel Consumer Report*.

Recommendation No. 6(c): Federal officials overseeing ACAA enforcement should develop a strategy for using these statistics to hold airlines accountable for their performance.

6.2 General Guidance to the Aviation Industry

Education and technical assistance to industry in implementing a regulation is an important component of a successful enforcement strategy. DOT has several approaches to providing general guidance and technical assistance to the aviation industry. This section describes each of these approaches, NCD's findings regarding how they have been carried out, and recommendations.

6.2.1 Letters to the Airline Industry

DOT periodically sends letters to the airlines and others interested in the aviation industry about rules concerning passengers with disabilities. NCD's research team was given about a dozen letters sent between 1988 and 1997. Although the present Part 382 did not become effective until 1990, the requirements of the old Part 382 were in effect. The ACAA-related letters are summarized briefly below, as they have been a major avenue for DOT in providing compliance guidance to the industry.

April 25, 1990—Immediately after Part 382 went into effect in April 1990, DOT sent copies of the rule to the major U.S. carriers with a letter notifying them to submit their required written compliance plans.¹¹⁸ They were also notified to implement a disability complaint resolution mechanism, designate their complaint resolution officers (CROs), and provide DOT with their names by June 4, 1990.¹¹⁹

November 29, 1990—DOT sent a second letter advising airline executives of "a clear and troubling trend" of "numerous complaints stress[ing] that many airline employees do not even know that the new rule exists!"¹²⁰ The letter also criticized the insufficiency of many airline responses to disability complaints that neither addressed the specific complaint nor stated what corrective action had been or would be taken. Finally, the letter stated that DOT would "refer to the Enforcement Office any matter which appears to warrant enforcement action because of a lack of employee awareness of the requirements of Part 382."¹²¹

December 20, 1991—DOT sent a letter to airline executives clarifying Part 382 boarding assistance requirements and explaining that it was imperative for airlines to inform passengers

about accessibility limitations on all legs of their journeys.¹²² DOT outlined the standard industry method for coding a need for special assistance into the passenger's reservation. DOT stressed the importance of training airline reservationists and travel agents to be aware of disability issues when making or checking existing reservations, and to identify potential accessibility conflicts. This letter was sent to all major and national U.S. airlines, encouraging them to work together and to avoid enforcement action through voluntary action. DOT also sent the letter to the major travel agency associations with a request to distribute it to their members.

April 2, 1992—In a letter sent to all *Air Travel Consumer Report* recipients, DOT emphasized the need for greater cooperation between airline and airport personnel to effect ACAA compliance in two key areas: providing lift devices and improving communication among airline and airport personnel regarding the special needs of passengers.¹²³ The availability of a free booklet and audio cassette for air travelers with disabilities was announced, and carriers were reminded that new aircraft delivered as of April 1992 must meet Part 382 accessibility standards.

March 16, 1993 and April 5, 1993—In two different letters, DOT notified all airlines and *Aviation Consumer Report* recipients of required cabin interior accessibility features for various types of aircraft.¹²⁴ Enclosed with the second letter was a booklet on accessible lavatory design for two aisle aircraft developed by an ATA-sponsored ad hoc working group. The letter emphasized that compliance with Part 382 accessibility standards is mandatory.¹²⁵

July 15, 1993—This communication was sent to airline officials as a cover letter with copies of two recent letters to industry representatives discussing the interpretation and proper application of Part 382 guidelines concerning passengers with communicable diseases.¹²⁶

October 7, 1993—DOT solicited recipients of the *Air Travel Consumer Report* for input on the NPRM concerning the design of lifts, ramps, and other suitable boarding devices, as well as a workable division of responsibility between airlines and airports in providing this equipment.¹²⁷

During 1994 and 1995, apparently no industry letters addressing Part 382 issues were sent.

November 4, 1996—DOT sent the 1996 NPRM dealing with communicable diseases, seating accommodations, wheelchair stowage, and airport accessibility standards and accommodations with an industry letter to recipients of the *Aviation Consumer Report* and requested comments.¹²⁸

May 23, 1997—This letter was sent to all major and national carriers, air transport organizations and "certain disability organizations" with a copy of Part 382 and the 1996 amendments.¹²⁹ Recipients were reminded that Part 382 can be downloaded from the Internet and must be made available to consumers at all airports at all times.

August 2, 1998—This letter was sent to the 10 largest U.S. certificated airlines, explaining DOT's policy under Part 382 on accommodating air travelers with documented severe peanut allergies. The letter explained the reasoning of the Office of Aviation Enforcement and Proceedings that creating peanut-free buffer zones in response to the request of a traveler with a medically documented peanut allergy was a reasonable accommodation and did not constitute an undue burden on air carriers.¹³⁰

6.2.2 Consumer Complaint Review Meetings

Each month, DOT staff meets with representatives from the individual major airlines to review consumer complaints received by DOT during the previous month. A summary of their complaint statistics is published in the *Air Travel Consumer Report*. Airline representatives willingly participate in these meetings because complaint levels are considered such an important measure of airline performance. The meetings aim to identify corrective action, discuss any problem patterns, and improve the airline's overall customer service record.

Consumer complaints received by DOT, not by the airline itself,¹³¹ are reviewed as part of the exercise. As currently conducted, these meetings do not address the specific issues of airline compliance with Part 382 arising from their own complaint data.

6.2.3 General Compliance Review Meetings

In 1995, DOT began a series of airline reviews as part of the Travelers First initiative. Since 1995, DOT has visited the headquarters offices of 10 major U.S. airlines and 15 smaller carriers as part of this initiative.¹³² The program was designed to promote improvement in the quality of service to the public by the aviation industry. DOT also wanted the program to promote its new image as a consumer protection "facilitator" with the airlines. By approaching the compliance reviews in the spirit of information-sharing rather than investigation, DOT began its move away from a regulatory and toward a more "programmatic" mode of operation.¹³³ Travelers First is still in effect and includes a general review of consumer protection operations for all the major airlines.

DOT reports that it has emphasized voluntary compliance with the law. During each Travelers First review, DOT representatives met with airline officials and staff responsible for general consumer protection. The 10 major air carriers received a briefing on Part 382 requirements, but no inspections were conducted.¹³⁴ DOT staff examined the Part 382 complaint-handling processes and training programs for 15 regional and large commuter air carriers, and also may have randomly inspected their aircraft cabins and equipment for Part 382 compliance (movable armrests, availability of wheelchairs, onboard wheelchairs, etc.). During the reviews, ACAA complaint data typically were not reviewed.¹³⁵ DOT is currently planning action to require airlines to certify the extent to which all their aircraft meet Part 382's physical accessibility requirements.¹³⁶

An area not currently within the scope of Travelers First or any other ACAA monitoring activity is compliance with the requirements for accessible lavatories in newly delivered double-aisle aircraft. OGC reports that it is currently considering the advisability and feasibility of working with FAA to inspect aircraft for compliance with all physical specifications required by ACAA regulations.

Each Travelers First review concludes with an information-sharing session on the various implementation strategies used by airlines in meeting Part 382 requirements. Following each airline visit, DOT sends a follow-up letter listing improvement/compliance recommendations and

requests a response to the recommendations. It is not clear how many airlines sent responses. Researchers were not provided with samples of the follow-up letters or airline responses.

Airlines found to be noncompliant during the reviews are warned about possible legal consequences, and DOT reports that follow-up visits have been conducted with four of those airlines to date. In several instances, carriers have been required to change policies and procedures to modify aircraft to ensure compliance with the physical accessibility requirements of Part 382.¹³⁷

6.2.4 DOT Presentations at Industrywide Conferences

DOT regularly gives presentations on Part 382 requirements and implementation issues at annual conferences sponsored by the Air Transport Association and the Paralyzed Veterans of America. DOT has presented at a number of Access to the Skies conferences, which provide a forum for the aviation industry, government, and disability group representatives to exchange information on accessibility problems for air travelers with disabilities.

6.2.5 Analysis and Recommendations

Finding No. 7: There appears to be little or no DOT follow-up to ensure compliance with DOT directives and guidance.

The guidance letters sent since 1990 have raised a number of compliance issues and concerns. However, there appears to be virtually no follow-up or resolution of concerns raised. For example, DOT's industry letter dated November 1990 expressed great concern about the many complaints pointing to a lack of airline personnel training. The letter threatened that enforcement action would be warranted if complaints continued.

After raising this concern in 1990, DOT did not mention it again, or any action it had taken to encourage compliance. Yet DOT's complaint files and records provide many current examples indicating inadequate training of airline personnel. The threat of enforcement action has also been empty. Of the five penalties issued, only one even mentions training as a factor that directly relates to the many violations.

Recommendation No. 7: DOT should use industry letters to report on both problem areas and the actions taken by DOT and the airlines to correct them.

Industry letters can be another forum for communicating about ACAA problem-solving initiatives and inviting airlines to communicate the solutions they are developing internally.

Finding No. 8: The monthly reviews of airline consumer complaints are underused as a resource for improving ACAA compliance.

Currently, a discussion of specific disability issues that appear in the airlines' own ACAA complaint data is not part of the monthly review of consumer complaints. There is no mechanism to ensure that recurring complaints and problem facilities identified in the airlines' complaint data are regularly addressed.

Recommendation No. 8: Once a quarter, DOT should use the monthly airline consumer complaint review meetings to focus on ACAA complaints.

During the quarterly meetings, airlines should be prepared to review *their own disability complaint data* with DOT, their own trend analysis of these data, and their own "get-well plan" (i.e., action plan for correcting any identified problems).

Finding No. 9: DOT does not provide incentives to encourage airline ACAA compliance.

Having dropped the regulatory role, DOT currently uses the Travelers First program as a form of compliance monitoring. Yet Travelers First is not so much a tool for compliance monitoring as for DOT collaboration with airlines to encourage overall performance improvement. It assumes a willingness to improve performance, an assumption that does not always apply to ACAA compliance. Other alternatives must be explored.

Recommendation No. 9: DOT should reward the airlines that are best in ACAA compliance and complaint resolution.

Airlines that are doing especially well in a particular area of ACAA compliance or complaint resolution should be given special recognition. Public recognition (free publicity) for a job well done in making travel accessible for people with disabilities is one of the most powerful tools available to encourage compliance.

Finding No. 10: The failure to include any regular review of ACAA complaints received directly by the airlines impairs effective monitoring.

The failure to include any regular review of ACAA complaints received directly by the airlines has many and varied implications for the implementation of ACAA. Because the vast majority of ACAA complaints go directly to the airlines, a regular examination of these data to determine where the real compliance problems are for each airline and a comparison of their statistics over time to measure improvements in performance are essential.

Recommendation No. 10: DOT should conduct routine follow-up reviews.

Airlines demonstrating borderline compliance or noncompliance should not only expect DOT check-ups but also should be required to produce evidence periodically that their compliance efforts are resulting in improvement.

Finding No. 11: DOT appears to take no initiative to provide appropriate, targeted assistance when airline problems are identified.

Recommendation No. 11: DOT should assist airlines in developing corrective action plans and compliance improvement objectives.

Finding No. 12: DOT does not appear to have a mechanism for facilitating intermodal and interdepartmental or external collaboration to meet ACAA enforcement responsibilities.

For example, no monitoring of any kind is under way in the delivery of new (double-aisle) aircraft with accessible lavatories.¹³⁸ While DOT claims that no complaints based on a failure to comply with lavatory accessibility requirements have been received to date,¹³⁹ noncompliance will have long-term consequences for many people with disabilities. DOT must be more proactive, despite resource limitations, in meeting its civil rights enforcement responsibilities. It must do some creative problem-solving and activate a mechanism for better use of existing resources. Redistributing resources and sharing responsibility within the agency, as well as aligning with outside resources and expertise may be necessary for DOT to ensure aircraft design monitoring is carried out and ACAA compliance achieved.¹⁴⁰

Recommendation No. 12(a): DOT should require collaboration between OST departments having official ACAA enforcement responsibility and FAA departments having operational responsibilities directly affected by ACAA requirements.

For example, FAA provides review and final approval for all airline flight attendant training programs. DOT should work with FAA to identify any training programs for aviation industry personnel who interface with air travelers within FAA's purview. DOT should collaborate with FAA to expand FAA's role to ensure ACAA requirements are a required component of every applicable training program.

Another example is that FAA inspectors must review and approve all aircraft designs to ensure compliance with FAA safety regulations. No aircraft can be built without an FAA-approved specification. Including ACAA access requirements within the scope of FAA's design inspection is an economical alternative that can significantly strengthen enforcement; it eliminates the need for multiple inspections of the same specification and makes design approval contingent upon compliance with the full spectrum of safety and access requirements. OGC is currently considering the feasibility of working with FAA on new aircraft inspections to ensure compliance with ACAA physical accessibility requirements.

Recommendation No. 12(b): The Rehabilitation Act should be amended to expand the authority of the Access Board.

The Access Board is a small independent federal agency that develops accessibility standards and guidelines. It developed ADA accessibility guidelines that were subsequently adopted by DOJ as part of the implementing regulations for the law. The Access Board's expertise in accessibility and standards development uniquely qualifies it for this role in relation to ACAA. This role parallels the one the Access Board plays for ADA in relation to DOJ.

Access Board responsibilities should include the development of airplane access standards and guidelines (including restrooms, deplaning equipment, and enplaning equipment) that should be incorporated into ACAA regulations. Congress should appropriate adequate funds to enable the Access Board to carry out this function. The Access Board should work in conjunction with FAA, other divisions of DOT, and disability community stakeholders as they

carry out ACAA compliance activities. The participation of FAA in this process is critical because it is already involved in the inspection and approval of aircraft designs.

Recommendation No. 12(c): DOT should anticipate where industry noncompliance may be most pervasive and develop appropriate countermeasures and incentives.

DOT should notify airlines and aircraft manufacturers about the accessibility standards their aircraft must meet and institute periodic inspections to monitor compliance. Airlines with a demonstrated record of compliance should be given special recognition in the *Air Travel Consumer Reports*. Where noncompliance is found, enforcement action should be initiated immediately to obtain voluntary compliance; civil penalties should be levied whenever a pattern of inconsistency in meeting accessibility standards is found. Severe penalties should be imposed for every instance in which the requirement for accessible lavatories in double aisle aircraft ordered after April 1990 or delivered after April 1992 has not been met.

6.3 Technical Assistance to the Aviation Industry

DOT has not had a formal technical assistance program to support Part 382 implementation. Aside from notifying airline officials about technical guidance available through external sources (e.g., ATA's design specification for accessible lavatories in two-aisle aircraft) and occasionally sending an implementation guidance letter, DOT technical assistance has consisted primarily of giving informal guidance to airlines, passengers, and disability rights organizations in interpreting and implementing ACAA regulations.¹⁴¹

Regarding specific technical issues such as transmitting a passengers' special seating assignment information between airlines, DOT has sent an industry letter detailing a workable implementation approach. Researchers did not, however, encounter any materials indicating ongoing involvement in resolving specific problems involving technical issues (e.g., lifting/transferring passengers in wheelchairs, lavatory design for single-aisle aircraft).

Another issue indirectly affecting technical implementation of ACAA requirements is the dual accessibility standards (those applying to ADA Titles II and III) called for under Part 382. Although guidance for meeting both ADA standards is available through DOJ and DOT has

distinguished the responsibilities of airlines and airports in Part 382, some confusion remains about which technical standards ought to apply (for example, airport operators may choose between ADA Accessibility Guidelines and the Uniform Federal Accessibility Standards in meeting certain ACAA accessibility requirements). This uncertainty is compounded when airlines and airports are required to share responsibility for meeting certain ACAA accessibility requirements (e.g., in providing mechanical lift equipment and an accessible path into an aircraft). Airport operators are held to ADA Title II's standards of "program accessibility" and "barrier removal," while airlines must meet the ADA Title III "reasonable accommodation" and "readily achievable" standards. These differing legal standards only add complexity to negotiations between airports and airlines in jointly developing solutions.

Finally, DOT has made limited efforts to tackle controversial but major cabin design problems. Under the leadership of the Office of Environment, Energy, and Safety and the Office of Regulation and Enforcement, the Aircraft Accessibility Federal Advisory Committee was formed to develop a workable design for accessible lavatories in single-aisle aircraft. To that end, the committee of stakeholders met to address technical issues and to resolve the many conflicting interests among the participants.

6.3.1 Aircraft Accessibility Federal Advisory Committee

Advisory committee members were representatives from the airline industry, disability groups, aircraft designers and manufacturers, and flight attendants. The committee met approximately eight times over 18 months to develop design options for accessible lavatories in single-aisle aircraft. Unable to reach consensus, the committee disbanded in 1996. A major area of disagreement was whether a curtain-enclosed partition was the only economically and technically feasible lavatory design option. The committee's final report, recently made available to the public, can be obtained from DOT's website ostpxweb.dot.gov.¹⁴²

6.3.2 Analysis and Recommendations

Finding No. 13: Confusion concerning which standards apply continues to impede full cooperation between airport operators and airlines where Part 382 mandates joint action to meet ACAA accessibility requirements.

Recommendation No. 13: Although DOT issued clarifying regulations as part of the November 1, 1996, amendments to Part 382 and 49 CFR Part 27, DOT must exercise stronger leadership to ensure that airports and airlines take joint action, consistent with the standards that apply to each, to provide an accessible path through the airport and proper equipment for boarding an aircraft.

Finding No. 14: DOT leadership is needed to find solutions to ACAA implementation problems and encourage collaborative stakeholder initiatives.

Recommendation No. 14: DOT must actively encourage airlines to collaborate with the disability community in developing solutions to common ACAA implementation problems.

DOT has used the regulatory negotiation process to address some technical issues in the past with limited success. DOT should build on its experience with these past negotiations to address controversial access issues. The most recent advisory committee on accessible lavatories in single-aisle aircraft failed because of intransigent conflict among the stakeholders. A relatively high level of disagreement and controversy among the stakeholders is a given. It is within DOT's ACAA enforcement mandate to initiate consensus-based processes and keep participants focused on working through stalemates to solve the problems. Issues calling for immediate attention include conflicts between Part 382 requirements and airline policies that seem to circumvent ACAA requirements (e.g., changes in airline preboarding practices).

6.4 Informal Complaints Alleging Potential Violations of 14 CFR Part 382

6.4.1 The Informal Consumer Complaint Process

Under Part 382, consumers should first lodge complaints about discriminatory treatment with the airline itself through the airline's CRO. The responsibilities of the CRO are twofold. First, the CRO is to have the authority to resolve complaints, instructing other air carrier personnel to take the actions required to ensure ACAA compliance (except to countermand pilot

decisions based on safety considerations). Second, the CRO makes a written record of any disability-related consumer complaint and provides to the complainant a written statement containing a summary of the facts.

If the CRO determines that a potential violation of the ACAA occurred, the statement provided to the complainant must include information about what steps the air carrier has taken or will take in response. If the CRO determines that the actions of air carrier personnel did not violate the ACAA, the statement must include the reasons for this determination. The written statement to the complainant must also "inform the complainant of his or her right to pursue DOT enforcement action."¹⁴³ Although the airline must keep written records, these complaints are considered informal complaints.

Airline passengers may also contact DOT directly with a complaint about discriminatory treatment by an air carrier. Complaints sent directly to DOT are simultaneously logged into the DOT complaint database and forwarded with a form letter to the particular airline for action by its consumer affairs division. Thus, some complaints appear only in the records of the specific air carrier, while other complaints appear in both the air carrier's database and the complaint database at DOT. The vast majority of complaints are sent directly to the airlines, with no copy to DOT.

Disability discrimination complaints sent to DOT are entered into the same DOT database that stores information on *all* categories of aviation consumer complaints, as well as complaints of discrimination under Title VI or any other civil rights laws. All these complaints, whether customer service or civil rights in nature, are considered informal complaints. The information profile on a disability complaint includes the date received, airline and flight number, type of disability of the passenger (broken into eight broad categories), basis of the complaint, identity of the person filing the complaint (e.g., the passenger, a relative of the passenger, a lawyer for the complainant, or a congressperson), date of the potential violation, disposition of the complaint, and status of the complaint (open or closed). In addition to the profile in the complaint database, DOT maintains a paper file on the complaint that includes correspondence about the complaint received by DOT, DOT letter of notification to the airline,

and the airline response to DOT and to the customer. Files of cases older than 12 months are purged regularly; only cases determined to be potential enforcement actions are retained.

DOT receives complaints in the form of phone calls, letters addressed directly to DOT, and copies of letters addressed directly to the airline. As the complaints come into DOT, an analyst reviews them and records them in the complaint database. The hard copy file may have letters and materials with information from the complainant and from the airline about actions taken in response to the complaint. After reviewing the file, the analyst may make further inquiries of the airline or the complainant and seek to clarify the pertinent ACAA requirements. Telephone complaints are usually followed up with a phone call to the complainant telling him or her to send a written complaint. After the complaint is logged in, the case is classified as "potential violation" or it is closed, or both, depending on whether the complaint was originally received in writing, by telephone, or other means. Complaints by telephone are generally closed the day they are received. Complaints sent by letter are coded "potential violation" and sent with a form letter to the airline requesting that it respond to the complainant and notify DOT of its actions within 30 days. When DOT receives a copy of the airline response, the complaint record is typically closed. DOT follows up with the airline only when the complaint involves an established policy or procedure that is out of compliance with ACAA. The vast majority of complaints are not determined to be matters of policy or procedure.

Even when they receive a finding of potential violation, individual informal complaints are rarely referred to the Enforcement Office for investigation. Although the Enforcement Office might file a formal complaint based on a single complaint that appears conspicuously egregious and raises issues of general public concern, no individual informal complaints have been referred for enforcement since 1990.¹⁴⁴ Generally, when an airline accumulates a significant number of complaints of the same type, indicating a problem of general public concern, these cases will be forwarded to the Enforcement Office for further investigation of a possible pattern and practice violation. The Enforcement Office may then seek a settlement with the airline or file a formal complaint. Most ACAA complaints received by DOT are informal, and only 17 formal

complaints alleging an ACAA violation have been fully processed since 1986. These are discussed in section 6.5 of this report.

6.4.2 Characteristics of Informal Complaints Received by DOT

Summary data from the complete DOT database made available to NCD show that complaints involving disability constitute approximately 4.5 percent of all consumer complaints received on the major airlines. Table 1 shows the total number of consumer complaints in all categories received for each of 10 major U.S. carriers during the entire ACAA enforcement period, what percentage of this total were identified as potential enforcement actions, and of those what percentage were disability-related.

Between April 1990 and October 1997, DOT received approximately 1,831 informal disability-related complaints. Of these, 140 appear to be multiple complaints generated from a single "travel occurrence" involving the same airline, actions, and date of travel. Although ACAA does not apply to foreign air carriers, 103 (5.6%) complaints in the database are from foreign carriers. Approximately 80 percent of the complaints involved one of the major U.S. airlines or their commuter airline affiliate (see Table 2). The remaining complaints involved smaller air carriers or tour operators.

The DOT database also shows that 72.5 percent of the complaints are made by letter, with 27.5 percent by telephone. More than one complainant can be listed for a single complaint. In fact, some complaints list up to four different complainants; these may include the traveler with the disability, a relative of the traveler, a lawyer, a congressperson, or other individual. The person registering the complaint is most often the passenger with the disability, although relatives (16 percent of all complainants), congresspersons (6.3 percent), and lawyers (3.2 percent) also appear in the records as complainants.

Table 3 displays the distribution of complaints against U.S. air carriers by type of disability, using the categories contained in the DOT database. DOT coding categories for the type of disability do not clearly describe the types of disabilities of the complainants, as some of the categories refer to conditions while others refer to assistive devices. It is also not clear how

people with multiple disabilities are categorized by the analysts who create the complaint record on the basis of the oral or written statement of the complainant. Approximately 60 percent of the complaints involve a person who uses a wheelchair, while another 19 percent are from persons classified as "other handicapped." Nearly 6 percent of the complaints come from persons with hearing or vision impairments, and 8.7 percent involve someone who uses oxygen.

The types of actions upon which the complaints are based are listed in Table 4. Failure to provide assistance is by far the most common complaint, accounting for 50 percent of the complaints. Complaints involving the handling of assistive devices constitute another large category. Approximately 21 percent of the complaints allege an ACAA violation involving problems with storage, loss, or damage to an assistive device, delay in returning the device to the owner; or the insistence upon a liability waiver (not allowed under ACAA). Although the database does not identify the types of devices involved in these complaints, a review of selected complaint files suggests that many of these cases involve wheelchairs. A smaller, but still significant, number of complaints involve refusal to board or seat assignment restrictions (the April 1998 NPRM addresses seating assignment rules).

Of the 1,728 disability-related complaints logged against U.S. carriers from April 1990 through October 1997, 169 or 9.8 percent were identified as "potential enforcement actions." In addition, all but 6.5 percent (113) of the complaints were considered closed cases. A determination of potential violation is made based on the complainant's statement (written or taken by telephone) and the airline's written response. DOT usually does not independently investigate these complaints by interviewing the major parties to the complaint or contacting other persons who may have witnessed the actions that form the basis of the complaint.

In summary, most of the complaints filed with DOT involve experiences with the major U.S. air carriers. This situation is not illogical because these carriers account for more flights and passengers overall. However, the concentration of most of the complaints among a small number of large carriers suggests that better oversight and increased support and consultation with a few airlines could produce a noticeable improvement in the air travel experience of people with disabilities. The DOT database also indicates that people who use wheelchairs continue to

experience problems—in the airport, in boarding and deplaning, the planes, and in the storage and retrieval of their wheelchairs. DOT should be able to monitor and address these problems through its database and compliance processes.

6.4.3 Complaint Data from the Airlines: A Different Picture

The complaints received by DOT constitute only a small proportion of all the complaints directly lodged with the airlines. Each airline has its own complaint handling system for recording complaints received and the actions taken. This record is required in Part 382, even though DOT has to date conducted no formal, systematic review of airline complaint records to date. Researchers learned of two instances in which these airline records had been obtained as part of discovery for lawsuits brought under ACAA by air travelers with disabilities. In both cases, the number of complaints filed directly with the airline far exceeded the number of complaints filed with DOT about that same airline.

The complaint log from one of these lawsuits was made available for our analysis. Table 5 summarizes this log, showing complaints received from January 1993 through November 1996 by a major U.S. carrier. More detail about the content of those complaints is given in Appendix B. Analysis of the log is useful not only because it provides a more accurate picture of the volume of disability complaints, but because it provides more detail about the types of actions that are the bases of complaints.

A total of 5,072 disability-related complaints were logged with this air carrier during a 47-month period. Approximately 38 percent of the complaints (1,942) were categorized by the airline as involving damaged or delayed wheelchairs. Nearly 25 percent of the complaints (1,258) were classified as failures on the part of the airline's customer service agents to provide sufficient or appropriate assistance to passengers with disabilities. Over 10 percent of the complaints were logged as problems with seating, particularly with requests for the bulkhead.

In analyzing the specific complaints, researchers found that a single complaint sometimes described several problems. Complaints about "delayed wheelchairs" also appeared in other categories such as "disabled passenger seating problem" or "disabled passenger left unattended."

To get a better sense of the true frequency of certain kinds of complaints, researchers tabulated each problem reported regardless of the main category into which the overall complaint had been logged. These results are shown in Table 6.

These complaints indicate significant problems with the level of training and knowledge of airline personnel about their obligations under ACAA, assisting someone with a disability, reassembling wheelchairs, and helping passengers with other assistive devices. It is also noteworthy that the complaints record insensitive, rude, and irresponsible treatment of passengers with disabilities. For example, there are 65 complaints of a passenger being left unattended in a manner that violated the requirement to provide assistance and that may have compromised the safety of the passenger.

To provide additional insight into the bases of ACAA disability complaints, researchers extracted the complaint details from the hard copy files for a small set of complaints filed with DOT. This information is located in Appendix C. The descriptions of the airlines' actions are very similar to the kinds of actions described in the individual airline database summarized in Table 5. Although the cases profiled here are not from a random sample of cases, they do present typical examples of the relationship between the nature of the complaints and their resolution.

For many of these cases, even cases that have been closed, no specific determination by DOT is noted. Apologies or compensatory vouchers by the airline appear to be treated as satisfactory responses in most cases. In a couple of instances, complaints have been marked as a "potential enforcement action," while complaints alleging similar violations are coded "potential violations." Even complaints marked as "potential enforcement actions" were not necessarily forwarded to the Enforcement Office for investigation. Researchers were told that the "potential enforcement action" notation flag problems that may become the basis for a pattern or practice enforcement action in the future.¹⁴⁵

Table 1. Summary of ACAA Informal Consumer Complaints

April 5, 1990–October 23, 1997

Air Carrier	Consumer Complaints (All Categories)	Category C Complaints: Reservations/ Ticketing/Boarding & Disability		Disability-Related Complaints Only		Potential Enforcement Actions			Total Information Requests (All Categories)
		Total	% of all complaints	Total	% of all complaints	Total number (all categories)	Number disability-related	% of disability-related	
CARRIER A	6,243	853	13.6	272	4.4	1,169	25	9.2	910
CARRIER B	5,102	658	12.8	259	5.0	1,160	28	10.8	811
CARRIER C	3,112	493	15.8	193	6.2	633	26	13.5	424
CARRIER D	3,680	587	15.9	183	5.0	1,208	27	14.8	1,013
CARRIER E	3,008	458	15.2	173	5.8	839	24	13.9	607
CARRIER F	3,661	436	11.9	137	3.7	570	18	13.1	769
CARRIER G	3,982	413	10.3	112	2.8	584	12	10.7	750
CARRIER H	1,702	224	13.1	48	2.8	299	5	10.4	180
CARRIER I	811	130	16.0	34	4.2	232	2	5.9	147
CARRIER J	321	55	17.1	25	7.8	97	2	8.0	49
TOTAL/ AVERAGE	31,622	4,307	13.6	1,436	4.5	6,791	169	11	5,660

**Table 2. ACAA Informal Complaints Against Major U.S.
Carriers Received by DOT Aviation Consumer Protection Division**

April 5, 1990–October 23, 1997

Air Carrier	% of Informal ACAA Complaints	Ranking based on share of customer base*
American Airlines (includes American Eagle)	15.5	3
United Airlines (includes United Express)	14.9	2
US Airways/USAIR (includes US Air Express)	10.7	4
Delta Airlines	10.0	1
Northwest Airlines (includes Northwest Airlink)	9.8	6
Continental Airlines (includes Continental Express)	7.6	7
Trans World Airlines (includes Trans World Express)	6.4	8
America West Airlines	2.6	9
Southwest Airlines	1.9	5
Alaska Airlines	1.4	10
Total	80.8	
	(N=1476)	

*Ranking based on total number of passengers served in 1996 as reported in the *Air Transport Association 1997 Annual Report*, p. 16. The major carriers listed above carry an estimated 92 percent of all commercial air traffic.

Table 3. Informal ACAA Complaints: Disability Categories¹

DOT Disability Category²	% of Complaints
Other wheelchair	59.8
Other handicapped	18.7
Oxygen	8.7
Vision impaired	3.2
Hearing impaired	2.0
Paraplegic	2.0
Mentally impaired	1.9
Quadriplegic	1.4
Vision/hearing impaired	0.7
Other assistive device	0.7
Communicable disease	0.6
Stretcher	0.4
Total	100.1
	(N=1728)

¹Based upon data from U.S. carriers only.

²The categories are those used in the DOT complaint database.
Percentages are rounded to the nearest tenth.

**Table 4. ACAA Informal Complaints:
Types of Disability Complaints Received¹**

DOT Complaint Types²	% of Complaints
Failure to provide assistance ³	50.0
Assistive device; storage; loss/damage/delay; Liability waiver	21.1
Other	8.5
Seat assignment restriction	7.9
Refusal to board passenger	5.8
Aircraft not accessible	2.0
Unsatisfactory information	1.2
Airport not accessible	1.1
Service animal problem	0.9
Refusal to board without attendant	0.8
Advance notice dispute	0.3
Ticket not received; ticket/reservation incorrect	0.3
Refusal to accept other airline ticket / Required to repurchase lost ticket	0.1
Unable to contact	0.1
Total	100.1
	(N=1728)

¹Based upon data from U.S. carriers only.

²The complaint types are those used in the DOT complaint database.
Percentages are rounded to the nearest tenth.

³"Failure to provide assistance" includes not providing a wheelchair or assistance in getting to a restroom, or not communicating information in a manner appropriate to a person's disability.

Table 5. Complaints Filed Directly with a Major Air Carrier
January, 1993–November, 1996¹

CODE	CATEGORY TITLE	Number of Complaints
DDWC	Delayed wheelchair	1871
DCSAH	Disabled pax assistance by CSA	1258
DSEAT	Disabled pax seating problems	524
DIFAT	Lack of F/A assistance with disabled pax	322
DCONT	Contract employee complaint	305
DMISC	Disabled miscellaneous	225
DRR	Lack of res. assistance with disabled pax	123
DPRO	Agent unfamiliar with disabled procedures	79
DAF	Disabled dissatisfied with aircraft facilities	74
DFAC	Disabled facility complaint	72
DDDWC	Damaged wheelchair	71
DUNAT	Disabled PAX left unattended	65
DPB	Disabled PAX preboarding	63
DTIPS	Disabled PAX solicitation of tips	20
	Total Complaints	5072

¹The complaints summarized in this table are from the records of a single airline. The major category headings are listed verbatim from the airline's file. Some of these complaints may have been sent to the Department of Transportation as well. The criteria for defining each category are unclear, as similar types of complaints often were found under several different categories.

PAX = passenger

CSA = customer service agent

F/A = flight attendant

Table 6. Complaints Filed Directly with a Major Air Carrier
January 1993–November 1996
Rank Ordering of Recurring Specific Complaints*

Recurring Complaints	Number of Complaints
Denied/delayed/challenged wheelchair use	2395
Refused/challenged need for assistance	354
Mistreated/rude/incompetent staff	229
Refused bulkhead seating	218
Left abandoned/unattended	202
No preboarding/boarding assistance	162
Missed connection/misboarded/wrong gate	151
Oxygen mishandling/overcharge/no delivery	143
Reservation assistance complaints	123
Injury during transfer/transport	95
Damaged wheelchair	83
Seated at rear of plane	73
Disabled in restricted (middle) seat	42
Solicitation of tips	41
No movable armrests	40
Forced to check assistive device before gate	39
Separated from companion	37
Nondisabled seated in bulkhead	36
No lift/jetway	28
Closed captioning complaints	26
Refused assistance to transfer/transport	25
Pre-assigned seat request denied	22
Staff incompetent/untrained	19
Nondisabled complaints of disabled as obstruction/safety hazard in aisle seats	17
Non-English speaking	15
ACAA violation complaints	15
Safety complaints/safety info transmission	13
No TTY	12
Restrooms inaccessible	11
TOTAL	4666

* The complaints summarized in this table are from the records of a single airline. Specific complaints with fewer than 10 occurrences are not included.

6.4.4 Analysis and Recommendations

Finding No. 15: The informal complaint handling process does not result in consistent enforcement and remediation to individuals whose civil rights were abridged in violation of ACAA.

The manner in which DOT handles ACAA complaints raises the issue of whether it is appropriate to treat complaints of civil rights violations as informal complaints. The process and the database used by DOT are much the same as those used for consumer complaints that do not involve violations of an individual's legally protected civil rights or, in some cases, any law at all. When draft ACAA regulations were issued, Eastern Paralyzed Veterans of America brought this issue to the attention of DOT. However, DOT nonetheless decided to structure the primary complaint process as an informal one. In its response to the comments received about the NPRM of June 22, 1988, DOT describes the role of the Consumer Protection Division as follows:

The Department's Consumer Affairs Office is often able to help resolve problems between passenger and carriers on disability issues as well as other airline consumer matters. We recommend that, before filing a part 302 complaint [this is a formal complaint], a passenger write or call this office to determine if it can work out a solution to the problem.

DOT goes on to say,

In the absence of other enforcement mechanisms the Department will consider individual complaints as well as so-called "pattern or practice" complaints under part 302 procedures. The office [Aviation Enforcement and Proceedings Office] will evaluate all complaints that come in. To mandate that every complaint be prosecuted, however, regardless of its merits, would entail a considerable waste of resources, both the Department's and those of carriers and complainants.

Researchers did not survey any ACAA complainants to learn what their expectations of the complaint process were. However, because complaints of housing discrimination and employment discrimination are generally handled on a case-by-case basis, with investigation and

individual case resolution and enforcement, it is logical to expect that complaints of disability discrimination in air travel would get similar individual case attention. The *New Horizons* brochure states, “Any person believing that a carrier has violated any provision of the rule may contact the following office,” followed by the address for the Consumer Protection Division. Nothing in the DOT brochure or website information about the ACAA compliance process makes it clear that most complaints sent to DOT are processed with a brief assessment, a tracking record created in a database, a form letter to the respondent airline, and monitoring of the complaint until an airline response is received and the complaint closed.¹⁴⁶ Only the few complaints determined to involve policies or procedures out of compliance with ACAA are investigated. It is not clear whether consumers with disabilities relying on DOT’s public information brochures would be aware of the limitations of filing an informal complaint with DOT to obtain complaint resolution.

Complainants who are not satisfied with the airline response to their complaint are encouraged to contact DOT. However, even if DOT has determined that a potential violation occurred and that the airline response was inappropriate, further formal action usually does not result. DOT may contact the airline and request that it amend its response to the passenger, but it does not levy a fine or engage in any formal mediation or adjudication between the complainant and the airline unless a formal complaint is filed. Thus, passengers dissatisfied with the airline response to their complaint are left with civil litigation as the primary means for obtaining a satisfactory or enforceable redress for the alleged violation of their rights.

Recommendation No. 15(a): Complaints filed under the Air Carrier Access Act should be individually investigated and given a specific determination by DOT that is communicated to the complainant.

The process should be modeled on the Equal Employment Opportunity Commission (EEOC) procedures for handling discrimination complaints and should involve the possibility of mediation and compensation or awards to complainants as an alternative to litigation.

Recommendation No. 15(b): The public information materials distributed by DOT should clearly describe the types of outcomes possible from filing an ACAA complaint with DOT.

Finding No. 16: DOT's complaint database is inadequate for adjudicating individual ACAA complaints and monitoring ACAA compliance across all air carriers.

The usefulness of the DOT complaint database as a vehicle for monitoring and enforcing ACAA is questionable. For example, all disability-related complaints are logged into a central database containing every category of consumer complaint received by DOT. Complaints about foreign air carriers, which are not currently enforced under ACAA, are included in DOT's statistical reporting of disability complaints.

The DOT database resides on an antiquated mainframe having limited capability to sort on user-selected data fields for different types of analysis. Researchers requested a variety of reports sorted according to different selection criteria and with different sets of data fields. DOT declined to provide all but two on the grounds that the requested reports required complicated reprogramming of the reporting function which none of the consumer protection staff knew how to do. However, following a review of the second draft of this report, DOT staff members said that the mainframe was capable of producing a broad range of reports, including those initially requested.

Another factor affecting the usefulness of the complaint data is the categories for type of disability and type of discriminatory action. Some categories are so broad (e.g., "other wheelchair") that it is difficult to produce a clear profile of the travelers and the events triggering their complaints.

Furthermore, specific information is lacking in the database records concerning the nature and circumstances of the complaints. Capturing this information is particularly important because it is DOT's policy to destroy the hard copies of most complaint files (other than those identified as a "potential enforcement action") a year after they have been received. Although the database record can be expanded indefinitely to document specifics of a given complaint file, the vast majority of complaint records contain only the most basic information about the complainant and the nature and disposition of the complaint. Part of the difficulty may be that complaint letters are written in a narrative style and contain varying amounts of relevant details about the occurrences. A carefully developed complaint form would allow more consistent and specific

data to be collected. In the National Council on Disability (NCD) interviews, DOT staff did acknowledge that the database categories could be improved and indicated that a standardized complaint form had been drafted and was under consideration for approval.¹⁴⁷ Between November 1997 and January 1998, researchers asked several different staff persons about the status of the complaint form. Most staff members indicated that no consensus had been reached on whether such a form would be useful or desirable. At the time of NCD's last inquiry, the form apparently was in limbo at an unknown level.¹⁴⁸

Still another concern is the use to which the complaint data are put. The database complaint records serve primarily to provide DOT with an aggregate picture of the problems reported by the public for each airline. DOT uses the data mainly to work with each airline at the big picture level in correcting compliance problems affecting its overall performance assessment or potentially leading to enforcement action. Although this is a legitimate and useful purpose for the data, the effort expended by individual consumers to document and report their complaints frequently does not result in a satisfactory outcome for them. In addition, as described above, disability complaints are not identified by individual airline in the public report of consumer complaints issued monthly by DOT. Instead, the disability complaints are grouped within the aggregate category "ticketing/boarding."

Finally, no data are regularly maintained by DOT that can be used to assess the full extent of ACAA problems or ACAA compliance across the nation. This is partly because the DOT database contains only a small fraction of the actual number of ACAA complaints generated each year. Most complaints are sent directly to the airline with no copy sent to DOT. Regarding those complaints that are sent to DOT, researchers were not able to determine whether they came from the most dissatisfied or aggrieved passengers, those most knowledgeable about the ACAA, or neither. Although the airline CROs by law must keep a written record of all complaints, DOT does not ask the airlines for these records or for a summary report of the records to analyze, unless in connection with the investigation of a formal complaint or enforcement action.

Yet complaint data produced by a defendant airline during the discovery phase of litigation in which it was involved indicated conclusively that the number of disability-related

complaints made directly to the airline was many times greater than the number of complaints received by DOT over the same period. Between January 1993 and November 1996, this major carrier received 5,072 disability-related complaints;¹⁴⁹ over the same period, DOT received only 142 complaints against that carrier and 1,009 disability-related complaints against all air carriers, including foreign carriers.

Researchers asked Enforcement Office staff what the estimated discrepancy was between the number of disability complaints received by DOT and the number received directly by the airlines. Using airline complaint data during enforcement investigations, they estimated that for every single complaint received by DOT against an airline, about 99 more disability complaints were recorded only in that airline's own records.¹⁵⁰

Recommendation No. 16(a): DOT should maintain a technically proficient database adequate to perform ACAA complaint tracking and analysis.

A database using modern application software should be developed to track the data items and codes required for ACAA complaint processing, investigation, enforcement, and compliance monitoring. In addition, the complaint data categories should be redesigned into clearly defined categories that describe meaningful data.

Recommendation No. 16(b): DOT should require all air carriers whose activities are covered by ACAA to submit annually the record of disability complaints that they are required by law to maintain.

DOT should review these records and evaluate them as part of its responsibility for compliance review.

Finding No. 17: The criteria are unclear for determining when complaints alleging similar violations are to be coded as potential violations only or as potential enforcement actions for investigation by the Enforcement Office.

Although the complaints handled by DOT are considered informal complaints, at some point they may be coded as potential violations or potential enforcement actions of both. Researchers noticed that complaints alleging similar violations were inconsistently coded—sometimes as potential violations and sometimes as potential enforcement actions—and asked

about the distinction between the two codes. When asked what the rules were for deciding which code to apply, DOT staff said there was “no written list” of criteria for distinguishing potential violations from potential enforcement actions or for referring cases to the Enforcement Office for formal enforcement. DOT staff explained that DOT routinely codes as “potential violations” all records generated from complaint letters after a copy of the complaint letter and a DOT form letter go out to the airline requesting a response to the complainant within 30 days.¹⁵¹

When pressed to provide the criteria used to distinguish a potential enforcement action from a potential violation, DOT staff said that some of the criteria for determining whether enforcement action should be taken on a complaint were

- the (perceived) potential effect of the enforcement action on consumers (positive and negative);
- the uniqueness of the complaint issue (i.e., whether it involves a new service the airlines are not yet accustomed to providing);
- how widespread the alleged violation is throughout the industry; and
- the potential impact of the enforcement action on the aviation industry.¹⁵²

Months later, DOT staff members reviewing the second draft of this report with NCD staff members, identified another criterion: whether a complaint involves an established airline policy or procedure that is not in compliance with ACAA. NCD staff members were told that this is the main benchmark for determining whether a complaint is a potential enforcement action. Relatively few complaints receive this designation because it is narrowly applied. Researchers were told that when enough complaints (potential violations) of a similar nature against a given airline had accumulated to suggest a pattern or practice not in the public interest, those cases might be forwarded to the Enforcement Office for review as “potential enforcement actions” against the airline.¹⁵³

Researchers received conflicting information from DOT staff regarding the categories “potential violation” and “potential enforcement action.” During early interviews with DOT staff, researchers were told that some complaints are initially determined to be “potential

enforcement actions,” while all other complaints are routinely coded as “potential violations.” Later, DOT staff said that most complaints are classified as potential enforcement actions from the outset.

Recommendation No. 17: DOT should develop written materials that articulate the decision rules for deciding the status of consumer complaints at each step of the enforcement process.

Objective criteria need to be defined for analyzing informal complaints to identify the elements of liability for prima facie violations, potential enforcement actions, and the imposition of civil penalties.

The next section presents an in-depth description of the formal complaint process and its relationship to ACAA enforcement.

6.5 Formal Complaints and Enforcement Actions

6.5.1 Filing a Formal Complaint

Formal complaints under ACAA are filed following the rules of 14 CFR Part 302. These rules apply not only to ACAA formal complaints but to all complaints alleging violations of any federal aviation statute or DOT rule or order. Any individual, corporation, or public entity, including DOT itself, may file a formal complaint alleging violation of the ACAA with DOT’s Dockets section under Part 302.

The complaint must conform to the procedural requirements of section 302.3 (see Appendix E) with respect to the form and filing of documents. These requirements, which are exacting and time-consuming, serve as procedural safeguards intended to meet due process requirements with respect to the respondent air carrier.¹⁵⁴

There are no public education documents describing how to file a formal complaint under the ACAA. The *New Horizons* brochure, DOT’s only publication for the public that describes in detail the protections afforded air passengers with disabilities, does not inform the public of the possibility of filing a formal complaint. Nor does it list the Enforcement Office as one of the

federal offices involved with ACAA enforcement. Thus, anyone seeking to file a Part 302 complaint would need to find out on his or her own whom to contact to file the complaint. To file correctly, it would be necessary to consult the federal regulations. Without the assistance of a lawyer, an individual would probably not know about the formal complaint process or successfully be able to file a complaint under it.

6.5.2 The Formal Complaint Process

After the complaint has been filed with DOT's Dockets section, the respondent has 15 days to file an answer. After all answers have been filed and any necessary investigation has been conducted, the Enforcement Office has a reasonable period (60 days unless an extension is granted) to file the notice of enforcement and proposed assessment of civil penalty or to dismiss the complaint.¹⁵⁵ At any time after the filing, the respondent may file an answer and a motion to dismiss the complaint. The Enforcement Office will consider matters raised in the answer in deciding whether to dismiss the complaint or institute an enforcement proceeding. The Enforcement Office will dismiss a third-party complaint if it finds either that

- the allegations do not provide sufficient grounds for believing that a violation of a federal aviation statute or department rule or order has occurred, or
- further investigation is not in the public interest.

A notice stating the reason must accompany the dismissal order. If the Enforcement Office does not act within a reasonable period, the complainant may file a motion with the Deputy General Counsel to docket the complaint.

If the Enforcement Office decides to file a notice of enforcement proceeding and its own formal complaint, the case is then assigned to an administrative law judge for a formal hearing under the requirements of 14 CFR 302.3–302.4. In keeping with its overall enforcement strategy, DOT will seek to resolve complaints informally whenever possible before resorting to formal enforcement action.

6.5.3 Informal Enforcement Strategy

The Enforcement Office maintains that the goal of enforcement is to ensure that consumers are protected adequately, and that formal enforcement action can actually impede consumer protection, depending on the approach taken.¹⁵⁶ *Regulatory* enforcement hinders a business's ability to satisfy customer needs, whereas *collaborative* enforcement supports efforts towards compliance in meeting customers needs.¹⁵⁷ The goal is to use the lowest level of enforcement appropriate to achieve satisfactory compliance on any given issue.

In keeping with this goal, the ACAA informal enforcement mechanism is graduated as follows:

- a telephone call explaining the need for compliance, followed by
- correspondence stating the same, followed by
- explicit warning notice, followed by
- referral for administrative enforcement action.

As a matter of policy, the Enforcement Office does not publicize formal complaint cases resulting in voluntary compliance, presumably to encourage voluntary compliance by respondents. If compliance is not forthcoming, enforcement action may begin.¹⁵⁸ Enforcement action can take the form of a voluntary consent order or administrative adjudication, either of which can impose cease and desist provisions (with or without civil penalties) or a federal lawsuit for injunctive relief.¹⁵⁹

Those staff persons who carry out DOT's enforcement strategy repeatedly emphasized: Collaboration is the key to DOT's enforcement strategy. The subtext of the collaborative strategy is that the rules governing success in the marketplace will ensure that consumer issues will eventually correct themselves. When asked what economic incentive an airline would have for Part 382 compliance, DOT staff frankly admitted that the main business incentive for complying with Part 382 is projecting the image of a customer-caring business to the general public.¹⁶⁰

Key DOT staff members believe this enforcement strategy is highly effective, saying that “air carriers are complying 99 percent” with the regulation (Part 382).¹⁶¹ The Enforcement Office also noted that the drastic cutback in compliance monitoring since deregulation seems to have had little real effect on the compliance picture. In support of its view on the extent of ACAA compliance problems, the Enforcement Office cites a statistical analysis of consumer complaint data samples from a number of airlines over several years during the 1990s. Their findings showed that disability complaints consistently represented only about 4 percent of the total consumer complaints across the board for every airline and for each year sampled.

6.5.4 Enforcement Orders

From 1987 until September 1998, DOT received 17 formal complaints filed by third parties and one formal complaint filed by the Enforcement Office. The formal complaint filed by the Enforcement Office resulted in a cease and desist order. Fourteen of the third-party complaints were dismissed.

Of the 14 third-party complaints dismissed, two resulted in cease and desist orders that also carried civil penalties. Four of the 14 were dismissed upon request of the complainants after private settlements had been reached with the airlines. Three complaints were dismissed because of insufficient cause and one because the accommodation requested constituted an undue burden. Four other dismissals were based on a finding that, while a violation may have occurred, mitigating factors led to a determination that it was not in the public interest to pursue enforcement action.

As of September 1998, the total amount in civil penalties imposed on airlines as a result of third-party formal complaints alleging discrimination on the basis of disability was \$28,000. Summaries of the three complaints resulting in cease and desist orders or civil penalties or both, follow.

6.5.5 Formal Enforcement Proceedings

A notice of the enforcement proceeding and a formal complaint initiated by the Enforcement Office commence an oral evidentiary proceeding, which may be based on a formal third-party complaint, on informal complaints received by DOT, or on information gathered by DOT without any complaint being filed.¹⁶²

Once a hearing has been held and the parties have filed briefs on the issues raised in the complaint, the administrative law judge issues a recommended decision or may certify the record to the DOT decisionmaker, who is either the Assistant Secretary for Aviation and International Affairs or the Secretary. Any final DOT order may be appealed to the U.S. Circuit Courts under 49 U.S.C. § 46110.¹⁶³

The procedures in a formal enforcement case are burdensome to all parties, imposing a continuing need to meet filing requirements or to make appearances at hearings or conferences. As a result, this process typically takes place over a protracted period of time. Enforcement decisions are based upon the information and materials supplied by the complainant and the respondent, as well as any additional information resulting from the Enforcement Office's investigation. The only disability discrimination case to make it through the full hearing and review process was the *Southwest Airlines Enforcement Proceeding*.¹⁶⁴ The third-party plaintiff filed the initial complaint in August 1984 and DOT rendered its decision (cease and desist order) on November 6, 1987. Since the sunset of the Civil Aeronautics Board in 1985, no enforcement case initiated by DOT has proceeded through all stages of the formal process.

Moody v. Delta¹⁶⁵

This consent order found that Delta violated Part 382 by failing to provide adequate assistance to passengers using wheelchairs and assessed a \$25,000 civil penalty. The order also required Delta Airlines (1) to increase the availability of self-mobile wheelchairs at its terminal

stations and (2) to emphasize in training its gate agents that they must give first priority to requests for assistance from passengers who use wheelchairs.

Del Colle v. Continental Airlines¹⁶⁶

This consent order assessed Continental Airlines a \$3,000 civil penalty for the air carrier's failure to provide accurate information on the availability of seats with movable armrests and ordered the carrier to cease and desist from further such violations.

Southwest Airlines Enforcement Proceeding¹⁶⁷

DOT received the original complaint in this case in 1984 and subsequently pursued its own complaint pursuant to a policy of Southwest Airlines that required passengers who are totally blind and deaf to travel with a ticketed companion. DOT determined that Southwest's requirement that all deaf-blind passengers travel with a companion was over-broad because it unjustly discriminated against deaf-blind individuals who can demonstrate an ability to understand general safety instructions. DOT directed Southwest to cease and desist from its categorical refusal to transport unaccompanied deaf-blind passengers and instead to treat deaf-blind passengers in a nondiscriminatory manner.

Below are summaries of cases dismissed because informal settlements were reached, insufficient cause was found, or enforcement action was deemed not to be in the public interest.

Wood v. American Airlines, Manning v. American Airlines¹⁶⁸

This dismissal order combined two complaints against American Airlines filed within a two-year period. The first complaint alleged that American Airlines failed to provide adequate assistance to Ms. Wood, who is a wheelchair user, in boarding and deplaning the aircraft and in transporting her wheelchair during a flight in 1992. Amanda Manning filed a similar complaint against American on June 13, 1994. The complainants and the airline reached an amicable resolution and requested that the complaints be dismissed.

Roberts and EPVA v. USAir¹⁶⁹

In this order, DOT dismissed a third-party complaint after the airport at issue, Stewart International Airport, modified its terminal area to make it accessible to wheelchair users. The airport also purchased a mechanized chairlift for passengers who use wheelchairs.

Seligman v. Northwest Airlines¹⁷⁰

This order dismissed a third-party complaint against Northwest Airlines alleging that the carrier failed to provide adequate attention to a passenger with Tourette syndrome. The dismissal order was issued after the carrier agreed to enhance its personnel training to place greater emphasis on meeting the special needs of passengers with this condition.

Segarra v. America West Airlines¹⁷¹

The complaint in this case alleged that America West Airlines failed to remove a series of steps at its terminal at JFK Airport. According to the complaint, the steps constituted a barrier to disabled individuals that under ACAA and Part 382 should have been removed by April 1993. The order dismissed the complaint, citing the carrier's move, subsequent to the filing of the complaint, to facilities that complied with the requirements for accessibility. The order, however, found that the steps were a technical violation of the rules and that the carrier was in violation of Part 382 during the six months prior to the transfer of the gate area in October 1993.

Hacker v. Southwest Airlines¹⁷²

This complaint alleged discrimination on the basis of disability when Southwest refused Ms. Hacker and her husband boarding as standbys on a Southwest flight in favor of all other passengers holding standby passes, solely because she was a wheelchair user. The airlines asserted, and the DOT concurred, that the Hackers were denied standby boarding, along with other passengers, because they arrived at the gate too late to board, not because of her disability. The complaint was dismissed.

Vasquez v. Southwest Airlines¹⁷³

This complaint alleged that Southwest refused to allow Ms. Vasquez, a person with cerebral palsy and a wheelchair user, to travel unaccompanied on a flight. Southwest admitted that it did not permit Ms. Vasquez to travel unaccompanied, but maintained that the refusal was justified based on a determination by Southwest personnel that she could present a safety risk in an emergency and could require extensive special assistance during the flight.

DOT found that affidavits filed by Ms. Vasquez and her sisters differed so significantly from those given by Southwest's employees as to put at issue whether Southwest could have reasonably concluded that Ms. Vasquez was not a person with a disability within the meaning of the statute. The complaint was dismissed because DOT further found that the extensive fact-finding required to investigate the issue would not be in the public interest and because the facts in Ms. Vasquez' complaint gave Southwest sufficient information to resolve its concerns about her ability to fly safely without an attendant in the future. In addition, two other issues raised in the complaint and the respondent's answer were in the process of being addressed in rulemaking at that time: when to require mobility-impaired passengers to fly with attendants and whether airlines were required to provide personal assistance to passengers with mobility impairments in using the lavatory. DOT elected to allow these issues to be clarified through the release of the NPRM rather than through a formal enforcement proceeding.

Sontag v. Simmons Airlines¹⁷⁴

The complainants, who are both blind, alleged that Simmons' failure to allow them to stow their flexible white canes at their seats constituted discrimination. Simmons asserted that its actions were based on safety considerations. DOT dismissed the complaint, concurring with Simmons that the carrier's decision was necessary in the interest of safety, not because the complainants were blind.

Greenberg v. American Airlines¹⁷⁵

The complainant alleged that American Airlines refused to allow him to sit in an emergency exit row because he is blind and subsequently refused to board him at all. He also alleged that he was not provided with the name of an official or agent to make a determination regarding their refusal to provide service. DOT dismissed his complaint, noting that it was their policy not to institute enforcement actions against carriers for refusing to transport blind passengers in emergency exit rows. In addition, DOT deemed American justified in refusing to board Mr. Greenberg. The risk of confrontation onboard between Mr. Greenberg and passengers angered by the flight delay resulting from his refusal to relocate from his seat in the emergency exit row was considered a threat to flight safety. DOT found no violation in relation to the claim regarding provision of airline personnel to resolve issues for disabled patrons.

In addition to the 17 formal complaints received since 1987, DOT has issued consent orders imposing civil penalties in six cases involving ACAA violations and two cases involving violations of the FA Act's general nondiscrimination provision. Each of these actions resulted from an independent investigation undertaken by the Enforcement Office. In five of those cases, failure to comply with several consumer notice regulations, including the requirement to have Part 382 available for review upon request, was the cause of action. The civil penalties imposed in those five cases, ranging from \$15,000 to \$40,000, were for failure to comply with multiple consumer notice regulations, among them the provision in Part 382. The other enforcement action that resulted in a civil penalty, involving an independent investigation of informal ACAA complaints by the Enforcement Office, is summarized below.

American Airlines¹⁷⁶

After the Enforcement Office investigated a number of informal consumer complaints filed with DOT, this order found that American violated numerous provisions of Part 382 by failing to provide adequate assistance to people with disabilities. The order directed American Airlines to increase the number of wheelchairs available at its airport stations and to significantly increase the number of wheelchairs with movable armrests. The order assessed a \$25,000 penalty.

The Enforcement Office has recently issued two other enforcement orders for violations of 49 U.S.C. §41310 involving disability discrimination by a foreign carrier and its U.S. code-sharing counterpart that imposed civil penalties in the amounts of \$1,000 and \$3,000, respectively.

Since 1987, only three enforcement orders with civil penalties totaling \$53,000 have been issued in cases primarily involving ACAA violations. Another five enforcement orders with civil penalties totaling \$161,000 have been issued in cases involving noncompliance with multiple consumer notice regulations, including the provision in Part 382. These orders do not indicate what portion of the penalty was assessed for the ACAA violation. Two additional enforcement orders involving disability discrimination in violation of the FA Act's general nondiscrimination provision applied to foreign carriers imposed penalties totaling \$4,000 (\$3,000 for the foreign carrier and \$1,000 for the U.S. carrier). These findings indicate that civil penalties have not been a primary tool in DOT's overall strategy for obtaining ACAA compliance.

Also noticeably absent from DOT's enforcement strategy is the practice of filing amicus briefs in civil actions alleging ACAA violations, a finding discussed in the following section.

6.5.6 Amicus Briefs

DOT has never participated in an ACAA case as an amicus. However, DOT is not authorized under the ACAA statute to file an amicus brief in civil actions relating to alleged ACAA violations and therefore must obtain prior approval from the Department of Justice (DOJ) to do so. In addition, the Enforcement Office reports that DOT has been invited only once to participate as an amicus party by an ACAA plaintiff;¹⁷⁷ in correspondence to both the plaintiff and the carrier. DOT concurred with the plaintiff's interpretation of the provision in Part 382 limiting a carrier's discretion to require attendants for deaf and blind passengers. DOT also indicated to the plaintiff its willingness to intervene as an amicus if DOJ granted permission and if the case reached the Circuit Court level. However, the carrier agreed to modify its training manuals and instructions to conform to the rule and declined to appeal the District Court's verdict of liability and imposition of nominal damages, so no amicus was filed.

Inquiries into the practices of other federal agencies showed that agencies having civil rights enforcement responsibilities typically take a different approach to participating as amicus parties. These agencies will petition to file an amicus brief, usually at the appeal stage, in selected cases in which the agency wants to clarify its position to the court on a particular issue. In instances in which the requesting agency is a designated enforcer of a civil rights statute, DOJ generally grants permission. Despite DOJ's liberality in granting petitions, DOT has chosen not to be proactive in using amicus briefs to assist the court in interpreting the ACAA and its regulation.

6.5.7 Analysis and Recommendations

Finding No. 18: The ACAA enforcement process at DOT does not adequately address the need for satisfactory resolution of individual complaints.

As discussed in detail earlier, DOT's informal complaint-handling procedure largely catalogues incoming complaints and tracks whether the airline makes a formal response as required in Part 382. Investigation of informal complaints usually takes place as part of a formal complaint or independent DOT investigation looking at the pattern and practice of a particular airline. Most informal complaints are not investigated at all. Further, because DOT does not actively investigate most informal complaints, its role in informal complaint resolution is also limited. Other than tracking to ensure that airlines send a response to the complainant, DOT intervenes only when the complaint is determined to be a matter of airline policy or procedure not in compliance with ACAA. Part 382 states that complainants should contact DOT for assistance in connection with their ACAA complaints. Under the current informal complaint-handling procedure, it is unclear what assistance they can expect to receive.

Recommendation No. 18: DOT's enforcement mechanism must be made more credible and vigorous. At a minimum, the following are necessary:

- investigation and evaluation of all individual complaints received by DOT;
- explicit criteria consistently applied in assessing complaints as potential violations and enforcement actions;
- penalties for violations;

- monitoring of complaints received directly by airlines; and
- development of a database dedicated to complaint processing and tracking compliance-monitoring activities.

Persistent problems with noncompliance will not resolve themselves. Congress must work with DOT to insist on a commitment to effective ACAA enforcement and remove the remaining obstacles to such enforcement, including resource barriers. ACAA enforcement must become a DOT civil rights priority, starting with allocation of the necessary resources for more extensive investigation and analysis of complaints.

Finding No. 19: Lack of available attorneys' fees and damages under ACAA hampers consumers in exercising their private right of action.

Another weakness in ACAA enforcement is the disincentives to exercising a private cause of action. The right to a private cause of action for ACAA violations was established through case law, not the ACAA.¹⁷⁸ If the plaintiff wins, the damages awarded, if any, are usually small. Reimbursement for legal fees and expenses is solely at the court's discretion.

Many people with disabilities who would file an ACAA lawsuit simply cannot afford an attorney. Without an attorney's fee provision, a lawyer has little incentive to take even a strong case on contingency. It is widely believed within the disability community that few ACAA cases have been brought to date precisely because attorneys' fees are unavailable. These strong disincentives to private legal action, combined with DOT's meager enforcement role, virtually eliminate any credible threat of enforcement, even when persistent violations occur. Under the ADA and other civil rights laws, plaintiffs who bring suit and win are entitled to reimbursement for attorney's fees and damages. The same should apply to cases brought under ACAA.

Recommendation No. 19: ACAA should be amended to authorize a private right of action and the awarding of attorneys' fees, as well as compensatory and punitive damages for successful litigants. DOT should notify complainants of their private right of action and the availability of fees and damages.

To bring the ACAA into parity with other disability civil rights laws, attorneys' fees and damages provisions should be included. Such provisions are necessary to ensure that individuals

protected by the law are able to exercise their rights fully. Establishing a private right of action in the statute will ensure the security of the provision.

Finding No. 20: Despite a number of ACAA lawsuits, DOT has never filed an amicus brief.

Recommendation No. 20: DOT should petition DOJ to file amicus briefs in ACAA cases.

It is in the public interest and part of DOT's enforcement responsibility to exercise leadership in clarifying the legal implications of ACAA. Without DOT's initiative in clarifying the intent of the law and regulation, further confusion results as courts in different jurisdictions make inconsistent decisions on similar issues. It is DOT's prerogative to clarify the intent of the law when the regulation is not clear. Therefore, DOT should request notification from the general public regarding pending ACAA lawsuits, and petition DOJ to file an amicus brief in every meritorious case involving an issue of public interest.

6.6 Compliance Monitoring

6.6.1 Review of Airline Compliance and Personnel Training Plans

All air carriers are required to have ACAA compliance plans. Major and national carriers were required to submit them to DOT by October 1990. Other carriers are required to have them on file and make them available for review by DOT. DOT was required to review the plans of all major and national air carriers by December 1990. If DOT requests amendments to any plan, the carrier is required to make the amendments and implement them immediately. DOT reports that it asks new air carriers to submit compliance plans.¹⁷⁹ The plan must include a schedule for personnel training, as well as the carrier's policies and procedures for accommodating passengers with disabilities.

DOT reports that it has received between 35 and 40 plans since the inception of the law. However, DOT did not have a list of which airlines were required to submit plans in 1990 and did not track those that did and did not comply. Today there is still no current list, even though new airlines are notified by FAA of the requirement to submit a plan as part of the certification

process. DOT used a standardized checklist to evaluate the plans. A review of the plans provided to researchers showed that DOT required revisions to most of the original submissions, and that most airlines complied by submitting a revised plan.

When asked whether DOT was monitoring whether and how the compliance and training plans were being implemented, DOT staff members frankly admitted that no monitoring was done unless the volume of ACAA complaints received for a given airline indicated a compliance problem.¹⁸⁰

6.6.2 Analysis and Recommendations

Finding No. 21: DOT's ACAA compliance monitoring is not proactive.

DOT reports that there is no regular monitoring of the implementation of compliance plans, nor of the specific accessibility requirements for new aircraft. DOT reports that it received 35 to 40 compliance plans, most between 1990 and 1991. Since the initial plan revisions were submitted in 1991–1992, DOT has not required any updates to the plans submitted by major and national carriers.

A major feature of the air carrier compliance mechanism is the designation of a CRO at every airport. DOT has occasionally requested a list of such officials but was not able to explain to researchers whether these lists were received and from which airlines. To NCD's knowledge, DOT has never attempted to monitor the performance of CROs.

DOT reports no regular ACAA compliance monitoring mechanism or regular compliance monitoring activities for air carriers at this time.

Recommendation No. 21: DOT should strengthen ACAA compliance monitoring.

Effective enforcement of ACAA requires a robust compliance monitoring mechanism. Air carriers need to know that they are accountable to DOT for their compliance and need to ensure ongoing efforts to achieve compliance. Part 382 should require a compliance monitoring program that includes, at a minimum

- annual reviews by DOT of the records of major and national air carriers to verify ACAA compliance (e.g., a list of the CROs designated at every airport served by the airline; records on when ACAA trainings are conducted; the most recent date of ACAA training for all employees who work with the public; and a description of a system for complying with ACAA seating assignment requirements);
- air carrier submission of “correction plans” to DOT within a specified time frame when implementation records indicate noncompliance with ACAA requirements;
- DOT review and evaluation of all major and national air carrier ACAA compliance plans triennially;
- air carrier submission, within a specified time frame, of revisions to plans found insufficient; and
- regular DOT site visits to spot-check airline ACAA compliance at airports. Adequate funds should be made available for such activities.

6.7 ACAA Rulemaking—14 CFR Part 382 and Modifications

This section will review both the rulemaking and regulatory negotiation processes to evaluate their effectiveness and assess their impact on 14 CFR Part 382.

6.7.1 The Rulemaking Process

In developing new regulations under the standard rulemaking process, the Office of Regulation and Enforcement conducts extensive research on the statute’s legislative history. When there is not enough information to develop an appropriate rule on a given issue, the Office of Regulation and Enforcement will request technical and other input through advance notices of proposed rulemaking published in the *Federal Register*. Such notices may simply be for the purpose of getting advance comments on specific issues affecting the regulated and protected

parties. All comments received in response to these notices are considered in developing the rule.

The Office of Regulation and Enforcement publishes the draft regulation as an NPRM in the *Federal Register*. The public, particularly stakeholder groups, are invited to submit comments. During the comment and review period, new issues may arise. The Office of Regulation and Enforcement may publish supplemental notices of proposed rulemaking for additional information on the new issues. In developing the final rule, the Office of Regulation and Enforcement considers all comments and weighs the interests of all the parties in formulating its regulatory position. The Office of Regulation and Enforcement directly addresses all substantive comments received on each major section and states the reasons for its position in the preamble of the proposed regulation.

After ACAA was passed in 1986, DOT intended to make the old Part 382 applicable to all carriers as an interim final rule and use the standard rulemaking process to develop revisions and address new issues. However, an interim rule was not issued. At the request of the parties, DOT instead initiated a regulatory negotiation process to develop an entirely new rule. The negotiation took somewhat longer to complete than the standard rulemaking process, contributing to a long delay in issuing the final rule.

The request for negotiations in place of the standard rulemaking procedure indicated the parties' belief that they themselves could develop a rule to serve their individual and mutual interests better. However, negotiations did not fully succeed. Stalemate on several issues could not be resolved, and negotiations terminated without reaching consensus on a final rule. DOT resumed the rulemaking process to finalize a concrete set of nondiscrimination requirements that did not impose undue burdens on the industry.

Members of the disability community complain repeatedly that the rulemaking process is that exceedingly slow. On two occasions lawsuits were filed against DOT for failure to act in a timely manner in issuing the regulation or changes.¹⁸¹ It would seem that some reasons for these delays go beyond bureaucratic inefficiency. Part 382 is quite precise in defining how to comply

with its target objective: nondiscrimination against air travelers with disabilities. Because Part 382 was intended to lay out specific rather than broad general requirements, all stakeholders had a heightened interest in how each provision would be crafted. Indeed, the intensity of conflict on several specific requirements hindered the regulatory negotiation (reg neg) process from reaching overall consensus on a package of provisions.

The rulemaking process was inadequate for several additional reasons. The most obvious is that the regulation lacked the enforcement provisions necessary to ensure ready compliance. This lack was a result not only of opposition from the aviation industry but also of DOT's own ambivalence about enforcement. As mentioned earlier, a lack of consensus within DOT led to dropping every enforcement proposal involving imposition of penalties in conjunction with the informal complaint process. Enforcement provisions that involved the commitment of DOT resources to specific monitoring tasks also failed to survive in the final regulation. The result was a regulation with great promise but inadequate tools for actualizing it. The regulation did not sufficiently empower DOT to exercise the authority and leadership necessary to implement a controversial law in an unwilling environment.

The purpose of the reg neg process was to resolve some of the controversial issues sufficiently to agree on the language of the regulation. It was also intended to give parties greater insight into the concerns of other stakeholders and to begin dealing with the implementation issues that would create obstacles to compliance. Although this process might have resulted in a regulation having a high voluntary compliance rate, this has not been the case with Part 382. The next section presents findings as to why this has been the case and some recommendations for structuring a more effective reg neg process.

6.7.2 Analysis and Recommendations

Finding No. 22: The rulemaking process does not adequately

- **identify and explicitly address the underlying obstacles to compliance;**
- **identify/create incentives for industry compliance; or**

- **respond proactively to noncompliance issues that emerge over time.**

Recommendation No. 22: Supplement the rulemaking process by sponsoring multiple stakeholder processes, each of which is targeted to develop alternative solutions for a specific issue; incorporate the findings/results into the regulation.

DOT must take the lead to bring stakeholders together in task forces aimed at finding solutions to the specific obstacles to implementation and compliance. A partnership with the private sector must be formed, having ACAA implementation problem-solving as its focus.

6.7.3 The Regulatory Negotiation Process

The reg neg process is consensus rulemaking by committee. Under the Federal Advisory Committee Act, DOT has authority to convene an advisory committee of representatives from groups having interests affected by the proposed rulemaking. Usually a neutral mediator from the Federal Mediation and Conciliation Service facilitates the committee. The negotiated rulemaking process takes place in an extended series of meetings during which the parties discuss each issue covered by the regulation to develop a consensus recommendation on the applicable regulatory language. If consensus is achieved, DOT must issue the final advisory committee recommendations as the official rule.

The reg neg process to develop Part 382 was only partially successful. The advisory committee met from June through November 1987 and produced many draft consensus recommendations. The advisory committee was unable to reach consensus on all the issues and therefore did not produce a final rule. DOT incorporated many of the committee's recommendations to its proposed rule and finalized it under the standard rulemaking procedure.

Despite the consensus-building work of the advisory committee, the proposed rule was in review for over six months, twice the normal time. An additional 30 days were granted for commenting parties to reply to the comments of other parties. DOT received more than 300 comments. In drafting the final regulation, DOT essentially took the role of arbitrator. Weighing

the interests and input of all the parties, DOT crafted the final rule to balance all stakeholder interests in light of the overall ACAA objective—civil rights protection.

It should be noted that DOT itself is a stakeholder in this process, and its own interests strongly influenced the final rule. When the regulation was drafted, several different enforcement mechanisms were under consideration. Most of them involved a stronger monitoring function and the imposition of penalties for violations. No consensus could be reached within DOT on any mechanism involving penalties, supposedly because of a lack of resources.¹⁸² DOT also dropped a proposal to monitor ACAA complaints received by the airlines, in part because DOT was concerned that such monitoring would not comport with the Paperwork Reduction Act and in part because of a lack of resources.¹⁸³

6.7.4 Analysis and Recommendations

Finding No. 23: Many problems with ACAA interpretation remain, and consensus on definitions and implementation is lacking. The rulemaking and regulatory negotiation processes are not adequate to resolve these problems.

Some examples of implementation issues that remain unresolved are appropriate application of the “threat to safety” standard when making denial of boarding determinations; clear requirements concerning lifting and transferring passengers with mobility disabilities; and ensuring passengers with disabilities priority in stowing assistive devices.

Recommendation No. 23: Tighten up the regulation with guidelines and definitions developed by stakeholder groups.

DOT has stated that the regulation provides flexibility in determining on a case-by-case basis whether its provisions constitute an undue burden or fundamentally alter the nature of an airline’s program.¹⁸⁴ At the same time, the many implementation problems indicate that more guidance is needed on how to comply without creating undue burden or fundamental program alteration. Finding solutions to difficult implementation problems requires joint participation by the concerned stakeholders in developing practical guidelines for eventual incorporation to the

regulation. DOT should create avenues and encourage experimentation with alternative approaches to working through implementation issues.

6.8 Monitoring the Law

As the executive agency responsible for ACAA enforcement, DOT plays a key role in monitoring its impact and assessing what changes are needed to achieve its legislative objectives. This monitoring responsibility includes not only ensuring compliance with the regulation by airlines and airport operators but also examining where regulatory changes are needed to clarify the requirements of the law. One area where discrimination continues legally in spite of the law is international air travel. Although the legal authority to extend a general nondiscrimination mandate to foreign air carriers exists under 49 U.S.C. §41310, DOT has applied this provision only twice in discrimination cases against foreign air carriers on the basis of disability (in September and December 1998). As the federal agency responsible for international air transportation policy, DOT negotiates the terms of international agreements under which foreign carriers must operate in the United States. DOT must ensure that foreign air carriers that have access to U.S. airport facilities and air travel markets conform to the requirements of the same civil rights laws that bind U.S. carriers. NCD urges DOT to continue exercising its authority to require all air travel service providers operating in U.S. markets to comply with the established standard of nondiscrimination.

Part III explores the views of stakeholders in the aviation industry and the disability communities on DOT's role in enforcing ACAA compliance.

PART III. STAKEHOLDER VIEWS ON ACAA ENFORCEMENT

7.0 Aviation Industry Perspectives

As part of this study, researchers met with representatives from the operations and legal divisions in the Air Transport Association (ATA) for their thoughts on Air Carrier Access Act (ACAA) implementation.¹⁸⁵ In addition to its stakeholder participation in ACAA regulatory negotiations, ATA supports ACAA implementation, including being the prime mover behind a task force to develop design specifications for accessible lavatories in wide-body aircraft. ATA was involved in another task force to develop solutions to problems with transporting power wheelchairs. “Products” of the task force included (1) a training video on disassembling and reassembling power wheelchairs; (2) successful passage of a regulation to label all batteries as “spillable” or “nonspillable”; (3) packaging instructions for spillable batteries; and (4) a portable placard for the back of wheelchairs illustrating proper disassembly and reassembly.¹⁸⁶

ATA developed a model ACAA training plan in 1990 and coordinated with the Federal Aviation Administration for the inclusion of the ACAA segment in flight attendant training programs. Recently ATA sponsored a joint meeting of all airline executives responsible for the complaint resolution officer (CRO) function.¹⁸⁷

The persons interviewed raised several important points. They readily admitted that ACAA compliance has been uneven across the major airlines but generally felt that the situation has vastly improved since 1990. They also believed that Access to the Skies conferences and other joint forums have strengthened communication between disability groups and the aviation industry on ACAA issues. However, they conceded the following points: these forums do not provide an ongoing process for moving toward consensus or actually resolving compliance problems; many compliance problems might stem from the market-driven, decentralized decision-making processes characteristic of the industry; there is a need for an ongoing process to resolve issues arising from “poor service decisions” and to design programs that permit “flexible accommodation based on responsible decision-making.”¹⁸⁸

The ATA executives interviewed readily agreed that some follow-up mechanism is needed to improve compliance and suggested that ATA would like to help facilitate it. ATA represents most of the passenger and cargo airline operations in the United States, and has the “infrastructure for communicating with 97 percent of the industry.” They recognize that continuing dialogue on these issues is necessary to finding solutions that meet the needs and can be successfully implemented.

8.0 Perspectives of Air Travelers with Disabilities

Enacted almost 12 years ago, the ACAA prohibits commercial air carriers from discriminating against travelers with disabilities. Despite the sweep of the law and its potential impact on travelers with disabilities, limited research has been conducted measuring its effectiveness from the perspectives of persons with disabilities. Nevertheless, the available research, written ACAA complaints, and personal anecdotes reveal patterns of continued discrimination by air carriers and weak enforcement by DOT. The following perspectives illustrate the problems that remain and suggest areas for improving implementation and enforcement of the law.

8.1 Accessibility of Air Travel—A Customer Perspective

“[I]f you are a wheelchair user and travel even occasionally by air, it’s a safe bet that you have had trouble on just about every flight you have ever taken.”¹⁸⁹

The Paralysis Society of America (PSA) conducted a year-long poll completed in 1996 that reveals mixed air travel experiences by persons with disabilities.¹⁹⁰ Although flying conditions for people with disabilities have improved since ACAA’s enactment, many air travelers with disabilities still fare poorly. The PSA poll, responded to by 550 self-selected individuals answering survey questions by toll-free number or on the Internet, revealed:

- about one-third of respondents requesting specific seats (i.e., bulkhead, aisle) did not receive them (accessible seating was addressed in the March 1998 notice of proposed rulemaking that became effective September 30, 1998);
- 41 percent of respondents specifically requesting bulkhead seats did not receive them;

- only 16 percent of people who requested seats with movable armrests received them;
- of 56 people traveling on flights not serviced by jet bridges, 19 (34%) had to be carried up the stairs in a boarding chair or by hand;¹⁹¹
- 17 people said they were charged a fee for a requested service, including charges for a wheelchair as extra baggage, a fee for retrieving a wheelchair, and a fee for connection assistance;
- more than half the people responding to the poll (52.18%) said their mobility aids had not been returned to them in good working order; and
- 49 percent said that airline personnel communicated with someone other than them concerning service, rather than directly with them.

It must be noted that the March 1998 amendment to Part 382 contains provisions addressing most of the issues related to seating assignments and requests mentioned in this survey. Many survey respondents said that airline personnel need more and better training, especially regarding disassembly and reassembly of motorized wheelchairs, lifting and transferring travelers with mobility disabilities, and persons with hidden disabilities. Airline personnel frequently told wheelchair users they could not stow their folding chairs in the aircraft cabin and failed to communicate gate information effectively. The PSA survey results suggest that DOT's weak ACAA enforcement and monitoring result in inconsistent access to safe and reliable air transportation services by people with disabilities.¹⁹²

8.2 Industry Compliance with ACAA and DOT Enforcement of ACAA: A Sample of Customer Complaints

Review of a sample of written complaints filed during 1997 with DOT by individuals with disabilities, their families, or attorneys reveals problems similar to those identified in the PSA poll.

- A frequent complaint involved air carrier response to requests for special needs accommodations such as boarding assistance, stowage of a power wheelchair or seating

requirements. Despite giving advance notice in accordance with ACAA regulations, travelers with special needs encountered the following situations at the airport:

- ▲ the airline's computer database contained no record at all of the advance request;
 - ▲ airline personnel had not noted the advance request in the database and were unprepared to provide the requested assistance;
 - ▲ airline personnel failed to act in a timely manner or simply did not act at all to provide the requested assistance; and
 - ▲ in some cases, airline personnel refused outright to provide the requested assistance.
- One passenger with a heart condition requested boarding and deplaning assistance. When her flight was rerouted because of weather conditions, her daughter telephoned the airline to inform them of her mother's requirements. She encountered an airline official whom she described as "very confrontational—rather than trying to diffuse the situation and see how he might be able to help, he [said] 'perhaps your mother should not be flying at all if she has a heart condition,' then he hung up."¹⁹³
 - One traveler alleged that an air-carrier-operated frequent flyer lounge was not accessible to him. Only after he wrote three letters of complaint and his attorney contacted both DOT and the airline was a method to access the lounge provided.¹⁹⁴
 - Several complaints alleged that flight crews, ramp agents, and other ground personnel were unaware of the ACAA requirement for a CRO at each airport, who the airport CRO was, or even what a CRO was. However, passengers reported that problems were resolved when CROs were available to assist. For example, one complainant who had been unable to convince the flight crew to allow his wife's manual wheelchair to be stowed in the passenger storage area asked to speak to the CRO. He wrote " [she] moved mountains. Within minutes, the wheelchair that wouldn't fit did fit like I said it would. [She] showed a lot of sensitivity and concern. When [she] spoke, it was a done deal."¹⁹⁵
 - Many of the complaints alleged that flight crews frequently refused to stow adaptive equipment such as walkers and folding wheelchairs in the aircraft cabin. For example,

one complainant wrote that she was told by a flight attendant, "We never allow wheelchairs in the cabin—you *have* to gate-check it."¹⁹⁶

- Several travelers alleged that advance special seat assignments (e.g., bulkhead and aisle) either could not be scheduled or were not honored at flight time.
- Many complaints alleged that airline contractors, such as those who provide boarding assistance or transport passengers to and from flights, are not trained adequately and are insensitive to the rights and requirements of travelers with disabilities.
- One complainant reported that an airline contract escort service at New York's Kennedy Airport would not allow her husband, who has a mobility disability, to use a wheelchair provided by the airline beyond the passenger arrival area. The contractor told her husband the chair was needed for another passenger, a claim that proved false.¹⁹⁷

The following sample of case summaries of ACAA complaints filed with various airlines and DOT during 1997 further illustrate common experiences of air travelers with disabilities.

DOT Case Summary No. 1: An elderly woman who had recently undergone knee surgery was traveling with her husband from Philadelphia to Detroit. He had made their airline reservations well in advance, requesting bulkhead seating to accommodate his wife's inability to bend her knee. He received a letter from the airline confirming the reservations and bulkhead seat assignments. When they arrived at the airport they learned that their seat assignments had been changed. The ticket agent refused to try to accommodate them in bulkhead seating, indicating the flight was full although the woman's husband observed vacant seats on the flight. In a letter to airline officials he said, "we boarded and endured the flight. This resulted in a very painful flight and a couple of painful nights. I hope this episode has not set back her [his wife's] recovery."¹⁹⁸

The man wrote twice to the airline complaining of poor treatment. A copy of his complaint was forwarded to DOT's Consumer Protection Division. At the time, the current regulation requiring airlines to accommodate individuals having certain impairments with

accessible seats had not been written. Eventually the airline responded saying advanced seating is offered as a courtesy and cannot be guaranteed. The letter also stated that it is the responsibility of the traveler to confirm the flight in advance, but the letter did not state that a change of schedule regarding this particular flight had taken place. It also stated that it was not the policy of the airlines to compensate in these instances; however, two \$25 dollar vouchers toward future flights were provided.

DOT Case Summary No. 2: Traveling with her husband on a round trip flight from Pittsburgh to Ft. Lauderdale, a woman who used a manual wheelchair requested permission to stow her chair in the passenger cabin's storage area. Their flights required a plane change on both legs of the trip. The cabin crews for each of four flights insisted that she stow her chair in baggage, although her husband explained that the chair was frequently damaged when it was stowed in the luggage area. Armed with DOT's booklet entitled *New Horizons for the Air Traveler with a Disability*, the passenger's husband showed the flight crews the provision for on-board storage of manual wheelchairs but was told the storage area was not "approved" or was reserved for coats. He explained that her chair would fit easily in the cabin's storage area but the crew insisted it be stored below.

He sent a complaint letter to DOT requesting a definition of approved storage. DOT referred his letter to the airline and sent the complainant a copy of *Fly Rights*. Because DOT did not explain the meaning of "approved storage", the complainant sent a second letter in an effort to obtain an answer to his original question. His second letter triggered a written explanation by DOT of the ACAA rules providing for on-board stowage of manual wheelchairs. This letter was copied to the airline. His second inquiry also triggered an internal DOT memo in which the airline personnel's conduct was characterized as "egregious" and the airline's response to the complainant called "a classic nonresponse that doesn't come close to the 'dispositive' reply required by section 382.65."¹⁹⁹ The airline wrote the complainant acknowledging that it permits stowage of folding wheelchairs in most of its aircraft and informing him of its plans to issue a bulletin to "airport personnel reminding them of the applicable regulations." It also gave the couple vouchers for \$150 each toward the purchase of future tickets.

DOT Case Summary No. 3: A woman with multiple sclerosis traveling from Miami to Chicago was not permitted to stow her walker in the aircraft's storage area although she had been allowed to keep the walker with her on a previous flight. She was taking various medications for her medical condition, including diuretics and steroids that caused frequent urination. She was unable to walk to the aircraft's lavatory without the walker. In a letter to DOT's Consumer Protection Division, her daughter stated that a member of the flight crew said she didn't care what had been allowed on a previous flight, the passenger couldn't carry the walker on with her. The daughter went on to state, " My mother was forced to sit the entire flight without being able to go to the rest room. She suffered not only from discomfort but from the humiliation and fear of being unable to control her bladder."²⁰⁰ DOT forwarded the letter to the airline, which issued an apology and two \$200 travel vouchers.

8.3 Analysis

The preceding case summaries and anecdotes illustrate some of the problems air travelers with disabilities still encounter. Taken as a whole, they reveal inconsistent ACAA implementation by the airline industry and weak, inconsistent enforcement of the law by DOT.

Each time they travel, passengers with disabilities must cope with a myriad of potential disability-related complications above and beyond those faced by travelers who do not have disabilities. They must arrive for their flights armed with information about their rights and prepared to advocate for themselves or their traveling companions. When their complaints do receive attention from an air carrier, the solution is often an apology and a ticket voucher. Carriers appear to respond to ACAA violations in the same manner in which they respond to customer service complaints involving lost baggage or flight delays, rather than as civil rights violations. There is little evidence to suggest that carriers take action to resolve systemic ACAA violations or that DOT fully exercises its enforcement authority and responsibility when it is aware of such problems.

Private litigation is not a reasonable option for many people with disabilities because ACAA itself does not provide explicitly for monetary damages and attorneys' fees. Although an attorney can recover reasonable fees if the complainant prevails in a litigation matter regarding

other civil rights laws, few attorneys are willing to represent clients with disabilities in ACAA claims because clients cannot afford to pay the legal fees. It is imperative that DOT fulfill its public trust to ensure that persons with disabilities are given equal access to air travel service at a level of quality and comfort comparable to that afforded the traveling public generally.

PART IV: CONCLUSION

9.0 Summary of Recommendations

Disability policy has clearly established full participation and integration of people with disabilities as a national goal. Access to transportation is a lynchpin for that participation and integration. As airline travel increasingly becomes a major mode of travel for Americans, it is essential that people with disabilities have full access to air travel. The Air Carriers Access Act (ACAA) is the federal law ensuring that access. Yet federal enforcement of the law falls far short of protecting people with disabilities from discrimination in airline travel.

Our recommendations for change are far-reaching and fall into three major categories: organizational change, process change, and changes to the law and regulation.

9.1 Recommendations for Organizational Changes

- DOT should establish an ACAA civil rights enforcement unit that is separate from consumer affairs monitoring.
- Such a unit might be located in the Office of General Counsel or in the Department of Transportation Office of Civil Rights. Congress should appropriate additional funds for adequate staff and resources to effectively run the enforcement office. The Department of Justice (DOJ) should be authorized to receive, investigate and litigate complaints from individuals alleging ACAA violations and to exercise independent litigation authority.
- The Access Board should be given authority to develop accessibility standards for aircraft interiors and access to aircraft, including boarding assistance equipment and any other equipment related to air travel access. The Access Board should work in consultation with Federal Aviation Administration design inspectors and industry experts to develop design specifications meeting ACAA access requirements. Congress should appropriate the necessary funds.

9.2 Recommendations for Process Changes

- As with other civil rights laws, all ACAA complaints alleging a prima facie violation should have standing, including informal complaints. DOT should investigate every legitimate complaint filed, make a determination concerning whether a violation has likely occurred, and take appropriate corrective action.
- Expand enforcement action for ACAA complaints beyond the Part 302 administrative process to allow remedies for individual plaintiffs. Administrative action under Part 302 is a pattern and practice remedy and was never intended as a means for redressing civil rights complaints. Furthermore, given the minimal civil penalties imposed, it has not eliminated pattern and practice violations still prevalent throughout the industry.
- Request funding from Congress to develop and carry out strategic ACAA education campaigns geared to consumers with disabilities and the general public.
- Develop explicit evaluation criteria for determining when a violation has occurred, and when enforcement action is appropriate. Apply these criteria consistently to all complaints.
- Develop appropriate remedies for ACAA violations comparable to those used for other civil rights laws.
- Develop a database dedicated to complaint processing and compliance monitoring (complaint log, evaluation checklist, action checklists, and "life cycle" status).
- Require air carriers to submit their Part 382 complaint data in standardized format to DOT at regular intervals. Publish the results of the summarized complaint data for all major airlines in the DOT *Air Travel Consumer Report*.
- Analyze air carrier Part 382 complaints regularly to identify noncompliance areas and monitor potential pattern and practice trends.

- Review non-compliance areas with airline representatives at quarterly intervals and require airlines to submit correction plans, including objective measures of success and a timeframe for achieving compliance.
- Undertake more extensive investigation and analyses of the causes of Part 382 noncompliance among air carriers and airports.
- Commit more resources (both staff and funds) to the expansion of compliance monitoring and enforcement activities.
- Provide training and technical assistance to the aviation industry in all aspects of ACAA implementation and compliance.
- Initiate facilitated consensus building among stakeholder groups to resolve technical issues impeding compliance and disagreements on definitions and appropriate accommodations.

9.3 Recommendations for Statutory Changes and Increased Appropriations

- Amend the ACAA to strengthen legal redress for ACAA violations:
 - ▲ establish a statutory private right of action;
 - ▲ authorize the award of attorney’s fees to successful litigants;
 - ▲ authorize the award of compensatory and punitive damages to successful litigants; and
 - ▲ establish the right to file individual ACAA complaints directly with DOJ for investigation and litigation as for complaints made under other civil rights laws.
- Appropriate the funds to DOT’s budget to conduct an aggressive ACAA education campaign geared to consumers with disabilities and the general public .
- Amend ACAA to require foreign carriers operating in the United States to comply with the same civil rights requirements as domestic carriers do.

- Amend the Rehabilitation Act to mandate the Access Board as the lead agency in developing access standards for aircraft.
- DOT and the Access Board should request and Congress should appropriate additional funds to carry out the recommendations of this report.

There is an urgent need for change in the overall approach to ACAA enforcement if the goal of nondiscrimination in air travel is to be fully realized. Most important is the need for DOT's leadership and initiative to help all parties overcome the substantial remaining obstacles to equal access.

ENDNOTES

¹ Air Carrier Access Act. Pub. L. No. 99-435, 100 Stat. 1080 (codified at 49 U.S.C. 1374(c)(1986) (hereinafter ACAA).

² See Nondiscrimination on the Basis of Disability in Air Travel, 14 CFR Pt. 382 including November 1996 amendments, at 14, U.S. Department of Transportation (1996).

³ See 49 U.S.C. 41708(a), (b).

⁴ See 49 U.S.C. 41310(a) (formerly 49 U.S.C. 1374(b)) (stating "An air carrier or foreign air carrier may not subject a person, place, port or type of traffic in foreign air transportation to unreasonable discrimination.").

⁵ See Lufthansa German Airlines, Order 98-9-23, September 23, 1998, and Alitalia, Order 98-12-19, December 15, 1998 (U.S. Department of Transportation).

⁶ See 132 Cong. Rec. 21770 (daily ed. August 15, 1986) (quoting Sen. Dole).

⁷ See *id.* at 21772 (quoting Sen. Metzenbaum).

⁸ See 132 Cong. Rec. 21770-71 (daily ed. September 18, 1986) (quoting statements of Rep. Snyder and Rep. Ackerman).

⁹ National Council on Disability, *Achieving Independence: The Challenge for the 21st Century, A Decade of Progress in Disability Policy Setting an Agenda for the Future* (July 26, 1996), at 155.

¹⁰ See *id.*

¹¹ Americans with Disabilities Act, 42 U.S.C. §§12101 et seq. Individuals with Disabilities Education Act, Pt. B, 20 U.S.C. §§1400 et seq. Fair Housing Act with 1988 Amendments, 42 U.S.C. §§3601-3619 (1988); ACAA, 49 U.S.C. §1374(c) (1986).

¹² Federal Aviation Act, 49 U.S.C. §§1374 et seq. (1958).

¹³ See Nondiscrimination on the Basis of Disability in Air Travel, 14 CFR § 382.49(a)(2) (1996).

¹⁴ See *PVA v. CAB*, 752 F.2d 694 (D.C. Cir. 1985); see also *DOT v. PVA*, 477 U.S. 597 (1986).

¹⁵ See *supra* note 12, §1374(a).

¹⁶ See *supra* note 12, §1374(b).

¹⁷ Federal agency responsible for aviation industry regulation before the agency was abolished and its functions transferred to the U.S. Department of Transportation.

¹⁸ See U.S. Department of Transportation Office of General Counsel comments on the draft Air Carrier Access Enforcement Report (August 21, 1998), p. 10 (hereinafter OGC comments).

¹⁹ See *supra* note 2, at 13-14.

²⁰ Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (codified as amended at 29 U.S.C. §701 et seq.) (1973).

²¹ 29 U.S.C. §794(a) (1988).

²² See *supra* note 2, at 14.

²³ See *id.*, at 13.

²⁴ See *PVA v. CAB*, 752 F.2d 694 (D.C. Cir. 1985).

²⁵ See *DOT v. PVA*, 477 U.S. 597 (1986).

²⁶ See *supra* note 1.

- ²⁷ *See supra* note 2, at 14–15.
- ²⁸ *See supra* note 2, at 15–17.
- ²⁹ *See supra* note 2, at 17.
- ³⁰ *See supra* note 2, at 17–18.
- ³¹ *See supra* note 2, at 18.
- ³² *See* 49 U.S.C. §1374(c)(1).
- ³³ *See supra* note 1, at 21 (explaining that "contract of carriage" refers to "those reasonable requests of air carrier personnel, with which all passengers, whether or not disabled, may be expected to comply as a condition for air travel service).
- ³⁴ *See* 14 CFR §382.5 (1990).
- ³⁵ *See id.* §382.7.
- ³⁶ *See id.*
- ³⁷ *See id.* §382.55(c).
- ³⁸ *See id.* §382.55(b).
- ³⁹ *See id.* §382.57.
- ⁴⁰ *See id.* §382.7.
- ⁴¹ *See id.* §382.9.
- ⁴² *See* Air Transport Association, 1997 Annual Report (June 1997), at 15.
- ⁴³ *See id.*
- ⁴⁴ *See supra* note 2, at 36–37.
- ⁴⁵ *See id.*
- ⁴⁶ *See* Nondiscrimination on the Basis of Disability in Air Travel, 63 Fed. Reg. 10, 529, 10535-36 (1998) (to be codified at 14 CFR pt. 382).
- ⁴⁷ *See* CFR §382.61(a) (1990).
- ⁴⁸ *See id.* §382.61(a)(1).
- ⁴⁹ *See id.* §382.61(a)(2).
- ⁵⁰ *See id.* §382.61(a)(3).
- ⁵¹ 14 CFR §121 contains operating requirements including training, for all domestic, flag, and supplemental operations; 14 CFR §135 contains parallel requirements for commuter and on-demand operations.
- ⁵² *See* 14 CFR §382.61(a)(4) (1990).
- ⁵³ *See id.* §382.61(a)(5).
- ⁵⁴ *See id.* §382.61(a)(6).
- ⁵⁵ *See id.* §382.61(a)(7).
- ⁵⁶ *See id.* §382.61(b).
- ⁵⁷ *See* 14 CFR §382.63(a)(4) (1990).
- ⁵⁸ *See id.* §382.63(a)(2).
- ⁵⁹ *See id.* §382.63(b).
- ⁶⁰ *See id.* §382.63(c)(1), (2).
- ⁶¹ *See id.* §382.63(c)(3), (d).

- ⁶² *See* 14 CFR §382.65(a) (1990).
- ⁶³ *See id.* §382.65(a)(1), (2).
- ⁶⁴ *See id.* §382.65(a)(3).
- ⁶⁵ *See id.* §382.65(a)(4).
- ⁶⁶ *See id.* §382.65(a)(4)(i)–(iv).
- ⁶⁷ *See* 14 CFR §382.65(b) (1990).
- ⁶⁸ *See id.* §382.65(b)(1).
- ⁶⁹ *See id.* §382.65(b)(2).
- ⁷⁰ *See id.* §382.65(b)(3).
- ⁷¹ *See id.* §382.65(b)(3)(I)–(iii).
- ⁷² *See* 14 CFR §382.65(d) (1990).
- ⁷³ *See* 14 CFR §382.63(c)(2), (3).
- ⁷⁴ *See id.* §382.65(c).
- ⁷⁵ *See supra* note 46, at 10535.
- ⁷⁶ *See id.* at 10529.
- ⁷⁷ *See id.* at 10535.
- ⁷⁸ *See id.*
- ⁷⁹ *See id.*
- ⁸⁰ *See supra* note 46, at 10535-36.
- ⁸¹ *See id.* at 10536.
- ⁸² *See id.*
- ⁸³ *See id.* at 10536-37.
- ⁸⁴ *See id.*
- ⁸⁵ *See supra* note 46, at 10529.
- ⁸⁶ *Conway v. United Airlines*, U.S. Dist. Ct. D.ME. (1997).
- ⁸⁷ Sharon G. Miller’s proposed amendment to 49 U.S.C. §41705 (draft) (October 1997) (on file with author).
- ⁸⁸ *See supra* note 5.
- ⁸⁹ Interview with Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings and Dayton Lehman, Deputy Assistant General Counsel for Aviation Enforcement and Proceedings, in Washington, D.C. (November 6, 1997) (Information revised in OGC comments of August 21, 1998).
- ⁹⁰ Interview with Hoyte B. Decker, Jr., Assistant Director for Aviation Consumer Protection (now retired), in Washington, D.C. (November 22, 1997).
- ⁹¹ Airline Deregulation Act of 1978, Pub.L. 95-504, Stat. (codified at 49 U.S.C.) October 24, 1978.
- ⁹² Civil Aeronautics Board Sunset Act of 1984, Pub.L. 98-443, Stat. (codified at 49 U.S.C.) October 4, 1984.
- ⁹³ *See supra* note 90.
- ⁹⁴ *See* 49 U.S.C. 1374(b) (lapsed).
- ⁹⁵ *See* 49 U.S.C. 1374(a).
- ⁹⁶ *See supra* note 90.

⁹⁷ *See id.*

⁹⁸ *See id.*

⁹⁹ *See id.*

¹⁰⁰ *See id.*

¹⁰¹ *See supra* note 90.

¹⁰² *See id.*

¹⁰³ *See supra* note 89.

¹⁰⁴ As no formal documentation describing roles and responsibilities was made available to researchers, pages accessible from the DOT Office of General Counsel's website provided an overview of several organizations discussed in this section. *See* <http://www.dot.gov/ost/ogc/org/aviation/index/html> (visited 10/15/97).

¹⁰⁵ *See id.*

¹⁰⁶ *See* 14 CFR 302.201.

¹⁰⁷ *See supra* note 104.

¹⁰⁸ *See id.*

¹⁰⁹ Telephone interview with Charlotte Boeck, Administrative Officer for the Office of General Counsel, in Washington, D.C. (March 10, 1998).

¹¹⁰ Interview with Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings Office, in Washington, D.C. (November 23, 1998).

¹¹¹ *See id.*

¹¹² *See supra* note 109.

¹¹³ *See id.*

¹¹⁴ *See id.*

¹¹⁵ *See id.*

¹¹⁶ *See supra* note 89.

¹¹⁷ Interview with Julie Zirlin, Acting Chief of External Policy and Program Development Division, in Washington, D.C. (December 1997).

¹¹⁸ Letter from Hoyte B. Decker, Jr., Assistant Director for Consumer Protection (now retired), to air carrier executives (April 25, 1990) (on file with DOT Aviation Consumer Protection Division).

¹¹⁹ *See id.*

¹²⁰ Letter from Hoyte B. Decker, Jr., Assistant Director for Consumer Protection (now retired), to air carrier executives (November 29, 1990) (on file with DOT Aviation Consumer Protection Division).

¹²¹ *See id.*

¹²² Letter from Hoyte B. Decker, Jr., Assistant Director for Consumer Protection (now retired), to air carrier and travel agency executives (December 20, 1991) (on file with DOT Aviation Consumer Protection Division).

¹²³ Letter from Hoyte B. Decker, Jr., Assistant Director for Consumer Protection (now retired), to aviation consumer report recipients (April 2, 1992) (on file with DOT Aviation Consumer Protection Division).

¹²⁴ Letter from Hoyte B. Decker, Jr., Assistant Director for Consumer Protection (now retired), to air carrier executives (March 16, 1993) (on file with DOT Aviation Consumer Protection Division).

¹²⁵ Letter from Hoyte B. Decker, Jr., Assistant Director for Consumer Protection (now retired), to aviation consumer report recipients (April 5, 1993) (on file with DOT Aviation Consumer Protection Division).

- ¹²⁶ Letter from Hoyte B. Decker, Jr., Assistant Director for Consumer Protection (now retired), to air carrier executives (July 15, 1993) (on file with DOT Aviation Consumer Protection Division).
- ¹²⁷ Letter from Hoyte B. Decker, Jr., Assistant Director for Consumer Protection (now retired), to aviation consumer report recipients (October 7, 1993) (on file with DOT Aviation Consumer Protection Division).
- ¹²⁸ Letter from Hoyte B. Decker, Jr., Assistant Director for Consumer Protection (now retired), to aviation consumer report recipients (November 4, 1996) (on file with DOT Aviation Consumer Protection Division).
- ¹²⁹ Letter from Hoyte B. Decker, Jr., Assistant Director for Consumer Protection (now retired), to major and national airlines, air transport organizations, and certain disability groups (May 23, 1997) (on file with DOT Aviation Consumer Protection Division).
- ¹³⁰ Letter from Norman A. Strickman, Chief of Aviation Consumer Protection Division, to the 10 largest U.S. certificated airlines (August 12, 1998) (on file with DOT Aviation Consumer Protection Division).
- ¹³¹ *See supra* note 90.
- ¹³² *See* OGC comments (August 21, 1998), p. 14.
- ¹³³ Interview with Hoyte B. Decker, Jr., Assistant Director for Consumer Protection (now retired), in Washington, D.C. (November 5, 1997).
- ¹³⁴ Telephone interview with Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings, in Washington, D.C. (December 22, 1998).
- ¹³⁵ *See supra* note 133.
- ¹³⁶ Interview with Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings, and Michael Spollen in Washington, D.C. (November 23, 1998).
- ¹³⁷ *See supra* note 132.
- ¹³⁸ Interview with Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, in Washington, D.C. (December 1, 1997).
- ¹³⁹ *See supra* note 136.
- ¹⁴⁰ *See supra* note 132 (The Enforcement Office is currently considering the advisability and feasibility of working with the Federal Aviation Administration to ensure airlines' compliance with ACAA accessibility requirements).
- ¹⁴¹ *See id.*
- ¹⁴² *See id.*, at 15.
- ¹⁴³ *See* 14 CFR §382.65(5)(iv).
- ¹⁴⁴ *See supra* note 132 at 15.
- ¹⁴⁵ *See supra* note 133.
- ¹⁴⁶ On the other hand, the voice mail on DOT's consumer assistance line (202-366-2220) does inform callers that DOT does not have staff to mediate individual complaints or return phone calls, but will log their complaints in the database.
- ¹⁴⁷ *See supra* note 133.
- ¹⁴⁸ Interview with Hoyte B. Decker, Jr., Assistant Director for Consumer Protection (now retired), in Washington, D.C. (January 20, 1998).
- ¹⁴⁹ This figure comes from the data of a major carrier. These data were obtained as part of discovery in a lawsuit against the carrier.
- ¹⁵⁰ *See supra* note 89.
- ¹⁵¹ Interview with Hoyte B. Decker, Jr., Assistant Director for Consumer Protection (now retired), in Washington, D.C. (November 13, 1997).

- ¹⁵² *See supra* note 133.
- ¹⁵³ *See id.*
- ¹⁵⁴ *See* OGC comments (August 21, 1998), p. 6.
- ¹⁵⁵ *See* 14 CFR §302.205.
- ¹⁵⁶ *See supra* note 89.
- ¹⁵⁷ *See id.*
- ¹⁵⁸ *See id.*
- ¹⁵⁹ *See supra* note 136.
- ¹⁶⁰ *See supra* note 89.
- ¹⁶¹ *See id.*
- ¹⁶² *See* OGC comments (August 21, 1998), p. 15.
- ¹⁶³ *See id.*, at 18.
- ¹⁶⁴ *See* Southwest Airlines Proceeding, No. 87-11-16 (November 6, 1987) (Dept. of Transportation).
- ¹⁶⁵ *See* *Moody v. Delta*, No. 95-11-6 (November 3, 1995) (Dept. of Transportation).
- ¹⁶⁶ *See* *Del Colle v. Continental Airlines*, No. 94-12-39 (December 28, 1994).
- ¹⁶⁷ *See supra* note 164.
- ¹⁶⁸ *See* *Wood v. American Airlines*, No. 95-10-14 (October 10, 1995) (Dept. of Transportation).
- ¹⁶⁹ *See* *Roberts v. USAir*, No. 95-7-38, (July 26, 1995) (Dept. of Transportation).
- ¹⁷⁰ *See* *Seligman v. Northwest Airlines*, No. 94-12-38 (December 28, 1994) (Dept. of Transportation).
- ¹⁷¹ *See* *Segarra v. America West Airlines*, No. 94-4-20 (April 11, 1994) (Dept. of Transportation).
- ¹⁷² *See* *Hacker v. Southwest Airlines*, No. 93-10-10 (October 5, 1993) (Dept. of Transportation).
- ¹⁷³ *See* *Vasquez v. Southwest Airlines*, No. 89-6-12 (June 9, 1989) (Dept. of Transportation).
- ¹⁷⁴ *See* *Sontag v. Simmons Airlines*, No. 89-2-8 (February 3, 1989) (Dept. of Transportation).
- ¹⁷⁵ *See* *Greenberg v. American Airlines*, No. 88-9-31 (September 16, 1988) (Dept. of Transportation).
- ¹⁷⁶ *See* *American Airlines*, No. 95-9-1 (September 1, 1995) (Dept. of Transportation).
- ¹⁷⁷ *Tunison v. Continental Airlines*
- ¹⁷⁸ *See* *Shinault v. American Airlines*, 936 F.2d 796 (5th Cir. 1991); *see also* *Tallarico v. Trans World Airlines*, 881 F.2d 56 (8th Cir. 1989).
- ¹⁷⁹ Interview with Don Trilling, DOT Director of the Office of Environment, Energy, and Safety, and Ira Laster, Senior Program Analyst, in Washington, D.C. (December 3, 1997).
- ¹⁸⁰ *See id.*
- ¹⁸¹ Interview with Robert Herman, Senior Advocacy Attorney for Paralyzed Veterans of America, in Washington, D.C. (October 6, 1997).
- ¹⁸² *See supra* note 138.
- ¹⁸³ *See id.*
- ¹⁸⁴ *See* OGC comments (August 21, 1998), p. 18.
- ¹⁸⁵ Interview with Albert H. Prest, Vice President of Operations, Ronald J. Welding, Director of Operations Standards; and David A. Berg, Assistant General Counsel for Air Transport Association of America, in Washington, D.C. (December 12, 1997).

¹⁸⁶ *See id.*

¹⁸⁷ *See id.*

¹⁸⁸ *See id.*

¹⁸⁹ Capozzi, David M. (Fall 1989). *The Disabled Fly Unfriendly Skies*, 71 *Bus & Soc Rev* 22, 26.

¹⁹⁰ Paralysis Society of America Airline Survey (August 1995–August 1996)) published by Paralyzed Veterans of America (PVA) under the auspices of PVA's Access to the Skies program.

¹⁹¹ One person who notified the airline in advance that she would require a lift had to crawl up the stairs because the lift was frozen.

¹⁹² *See supra* note 190.

¹⁹³ Disability Complaint, Aviation Consumer Protection Division, Office of Aviation Enforcement and Proceedings, U.S. Dept. of Transportation, July 14, 1997.

¹⁹⁴ Disability Complaint, Aviation Consumer Protection Division, Office of Aviation Enforcement and Proceedings, U.S. Dept. of Transportation, July 1997.

¹⁹⁵ Disability Complaint, Aviation Consumer Protection Division, Office of Aviation Enforcement and Proceedings, U.S. Dept. of Transportation, July 10, 1997.

¹⁹⁶ Disability Complaint, Aviation Consumer Protection Division, Office of Aviation Enforcement and Proceedings, U.S. Dept. of Transportation, July 22, 1997.

¹⁹⁷ Disability Complaint, Aviation Consumer Protection Division, Office of Aviation Enforcement and Proceedings, U.S. Dept. of Transportation, July 24, 1997.

¹⁹⁸ Disability Complaint, Aviation Consumer Protection Division, Office of Aviation Enforcement and Proceedings, U.S. Dept. of Transportation, July 21, 1997.

¹⁹⁹ Disability Complaint, Aviation Consumer Protection Division, Office of Aviation Enforcement and Proceedings, U.S. Dept. of Transportation, May 30, 1997.

²⁰⁰ Disability Complaint, Aviation Consumer Protection Division, Office of Aviation Enforcement and Proceedings, U.S. Dept. of Transportation, June 30, 1997.

APPENDIX A

14 CFR Part 382 Requirements

Access to Aircraft—General Requirements

- Aircraft with 30 or more seats shall have movable armrests on at least one-half of the passenger aisle seats. Aisle seats restricted from use by a mobility-impaired person by a Federal Aviation Administration (FAA) safety rule, or which are not feasible locations for a movable armrest, are exempted.¹
- Aircraft with one 100 or more seats shall have priority space in the cabin designated for stowage of at least one folding wheelchair.²
- Aircraft with more than one aisle shall include at least one accessible lavatory.³ An accessible lavatory means
 - ▲ All lavatory handles, dispensers, and other controls can be used by persons with manual impairments and persons using wheelchairs;
 - ▲ Passengers can enter, maneuver within, and leave by means of the aircraft's on-board wheelchair; and
 - ▲ Passengers have privacy equivalent to that afforded ambulatory users.⁴
- Aircraft with more than 60 seats having an accessible lavatory shall be equipped with an operable on-board wheelchair.⁵
- Aircraft with more than 60 seats shall have an operable on-board wheelchair available upon request by a passenger with a disability and advance notice that it is needed to reach a nonaccessible lavatory from his or her seat.⁶ Air carriers shall comply with this provision by August 5, 1992.⁷ ATR-72 and ATP aircraft seating 60–70 passengers are exempted.⁸

Access to Aircraft—Implementation Responsibilities

- All air carriers shall ensure:
 - ▲ On-board wheelchairs meeting Part 382 design specifications are provided on aircraft having accessible lavatories and more than 60 seats by August 5, 1992;⁹

- ▲ Nonaccessible features of cabin interiors, as replaced, conform to applicable accessibility requirements.¹⁰ Replaced features shall meet a level of accessibility not less than that specified in Part 382¹¹;
- ▲ All aircraft accessibility features are maintained in proper working order;
- ▲ Aircraft ordered after August 5, 1990, or delivered after August 5, 1992, meet all accessibility requirements consistent with the aircraft's size and structure;¹² and
- ▲ Cabins are configured or administrative systems established so that seating in rows with movable armrests is readily available to passengers with mobility impairments.¹³

Access to Airports—General Requirements Under Part 382 and Section 504

- Terminal facilities and services provided by air carriers, including frequent flyer clubs, shall meet the Americans with Disabilities Act (ADA) Title III accessibility standards for public accommodations.¹⁴
- Terminal facilities and services provided by airport operators receiving federal assistance shall meet access requirements applying to state and local government programs and facilities under ADA (Title II).¹⁵
- The accessibility standard for airport facilities shall be the Americans with Disabilities Act Accessibility Guidelines (ADAAGs), including section 10.4.¹⁶

Access to Services—General Requirements

- Air carriers shall not refuse to provide transportation to a qualified person with a disability on the basis of his or her disability unless refusal to transport is specifically permitted by the regulation.¹⁷
- Air carriers may refuse transportation to a passenger with a disability on the basis of safety, or to comply with the Federal Aviation Regulations, but shall apply such rules in a nondiscriminatory manner, or be subject to legal remedies.¹⁸
- Air carriers shall not refuse air transportation:
 - ▲ By limiting the number of persons with disabilities permitted to travel on a given flight,¹⁹ or

- ▲ When a passenger's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crew members or other passengers.²⁰
- Air carriers shall provide a written explanation that includes the reasonable basis for the carrier's belief that flight safety would be compromised within 10 calendar days to any person refused transportation on a basis relating to his or her disability.²¹

Access to Airports—Implementation Responsibilities

- Air carriers (Part 382) and airport operators (section 504) shall ensure
 - ▲ An accessible path between the gate and the aircraft boarding area (jetway, tarmac, etc.);²²
 - ▲ Compliance of interterminal transportation facilities with the Department of Transportation's (DOT's) applicable ADA requirements;²³ and
 - ▲ Contracts or leases between air carriers and airport operators concerning use of airport facilities set forth their respective responsibilities for providing accessible facilities and services, as required under part 382, and for airport operators, the applicable section 504 and ADA rules of the Department of Justice (DOJ) and DOT.²⁴
- Airport operators receiving federal assistance shall submit a transition plan to the FAA meeting the requirements of 49 CFR §27.65 by March 3, 1997.²⁵

Access to Services —Implementation Responsibilities

Boarding assistance

- Air carriers shall provide
 - ▲ Personnel and equipment (including ground wheelchairs, boarding and on-board wheelchairs, ramps) needed to provide assistance requested by or on behalf of a

person with a disability in enplaning, deplaning, making flight connections, and moving between gates.²⁶

▲ Boarding by level entry platforms or accessible passenger lounges, when available; otherwise, ramps, lifts, or other suitable devices shall be maintained in working order for enplaning and deplaning passengers as needed.²⁷

- Air carriers shall not leave passengers who are not independently mobile unattended in ground wheelchairs for more than 30 minutes.
- Air carriers operating 19–30 seat capacity aircraft at airports having 10,000 or more annual enplanements shall work with the airports to provide mechanical lifts, ramps, or other boarding assistance devices that do not require employees to lift or carry passengers up stairs.²⁸
- Air carriers shall negotiate in good faith with airport operators concerning the acquisition and use of suitable equipment, and execute written agreements allocating responsibilities for meeting boarding assistance requirements by September 2, 1997.²⁹
- Air carriers and airport operators are jointly responsible for timely and complete implementation of the agreements.³⁰
- Agreements shall be made available to DOT upon request.³¹
- Agreements shall provide for the completion of all actions necessary to ensure accessible boarding as soon as possible, and no later than

▲ December 2, 1998, at medium and large commercial service hub airports

▲ December 2, 1999, at small commercial service hub airports; and

▲ December 4, 2000, for nonhub commercial service primary airports.³²

- Agreements shall ensure that all accessibility equipment is maintained in proper working condition.³³
- Agreements may require passengers wishing to receive boarding assistance by lift to check-in one hour before scheduled departure.³⁴
- Air carriers shall provide boarding assistance by lift when the passenger checks in less than one hour before departure, if it can do so without delaying the flight.³⁵
- Boarding assistance under the agreement is not required for
 - ▲ access to aircraft with a capacity of fewer than 19 and more than 30 seats,
 - ▲ access to float planes, or
 - ▲ access to models of 19-seat aircraft determined by DOT to be unsuitable for boarding assistance.³⁶
- When mechanical boarding assistance is not required or cannot be provided for reasons beyond the control of the parties to the agreement, boarding assistance shall be provided by any means acceptable to the passenger except hand-carrying.³⁷
- Air carriers shall not require personnel to provide boarding assistance that involves hand-carrying a passenger.³⁸
- Air carriers shall ensure that personnel are trained to proficiency in operating boarding assistance equipment and in following procedures to protect the safety and dignity of passengers.³⁹
- When a flight cancellation or substitution of inaccessible equipment forces a passenger to travel with a different air carrier, air carriers shall assist the second carrier in providing accommodations requested by the passenger to the maximum extent feasible.⁴⁰

Seat Assignments

- Air carriers shall not exclude persons with disabilities from any seat in an exit row or other location or require seating in a particular seat, except to comply with FAA safety regulations.⁴¹
- Air carriers refusing transportation on the basis of safety must offer seating in a particular location as an alternative, when the safety problem would thereby be sufficiently mitigated.⁴²
- Air carriers shall offer, if available, a seat location that can accommodate a passenger's service animal, when the original seat location cannot, as an alternative to requiring the animal to travel with checked baggage.⁴³

In-Cabin Assistance

- Air carrier personnel are required to provide assistance in
 - ▲ Moving to and from seats;
 - ▲ Preparation for eating;
 - ▲ Use of the on-board wheelchair in moving to and from the lavatory;
 - ▲ Movement to and from the lavatory for semi-ambulatory persons, excluding lifting or carrying; and
 - ▲ Loading and retrieving carry-on items, including mobility aids and assistive devices stowed onboard.⁴⁴
- Air carrier personnel are **not** required to provide extensive special assistance, including
 - ▲ Assistance in eating (feeding);
 - ▲ Assistance with elimination functions either in the lavatory or at the passenger's seat; or

- ▲ Medical services.⁴⁵

Personal Equipment Stowage

- In accordance with applicable regulations, air carriers shall permit qualified passengers to
 - ▲ Bring on board and use personal equipment that meets required safety standards, including ventilators/respirators and nonspillable batteries;⁴⁶
 - ▲ Stow canes and other assistive devices near their seats;⁴⁷
 - ▲ Store wheelchairs (assembled or components) in overhead compartments or under seats;⁴⁸ and
 - ▲ Provide air carrier personnel with written directions for assembling and disassembling their wheelchairs.⁴⁹
- Air carriers shall not count toward a limit on carry-on items any assistive device brought onboard by a qualified passenger.⁵⁰
- Air carriers shall
 - ▲ Designate priority stowage space for at least one wheelchair in aircraft having stowage areas large enough to accommodate a folding wheelchair.⁵¹
 - ▲ Give priority to wheelchair stowage in approved areas for passengers who are offered and accept preboarding; passengers who do not accept a preboarding offer may use the areas on a first-come, first-served basis.⁵²
 - ▲ Stow wheelchairs in the cargo department when no in-cabin stowage area is available.⁵³

- ▲ Accept and carry battery-powered wheelchairs (including batteries) as baggage, consistent with DOT safety regulations, where aircraft size and safety considerations do not prohibit doing so.
- ▲ Give priority to a passenger's wheelchair or other assistive device over other cargo and baggage for stowage in the aircraft's baggage compartment.⁵⁴
- ▲ Give priority over other items to the retrieval and timely return to the passenger of wheelchairs and other assistive devices from the aircraft's baggage compartment.⁵⁵
- ▲ Make every effort to ensure arrival of the passenger's baggage within four hours of his or her flight's scheduled arrival, if the baggage and the assistive device cannot be accommodated on the same flight.⁵⁶
- ▲ Provide for checking and timely return of wheelchairs and other assistive devices to the passenger either as close to the door of the aircraft as permitted by DOT safety regulations or at the baggage claim area, as the passenger requests.⁵⁷

Wheelchairs

- Air carriers shall:
 - ▲ Transport electric wheelchairs in an upright position whenever feasible in order to meet DOT safety standards without separating the battery from the chair.⁵⁸
 - ▲ Provide DOT-approved packaging materials and package wheelchair batteries when the battery must be detached from the chair. Use of packaging materials other than those normally used for this purpose is at the discretion of the air carrier.⁵⁹
 - ▲ Reassemble and promptly return to passengers wheelchairs and other assistive devices disassembled for stowage in the condition received.⁶⁰

- Air carriers shall not
 - ▲ Drain batteries used by wheelchairs or other assistive devices.⁶¹
 - ▲ Limit liability for loss, damage, or delay concerning wheelchairs and other mobility aids on domestic flights to any amount less than twice the limit established for luggage under 14 CFR 254 (generally \$1,250 per passenger).⁶²
 - ▲ Require passengers to sign waivers of liability for damage to wheelchairs and other assistive devices.⁶³

Passenger Information

- Air carriers shall make available the following information to passengers upon request:
 - ▲ The location of seats with movable armrests and any seats not made available to persons with disabilities;⁶⁴
 - ▲ Any limitations on an aircraft's ability to accommodate persons with disabilities, including limitations on the availability of boarding assistance to the aircraft at departure and destination points as well as intermediate stops. Any passenger who states that he or she uses a wheelchair for boarding shall be provided this information, even if he or she does not explicitly request it.⁶⁵
 - ▲ Any limitations on the availability of storage facilities for mobility aids and other assistive devices in the cabin or baggage compartment.⁶⁶
 - ▲ Whether the aircraft has an accessible lavatory.⁶⁷
- With respect to safety briefings, air carrier personnel shall
 - ▲ Conduct individual safety briefings for passengers as required by DOT regulations and for any other passenger as they wish.⁶⁸

- ▲ Conduct individual safety briefings as inconspicuously as possible.⁶⁹
- ▲ Impose no requirement to demonstrate understanding or "acceptance" of a safety briefing beyond that required of all passengers, or take related adverse action against any passenger with a disability.⁷⁰
- Air carrier personnel shall provide to persons with vision or hearing impairments who request assistance timely access to information routinely provided to other passengers in the terminal or on the aircraft (e.g., flight delays, schedule changes, connections, gate assignments, aircraft changes).⁷¹
- Air carriers shall maintain a copy of Part 382 at every airport they use, available for review by passengers upon request.⁷²

Hearing Impairments

- All air carriers making telephone reservation and information service available to the public shall provide the same service during the same hours via a teletype (TTY) device for the deaf. The response time for answering TTY calls shall be equivalent to that for the general public and the charge for the service may not exceed the charge to the general public.⁷³
- Air carriers using video screens to present safety briefings shall ensure that the presentation is accessible to persons with hearing impairments.⁷⁴ Open captioning and sign-language insets are the preferred methods of implementation. If neither method is feasible, nonvideo alternatives may be used.⁷⁵ Uncaptioned video materials shall be replaced in the normal course of the carrier's operations with captioned materials.⁷⁶

Security Screening

- Security requirements for persons with disabilities shall be no different from those for other passengers. Security searches of persons with disabilities shall be conducted in the same

manner as for other passengers. Persons with disabilities shall not be subject to private security screenings more frequently or for different reasons than other passengers.⁷⁷

- Passengers traveling with assistive devices shall not be subject to a special screening if their devices clear the security system without activating it. Security personnel may, however, examine any device that in their judgment may conceal a prohibited item.⁷⁸
- Requests for a private screening will allow sufficient time for the passenger to enplane. If the air carrier's security system can conduct an appropriate screening without a physical search, a private screening need not be provided.⁷⁹

Communicable Diseases

- Air carriers may take any of the following actions with respect to a person having a communicable disease or infection, only if the individual's condition poses a direct threat to the health or safety of others:
 - ▲ Refusal to provide air transportation;
 - ▲ Requirement to provide a medical certificate; or
 - ▲ Imposition of conditions or restrictions not imposed on other passengers.⁸⁰
- "Direct threat" means a significant risk to the health and safety of others that cannot be eliminated by a modification of policies, practices, or procedures or the provision of auxiliary aids or services.⁸¹
- Air carriers shall not subject a passenger to any of the above restrictions solely on the basis that the person has a communicable disease or infection.⁸²
- Whether an individual poses a direct threat is determined by an individualized assessment based on reasonable judgment, relying on objective evidence and current medical knowledge, to ascertain the risk of harm to others, and if the risk can be mitigated.⁸³

- Air carriers shall select the least restrictive alternative from the viewpoint of the person having the communicable disease, consistent with the safety and health of others.⁸⁴
- Unless doing so is not feasible, air carriers shall provide air transportation to passengers with a communicable disease or infection who have a medical certificate in which the conditions necessary to prevent transmission of the disease or infection to others in flight are set forth.⁸⁵
- Air carriers shall provide a written explanation of any action taken within 10 days of the passenger's request.⁸⁶
- When a passenger's travel is postponed because of a determination of posing a direct threat to others, the air carrier shall permit the passenger to travel within 90 days at the same fare and without penalty, or at the passenger's discretion, to receive a refund for any unused flights.⁸⁷

Medical Certificates

- Air carriers shall not require a medical certificate of any passenger with a disability unless he or she
 - ▲ is traveling on a stretcher or in an incubator;⁸⁸
 - ▲ needs medical oxygen in flight;⁸⁹
 - ▲ has a medical condition so serious that a reasonable doubt exists as to whether he or she can safely complete the flight without extraordinary medical assistance;⁹⁰
or
 - ▲ has a communicable disease or infection that could be transmitted to others during the flight.⁹¹

- A valid medical certificate is a written statement signed by the passenger's physician, dated within 10 days of the flight, stating that the present condition of the passenger's communicable disease or infection would not pose a risk of transmission to others during the flight.⁹² The certificate shall state any conditions or precautions necessary to prevent transmission to others during the flight.⁹³

Advance Notice

- Air carriers shall not require a passenger with a disability to give advance notice of his or her disability either as a condition for air transportation or to receive any services or accommodations required by Part 382.⁹⁴
- Air carriers may require up to 48 hours advance notice and one hour advance check-in for a passenger who requires the following services, equipment or accommodations:
 - ▲ transportation of an electric wheelchair on an aircraft with fewer than 60 seats;⁹⁵
 - ▲ provision of hazardous materials packaging for wheelchair or assistive-device battery;⁹⁶
 - ▲ accommodation for a group of 10 or more persons with disabilities who make reservations and travel as a group;⁹⁷ and
 - ▲ provision of an on-board wheelchair on aircraft lacking an accessible lavatory.⁹⁸
- If an air carrier makes the following services available on a given flight, up to 48 hours advance notice and one hour advance check-in may be required for passengers requesting the following services, equipment, or accommodations:
 - ▲ medical oxygen for in-flight use;⁹⁹
 - ▲ incubator;¹⁰⁰
 - ▲ respirator hook-up to the aircraft's electrical power supply;¹⁰¹ or

▲ stretcher accommodation.¹⁰²

- Air carriers are required to make a reasonable effort (without delaying the flight) to accommodate passengers who do not meet the above advance notice or check-in requirements.¹⁰³
- Air carriers shall ensure that reservation and other administrative systems operate to effectively record and transmit advance notice requests to the operating employees responsible for providing the accommodations.¹⁰⁴
- Air carriers are required to ensure that accommodations requested with the proper advance notice are provided.¹⁰⁵

Attendants

- With specific exceptions, air carriers shall not require a passenger with a disability to travel with an attendant as a condition for air transportation.¹⁰⁶
- Air carriers may require passengers meeting the following criteria to travel with an attendant:

▲ when an attendant is determined essential for safety;

▲ persons traveling on a stretcher or in an incubator; the attendant must be capable of meeting their in-flight medical needs;¹⁰⁷

▲ persons with mental disabilities rendering them unable to understand or respond appropriately to mandatory safety instructions;¹⁰⁸

▲ persons unable to assist in their own evacuation from an aircraft because of severe mobility impairment;¹⁰⁹

- ▲ persons who are both severely visually and hearing impaired, when communication with air carrier personnel adequate to transmit mandatory safety instructions cannot be established.¹¹⁰
- Air carriers requiring a passenger who is mentally disabled, mobility impaired or deaf-blind to travel with an attendant contrary to his or her own self-assessment shall not charge for the attendant's transportation.
- Air carriers requiring a passenger to travel with an attendant shall deem the attendant to have checked in at the same time as the passenger. If a passenger is denied boarding because a seat for his or her required attendant is unavailable, air carriers shall provide denied boarding compensation in accordance with 14 CFR part 250.¹¹¹

Service Animals

- Air carriers shall
 - ▲ permit dogs and other animals serving persons with disabilities to accompany them on a flight at the seat where the passenger is sitting, unless the animal obstructs an area that must remain unobstructed for emergency evacuation.¹¹²
 - ▲ accept any credible physical or verbal evidence that an animal is a service animal;¹¹³ and
 - ▲ provide to any passenger traveling with an animal (including service animals) to a foreign destination on their airline, whatever special information applies concerning the transportation of animals outside the continental United States.¹¹⁴

ENDNOTES

¹ §382.21(a)(1) (i), (ii)

² §382.21(a)(2)

³ §382.21(a)(3)

⁴ *Id.*

⁵ §382.21(a)(4)(i)

⁶ §382.21(a)(4)(ii)

⁷ §382.21(b)(2)

⁸ 1992 Exemption for ATR and ATP aircraft from the requirement for an onboard wheelchair, 57 FR 12872 (April 14, 1992).

⁹ §382.21(a)(4)(iii)

¹⁰ §382.21(c)

¹¹ §382.21(e)

¹² §382.21(f)

¹³ §382.21(a)(1)(iii)

¹⁴ §382.21(b)

¹⁵ 49 CFR §27.71(b)

¹⁶ 14 CFR §382.23(e) (1996) and 49 CFR §27.71(e) (1996)

¹⁷ 14 CFR §382.31(a)

¹⁸ 14 CFR §382.31(d)

¹⁹ 14 CFR §382.31(c)

²⁰ 14 CFR §382.31(b)

²¹ 14 CFR §382.31(e)

²² 14 CFR §382.23(c) (1996) and 49 CFR §27.7(c) (1996)

²³ 14 CFR §382.23(d) (1996) and 49 CFR §27.71(d) (1996)

²⁴ 14 CFR §382.23(f) (1996) and 49 CFR §27.71(f) (1996)

²⁵ 49 CFR §27.71(g) (1996)

²⁶ 14 CFR §382.39(a)(1)

²⁷ 14 CFR §382.39(a)(2)

²⁸ 14 CFR §382.40 (1996)

²⁹ 14 CFR §382.40(c)(1) (1996)

³⁰ 14 CFR §382.40(c)(2) (1996)

³¹ 14 CFR §382.40(c)(1) (1996)

³² 14 CFR §382.40(c)(2) (1996)

³³ 14 CFR §382.40(c)(6) (1996)

³⁴ 14 CFR §382.40(c)(3) (1996)

³⁵ *Id.*

³⁶ 14 CFR §382.40(c)(4) (1996)

³⁷ 14 CFR §382.40(c)(5) (1996)
³⁸ 14 CFR §382.49(a)(2) (1996)
³⁹ 14 CFR §382.40(d) (1996)
⁴⁰ 14 CFR §382.33(f)
⁴¹ 14 CFR §382.37(a)
⁴² 14 CFR §382.37(b)
⁴³ 14 CFR §382.37(c)
⁴⁴ 14 CFR §382.39(b)
⁴⁵ 14 CFR §382.39(c)
⁴⁶ 14 CFR §382.41(b)
⁴⁷ 14 CFR §382.41(c)
⁴⁸ 14 CFR §382.41(e)(1)
⁴⁹ 14 CFR §382.41(g)(5)
⁵⁰ 14 CFR §382.41(d)
⁵¹ 14 CFR §382.41(e)(2)
⁵² *Id.*
⁵³ 14 CFR §382.41(e)(3)
⁵⁴ 14 CFR §382.41(f)(3)
⁵⁵ 14 CFR §382.41(f)(2)
⁵⁶ 14 CFR §382.41(f)(3)
⁵⁷ 14 CFR §382.41(f)(1)
⁵⁸ 14 CFR §382.41(g)(2)
⁵⁹ 14 CFR §382.41(g)(3)
⁶⁰ 14 CFR §382.43(a)
⁶¹ 14 CFR §382.41(g)(4)
⁶² 14 CFR §382.43(b)
⁶³ 14 CFR §382.43(c)
⁶⁴ 14 CFR §382.45(a)(1)
⁶⁵ 14 CFR §382.45(a)(2) (1996).
⁶⁶ 14 CFR §382.45(a)(3)
⁶⁷ 14 CFR §382.45(a)(4)
⁶⁸ 14 CFR §382.45(b)(1), (2)
⁶⁹ 14 CFR §382.45(b)(3)
⁷⁰ 14 CFR §382.45(b)(4)
⁷¹ 14 CFR §382.45(c)
⁷² 14 CFR §382.45(d)
⁷³ 14 CFR §382.47(a)
⁷⁴ 14 CFR §382.47(b)
⁷⁵ 14 CFR §382.47(b)(1), (2)
⁷⁶ 14 CFR §382.47(c)
⁷⁷ 14 CFR §382.49(a)

⁷⁸ *Id.*

⁷⁹ 14 CFR §382.49(b), (c)

⁸⁰ 14 CFR §382.51(a)

⁸¹ 14 CFR §382.51(b)(2) (1996)

⁸² 14 CFR §382.51(a)

⁸³ 14 CFR §382.51(b)(3) (1996)

⁸⁴ 14 CFR §382.51(b)(4) (1996)

⁸⁵ 14 CFR §382.51(c)

⁸⁶ 14 CFR §382.51(b)(6) (1996)

⁸⁷ 14 CFR §382.51(b)(5) (1996)

⁸⁸ 14 CFR §382.53(b)(1)(i)

⁹¹ 14 CFR §382.53(b)(1)(ii)

⁹⁰ 14 CFR §382.53(b)(1)(iii)

⁹¹ 14 CFR §382.53(c)(1)

⁹² 14 CFR §382.53(b)(2)

⁹³ *Id.*

⁹⁴ 14 CFR §382.33(a)

⁹⁵ 14 CFR §382.33(b)(5)

⁹⁶ 14 CFR §382.33(b)(6)

⁹⁷ 14 CFR §382.33(b)(7)

⁹⁸ 14 CFR §382.33(b)(8)

⁹⁹ 14 CFR §382.33(b)(1)

¹⁰⁰ 14 CFR §382.33(b)(2)

¹⁰¹ 14 CFR §382.33(b)(3)

¹⁰² 14 CFR §382.33(b)(4)

¹⁰³ 14 CFR §382.33(c)

¹⁰⁴ 14 CFR §382.33(d)

¹⁰⁵ 14 CFR §382.33(e)

¹⁰⁶ 14 CFR §382.35(a)

¹⁰⁷ 14 CFR §382.35(b)(1)

¹⁰⁸ 14 CFR §382.35(b)(2)

¹⁰⁹ 14 CFR §382.35(b)(3)

¹¹⁰ 14 CFR §382.35(b)(4)

¹¹¹ 14 CFR §382.35(d), (e)

¹¹² 14 CFR §382.55(a)(2)

¹¹³ 14 CFR §382.55(a)(1)

¹¹⁴ 14 CFR §382.55(a)(3)

APPENDIX B
Summary of Complaints Filed Directly with a Major Air Carrier
(January 1993–November 1996)*

Total Complaints: 5072

DAF	Disabled Dissatisfied W/ Aircraft Facilities	74
DAF	Closed captioning	23
DAF	No onboard wheelchair (aisle chair)	7
DAF	Restrooms inaccessible	8
DAF	Equipment mishandling	1
DAF	Widen aisles	2
DAF	Lack of assistance/information	11
DAF	Oxygen undelivered/mishandled	6
DAF	Connecting times too short	1
DAF	Wheelchair miscellaneous	4
DAF	Passenger injury during transfer/transport	1
DAF	No movable armrests	1
DAF	Bulkhead seating complaint	1
DAF	Miscellaneous/no explanation	10

CONT	Contract Employee Complaint	305
DCONT	Abandoned W/O assistance/assistive device	51
DCONT	Long wait time for assistance/transport	11
DCONT	Refused assistance to transport/transfer	25
DCONT	Separated from travel companion(s)	3
DCONT	Unsafe transfer/injury during transfer/transport	46
DCONT	Staff incompetent/untrained	19
DCONT	Mistreated	28
DCONT	Tipping solicited/demanded/scoffed	18
DCONT	Lost and/or missed connecting flight	44
DCONT	Burned on W/C/broken W/C	8
DCONT	Refused W/C use	22
DCONT	Refused W/C use W/O deposit	2
DCONT	Security complaints misc.	9
DCONT	Theft	5
DCONT	Refused restroom stop	1
DCONT	Andy Frain complaints	5
DCONT	Charged for service van	1
DCONT	Non-English-speaking	6
DCONT	Damaged items	1
DCONT	Miscellaneous cont complaints/no explanation	30

DCSAH	Disabled Passenger Assistance by Customer Service Agent	1258
DCSAH	Boarding/deboarding complaints	71
DCSAH	Denied/challenged W/C assistance	338
DCSAH	Refused/challenged need for assistance	198
DCSAH	Mistreated/rude/incompetent staff	132
DCSAH	Seating complaint	54
DCSAH	No aisle chair/mishandling	36
DCSAH	Miscellaneous CSA complaints/no explanation	208
DCSAH	W/C misc.	20
DCSAH	Oxygen mishandling/overchg/no delivery	55
DCSAH	Injury during transfer/transport	33
DCSAH	Missed connection/misboarded/wrong gate	100
DCSAH	Lost/abandoned without assistance	72
DCSAH	Non-English speaking/no assistance	9
DCSAH	IV Hookup not set up	1
DCSAH	Property mishandled/lost	9
DCSAH	W/C damage	2
DCSAH	Delayed assistance/W/C arrival	21
DCSAH	Forced to check assistive device before gate	39
DCSAH	No jetway/no lift	17
DCSAH	Solicited tip	3
DCSAH	TTY not available/not easily located	2
DCSAH	ACAA violation complaints	15
DCSAH	Denied cart for transfer/transport	14
DCSAH	Moveable armrest complaints	6
DCSAH	Denied service animal onboard	1
DCSAH	Denied travel	1
DDWC	Damaged Wheelchair	71
DDWC	Delayed Wheelchair (Delayed W/C, denied W/C assistance, denied W/C attendant, no aisle chair)	1871
DFAC		72

DFAC	No access/accommodations for disabled	8
DFAC	Restrooms inaccessible to disabled	2
DFAC	No TTY	8
DFAC	Delayed/denied W/C assistance	4
DFAC	No elevator/lift	7
DFAC	Miscellaneous/no explanation	3
DFAC	Facility complaint	10
DFAC	Misconnection/missed flight/misboard	3

DIFAT	Lack of Flight Attendant Assistance with Disabled Passenger	322
--------------	--	------------

DIFAT	Mistreatment/rude/discriminatory/incompetent	63
DIFAT	Refused/challenged need for assistance	140
DIFAT	Denied preboard/preferential deboard	10
DIFAT	Oxygen mishandled/not delivered	8
DIFAT	Seating complaint/refusal to reseat	27
DIFAT	Safety complaints/no safety info to blind/deaf	13
DIFAT	No lift	2
DIFAT	No W/C assistance/aisle chair operation	34
DIFAT	Miscellaneous F/A complaints	32

DMISC	DISABLED MISCELLANEOUS	225
--------------	-------------------------------	------------

DMISC	Restrooms inaccessible	1
DMISC	Left abandoned without assistance	3
DMISC	Mistreated/rude/incompetent	6
DMISC	Misconnection/misboard/wrong gate	5
DMISC	No W/C assistance	26
DMISC	Miscellaneous disabled complaints	37
DMISC	Oxygen mishandling/overcharge/no delivery	67
DMISC	Refused/challenged/not offered assistance	11
DMISC	Injury	12
DMISC	Misc. non-disability related complaints	30
DMISC	No dialysis onboard	1
DMISC	Captioning for onboard videos	3
DMISC	Theft alleged	1
DMISC	Transport bus inaccessible	2
DMISC	No cart assistance	2

DMISC	Forced to check assistive device before gate	1
DMISC	Seating complaint	5
DMISC	Refused assistance with medications	3
DMISC	No TTY	2
DMISC	No preboard/preferred deboard	2
DMISC	Longer connecting times	1
DMISC	No accommodations for oversized individuals	4
DMISC	Property damage	1
DMISC	Charged for W/C use	2

DPB	Disabled PAX Preboarding	63
------------	---------------------------------	-----------

DPRO	Agent Unfamiliar with Disabled Procedures	79
-------------	--	-----------

DPRO	Oxygen procedures mishandled	7
DPRO	Preboarding procedure mishandled	1
DPRO	Wheelchair not provided	3
DPRO	Escort fees	3
DPRO	No lift	2
DPRO	Forced to check assistive device before gate	5
DPRO	Charged to check assistive device	1
DPRO	No onboard stowage of assistive device	4
DPRO	Unfamiliar with transfer procedures	3
DPRO	Assistive device not returned at gate	2
DPRO	Check in complaints for assistive device	2
DPRO	W/C Battery procedures	6
DPRO	Injury to PAX during transfer	3
DPRO	Miscellaneous	5
DPRO	W/C Mishandled/requirements	2
DPRO	Non-attentive staff/non-assistive	5
DPRO	Staff untrained	2
DPRO	No service animals allowed onboard	2
DPRO	Unfamiliar with Moveable Armrests	3
DPRO	ACAA complaints	2

DRR	Lack of Res. Assistance W/Disabled PAX	123
------------	---	------------

DSEAT	Disabled PAX Seating Problems	524
DSEAT	Refused aisle/bulkhead/exit row seating	217
DSEAT	Nondisabled seated in bulkhead	36
DSEAT	Preassigned seat request denied	22
DSEAT	Separated from companion	34
DSEAT	Disabled in restricted (middle) seat	42
DSEAT	Disabled seated at rear of plane	73
DSEAT	Nondisabled complaints of disabled as Obstruction/safety hazard in aisle seats	17
DSEAT	No movable armrests	16
DSEAT	No preboard/boarding assistance	15
DSEAT	No seating near restrooms	4
DSEAT	Disabled seated on upper deck of plane	2
DSEAT	No aisle chair/delay	5
DSEAT	No reclined seating	4
DSEAT	Other	107
DTIPS	Disabled PAX Solicitation of Tips	20
DUNAT	Disabled PAX Left Unattended	65

*Note: The major category headings are listed verbatim from the airline's file. The numbers in bold type are the total complaints in each of the major categories. The

subcategories have been created from the brief narrative description provided for each complaint. Multiple problems identified in the narrative have been coded into the appropriate subcategories. Thus, subcategory totals may exceed the total number of complaints recorded for the major category heading.

W/ = with

W/O = without

W/C = wheelchair

MISC = miscellaneous

CSA = customer service agent

TTY = teletype

ACAA = Air Carriers Access Act

F/A = Flight attendant

PAX = passenger

APPENDIX C
Summarized Selected Complaints from the Consumer Protection Division

Complaint Basis/Disability Type	Complaint Format	Complaint Information	Outcome
Failure to provide assistance/other handicapped	Other	PAX (66-year-old woman with unspecified disability) requested special assistance at the airport. No assistance was given, forcing her to stand for hours.	Inconclusive
Assistive device (storage/loss/damage /delay/waiver)/other wheelchair	Letter	PAX's W/C completely demolished. Airline replaced, but refused to pay more than \$300. PAX given no choice regarding replacement. PAX told that air carrier's consumer affairs office would direct baggage dept. to contact her directly regarding unsatisfactory replacement W/C.	Inconclusive
Failure to provide assistance/other wheelchair	Telephone	Multiple complaints alleging repeated failures to provide adequate assistance throughout PAX's flights. PAX to send a follow-up summary letter to DOT. PAX had called airline earlier and received a \$100 voucher, a gesture PAX found insulting. Concerned that airline take steps to prevent similar treatment to other passengers with disabilities. No follow-up letter found.	Apology and voucher
Assistive device (storage/loss/damage /delay/waiver)/oxygen	Letter	PAX provided advance doctor's notice of need for medical oxygen in-flight. Oxygen supply in-flight was insufficient and attendants failed to notify EMS of needed oxygen upon landing. Airline attendant told PAX that gate personnel were "union," so she could not guarantee assistance. Airline sent letter of apology—nothing else.	Apology
Seat assignment restriction/other handicapped	Other	PAX requested bulkhead seating to relieve pain in leg. Bulkhead seat was changed at flight time.	Inconclusive

Complaint Basis/Disability Type	Complaint Format	Complaint Information	Outcome
Failure to provide assistance/other wheelchair	Letter (not in file)	No W/C, cart, or other assistance provided to PAX's elderly, disabled mother. Very last seats in the plane assigned on the final segment of trip.	Inconclusive
Failure to provide assistance/hearing impaired	Letter (not in file)	Group of deaf PAXs who requested assistance didn't get any. Two letters of apology, including offers of vouchers, from airline. <i>Complaint marked as potential enforcement action.</i>	Apology and vouchers
Assistive device (storage/loss/damage/delay/waiver)/oxygen	Telephone	PAX barred from carrying on her husband's oxygen "concentrator." Wanted to use during connecting stops and to ensure safety from damage as checked baggage. Airline analyst determined device not a safety problem; device could be placed in overhead storage or in closet if PAX preboards. When DOT complaint analyst requested copy of airline analyst's assessment of the device, airline's customer service representatives refused, saying replies on 382 issues are "confidential and can't be shared with DOT." Eventually DOT analyst got a copy of the report and faxed it to the PAX. The next time the PAX flew on airline, she presented the letter when she boarded the aircraft and was again refused. DOT complaint analyst spent much time attempting to resolve this matter. No letter documenting the complaint was in the file.	Inconclusive
Seat assignment restriction/other W/C	Telephone/ (letter in file)	PAXs are husband and wife; both have multiple sclerosis. Both requested advance assignment of bulkhead seating and were refused. DOT analyst sent copy of NPRM on bulkhead seating and explained current situation. Airline response states that bulkhead seats are held until the day of departure and they can only have them if no PAXs with infants/bassinets need them.	Inconclusive

Complaint Basis/Disability Type	Complaint Format	Complaint Information	Outcome
Seat assignment restriction/other handicapped	Letter	PAX is elderly, disabled woman who walks with two crutches/canes. Refused seating near the front of the plane when her flight was changed. Airline agent told her she had to reserve a front row seat 130 days in advance and at midnight. Agent said that the policy of reserving front row seats for persons with disabilities had been up for review, and seats were no longer being held. File contained a response letter from the airline saying, "[we are] sorry to learn of your disappointment...." Letter said that present policy is to hold seats near the front of the cabin for PAXs with disabilities until 48 hours before departure. Letter also said PAX should advise agent of special needs when booking the reservation, and "if available, the representative will assign the seat to you."	Inconclusive
Failure to provide assistance/other handicapped	Letter (not in file)	73 year old PAX with emphysema assigned a seat at back of plane and given no assistance. PAX sent a letter of complaint first to airline and then to DOT. Airline apologizes for PAX's discomfort and says that (1) PAX had no advance seat assignment; (2) the flight had been oversold; (3) in oversold situation, final closeout of seat assignments does not begin until 10 min. before departure ("orderly process must be followed"); and (4) under the circumstances, the airline was pleased they were able to transport her and provide W/C assistance.	Apology/ inconclusive
Failure to provide assistance/other handicapped	Telephone	Attorney called to register complaint on behalf of client. Client is seriously ill with cancer and was treated very rudely by an airline agent. Requests for information/ assistance were responded to with "Sit down and shut up."	Inconclusive

Complaint Basis/Disability Type	Complaint Format	Complaint Information	Outcome
Failure to provide assistance/other wheelchair	Other (letter in file)	Severely physically disabled elderly woman was told to get out of the W/C at the elevator. Left without walker or any kind of assistance to get herself and carry-on bag to the baggage claim area. PAX was so frightened she became incontinent. Airline apologized for the incident and personnel handling of the situation.	Apology
Failure to provide assistance/other handicapped	Letter (not in file)	Husband and wife were both PAXs needing W/C assistance. None was provided. In response letter, airline apologizes for incident and for disagreement regarding airline compensation to PAXs for incident. Letter does not address the specific complaint; says the "station managers" have been alerted.	Apology
Failure to provide assistance/hearing impaired	Other	Deaf PAX explained need for special assistance to agent. Agent attached a prominent "handicapped" sticker to ticket. Airline response letter apologizes, but doesn't address the sticker issue.	Apology
Failure to provide assistance/other handicapped	Other	PAX has degenerative arthritis and requested assistance that she did not receive on two separate occasions. Airline apologizes and offers voucher. <i>Complaint identified for potential enforcement action.</i>	Apology and voucher
Assistive device (storage/loss/damage/delay/waiver) / oxygen	Letter	PAX requested medical oxygen in-flight. PAX complained about the price of the canisters and sought a refund for one that had not been used at all during the flight. Two airline response letters stated that the price of oxygen, while high, was within the industry standard. Neither letter addressed her request to refund the cost of unused oxygen.	Inconclusive
Failure to provide assistance/Other wheelchair	Letter (no letter in file)	PAX in W/C was left at the airport for 18 hours after his flight was canceled. When he recovered W/C, it had been mishandled and the battery damaged. Rude treatment by the airline attendant who informed them about Part 382.	Inconclusive

Complaint Basis/Disability Type	Complaint Format	Complaint Information	Outcome
Failure to provide assistance/vision impaired		Blind PAX not given assistance at the airport. PAX missed flight and ended up wandering on the taxiway until a baggage handler stopped and helped him back to the terminal. No assistance was given inside the terminal to get him another flight, and he finally took a bus. Airline response offers apology and three domestic vouchers, plus refund of unused tickets and difference between air and bus fare.	Apology and vouchers
Failure to provide assistance/oxygen		PAX complained about cost of oxygen during a 1997 flight. Price had nearly tripled from \$50/canister in 1995. Airline response did not address the price discrepancy, but indicates carrier's intent to reduce the cost and the necessity for changing cylinders between flights by switching to larger oxygen cylinders. Airline agreed to reimburse PAX for the multiple cylinders of unused oxygen with a \$150 check and travel coupons for various in-flight amenities.	Reimbursement and amenity coupons

PAX = passenger

W/C = wheelchair

DOT = Department of Transportation

EMS = emergency medical service

NPRM = notice of proposed rulemaking

APPENDIX D

Glossary of Acronyms

ACAA—Air Carrier Access Act

ADA—Americans with Disabilities Act

ATA—Air Transport Association of America

CAB—Civil Aeronautics Board

CRO—Complaint Resolution Officer

DOJ—Department of Justice

DOT—Department of Transportation

DREDF—Disability Rights Education and Defense Fund

EEOC—Equal Employment Opportunity Commission

FA Act—Federal Aviation Act of 1958

FAA—Federal Aviation Administration

FTE—Full-time Equivalent

IDEA—Individuals with Disabilities Education Act

NCD—National Council on Disability

NPRM—notice of proposed rulemaking

OGC—Office of General Counsel

OST—Office of the Secretary of Transportation

PVA—Paralyzed Veterans of America

Reg Neg—Regulatory negotiation

TTY—teletype

APPENDIX E

14 CFR 302.3 Filing of Documents

[Docket No. 82, 50 FR 2384, Jan. 16, 1985, as amended at 53 FR 16701, May 11, 1988; Doc. No. OST-96-1436, 61 FR 29284, June 10, 1996]

Subpart A—Rules of General Applicability

Sec. 302.3 Filing of documents.

(a) Filing address, date of filing, hours.

Documents required by any section of this part to be filed with DOT [Department of Transportation] shall be filed with the Documentary Services Division of DOT, Washington, DC 20590. Such documents shall be deemed to be filed on the date on which they are actually received by DOT. Documents must be filed between 9:00 a.m. and 5:00 p.m., eastern standard or daylight saving time, whichever is in effect in the District of Columbia at the time, Monday to Friday, inclusive, except on legal holidays.

(b) Formal specifications of documents.

(1) Documents filed under this part must be on white paper not larger than 8 1/2 by 11 inches, including any tables, charts, and other documents that may be included. Ink must be dark enough (but may not be green) to provide substantial contrast for scanning and photographic reproduction. Text must be double-spaced (except for footnotes and long quotations, which may be single-spaced), using type not smaller than 12 point. The left margin must be at least 1 1/2 inches; all other margins must be at least 1 inch. The title page and first page must bear a clear date, and all subsequent pages must bear a page number and abbreviated heading. To facilitate automated processing in document sheet feeders, documents of more than one page should be held together with removable metal clips or similar retainers. Original documents may not be bound in any form or include tabs, except in cases assigned by order to an Administrative Law Judge for hearing, in which case the filing requirements will be set by order. Section 302.31 contains additional requirements as to the contents and style of briefs.

(2) To facilitate indexing, a filer should include in or provide with each document the following: the docket title and subject; the relevant operating administration before which the application or request is filed; the identity of the filer; the title of the specific action being requested; and the name and address of the designated agent, and so identified, on file for official service. The Docket Management Facility has an Expedited Processing Sheet that filers can use to expedite this index input.

(3) Reproduction of documents.

Papers may be reproduced by any duplicating process, provided all copies are clear and legible. Appropriate notes or other indications shall be used, so that the existence of any matters shown in color on the original will be accurately indicated on all copies.

(c) Number of copies.

Unless otherwise specified, an executed original, along with the number of true copies set forth below for each type of proceeding, must be filed with the Docket Management Facility. The copies filed need not be signed, but the name of the person signing the original document, as distinguished from the firm or organization he or she represents, must also be typed or printed on all copies below the space provided for the signature.

Airport Fee	9 copies
Agreements	
International Air Transport Association (IATA)	6 copies
Other (under 49 U.S.C. 41309)	9 copies
Complaints Enforcement	5 copies
Mail Contracts	4 copies
Rates, Fares, and Charges in Foreign Air Transportation	6 copies
Unfair Practices in Foreign Air Transportation (49 U.S.C. 41310)	7 copies
Employee Protection Program (14 CFR 314)	7 copies
Exemptions	
Computer Reservation Systems (14 CFR 255)	8 copies
Other (under 49 U.S.C. 40109)	7 copies
Tariffs (under 49 U.S.C. Chapter 415 or 14 CFR 221)	5 copies
Foreign Air Carrier Permits/Exemptions	7 copies
International Authority for U.S. Air Carriers (certificates, exemptions, allocation of limited frequencies, or charters)	7 copies
Mail Rate Proceedings	4 copies
Name Change/Trade Name Registrations	4 copies
Suspension of Service (14 CFR 323)	4 copies
Tariff Justifications to Exceed Standard International Fare Levels	6 copies
U.S. Air Carrier Certificates	
(involving Initial or Continuing Fitness)	6 copies
Other Matters	3 copies

Filers are encouraged to submit one of the required true copies (except for counterparts of Agreement CAB 18900) in electronic form on a 3 1/2 inch floppy disk, labeled to show the filer's and representative's names, the docket number (if known) or space for it, and document title. The electronic submission must be in one of the following formats: Microsoft Word (or RTF), WordPerfect, Excel, Lotus 123, or ASCII text. The disk must be accompanied by a signed certification that it is a true copy of the executed original document.

(d) Table of contents.

All documents filed under this part consisting of twenty or more pages must contain a subject-index of the matter in such document, with page references.

(e) [Reserved]

(f) Official docket copy.

With respect to all documents filed under this part that are scanned, the electronic scanned record produced by DOT shall thereafter be the official docket copy of the document and any subsequent copies generated by DOT's electronic records system will be usable for admission as record copies in any proceeding before the department.

APPENDIX F
List of Interviews and Consultations

DEPARTMENT OF TRANSPORTATION PERSONNEL

Office of the Secretary

Office of General Counsel

Nancy McFadden, Esq., General Counsel

Charlotte S. Boeck, Administrative Officer

Robert Ashby, Assistant General Counsel for Regulation and Enforcement

Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings

Dayton Lehman, Deputy Assistant General Counsel for Aviation Enforcement and Proceedings

Hoyte B. Decker, Assistant Director for Aviation Consumer Protection

Office of the Assistant Secretary for Transportation Policy

Don Trilling, Director, Office of Environment, Energy, and Safety

Ira Laster, Senior Program Coordinator

Departmental Office of Civil Rights

Ronald Stroman, Director

April Marchese, Acting Deputy Director

Julie Zirlin, Acting Chief, External Policy and Program Development Division

Federal Transit Administration

Michael Winter, Associate Administrator, Office of Budget and Policy

MISCELLANEOUS CONSULTATIONS

Michele Anderson, Esq., Institute for Public Representation, Georgetown University Law Center

David A. Berg, Assistant General Counsel, Air Transport Association of America

Steve Gold, Esq.

Marilyn Golden, Senior Policy Analyst, Disability Rights Education and Defense Fund

Robert Herman, Esq., Advocacy Attorney, Paralyzed Veterans of America

Frederick Isler, Assistant Staff Director, Office of Civil Rights Education, U.S. Commission on Civil Rights

Kleo J. King, Esq., Program Counsel, Eastern Paralyzed Veterans Association

Scott Marshall, American Federation of the Blind

Maureen McCloskey, Director of Policy and Government Affairs, Paralyzed Veterans of America

Sharon G. Miller, Esq.

Douglas Parker, Esq., Institute for Public Representation, Georgetown University Law Center

Albert H. Prest, Vice President Operations, Air Transport Association of America

Jim Weisman, Esq., Program Counsel, Eastern Paralyzed Veterans Association

Ronald J. Welding, Director, Operations Standards, Air Transport Association of America

Nadja Zalokar, Ph.D., Senior Economist, Office of Civil Rights Education, U.S. Commission on Civil Rights