

February 16, 2021

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Re: Docket No. DOT-OST-2021-0004

Dear Secretary Buttigieg,

The undersigned organizations submit the following comments in response to the Department of Transportation's (Department) request for comments on its recently released Draft Strategic Plan on Accessible Transportation. Our comments will focus specifically on efforts to advance accessible air travel as outlined in Goal 5, Advance Accessible Air, Motorcoach, and Rail Intercity Transportation Systems for People with Disabilities, Objective 5.1 Air Transportation.

Goal 5 of the strategic plan is to connect our country "with accessible transportation systems [which] will provide the widest range of options to ensure every member of our community can participate in economic, recreational, and social opportunities." This lofty goal starts out on uneven ground for people with disabilities because air travel is inaccessible to many people with disabilities due to poorly trained assistance and inaccessible aircraft and systems. The civil rights law protecting passengers with disabilities in air travel is the Air Carrier Access Act (ACAA), a weaker law compared to the Americans with Disabilities Act (ADA). The ADA specifies standards of access and a path of travel that transportation systems must adhere to as a way to provide equal access for people with disabilities. The U.S. Access Board issues the ADA Accessibility Guidelines (ADAAG) which define specific access to motorcoaches and passenger rail/Amtrak. For example, ADAAG requires a lift on buses to allow people who use wheelchairs to ride in their wheelchair in a designated accessible spot on the bus. It also requires a path of travel on an Amtrak train and a designated spot for wheelchair passengers to ride in their wheelchair or transfer into a fixed seat. Furthermore, Amtrak has an accessible bathroom, café car, and sleeper room for overnight train travel accessible to wheelchair users.

By contrast, the ACAA does not have defined standards of access to ensure safe and accessible egress into an airplane. Instead, it relies upon a paternalistic system of people with disabilities being physically lifted by other human beings and carried onto the plane. Before entering the plane, a person who uses a wheelchair has to transfer onto an "aisle chair" which airline personnel pull backwards into the plane to the passenger's assigned seat. The aisle chair is an assistive device only designed to traverse a short distance. It has no padding or customized seating to ensure correct and healthy seating posture; no means of independent mobilization; and in many cases, requires being physically lifted / transferred onto it from the person's personal wheelchair. Throughout this process to board and deplane an aircraft, many passengers with

disabilities say that they have incurred bodily harm, including bumps, bruises, broken bones, and skin sores. The individual's personal wheelchair is then taken away and typically stowed in the belly of the airplane for the flight. Airlines are required to return a person's assistive device in the same condition in which it was received; yet, all too often the wheelchair comes back with broken parts, especially power wheelchairs. This violation leaves the person with a disability in some cases immobile and totally dependent until repairs can be completed.

The ACAA also fails to mandate textual access to PA announcements for deaf and hard of hearing passengers as well as captioning for in-flight entertainment.

Under the ACAA, there is very limited recourse that a person with a disability has when these violations occur. First, they can file a complaint with the airline, the airline is responsible for all damage to an assistive device and will make restoration. Second, the aggrieved can file a complaint with the Department. The Department will review the complaint and notify the airline of the complaint and then only if the Department feels the violation is egregious or is part of a pattern or practice by the airline will it issue a civil fine against the airline. There are no further means to ensure the person with a disability is made whole.

Unless and until these grave deficiencies with the ACAA regulations and the Department's enforcement of the law are addressed, air travel for passengers with disabilities will remain an inherently unequal and inferior experience.

Below are specific comments on the strategies discussed in the Department's plan:

Strategy 5.1.1. Speedily investigate disability-related complaints against airlines.

Example: DOT's Office of Aviation Consumer Protection (OACP), a component of the Office of the General Counsel (OGC), will continue to monitor compliance, conduct investigations, and enforce, as appropriate, violations of aviation civil rights requirements against airlines. OACP aims for a median investigation time of 365 days or less for disability-related complaints.

Comment –We believe that OACP needs to respond within 90 days to disability-related complaints.

Strategy 5.1.2. Promote passenger outreach and education.

Example: OACP will continue to meet regularly with representatives from advocacy organizations representing individuals with disabilities, monitor its disability hotline, ensure DOT's website contains clear, useful information about the rights of air travelers with disabilities, and publish the DOT's monthly Air Travel Consumer Report and an annual report reflecting the number and type of disability-related complaints that airlines received directly each year.

Comment –To ensure full access, OACP needs to ensure DOT websites meet Sec. 508 compliance standards and that all stakeholder meetings are conducted in a manner than is accessible for all participants.

Example: FAA will continue and expand training initiatives such as the annual National Civil Rights Training Conference for Airports. Training events help provide guidance and best practices to airport sponsors. Trainings provide information on passenger outreach and education, as well as enhance airport sponsor compliance with Federal accessibility laws. Topics include ensuring disability access compliance, reasonable accommodation and modification obligations, and accessible aircraft boarding equipment and service.

Comment –FAA training needs to ensure airports recognize their responsibility to accommodate people with disabilities as a public service and public accommodation as required by Section 504 of the Rehabilitation Act of 1973 and the ADA. Airport facilities need to comply with ADAAG Standards. The U.S. Access Board also needs to issue, and the Department must adopt, standards of access for aisle chairs designed for boarding and deplaning.

Example: FAA’s Office of Civil Rights (OCR) will ensure continued outreach on Federal accessibility laws and regulations through industry conferences, FAA webinars, and other trainings in collaboration with stakeholders. Topics will include accessible ground transportation, best practices in facility design, accessible aircraft boarding issues, service animals, reasonable accommodations and modifications, complaint resolution processes, and responsibility for oversight of tenants and contractors.

Comment – FAA OCR needs to ensure airports are held in compliance for accessible transit systems of hotels and commuter transport shuttles that pick up and drop off on a fixed route or through demand response.

Strategy 5.1.3. Improve guidance and regulation to foster an accessible air transportation system.

Example: OACP will continue to assess the need for amendments to DOT’s Air Carrier Access Act regulation to advance accessibility in air transportation for passengers with disabilities. OACP will also continue to conduct activities, including issuing guidance documents, to better educate airlines of their obligations under the law.

Comment – OACP must finalize the rule on Accessible Lavatories on Single-Aisle Aircraft: Part I (RIN 2105-AE88) and publish for notice and comment Accessible Lavatories on Single-Aisle Aircraft: Part II (RIN 2105-AE89) to ensure lavatory access for passengers with disabilities. The rules were the subject of a negotiated rulemaking in 2016 and have yet to be finalized.

OACP must also finalize the rule on captioning for in-flight entertainment, which was part of the 2016 negotiated rulemaking. Additionally, we urge OACP to publish a notice-and-comment on textual access to PA announcements, which was discussed during the aforementioned negotiated rulemaking but did not proceed as far as other topics of negotiation did.

Example: FAA’s publication of Advisory Circulars assists airports in complying with laws and regulations regarding individuals with disabilities. For example, FAA Advisory Circular 150/5360-14A - Access to Airports by Individuals with Disabilities identifies and presents the

main features of relevant statutes and regulations and lists sources of assistance or additional information. This Advisory Circular also presents and reconciles accessibility regulations contained in multiple Federal sources to assist with compliance.

Example: FAA maintains a dedicated online resource, the FAA Civil Rights Connect System, for collecting required reports from airports relating to Federal accessibility laws. Additional material in this online resource includes materials from FAA trainings, recorded webinars, prior compliance review reports, and redacted complaint investigation letters of finding. Recent guidance documents include FAA's Best Practices for Enhancing Traveler Experience: Addressing the Needs of Persons with Disabilities

Comment – FAA should establish a staffed “hotline” for passengers with disabilities to call for assistance and to report violations.

Strategy 5.1.4. Ensure airport operators' compliance with Federal accessibility laws.

Example: FAA's Office of Civil Rights Airport Disability Compliance Program (ADCP) will provide guidance, conduct training sessions, update policies, and review existing programs and activities. The ADCP will complete at least 90 percent of required training, technical assistance activities, and compliance reviews required by the FAA Civil Rights Business Plan by the required target dates.

Comment – FAA ADCP needs to be a fully staffed with a budget to ensure compliance reviews on a continuous basis as required by the FAA Civil Rights business plan.

Example: FAA reviews will continue to assess airport facilities, policies, and programs. Reviews also ensure that airports designate a local coordinator for accessibility matters, utilize accessible facilities, work with air certificate holders to provide equipment and trained personnel for safe and accessible aircraft boarding.

Example: FAA will continue conducting reviews and engaging with airports to complete self-assessment reviews. FAA subject matter experts assist airports with addressing any identified issues. In addition to helping to ensure that airports are accessible, the resource also helps airports to meet their obligations under law to periodically evaluate their compliance status.

Example: FAA will continue to conduct investigations of complaints from members of the public alleging that an airport is not in compliance with Federal accessibility laws. FAA investigations require a complete investigation or informal resolution within 180 days. FAA will continue engaging with airports that have their own complaint processes.

Comment – FAA investigations need to be completed within 90 days.

Thank you for the opportunity to provide comments on this important matter. If you have any questions, please contact Heather Ansley, Associate Executive Director of Government

Relations, with Paralyzed Veterans of America (PVA) by email at heathera@pva.org or Lee Page, Senior Associate Advocacy Director, with PVA by email at leep@pva.org.

Sincerely,

Access Living of Metropolitan Chicago
ALS Association
American Association of People with Disabilities
American Council of the Blind
The Arc of the United States
Autistic Self Advocacy Network (ASAN)
Bazelon Center for Mental Health Law
Blinded Veterans Association
Christopher & Dana Reeve Foundation
Cure SMA
Disability Rights Education & Defense Fund (DREDF)
Easterseals
Epilepsy Foundation
Muscular Dystrophy Association
National Association of the Deaf
National Council on Independent Living
National Disability Rights Network
Paralyzed Veterans of America
United Spinal Association