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Re: Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs (DOT-OST-2022-0144)

The undersigned organizations submit the following comments in response to the U.S. Department of Transportation’s Notice of Proposed Rulemaking (NPRM), “Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs.”¹ The rulemaking is warranted by the statistical and anecdotal evidence underscoring the large discrepancy for safe air transport for wheelchair and scooter users compared to passengers without disabilities. Even though the Air Carrier Access Act (ACAA) was passed over 37 years ago, people who use mobility devices are repeatedly and continuously subjected to significant risk of injuries.

Air travel connects individuals to family and friends, employment, vital services, social and recreational activities, and opens the door to other opportunities.² Air travel is considered the safest mode of transportation,³ but this is too often not the reality for passengers who use mobility devices and need boarding and deplaning assistance. This NPRM intends to strengthen the ACAA and address the serious problems that wheelchair and scooter users face in air travel that impact their safety and dignity.⁴

When the ACAA was enacted, Congress directed the department to promulgate regulations to provide safe carriage for passengers with disabilities, consistent with that provided to passengers without disabilities, and prohibit disability discrimination in commercial air travel.⁵ The recently passed FAA Reauthorization Act of 2024 (P.L. 118-63) reemphasizes Congress’s intent to further protect the safety and dignity of passengers with disabilities, especially mobility device users, in air travel. The FAA Reauthorization Act included provisions directing the department to enhance training standards for personnel who physically assist passengers with disabilities or handle wheelchairs and scooters; requires more detailed annual reports to Congress on the number of disability-related consumer complaints; directs the department to undertake rulemaking on

¹ U.S. Department of Transportation, Notice of Proposed Rulemaking - Safe and Accessible Air Travel (NPRM) (Feb. 28, 2024), available at <https://www.regulations.gov/document/DOT-OST-2022-0144-0005>.

² See NPRM at 3.

³ See International Air Transport Association, 2023 Safest Year for Flying By Several Parameters (Feb. 28, 2024), available at <https://www.iata.org/en/pressroom/2024-releases/2024-02-28-01/>.

⁴ NPRM at 1.

⁵ Pub. L. 99-435, § 3, 100 Stat. 1080, 1080 (1986).

additional accommodations for passengers with disabilities; and addresses the accessibility of the aircraft and aircraft services.

Congress has been forced to act on several occasions to address the needs of passengers with disabilities in air travel due to the continuing concerns raised by our organizations and passengers with disabilities more broadly about their inability to consistently access air travel in a safe and dignified manner. According to a department report, “There were 8 years between 2010 and 2021 with no passenger fatalities on U.S. passenger airlines.”⁶ Furthermore, reports indicated that only 165 passengers were injured or hurt on U.S. commercial flights between 2016 and 2022.⁷ Although the department reports reflect a sense of safety for commercial air passengers, the safe carriage experienced by passengers does not fully extend to those who use wheelchairs and scooters. Instead, during this same time period, passengers with disabilities were injured during aisle chair transfers and when their mobility aids were lost, pilfered, damaged, or destroyed.

Since the passage of the ACAA, the industry has not made sufficient advancements on its own to improve the system’s ability to safely transport passengers and their mobility devices and provide assistance in a dignified manner. In 2022, the Airlines for America’s passenger airlines jointly committed to taking steps to improve accessibility and services for passengers with disabilities.⁸ The air carriers each committed to establishing or maintaining a passenger accessibility advisory group to work directly with the disability community to improve their policies and operations; improve passenger transfers and the handling of personal mobility aids; enhance accessibility services training for frontline workers and educating employees about passengers with disabilities; and support the continued study and development of safe and feasible aircraft accessibility features that broaden air travel opportunities for passengers with disabilities.⁹ While we appreciate the joint commitment of the nation’s largest carriers, as well as their individual efforts to make improvements, we believe that the department must strengthen its regulations to complement the carriers’ efforts to ensure the safe and dignified air travel experience of passengers with disabilities.

Enforcement

Although we strongly support strengthening the ACAA’s regulations, we also acknowledge that issuing new regulations without plans to ensure they are properly enforced will not likely result in significantly improving the air travel experience of people with disabilities. From 2013 to 2022,

⁶ U.S. Department of Transportation, Bureau of Transportation Statistics, Transportation Statistics Annual Report 2023, 5-15 (2023), available at <https://doi.org/10.21949/1529944>.

⁷ National Transportation Safety Board, US Civil Aviation Accident Statistics, available at <https://www.nts.gov/safety/StatisticalReviews/Pages/CivilAviationDashboard.aspx>. An accident is defined as, “an occurrence associated with the operation of an aircraft that takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked, and in which any person suffers death or serious injury, or in which the aircraft receives substantial damage.” 49 CFR 830.2.

⁸ Airlines for America, Our Commitment to Passenger Accessibility (2022), available at https://www.airlines.org/wp-content/uploads/2022/10/Our-Commitment-to-Passenger-Accessibility_Final.pdf.

⁹ *Id.*

the department received 9,878 disability-related complaints.¹⁰ Of those, 4,144 were related to inadequate wheelchair assistance.¹¹ From 2013 to 2021, carriers reported that they received a total of 278,437 disability-related complaints.¹² Despite the reported, systematic, and continuing ACAA violations, the department has rarely formally investigated and entered into agreements with carriers to remedy policies and practices. To expeditiously improve the safety of passengers with disabilities, the department must further, and frequently, engage in enforcement efforts.

In contrast, the Canadian Transportation Agency (CTA) actively enforces the Accessible Transportation for Persons with Disabilities, a law similar to the ACAA. This law prohibits disability discrimination by transportation entities, including air carriers, and protects the rights of people with disabilities to accommodations and services. Recently, CTA levied a civil penalty, in the amount of \$97,500 CAD,¹³ when the carrier failed to assist a wheelchair user to disembark its aircraft.¹⁴ The passenger, who has spastic cerebral palsy and is unable to ambulate, was forced to drag himself along the aisle when the carrier failed to bring an aisle chair for deplaning assistance and stranded him in the airport terminal.¹⁵ The incident happened at the Harry Reid International Airport in Las Vegas, Nevada. CTA also frequently engages in enforcement efforts. CTA levied civil penalties against one carrier in April 2024,¹⁶ for four violations of failing to preboard passengers with disabilities and in May 2024,¹⁷ for two violations of failing to ensure personnel received adequate or timely training and failing to provide deplaning and transfer assistance, for a total amount of \$197,500 CAD.¹⁸ Akin to CTA's enforcement efforts, the department must actively take action to investigate and enforce the ACAA to remedy violations.

We emphasize that enforcement of the ACAA should not be limited to fines. Moreover, simply requiring carriers to pay civil penalties may not result in the necessary policy and procedure changes needed to prevent future violations. Enforcement could entail agreements, consent orders, or any other action plans to improve safety, ensure compliance, remedy discriminatory treatment, and protect the rights of passengers to accommodations and disability-related

¹⁰ NPRM at 13.

¹¹ *Id.*

¹² *Id.*

¹³ Approximately \$73,251.75 USD as of December 21, 2023.

¹⁴ Canadian Transportation Agency, The Canadian Transportation Agency Issues Administrative Monetary Penalty to Air Canada for Violations of the Accessible Transportation for Persons with Disabilities Regulations (Dec. 21, 2023), available at <https://otc-cta.gc.ca/eng/content/canadian-transportation-agency-issues-administrative-monetary-penalty-air-canada-2>.

¹⁵ Skies Magazine, Air Canada Slapped with Financial Penalty for Accessibility Infractions (Jan. 4, 2024), available at <https://skiesmag.com/news/air-canada-slapped-with-financial-penalty-for-accessibility-infractions/>.

¹⁶ Canadian Transportation Agency, The Canadian Transportation Agency Issues Administrative Monetary Penalty to WestJet for Violations of the Accessible Transportation for Persons with Disabilities Regulations (Apr. 10, 2024) (administrative monetary penalty of \$55,000 CAD), available at <https://otc-cta.gc.ca/eng/content/canadian-transportation-agency-issues-administrative-monetary-penalty-westjet-violations>.

¹⁷ Canadian Transportation Agency, The Canadian Transportation Agency Issues Administrative Monetary Penalty to WestJet for Violations of the Accessible Transportation for Persons with Disabilities Regulations (May 13, 2024) (an administrative monetary penalty of \$142,500 CAD), available at <https://otc-cta.gc.ca/eng/content/canadian-transportation-agency-issues-administrative-monetary-penalty-westjet-violations-0>.

¹⁸ Approximately \$144,457 USD based on the dates penalties were levied.

services. Compliance can also be potentially achieved through warning letters or negotiated settlements. However, fines should be considered when there are systemic or egregious ACAA violations.

In 2023, the department issued a notice to explain its investigatory and enforcement policies and practices and reaffirm its commitment to vigorously enforce the law to protect aviation consumers.¹⁹ The department recognized that a robust enforcement program is necessary to protect the rights of the traveling public, hold carriers accountable, and deter future violations.²⁰ The department noted, “When [Office of Aviation Consumer Protection] has evidence of systematic violations, or a single or a few egregious violations, it will take enforcement action.”²¹ However, this commitment has not been yet applied to systemic or egregious ACAA violations.

The high number of reported mobility device mishandlings and consumer complaints is evidence of systematic violations. The basis of many of these complaints spotlights the egregious treatment of passengers with disabilities. The department must hold carriers accountable for systematic and egregious violations. In addition, as outlined in the notice, the department should take any action to ensure the consumer is made whole and assess civil penalties that are high enough to deter the carrier and others from similar violations.

The department must also engage in robust enforcement needed to ensure that carriers do not deny transport for passengers who use wheelchairs or scooters as a means of mitigating or avoiding any ACAA requirements. The ACAA explicitly prohibits carriers from excluding a passenger who uses a mobility device the benefit of any air transportation or related services, except when specifically permitted.²² The ACAA specifically permits the denial of air transportation in very limited circumstances. In the its enforcement program, the department must be highly conscious of any denial of transportation for passengers with disabilities and expeditiously take action to deter any unlawful future denials and violations by the carrier. Only with active, vigorous enforcement efforts can the safety and dignity of passengers with disabilities be protected.

A. Providing Assistance to Individuals with Disabilities

1. Safe and Dignified Assistance

¹⁹ The U.S. Department of Transportation, Office of Aviation Consumer Protection, Notice Regarding Investigatory and Enforcement Policies and Procedures (Jan. 3, 2023), *available at* https://www.transportation.gov/airconsumer/Notice_Investigatory_Enforcement_Policies_Procedures, 1.

²⁰ *Id.*

²¹ *Id.*

²² 14 CFR 382.11(a)(3) (“You must not exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons, except where specifically permitted by this Part. This is true even if there are separate or different services available for individuals with a disability, except when specifically permitted by another section of this Part.”).

Following Congress' direction under the ACAA, the department must ensure that the ACAA provides passengers with disabilities equal safety in commercial air travel as those without disabilities. Airline trade associations emphasize that, "air travel is the safest mode of transportation in the world,"²³ and recent reports show "best-ever" safety progress based on statistics tracking on-board commercial air travel passenger injuries and fatalities.²⁴ Despite these claims, people with disabilities who use wheelchairs or other mobility assistive devices are too often injured, sometimes significantly, during air travel and their assistive devices are regularly mishandled.

The high number of wheelchairs and scooters that are damaged and passengers who are injured during aisle chair transfers is indicative of the carriers' systemic failure to protect the safety of passengers with disabilities. Approximately 11,389 wheelchairs and scooters were mishandled during 2022, equating to a mishandling rate of 1.54 percent.²⁵ That, in turn, forces passengers to wait for lengthy periods of time in the ill-fitting aisle chairs or standard airport wheelchairs while a temporary, and often similarly ill-fitting, replacement chair is found—again subjecting passengers to the risk of serious injury. Indeed, a disability rights activist, Engracia Figueroa, died due to injuries she incurred when she was forced to sit in an airport chair for five hours and then use a temporary chair for months after a carrier damaged her wheelchair.²⁶

Devastatingly, the death of Ms. Figueroa did not immediately result in improvements to passenger safety. In 2023, approximately 11,527 wheelchairs and scooters were mishandled.²⁷ Wheelchairs and scooters are medical devices that protect the health, safety, and independence for people with mobility disabilities. Mishandled wheelchairs and scooters inevitably threaten the safety and dignity of the passenger. Even with more than 11,000 wheelchairs and scooters mishandled in both 2022 and 2023, carriers have not taken adequate measures to remedy this serious issue.

Beyond the injuries sustained from damaged mobility devices, passengers are directly injured during unsafe and ineffective aisle chair transfers. Injuries during the boarding and deplaning process have caused passengers with disabilities to experience significant injuries,²⁸

²³ Airlines for America, Committed to Safety, available at <https://www.airlines.org/committed-to-you/#:~:text=Air%20travel%20is%20the%20safest,to%20keep%20it%20that%20way>.

²⁴ International Air Transport Association, *supra* note 3.

²⁵ NPRM at 13.

²⁶ Bethany Dawson, A Disability Activist Died From Body Sores Associated With the Loss of Her \$30,000 Wheelchair That was 'Destroyed' During a United Airlines Flight, Advocacy Group Claims, Business Insider (Nov. 6, 2021), available at

<https://www.businessinsider.com/disability-activist-died-after-united-airlines-destroyed-30k-wheelchair-2021-11>.

²⁷ U.S. Department of Transportation, Press Release: Secretary Buttigieg Announces Proposed Rule to Ensure Passengers Who Use Wheelchairs Can Fly with Dignity (Feb. 29, 2024), available at

<https://www.transportation.gov/briefing-room/secretary-buttigieg-announces-proposed-rule-ensure-passengers-who-use-wheelchairs-can#:~:text=An%20estimated%205.5%20million%20Americans,report%20this%20data%20to%20DOT>.

²⁸ See *Fulton v. United Airlines, Inc.*, 4:17-cv-00528 (S.D. Tex. Jan. 24, 2019), *aff'd* No. 19-20140 (5th Cir. Aug. 12, 2021) (awarding the plaintiff over \$3.8 million in damages after United Airlines wheelchair attendants dropped the

hospitalizations, and end up in a coma.²⁹ Generally, when a passenger is physically injured on a commercial air carrier an investigation occurs immediately after the accident. The investigation may include on-site fact gathering; analysis of facts and determination of probable cause; a final report; and safety recommendations arising from the investigation.³⁰ However, when a passenger is injured during an aisle chair transfer, investigations do not occur nor are carriers required to even report the incident. In a survey conducted by the disability community, 165 of the 710, or twenty three percent, of the respondents who need aisle chair assistance during boarding or deplaning had been injured or hurt during the process.³¹ In contrast to general U.S. air travel consumer statistics, in 2022, approximately one out of 42,650,000 passengers was injured.³² With approximately twenty three percent of passengers injured during aisle chair transfers and 1.54 percent of wheelchairs and scooters mishandled, compared to the extremely low number of commercial air travel passengers injured, the injury rates alone highlight the incredible need for new regulations and enforcement programs that will equally protect the safety of all passengers.

The injuries to passengers who use wheelchairs and scooters also extend beyond those physically sustained – the indignities. A survey respondent referred to the aisle chairs as a “human dolly” and expressed, “my main concerns is reminding them that I’m a person and not luggage even though they are transporting me like luggage.”³³ Despite the already degrading process, carriers fail to have assistance in place to allow passengers who need aisle chair assistance to preboard and have performed unsafe transfers in-between the boarding of other passengers. In some instances, the carriers have even dropped passengers on the jetbridge or aircraft aisle between other boarding passengers.³⁴ At times, the aisle chair attendants do not come at all. Without any other options, paralyzed passengers have been forced to drag themselves to the front of the plane to disembark.³⁵ Assistance must be provided in a dignified manner that also protects their safety.

plaintiff during an aisle chair transfer and her wheelchair was destroyed. The airline was found to be negligent in that the employees failed to use reasonable care when transferring and/or moving her from her wheelchair to her seat on the flight, failed to use reasonable care when assisting in transporting her to her connecting gate, failed to render sufficient aid to her and failed to provide her with safe equipment. The plaintiff further asserted that the defendants had failed to use ordinary care when hiring, training and supervising employees and failed to warn airline passengers of known hazards.).

²⁹ See *Nathaniel Foster, et. al., v. United Airlines, Inc.*, No. 19-02530 (N.D. Cal) (case settled during the trial for \$30 million in 2023 after a quadriplegic passenger ended up in a coma after being injured during deplaning assistance).

³⁰ National Transportation Safety Board, *The Investigative Process*, available at <https://www.nts.gov/investigations/process/Pages/default.aspx>.

³¹ Paralyzed Veterans of America, *The ACAA Survey: Overview of Survey Results Regarding the Air Travel Experience of Passengers with Disabilities (PVA ACAA Survey)*, 24 (Sept. 2022), available at <https://pva.org/wp-content/uploads/2022/09/2022-ACAA-Survey-Results-FINAL.pdf>.

³² U.S. Department of Transportation, Bureau of Transportation Statistics, *Injured Persons by Transportation Mode (20 persons Injured on U.S. Air Carriers)*, available at <https://www.bts.gov/content/injured-persons-transportation-mode>; U.S. Department of Transportation, Bureau of Transportation Statistics, *Full Year 2022 U.S. Airline Traffic Data (Mar. 16, 2023)*, available at <https://www.bts.gov/newsroom/full-year-2022-us-airline-traffic-data#:~:text=For%20the%20full%20year%202022,and%20388%20million%20in%202020>.

³³ PVA ACAA Survey at 23.

³⁴ See *Complaint of Paralyzed Veterans of America*, DOT-OST-2024-0038-0003 (Mar. 14, 2024), available at <https://www.regulations.gov/document/DOT-OST-2024-0038-0003>.

³⁵ See, e.g., *Paralyzed Veterans of America, No Aisle Chair*, available at <https://air-access.org/no-aisle-chair/>.

Through this rulemaking, the department must ensure that passengers are not treated in a manner that makes them feel like they are not people but “luggage.”

To protect the safety and dignity of the passenger, carriers must also promptly return the passenger’s wheelchair or scooter, prior to the passenger deplaning. Passengers have been deplaned when their personal wheelchair is not available and stranded in the aisle chair or airport wheelchair. Without the ability to maneuver these devices, some passengers have soiled themselves and been forced to sit in their urine waiting for the return of their personal wheelchair.³⁶ Because of these situations and the safety risks associated with sitting for a prolonged period of time in such chairs, passengers wait on the aircraft for the return of their personal mobility device. With indifference to passengers’ safety, personnel have threatened to call law enforcement or emergency services when passengers will not deplane until their personal wheelchair is available.³⁷ In such circumstances, the carriers treat the passenger as a criminal and not as an individual with rights who is entitled to safe carriage. We emphasize though that to protect the safety of the passenger, carriers must not force passengers to deplane when their personal mobility device is not immediately available.

These examples only cover the indignities suffered while traveling by air. They do not include the numerous wheelchair users who no longer travel by air because of concerns for their personal safety during transfers, potential or actual damage to their personal wheelchair, and the many other risks. Others are denied transportation because carriers will not transport their mobility device. When people who use wheelchairs or scooters are excluded from the benefits of air transportation or access the doors that air travel opens – connection to family and friends, employment, vital services, social and recreational activities, and other opportunities – they are discriminated against due to their disability.

We agree with the department that language must be added to 14 CFR § 382.11 for carriers to treat passengers with disabilities in a “safe and dignified manner.” However, this requirement must be broadly applied – to all ACAA obligations. The proposed language states, “the assistance you provide with respect to this Part must be performed in a safe and dignified manner.” The department must clarify that “assistance” applies to all provisions. For example, without clear direction, it may not appear on its face that carriers must stow mobility aids to avoid damage to ultimately protect the passenger. Safety and dignity must apply to all provisions and passenger protections under the ACAA.

Question 1: Are the terms “safe” and “dignified” easily understood by carriers and by the public?

Safe carriage and assistance for passengers with disabilities is not understood by air carriers nor are the longer-term impacts which further endanger their health and safety, well-being,

³⁶ See Complaint of Paralyzed Veterans of America, DOT-OST-2022-0075-0001 (July 8, 2022), *available at* <https://www.regulations.gov/document/DOT-OST-2022-0075-0001>.

³⁷ *Id.*

livelihoods, independence, and quality of life. Passengers with disabilities are discriminatorily subjected to increased safety risks and are injured at far higher rates than passengers without disabilities. Although injuries from turbulence, runway incursions, hard landings, and aircraft malfunctions are tracked and reported, injuries from failed transfers or boarding and deplaning assistance are not. Failure to track or report bodily injuries from disability-related assistance demonstrates a misinterpretation of the provision of safe carriage and assistance. It is also clear from the high rates of injuries and mishandled assistive devices, carriers fail to understand safety for passengers with mobility disabilities. The department must proactively emphasize that passengers with disabilities have the fundamental right to safe and dignified air travel.

Question 2. Should the Department include definitions for “safe” and “dignified” in Part 382? If so, what should the Department consider when drafting definitions for those terms?

The definition of safety, for all passengers with disabilities, must be clarified and added to 14 CFR 382.3. We propose that safe assistance be defined as, “*free from the risk of bodily injury or death and the freedom from the risk of loss or damage to any assistive device.*”³⁸ The stated congressional purpose of the ACAA was to ensure that passengers with disabilities receive the same safe carriage as all other passengers. This definition will fulfill the purpose of the ACAA, to ensure safe carriage for passengers with disabilities, and provide protections to safe and adequate air transport.³⁹

We agree with the department that the regulations must ensure passengers with disabilities are treated with dignity. Dignity, however, should not be explicitly defined. Dignity is not a singular concept, but includes civil rights, human rights, recognition, and non-discrimination. Any definition would fail to capture the breadth of what dignity encompasses. Dignity parallels the requirements for safe carriage, protections against non-discrimination, and access to services under the ACAA. We again emphasize that the requirement to treat passengers with disabilities with dignity must be applied to all provisions under the ACAA. However, specifically defining dignity would only result in narrowing the carrier’s obligations and passenger protections.

Question 3: Are there any other specific practices or procedures that the Department should require or prohibit to safeguard dignity and safety for passengers with disabilities?

The right to safe and dignified assistance is intrinsically at the core of the ACAA, which serves to provide safe carriage for all passengers with disabilities. Any violation of the ACAA results in the passenger being denied safe and dignified assistance. Given that 42,306 air travel disability-related complaints were filed in 2022 alone,⁴⁰ to ensure that passengers receive safe and dignified

³⁸ Assistive device as defined under 14 CFR 382.3 (“Assistive device” means any piece of equipment that assists a passenger with a disability to cope with the effects of his or her disability. Such devices are intended to assist a passenger with a disability to hear, see, communicate, maneuver, or perform other functions of daily life, and may include medical devices and medications.).

³⁹ As required by 49 USC 41702.

⁴⁰ U.S. Department of Transportation, 2022 Disability-Related Complaints Received for All Carriers (Oct. 19, 2023), available at <https://www.transportation.gov/sites/dot.gov/files/2023-10/2022-A%20All%20Carriers.pdf>.

assistance, the requirements to provide disability-related services and the carrier's obligations must be clarified. Furthermore, training requirements, including recurrent training, must be enhanced to protect the safety and dignity of the passenger.

2. Prompt Enplaning, Deplaning, and Connecting Assistance

The NPRM proposes to clarify that all boarding, deplaning, and connecting assistance, including moving within the airport terminal, must be provided in a prompt manner, consistent with the department's longstanding interpretations. We agree that these provisions must be clarified in the regulations to ensure passengers with disabilities receive safe and dignified assistance. In addition to the department clarifying the requirements for prompt assistance for passengers who must use an aisle chair to deplane, the department must also clarify that prompt assistance extends to those who wish to preboard and need aisle chair assistance to do so.

Prompt Assistance For Passengers Who Use an Aisle Chair to Enplane

Under 14 CFR § 382.93, carriers must offer preboarding to passengers with a disability who self-identify as needing boarding assistance. However, this is not an option when the aisle chair or other requested boarding equipment and/or attendants are not available when the flight begins to preboard. Passengers who wished to preboard have been required to wait at the gate or even on the jet bridge while other passengers boarded because the equipment or the proper number of trained attendants were not available, and then boarded and transferred between other passengers. This fails to safeguard the safety and dignity of the passenger and has resulted in passengers being dropped in front of other passengers.⁴¹

In addition, the department should urge carriers to provide mechanical lifts or slings for transfer assistance to further reduce safety risks to the passenger. In line with the importance of taking instruction from the passenger, if multiple transfer options are available, personnel must explain the transfer options and accommodate the passenger's choice. To comply with 14 CFR § 382.93 and § 382.39, the department should also clarify that prompt enplaning assistance for a passenger wishing to preboard who must board using an aisle chair or other boarding equipment means the requested enplaning equipment is in working order and a sufficient number of attendants are available at the time the flight begins to preboard.⁴²

We recommend the department include language under 14 CFR § 382.89:

“(d) Prompt assistance for a passenger who requests preboarding with the use of a boarding chair (i.e., aisle chair) or other boarding equipment in enplaning and is available to preboard requires a sufficient number of employees or contractors (i.e., two or more) and the boarding chair or requested boarding equipment in working order to be available when the flight begins the

⁴¹ See Third Party Complaint of Paralyzed Veterans of America against American Airlines, Inc., DOT-OST-2024-0038.

⁴² However, as still prohibited by 382.11(a)(2), a carrier cannot require a passenger to preboard.

preboarding process. If multiple transfer options are available, personnel must explain the transfer options and accommodate the passenger's choice."

If adopted, the department must also amend 14 CFR § 382.89(b):

"Whether the assistance is prompt is dependent on the totality of the circumstances, except, for as set forth in paragraphs (c) and (d)."

Carriers Claims of Fraudulent Requests for Enplaning Wheelchair Assistance

Carriers and airports claim "fraudulent" requests for enplaning wheelchair assistance is a massive, rampant abuse of special services.⁴³ Carriers consider some requests for enplaning services as passengers abusing the system to obtain other benefits. However, a passenger would not request unnecessary aisle chair assistance. With each transfer a passenger faces substantial safety risks – risks that a passenger would not want to unnecessarily face. Because of the difference in aisle chair assistance versus airport wheelchair assistance, we recommend the department implement separate standards for the training and provision of these types of physical assistance.

Ultimately, carriers do not have the expertise to determine what assistance a passenger with a disability needs. Some passengers have disabilities that might not be visible, such as multiple sclerosis, and are not readily apparent to the carrier's personnel. Different types of disabilities impact a passenger's mobility in different ways. They may also need different types of assistance at each leg of the flight because of how waiting in an airport or sitting for long periods of time on the aircraft impacts their mobility, or need assistance in larger airports to traverse the further distances because of mobility limitations. As with requirements under other disability civil rights laws, the carrier should not inquire into the specifics of the passenger's disability. It would be reasonable for personnel to ask if the assistance is needed due to a disability. Moreover, if passengers are requesting unnecessary assistance for other purposes, carriers could review and adapt benefits offered to passengers to preserve resources for passengers who need such services due to a disability.

Question 1: Should the Department continue to consider the totality of circumstances to determine whether assistance with enplaning, deplaning, and moving within the airport (e.g., moving from the terminal entrance through the airport to the gate for a departing flight, or from the gate to the terminal entrance, or moving between gates to make a connection) is provided promptly?

We recommend the department adopt the proposed language for prompt deplaning assistance in 14 CFR § 382.89(c) and the recommended language for prompt enplaning above. However, the need to promptly enplane and deplane for passengers who use aisle chairs is critical for the safety,

⁴³ See, e.g., Barry Biffle, CEO of Frontier Airlines at a Wings Club luncheon (May 23, 2024). Reported in FlyerTalk.com, available at <https://www.flyertalk.com/articles/frontier-ceo-stop-wheelchair-service-abuse.html>.

well-being, and dignity of the passenger. When passengers who use aisle chairs are not preboarded, though the passenger is waiting at the gate when preboarding starts, they have been boarded between passengers or after other passengers have already boarded. When passengers who use aisle chairs are boarded in this manner, their dignity is not safeguarded as the transfer process is belittling, especially if they are dropped, bumped, or injured. In addition, performing transfers in-between or after other passengers have boarded is unsafe for the passenger, personnel, and other passengers. If a transfer is not correctly performed, the passenger being transferred may be dropped or bumped into another passenger. If a passenger who needs aisle chair assistance is not promptly deplaned, they can be left on the aircraft awaiting assistance. Some passengers have dragged or maneuvered themselves through the aisles when the aisle chair services are not readily available. The department should use the bright line rules for prompt assistance for passengers who need aisle chair assistance in boarding and deplaning.

We agree the department should continue to use its long-standing interpretation of “prompt” as based on the totality of circumstances for connecting assistance or wheelchair assistance in moving within the airport. The department must emphasize that the reasonable performance standard includes the carriers taking steps to ensure proper staffing levels and systems for tracking service requests. In a 2004 Consent Order between the department and America West Airlines, Inc., based on the failure to provide wheelchair assistance, prolonged delays in obtaining wheelchair assistance, and stranding individuals alone in wheelchairs in the terminal or on board an aircraft for extended periods of time, the department required the carrier to purchase or develop computer software that tracks wheelchair requests, dispatches wheelchair runners, and provides the carrier with a full report of those activities.⁴⁴ When reviewing whether a carrier violated 14 CFR Part 382 Subpart G, the department should also consider the processes, procedures, and systems used by the carrier in tracking service requests to determine whether these processes, procedures, and systems can reasonably provide prompt assistance.

Question 2: With respect to deplaning assistance that requires the use of aisle chairs, should “promptly” continue to mean that personnel and boarding chairs must be available to deplane the passenger no later than as soon as other passengers have left the aircraft?

Yes, the department must require personal mobility assistive devices and aisle chairs be available no later than as soon as other passengers have deplaned. However, passengers should never be required to deplane unless a sufficient number of trained personnel (i.e., two or more) and their personal wheelchair are available, if requested, at the aircraft’s boarding door. Passengers may choose to deplane without their wheelchair being ready for them to access, but they must never be compelled to do so. Neither aisle chairs nor airport wheelchairs are designed to safely accommodate passengers with significant disabilities, such as spinal cord injuries, for prolonged periods of seating.

⁴⁴ 2004-8-19 Consent Order (America West Airlines, Inc.) - Violations of 49 U.S.C. Sections 41310, 41702, 41705, 41712, and 14 CFR Part 382, available at <https://www.regulations.gov/document/DOT-OST-2004-16943-0030>.

Another concern with boarding and deplaning is the carrier's failure to have a sufficient number of trained personnel available for boarding and deplaning assistance. When there is only one trained employee or contractor available for an aisle chair transfer, passengers have been left on the aircraft or on the jetbridge as there is a delay in attempts to locate another employee or contractor; personnel have recruited non-trained employees or contractors to assist with the transfer; and single individuals attempted to transfer the passenger alone. These circumstances can result in physical injuries and subject the passenger to further safety risks.

We propose the department add language to 14 CFR § 382.95(a) under the carriers' general obligations that include, *"At least two trained employees or contractors must be available to provide transfer assistance."*

Question 3: For prearranged deplaning assistance that does not require the use of aisle chairs (i.e., a passenger with a disability is able to walk short distances), should "prompt" be based on the totality of circumstances or mean that personnel and an airport wheelchair must be available to assist the passenger with moving from the gate to the terminal entrance (or moving between gates to make a connection) by the time that all other passengers have left the aircraft? Alternatively, should "prompt" mean that personnel and an airport wheelchair are ready and waiting for the passenger at the gate by the time the aircraft doors open and passengers begin to deplane? Should the fact that the individual is able to deplane the aircraft on his or her own factor into when the assistance is available?

When a passenger who does not need an aisle chair prearranges deplaning assistance, prompt assistance should require trained personnel – whether they are employees of carriers or of the contracted services providers – and an airport wheelchair be ready and waiting for the passenger when the aircraft doors open and the passengers begin to deplane. If the passenger does not prearrange assistance, then the totality of circumstances standard can apply. Whether the individual is able to deplane without assistance should not be a factor.

Question 4: Is there another standard that the Department should use to define "prompt?"

The department should adopt the standards for prompt outlined above for enplaning, deplaning, and connecting assistance. In addition, the department should amend current regulations to include a requirement for carriers to provide a proper number of trained personnel, at least two, to provide transfer assistance.

B. Handling Requirements for Wheelchairs, Mobility Aids, and Other Assistive Devices

1. Mishandling Wheelchairs, Mobility Aids, and Other Assistive Devices as a Per Se Violation

As the department recognizes, mishandling of mobility devices can lead to a multitude of problems including the fear of flying; lost wages; loss of independence; physical injury; and expensive and lengthy device repairs and/or waits for replacements. However, the burdens and

expenses for a mishandled mobility device have further repercussions. Mishandling mobility devices can also lead to additional medical expenses due to the use of ill-fitting loaner wheelchairs, the need to pay for a caregiver or rely on others due to the loss of independence; the passenger being unable to fully perform their employment responsibilities resulting in lost wages; impacts on family members or companions in assisting the passenger when waiting for the device to be repaired or replaced; and a loss of dignity as the passenger engages in the frustrating, and sometimes demeaning experience, when filing claims for mishandled devices and waiting for repairs or replacement of their mobility device. Generally, carriers are already required to return wheelchairs, other mobility aids, and other assistive devices to the passenger in the condition in which they received them.⁴⁵ When complaints are filed for damaged mobility devices, carriers often acknowledge the ACAA violation.⁴⁶ It is reasonable to consider the mishandling of wheelchairs or other assistive devices as a *per se* violation.

Disassembly of Assistive Devices

Department regulations state that an air carrier “must return wheelchairs, other mobility aids, and other assistive devices to the passenger in the condition in which [it was] received.”⁴⁷ The title of that regulation, however, refers to wheelchairs and other assistive devices that have been disassembled for stowage on the plane. In light of air carrier responses to incidents, we are concerned that the duty of the air carrier with regard to a passenger’s wheelchair or other mobility device is not sufficiently clear.

Any reading of the regulation requiring only disassembled wheelchairs to be returned in the manner received would thwart the purpose of the ACAA. It would permit air carriers to return wheelchairs and other assistive devices—what have been described as passengers’ “legs”⁴⁸ — in worse or damaged condition, so long as they had not disassembled for stowage on the plane. The ACAA language is clear—all wheelchairs, other mobility aids, and other assistive devices must be returned to the passenger in the condition in which they were surrendered to the carrier. However, the department must amend 14 C.F.R. § 382.129(b) to remove any ambiguities. Specifically, it must be clarified that a mobility aid or device must always be returned in the same condition in which it was surrendered, whether or not it was disassembled for stowage.

Definition of Mishandled

The department proposes to define mishandled as, “lost, delayed, damaged, or pilfered,” consistent with checked baggage. However, assistive devices are not equivalent to baggage. When some baggage is lost or delayed, the passenger may suffer inconveniences. In contrast, when an assistive device is lost, delayed, damaged, or pilfered, the consequences are serious. Wheelchairs are medically necessary to treat health conditions that limit mobility and account for functional

⁴⁵ 14 CFR 382.129(b).

⁴⁶ This is based on numerous informal complaints filed by PVA on behalf of members. To protect the information of the passengers, specific complaints are not cited.

⁴⁷ 14 C.F.R. 382.129(b).

⁴⁸ Dawson, *supra* note 27.

needs of each individual. The department must provide a definition of mishandled, but also clear guidance for the determination of when an assistive device is considered “lost” or “delayed.”

Lost and Delayed Mobility Assistive Devices

The department must strengthen the definition of mishandled by clarifying the terms “lost” and “delayed.” In 2018, the department issued technical guidance for reporting mishandled bags, wheelchairs, and scooters.⁴⁹ Generally, carriers must report to the department all bags (including wheelchairs and scooters) reported by or on behalf of passengers as lost, damaged, delayed, or pilfered, that occurred in the custody of the carrier or the custody of its code-share partner for domestic flights to or from any U.S. large, medium, small or non-hub airport.⁵⁰ The department uses the term “bag” in its examples, but the requirements include the mishandling of wheelchairs and scooters. Per the guidance, “A bag [or device] is considered delayed when reported as delayed or lost [by the passenger], and the bag is not yet proven lost. For example, a bag that is located and returned within 30 minutes, or with the arrival of the next flight is still reportable if the passenger reports it to the carrier as delayed or lost...”⁵¹ The bags are reported as mishandled “even if the passenger had agreed to a voluntary separation from their baggage, courtesy tracer reports, baggage improperly checked by skycaps, baggage claimed by the wrong passenger, and baggage delayed because of security.”⁵² The department must make all terms for lost and delayed mobility assistive devices consistent with reporting requirements.

In the Custody of the Carrier

The department must also clarify that these obligations extend to the full timeframe that an assistive device is in the custody of the carrier. The reporting guidance clarifies that a wheelchair or scooter is in the custody of the carrier beginning at the point in time which the passenger hands the device to the carrier’s representative or agent, or leaves the device at a location as instructed by the carrier. A carrier’s custody ends when the passenger, a party acting on the passenger’s behalf, or another carrier takes physical possession of the bag. An unclaimed device is considered to remain in the carrier’s custody. For a device that is being handed off between carriers or its agents such as for purposes of transferring the device to a connecting flight, the arriving carrier is considered to be in custody of the device until the receiving carrier or its agent

⁴⁹ Department of Transportation, Bureau of Transportation Statistics, Office of Airline Information, Title 14 Code of Federal Regulations Part 234, Technical Reporting Directive #30 – Mishandled Baggage and Wheelchairs and Scooters (October 31, 2018), available at <https://www.bts.gov/topics/airlines-and-airports/number-30-%E2%80%93-technical-directive-mishandled-baggage-effective-jan-1-2019>.

⁵⁰ *Id.* at 8-9. The guidance further explains, “For multi-carrier itineraries, the carriers involved must determine under which carrier’s custody the bag was mishandled and report accordingly or report the mishandling to the Department based on the carrier that operated the last flight segment. For itineraries with reportable domestic segments and nonreportable international segments, the carriers must determine whether a bag was mishandled on a domestic segment and, if so, report the mishandling to the Department or exclude the mishandled bag and enplaned bag on international itineraries with domestic segments (other than the valet bags on the domestic segment(s)).”

⁵¹ *Id.* at 9.

⁵² *Id.*

takes physical possession of the device or the device is left at a location as instructed by the receiving carrier. Therefore, possession of a device by these entities is not an event that breaks a carrier's custody.⁵³

Since the carrier's custody does not end until the passenger, a party acting on the passenger's behalf, or another carrier takes physical possession of the device, carriers are responsible for mishandled device occurring in the custody of their third-party contractors, such as a vendor delivering the device to the passenger on the carrier's behalf. All requirements for carriers should align with the guidance on reporting mishandling wheelchairs and scooters – that the custody of the carrier does not end until the passenger, a party acting on the passenger's behalf, or another carrier takes physical possession of the device.

Obligation to Notify Passengers of Their Rights

The department is also proposing that when carriers mishandle mobility devices, they have an obligation to inform passengers of their rights and options moving forward. More specifically, the NPRM proposes to require carriers to immediately notify the passenger of their rights to: (1) file a claim with the airline; (2) receive a loaner wheelchair from the airline with certain customizations; (3) choose a preferred vendor, if desired, for repairs or replacement of a damaged device; and (4) to have a Complaints Resolution Official (CRO) available and be provided information on how to contact the CRO.

The department must require carriers to notify passengers of their rights when a mobility device is mishandled, who may not know their rights. Notifications must be effectively communicated, e.g. orally and in writing in plain language, and in a manner accessible for the passenger. For effective communication, personnel may need to provide auxiliary aids and services necessary to communicate effectively with a passenger due to their disability. All personnel – whether they are employees of carriers or of the contracted services providers – must be properly trained on the passengers' rights, effective communication with passengers with disabilities, the claims process, and corresponding paperwork and forms.

Carriers often require the passenger to report damage and file a claim before departing the airport. In other instances, carriers will only permit the passenger to file a complaint at the end of the roundtrip journey, even when the damage occurred on an earlier leg of the flight. However, at times, the passenger is unaware of the damage to their mobility device until after leaving the airport. A passenger may also only discover any damage after their device is returned, if returned after the passenger leaves the airport. The department should adopt a reasonable timeframe, specifically fifteen days after the passenger's arrival or the return of the mobility device, whichever is later, to file a claim. Furthermore, carriers should not require passengers to only file claims at the airport, especially if the damage was discovered after leaving or upon its return. Instead, carriers should implement policies and procedures that allow passengers to file claims,

⁵³ *Id.* at 10.

in an accessible manner, without adding additional accessibility hurdles, e.g., over the phone or online.

We recommend the department include language under 14 CFR § 382.130(b):

“In the event of a mishandling of a wheelchair or scooter, you must immediately notify the impacted passenger orally and in writing in plain language or alternative method that is accessible for the passenger, of their rights to file a claim and the process to file a claim with the carrier within 15 days after the passenger’s arrival or return of the mobility device, whichever is later. Notifications must include their right to receive a loaner wheelchair or scooter from the carrier with certain customizations described in paragraph (e) of this section; to choose a preferred vendor for repairs or replacement of the device; and to have a Complaints Resolution Official (CRO) available and be provided information on how to contact the CRO.”

In addition, we recommend similar language be added under 14 CFR § 382.130(d)(1):

“The passenger may file a claim with the carrier within 15 days after the passenger’s arrival or return of the mobility device, whichever is later, and elect to use the passenger’s preferred vendor to repair or replace the wheelchair or scooter if needed...”

The carrier’s obligations should be further clarified with the addition under 14 CFR § 382.130:

“If you are notified within 15 days after the passenger’s arrival or return of an assistive device, whichever is later, that the device has been damaged, you must immediately notify the impacted passenger orally and in writing in plain language, or an alternative method that is accessible for the passenger, of their rights to file a claim and the process to file a claim. Notifications must include their rights to receive a loaner wheelchair or scooter from the carrier with certain customizations described in paragraph (e) of this section; to choose a preferred vendor for repairs or replacement of the device; and to have a Complaints Resolution Official (CRO) available and be provided information on how to contact the CRO.”

Question 1: Is it reasonable to consider any mishandling of a wheelchair or other assistive device a per se violation of the ACAA? Why or why not?

Yes, it is reasonable to consider any mishandling of an assistive device to be a *per se* violation of the ACAA. Carriers regularly acknowledge an ACAA violation when a mobility device was not returned to the passenger in the same condition in which it was surrendered. Clarifying that mishandlings are a violation is consistent with interpretations already utilized by the carriers.

Question 2: Is the proposed definition for “mishandled” appropriate? Why or why not?

The proposed definition for mishandled is appropriate. However, the department should clarify that the interpretation of lost, delayed, and in the custody of the carrier are consistent with the definitions in the technical guidance for reporting mishandled wheelchairs and scooters.

Question 3: What, if anything, do airlines currently tell passengers when checked wheelchairs and scooters are mishandled?

When the device is mishandled, the carriers usually do not provide adequate information to the passenger. Often, the passenger will not even be aware of any damage until their mobility device was returned and they discover the damage themselves. In other instances, the passenger may be informed that their device was lost or is delayed but the passenger has no way to track the status of their personal mobility device. The information relayed by the carrier is also dependent on personnel's knowledge, when the personnel are informed of the mishandling, and how this information is communicated among the personnel. These issues can be alleviated if the department requires carriers to implement a system for the passenger to track the status of their personal mobility device.

Question 4: Is the Department's proposal that carriers must notify passengers of their rights and options when checked wheelchairs and scooters are mishandled sufficient? Why or why not?

In addition to the proposed language, the department should include requirements that the passenger may file a claim, and carriers must accept a claim, within fifteen days after the passenger's arrival or return of the assistive device, whichever is later. In addition, the carriers must provide an option for a passenger to file a claim in an accessible manner that does not require the passenger to return to the airport. Passengers must be notified of this right as well. The department should refer to our comments on passenger notifications for further recommendations.

Question 5: Should the proposal to notify passengers of their rights and options be limited to wheelchairs and scooters or extended to include other checked assistive devices?

Notification requirements should extend to other checked assistive devices. Further, not all mobility assistive devices⁵⁴ are wheelchairs or scooters. For example, wheelchair attachments or other mobility devices are assistive devices under the ACAA. Notification requirements should also apply to non-mobility assistive devices, when the carrier has knowledge that the assistive device was checked by the passenger. If the department extends the carrier's obligations for mishandlings and notifications, the department must amend all relevant provisions for consistent language to "assistive devices," as appropriate.

2. Timely Passenger Notifications and Return of Delayed Wheelchairs or Scooters

Despite existing requirements under 14 CFR § 382.125(b), passengers often wait for a lengthy amount of time for the return of their mobility devices. During this wait, passengers are rarely notified of the location of their mobility device nor given updates on when their device will be

⁵⁴ See 14 CFR 382.3.

returned. Passengers have been left in the aircraft, aisle chairs, and airport wheelchairs without knowing if and/or when their device will be returned.⁵⁵ Parallel to prompt assistance, the department must also provide timely notifications to the passenger on the loading and unloading of their assistive devices.

It is critical that passengers know if and when their mobility device has been loaded and offloaded from the aircraft. We agree with the department that the impact of delayed devices could be *alleviated*, but not eliminated, if the carriers provide passengers timely and accurate notifications about their checked assistive devices during the loading and unloading process. Many carriers offer the ability for passengers to track their luggage in real-time via a mobile app or website. However, despite this technology and convenience, in general, passengers who use mobility aids cannot track the devices that are critical to their health, safety, and independence. If the department requires carriers to provide passengers timely and accurate notifications about their checked mobility devices, this information must be provided to both the passenger and personnel. If the information is also available to the personnel, they will know whether the wheelchair has been unloaded and can be made available for the passenger's use.

Immediate Notification of the Inability to Transport the Device During the Reservation Process

Carriers are already required to provide information, on request, to passengers with disabilities on any limitations on the availability of storage facilities, in the cabin or in the cargo compartment, for mobility aids or other assistive devices commonly used by passengers with a disability.⁵⁶ The department should clarify that "on request" means when the passenger notifies the carrier. This would include, but not be limited to, a passenger indicating they will be traveling with a wheelchair or scooter during the reservation process or prior to arrival; the passenger providing the carrier the dimensions of their mobility device any time prior to the arrival at the airport; or after the passenger surrenders the mobility device. When a device cannot fit on the passenger's aircraft due to the size of the cargo compartment, the carrier must *immediately notify* the passenger. The immediate notification requirement begins upon first notice by the passenger that they will be traveling with a mobility device – including during the reservation process.

After entering into an agreement with the department, United Airlines, Inc., ("United Airlines") recently implemented a filter on its reservation webpages where the passenger can input the size of their mobility device and the website will indicate which flights can accommodate their device.⁵⁷ In testing this filter for flights between two hub airports, the passenger's flight options were extremely limited, with only twenty percent of the flights marked as being able to accommodate the passenger's wheelchair.⁵⁸ Another test search using the same dimensions

⁵⁵ See Paralyzed Veterans of America – Complaint Against American Airlines Inc., DOT-OST-2022-0075-0001.

⁵⁶ 14 CFR 382.41(d).

⁵⁷ United, Wheelchair Assistance and Mobility Services, *available at* <https://www.united.com/en/us/fly/travel/accessibility-and-assistance/wheelchair-assistance.html>.

⁵⁸ A search for flights from Washington Dulles International Airport (IAD) to Los Angeles International Airport (LAX) was conducted. The search included a passenger with a wheelchair that is 25-inches wide and 33-inches high, which is smaller than many power wheelchairs, with a wet-cell battery. Only seven out of thirty five flight options

between two non-hub airports showed that no flight, out of eleven flight options, could accommodate the passenger's mobility device.⁵⁹ This effectively denies the passenger with a disability air travel with the carrier on that flight route. Furthermore, the filter tool is based on the aircraft at the time of the search. If the aircraft changes, a passenger's mobility device may no longer fit in the cargo hold despite the aircraft being marked as capable of transporting their wheelchair during the reservation process.

Though the passenger should be notified during the reservation process, this cannot result in the passenger being denied transport by air, which violates the non-discrimination requirements of the ACAA.⁶⁰ If no, or only a limited number of, flights are marked as being able to transport the passenger's mobility device and the carrier will not let them reserve a ticket, the passenger is explicitly denied air transport because of their disability. Instead of completely denying a ticket sale to a passenger, a prominent notification could be put on the website, or provided orally if the reservation is made by phone, explaining the passenger's rights if their mobility device cannot fit into the cargo hold. Then, the carrier must take all reasonable steps to accommodate the transport of the passenger's mobility device, including an option for the device to be tilted or tipped to facilitate enplaning or deplaning; transporting the device on another flight or mode of transportation; rebooking the passenger and their travel companions and refunding the fare difference; and paying for an alternative mode of transportation and related costs for the passenger and their travel companions.

Immediate Notification of the Inability to Transport the Device Prior to the Passenger's Arrival at the Airport

When a passenger notifies the carrier of the dimensions of their assistive device any time prior to arriving at the airport, the passenger must be immediately notified if their assistive device cannot fit on the scheduled aircraft. When a passenger purchases a ticket, the carrier enters into a contract of carriage that it will transport a passenger (unless a contract exception applies). Under 14 CFR § 382.121, the carrier must permit passengers to bring their mobility device, either in-cabin or in the cargo.⁶¹ If the carrier cannot fulfill its obligations under a contract of carriage, specifically that the passenger cannot bring their mobility device on the passenger's aircraft, the carrier must immediately notify the passenger. However, it must be emphasized that a carrier cannot deny a passenger with a disability the benefit of air transportation on the basis of their

indicated that the passenger's mobility device could be transported on the aircraft. (Search conducted on May 7, 2024).

⁵⁹ A search for flights from Hector International Airport (FAR) in Fargo, North Dakota to Gerald R. Ford International Airport in Grand Rapids, Michigan indicated that zero of the eleven flights could fit a passenger's mobility device. The search included a passenger with a wheelchair that is 25-inches wide and 33-inches high, which is smaller than many power wheelchairs, with a wet-cell battery. (Search conducted on May 7, 2024).

⁶⁰ 14 CFR 382.1 ("This rule prohibits both U.S. and foreign carriers from discriminating against passengers on the basis of disability; requires carriers to make aircraft, other facilities, and services accessible; and requires carriers to take steps to accommodate passengers with a disability.").

⁶¹ Unless an exception applies under 14 CFR 382.125(c).

mobility disability and use of an assistive device.⁶² Instead, the carrier must take all necessary steps to accommodate the transport of the passenger's mobility device.

Immediate Notification of the Inability to Transport the Device Upon Arriving at the Airport

Analogous to the recommended requirements outlined above, the carrier must immediately notify the passenger if the aircraft is unable to transport their assistive device when the passenger is at the airport. We reiterate that a carrier cannot exclude a passenger with a disability the benefit of any air transportation on the basis of their mobility disability and need for an assistive device.⁶³ Denying transport for this reason discriminates against the passenger with a disability. In addition, a carrier cannot require the passenger to provide advance notice that they are traveling on the flight and use a mobility device.⁶⁴ Thus, a carrier must take all necessary steps to accommodate the transport of the passenger's mobility device.

Method of Notification – Passenger Preference

The department does not propose a specific method for carriers to notify the passenger, but the department should not give carriers complete autonomy for passenger notifications. All notifications should occur in the most prompt method, that is accessible for the passenger. But carriers must also ensure that all notifications are accurate. There have been instances when passengers received oral updates that their mobility device was available, but after deplaning, their device could not be located. For standard tracking purposes, e.g., loading and offloading of the passenger's mobility device, the carrier should default to a real-time accessible method of communication, such as text message and updates on the carrier's website or mobile app. When a mobility device is mishandled, in line with prompt notification requirements, the carrier must provide an immediate oral update about the mishandling and notify the passenger of their rights orally and in plain language, as outlined in other responses in this comment. A carrier can elect for this update to be provided by the CRO, who may have specialized training in assisting the passenger with any necessary accommodations.

Passenger Notification of Damage to Assistive Devices

The passenger must also be notified if their mobility device is damaged. Sometimes, they receive no such notification and only discover the damage when it is returned. In other instances, the damage is not readily apparent even when returned to the passenger. The department should require carriers to proactively notify the passenger when their device is damaged and include their rights to file a claim and the process to file a claim in plain language or an alternative method of accessible communication.

⁶² See 14 CFR 382.11(a)(3) ("You must not exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons...").

⁶³ *Id.*

⁶⁴ 14 CFR 382.25.

Transporting the Passenger's Mobility Device After the Passenger's Arrival

If a mobility device must be returned after the passenger's arrival, the passenger must receive frequent notifications, whether by phone, email, text, or other means of accessible communication, on the status of the transport or availability of their device. The carrier should use the method(s) of notification requested by the passenger. Similar to the recommended in-flight notification requirements, passengers must be notified when the device has been transferred; if transported by air or multiple modes of transport, any stops when the device is loaded onto a new aircraft or changes to a new mode of transport; and estimated arrival to their airport or the location requested.

Question 1: What are airlines' current practices regarding tracking wheelchairs and scooters and providing updates and notifications to passengers on the status of their wheelchairs and scooters?

Right now, any updates are provided orally by personnel or not provided at all. The passenger must rely on any oral updates, if even provided, and, generally, cannot independently track the status of their assistive device.

Question 2: Should the Department consider requiring airlines to provide other status updates to passengers about their checked wheelchairs and scooters (e.g., stowage location of the passenger's wheelchair or scooter on the flight)? Should the requirement to provide status updates extend to other assistive devices that are checked in cargo or be limited to wheelchairs and scooters?

The department should require carriers to provide status updates for the passenger's mobility assistive device throughout the entire air travel experience. This would include each time the status of the assistive device changes, including the loading and offloading of their device, for each leg of their flight. The carrier must always immediately notify the passenger if their device was not stowed onto the aircraft. If this occurs, the carrier should also immediately notify the passenger of their rights to any accommodations. Notification requirements should also apply to other disability-related assistive devices,⁶⁵ if the carrier was notified that an assistive device was checked by the passenger.

Question 3: What are airlines' current policies and practices when a passenger's wheelchair or scooter does not fit in the cargo compartment?

We are unaware of any consistent policies and practices among all carriers. There have been some efforts to determine potential complications prior to the individual's arrival at the airport, such as United Airlines' recently implemented filter. However, the limited number of flights available for passengers with power wheelchairs points to a systemic problem in commercial aviation due to the limited aircraft accessibility for wheelchair users and their assistive devices. Until aircraft

⁶⁵ "Assistive device" as defined by 14 CFR 382.3.

can readily accommodate power wheelchairs and scooters, carriers should be required to provide additional options to passengers, including the transport of their device on other airlines' aircraft or other modes of transportation. Nonetheless, any policies and practices cannot discriminate against passengers with disabilities by requiring passengers to provide advance notice that they are traveling on a flight⁶⁶ or by completely denying transportation for people with mobility disabilities because of the dimensions of their mobility device.

Question 4: Are there any other concerns or factors that the Department should consider when a passenger's wheelchair or scooter does not fit in the cargo compartment? Because learning at the airport that a wheelchair or scooter does not fit in the cargo compartment can disrupt travel plans of passengers, should carriers be required to provide the dimensions of their cargo compartments prior to travel to any passenger who shares that he or she will be traveling with a personal wheelchair or scooter? The Department notes that airlines are already required to notify passengers, on request, of any limitations on the availability of storage facilities, in the cabin or in the cargo bay, for mobility aids or other assistive devices commonly used by passengers with a disability.

The department should consider notification requirements during all stages prior to the flight – during the reservation process, prior to arrival at the airport, and upon arriving at the airport – if the passenger's assistive device cannot be stowed in the aircraft. It should be clarified that the cargo door dimensions on an aircraft, not the actual size of the cargo compartment, are often the major barrier to loading power wheelchairs in an upright position. Tilting a power wheelchair or laying it on its side can damage the wheelchair. Simply providing the dimensions of the cargo compartments and doors could result in the carrier effectively denying air transportation for passengers who use mobility devices if their power wheelchair must be tilted or laid down for loading. Even when the carrier makes the dimensions of the cargo compartment and doors available, they must also prominently display or verbally provide a policy with the requirements, if adopted, that if the passenger's assistive device cannot be transported on the aircraft, accommodations will be provided. Carriers should be required to accept the risk for repair and replacement of a mishandled wheelchair or payment of travel on other modes of transportation, as long as the carriers use aircraft that cannot properly accommodate the needs of all of their passengers, including those who use wheelchairs and scooters.

Question 5: What are airlines' current policies and practices regarding delayed wheelchairs and scooters?

Carriers provide limited notifications, if any, regarding the status of delayed wheelchairs and scooters. If the wheelchair is not readily available for the passenger to deplane, they must rely on oral updates from personnel about its availability. During this time, they must be allowed to remain on the aircraft if the wheelchair is enroute, unless the passenger agrees to deplane before their personal wheelchair is available. If the individual elects to deplane, then the carrier must communicate with the passenger to determine the proper accommodations needed while

⁶⁶ 14 CFR 382.25.

waiting for the return of their personal wheelchair. CROs may be best suited to have these conversations and provide proper accommodations. These notification and accommodation requirements help ensure the safety and dignity for the passenger with a disability.

Question 8: How do airlines communicate and provide updates to passengers regarding the status of their delayed wheelchairs and scooters? Is there a preferred or best method for contact, such as by email, text message, or phone call?

Due to the lack of sufficient updates on the status of their delayed wheelchair or scooter, passengers express repeated instances of being left in the aircraft, aisle chair, or airport wheelchair without status updates. As previously addressed, all notifications should occur in the most prompt manner, that is accessible for the passenger. But carriers must also ensure that all notifications are accurate. For standard tracking purposes, e.g., loading and offloading of the passenger's mobility device, the carrier should default to a real-time accessible method of communication, such as text message or updates on the carrier's website or mobile app. When a device was mishandled, in line with prompt notification requirements, the carrier must provide an immediate oral update and notify the passenger of their rights. A carrier can elect for this update to be provided by the CRO, who may have specialized training in assisting the passenger with any necessary accommodations. In order to investigate and determine if any ACAA violations occurred and to review the efficacy of notification systems, the carrier should record all status updates communicated to the passenger.

Question 9: In situations where the wheelchair of a passenger with disabilities is delayed or damaged and the passenger is waiting for his/her wheelchair or a loaner wheelchair at the airport, should airlines be required to provide safe and adequate seating options that will accommodate the passenger? What types of seat options would accommodate passengers with disabilities while they wait in the airport for their wheelchairs and what are the costs and logistics associated with having these options available at the airports?

When a passenger's mobility device is delayed or damaged, the carrier must always provide accommodations that safeguard the safety and dignity of the passenger. If the passenger must wait in the airport, the carriers must provide safe and adequate seating options, in accordance with the passenger's preference. The ACAA prohibits a carrier leaving a wheelchair user who needs enplaning, deplaning, or connecting assistance in a ground wheelchair, boarding wheelchair, or other device, in which the passenger is not independently mobile, for more than 30 minutes.⁶⁷ Nonetheless, passengers report they are stranded in these devices for a longer period of time, even though spending less than 30 minutes in such a device can be unsafe for the passenger. The passenger must also rely on unverifiable oral updates on the return of their wheelchair or scooter. For the passenger to receive real-time updates, tracking and notification systems for the passenger's mobility device must be implemented.

⁶⁷ 14 CFR 382.103.

Personnel – whether they are employees of carriers or of the contracted services providers – must be trained in effective communication and take instruction from the passenger for their preferred accommodations. These accommodations may be dependent on the anticipated length of the delay. Depending on the passenger’s disability, some could sit in airport provided wheelchairs with their personal seat cushion for a limited amount of time. But others could face significant risks of pressure sores if this is their only option. The carrier must always maintain effective communication with the passenger, provide accurate updates on the availability of their personal mobility device, and give preference to the passenger’s request for accommodations. For effective communication, personnel may need to provide auxiliary aids and services necessary to communicate effectively with a passenger due to their disability.

For example, in the event of a short delay, the carrier could provide safe and adequate seating options for the passenger, at the passenger’s preference. Accommodations for short delays would apply if the passenger’s mobility device is at the passenger’s destination airport, but not immediately available when the passenger deplanes. However, this should only occur in rare instances as the passenger should not be required to deplane until their mobility device is available. But passengers may elect, but not be forced, to deplane prior to their device being immediately available. In these rare circumstances, accommodations can include providing a wheelchair that the passenger can independently use; medical seat cushions; or use of an airport lounge area or hotel. In the event of a prolonged delay, meaning the passenger’s mobility device is not at the passenger’s destination airport, the carrier must offer these accommodations and more, such as accessible transportation to the passenger’s destination or another location and/or providing a loaner wheelchair. If the passenger’s mobility device is damaged, the carrier should offer the passenger a loaner wheelchair and accessible transportation to the passenger’s destination. If the wheelchair is damaged, all rights outlined in relevant comment responses in other sections should apply. However, the length of the delay cannot be determined, unless the status of the passenger’s mobility device is known. We urge the department require carriers to implement real-time tracking systems for wheelchairs and scooters, accessible for both personnel and the passenger.

Under the department’s recent agreement with United Airlines, the carrier agreed to conduct a pilot program to explore whether additional equipment, such as a providing a wheelchair that the passenger can independently use or other form of moveable or non-moveable chair, can be utilized to safely accommodate passengers waiting for loaner wheelchairs because of damage or delay to their personal wheelchairs during a flight. It also requires the carrier to leverage the expertise of its Accessible Travel Advisory Board, to determine how to implement the accommodation options in the pilot program. This will cover what type of specialized seating equipment should be tested, how and where it will be utilized within the airport, and how to best collect user feedback.⁶⁸ The final rule should immediately require carriers to provide safe and adequate seating options that will accommodate the passenger. However, upon completion of

⁶⁸ Agreement Between U.S. Department of Transportation and United Airlines (Sept. 27, 2023), *available at* <https://www.transportation.gov/sites/dot.gov/files/2023-09/United%20and%20DOT%20Agreement%20on%20Accessibility.pdf>.

the pilot, the department should engage in supplemental rulemaking to implement any specialized seating equipment options that were found to further safeguard the safety and dignity of passengers for all carriers.

We recommend the department amend 14 CFR 382.129(b) to include:

“14 CFR 382.129(b)(i): When a passenger’s mobility assistive device is mishandled and cannot be promptly returned, you must provide safe and adequate seating and mobility or other accommodations at the preference of the passenger.”

Question 10: Should the Department consider any other factors or standards when determining what is meant by device delivery to the “passenger’s final destination”? And if so, why?

We agree that the passenger should have the option for the return of their mobility assistive device for either pick up at the airport or to the passenger’s final destination. With limited accessible transportation options, passengers should not be required under all circumstances to pick up their mobility device from the destination airport. For many reasons, including limited accessible transportation options, the passenger may have no means to travel back to the airport. Carriers should be held accountable for the delay of the passengers mobility device and provide for its return to the passenger. However, the department must amend the language on delivery to the passenger’s final destination to ensure the passenger, or an authorized party, takes physical possession of the device.

We do not agree with the department’s proposal that the mobility device can be returned, “regardless of whether the passenger is present to take possession” of the device. Assistive devices protect the individual’s mobility, health, safety, and freedom and should not simply be left at a designated location, without acceptance by an authorized individual. In addition, mobility assistive devices, especially power wheelchairs, are expensive pieces of medical equipment. We also acknowledge that a passenger may be unable or unavailable to always take possession of the returned device. We also do not find it reasonable for a passenger to be perpetually waiting for its delivery. Thus, permitting an authorized party, e.g., a family member, hotel personnel, accommodations host, to take physical possession of the device provide a reasonable balance for delivery. The passenger can also authorize multiple parties to accept the mobility device on their behalf to further ease the burden on the passenger and carrier.

Furthermore, we do not agree with the proposed language that a wheelchair or scooter is considered provided to the passenger when they are notified it is available for pick-up at the destination airport. Per the carrier’s reporting requirements, the carrier maintains custody of the wheelchair or scooter until a passenger or a party acting on behalf of the passenger takes physical custody of the device.⁶⁹ Simply notifying a passenger that their device is available for pick-up does

⁶⁹ Department of Transportation, Bureau of Transportation Statistics, Office of Airline Information, Title 14 Code of Federal Regulations Part 234, Technical Reporting Directive #30 – Mishandled Baggage and Wheelchairs and

not terminate the carrier's obligations to provide the device to the passenger. We recommend the department adopt language that considers the device provided to the passenger when the passenger or an authorized party takes physical possession of the device.

We recommend the department amend 14 CFR § 382.130(c)(1) to:

14 CFR § 382.130(c)(1): "You must provide passengers a choice between picking up the wheelchair or scooter at the passenger's final destination airport or having the wheelchair or scooter delivered to another location based on a reasonable request by the passenger, such as the passenger's home or hotel. The wheelchair or scooter is considered to be provided to the passenger *when the passenger or a party acting on the passenger's behalf takes physical possession of the wheelchair or scooter.*"

Question 11: If an individual with a disability incurs additional, associated costs because a wheelchair or scooter is delayed, should the airline be responsible for reimbursing the individual for those costs? What are these potential costs? What documentation should individuals provide to airlines to substantiate these costs? Should there be a limit to the airlines' liability?

If a passenger incurs additional, associated costs due to the delay of their mobility device, the carrier must be responsible for reimbursing the passenger for these costs. The passenger must have the right to recoup the additional costs they incurred based on the carrier's failure to comply with the ACAA. With no current private right of action under the ACAA, when a carrier mishandles a mobility device, the passenger has no recourse besides filing a complaint with the airline and/or the department. Complaints filed with the department do not result in reimbursements to passengers for expenses due to an ACAA violation.

Additional costs could include, but are not limited to, transport to and from the airport, if they need to return to the airport to pick up their mobility device; overnight accommodations while waiting for their delayed device; payment of a caregiver to provide assistance with daily life activities they are unable to do without their personal mobility device; wages lost by the impacted passenger because of their functional limitations; loss of the wages of a family member or other companion if they must take time off work to provide assistance to the passenger; renting a mobility device that provides better functionality and safety than the loaner wheelchair; cancellation of their trip entirely, losing any pre-paid costs; additional physician or healthcare expenses; and other direct costs.

Passengers must be entitled to provable direct or consequential damages due to the mishandling of their mobility device. A carrier could require reasonable documentation to verify these costs including receipts; documentation showing wages lost by the impacted passenger because of their functional limitations; documentation showing payments to a caregiver or the loss of wages

Scooters (October 31, 2018), available at <https://www.bts.gov/topics/airlines-and-airports/number-30-%E2%80%93-technical-directive-mishandled-baggage-effective-jan-1-2019>.

of another who had to care for the passenger; invoices; and written statements attesting to the financial losses. If the department permits passengers to recoup these costs, the carrier must provide payment to the passenger within seven business days, similar to the period associated with recent final rule on air travel consumer refunds.⁷⁰

3. Prompt Repair or Replacement of Lost, Damaged, or Destroyed Wheelchairs or Scooters

Not only do damaged and lost mobility assistive devices subject passengers with disabilities to discriminatory treatment as they face higher risks to their safety than those without disabilities,⁷¹ but failing to promptly repair or replace the passenger's mobility device endangers the health and safety of the passenger. Lengthy and frustrating repair and replacement processes also can impact the dignity of the passenger, especially if they experience reduced independence, risks to their safety, medical complications, and incur additional expenses. Prompt repairs and replacements can also more expeditiously restore dignity to the passenger.

Right now, the timeline for the repair or replacement of a passenger's mobility device is not standardized. Based on informal and formal complaints filed, PVA found that minor and major repairs and replacements of wheelchairs have taken over a month or even longer. During this time, PVA members were forced to use an older, backup wheelchairs that did not fully meet their functional and safety needs. Other passengers may not have backup wheelchairs. During the entire time the passenger is waiting for the return or replacement of their personal mobility device, the passenger's safety is at risk and may experience indignity.

Although circumstances outside of the carriers' control may be to blame in some cases for the delays, at least some of these delays and thus, risks to the passenger, could be alleviated if the passenger has options when their mobility device is damaged or destroyed. We agree with the department's proposal that a passenger must have options when the carrier mishandles their mobility device to reduce any safety risks for the passenger. All repairs and replacements must be prompt, with an expeditious timeline. The requirement to promptly repair and replace the mobility device can also be accomplished by providing the passenger the choice to use their preferred vendor. This allows the passenger to elect the option that protects their safety and dignity and can reduce burdens on the carrier's vendor.

Passenger Notifications During the Repair Process

Not only do passengers wait an unreasonable amount of time for the repair and replacement of their mobility device, but they are also not provided frequent updates during this process. After PVA filed an informal complaint based a carrier's failure to promptly repair the passenger's

⁷⁰ U.S. Department of Transportation, Refunds and Other Consumer Protections, RIN 2105-AF04 (April 26, 2024), available at <https://www.federalregister.gov/documents/2024/04/26/2024-07177/refunds-and-other-consumer-protections>.

⁷¹ See Pub. L. 99-435, § 3, 100 Stat. 1080, 1080 (1986).

wheelchair, the carrier alleged they provided sufficient repair updates. However, the prolonged delays between updates were unreasonable. After the carrier's assessment of the damage to the joystick controller of the passenger's power wheelchair that rendered the chair unusable, the carrier admitted they only contacted the passenger twice, once eight days later, then twelve days later. The repairs were completed 20 days after the second call. Between these infrequent calls, the passenger was left without any updated information on the return of their mobility device, which protects their safety. The department must require carriers to provide frequent updates throughout the entire repair and replacement process.

Passenger Notifications of the Rights and Timelines to File a Claim

The department must ensure passengers, whose mobility devices are damaged, are notified of their rights. We urge the department adopt the recommended language under 14 CFR § 382.130(b) and § 382.130(d)(1) outlining the rights of the passenger; the carrier's obligations to effectively communicate the passenger's rights in a method that is accessible for the passenger; the right for passengers to file a claim for damage to their mobility device up to fifteen days after the passenger's arrival or return of the mobility device, whichever is later; and require the carriers to accept claims in this timeframe. In addition, the carriers must provide an option for a passenger to file a claim in an accessible manner that does not require the passenger to return to the airport.

Notifications must be effectively communicated in an accessible manner, e.g. orally and in writing in plain language or an alternative method of accessible communication. In addition, we recommend the department require all policies to be prominently displayed on the carrier's website, including any webpages devoted to passengers with disabilities and on any pages where a passenger can file a claim or complaint. By providing passengers with notifications in multiple formats, they can more easily understand their rights and options for recourse. In addition to notification requirements, personnel must be properly trained on the passenger's rights, the claims process, corresponding paperwork and forms, and how to effectively communicate their passenger rights in plain language.

Incurred Costs During the Repairs and Replacements Process

When a passenger incurs additional costs due to the carrier mishandling their mobility device, the carrier must be responsible for these costs. When a carrier mishandles a passenger's luggage, the passenger is entitled to provable direct or consequential damages.⁷² Similarly, passengers must be entitled to provable direct or consequential costs due to the damage or loss of their mobility device. Costs could include additional medical services needed due to the use of a loaner wheelchair that is not individually customized to the extent of their personal device; medical supplies or services needed when the passenger experiences limited function and safety without their personal wheelchair; wages lost by the impacted passenger because of their functional and mobility limitations; additional personal care services, like the need to hire a care support

⁷² 14 CFR 254.4.

professional or a family member taking leave from work to assist the passenger with activities of daily living; more expensive transportation assistance needed when the passenger cannot use their standard mode of transportation without their personal mobility device; and any other direct and consequential incurred costs. We do not object to the department placing a reasonable standard for coverage based on the restriction of mobility and independence. However, this should not be a minimal per diem, but a dollar amount that ensures the passenger can maintain their safety while waiting for the return of their personal device or an equivalent replacement device.

A carrier could require reasonable documentation to verify these costs including receipts; documentation showing wages lost by the impacted passenger because of their functional limitations; documentation showing payments to a care support professional or the loss of wages of another who had to provide care supports for the passenger; invoices; and written statements attesting to the financial losses. If the department permits passengers to recoup these costs, the carrier must provide payments to the passenger within seven business days, similar to the period associated with passenger refunds.⁷³ Although carriers may dispute paying for any additional services or expenses, requiring carriers to cover these expenses not only remedies the additional costs paid by the passenger, but also incentivizes carriers to implement policies that result in fewer mishandlings. In addition, this can encourage the carriers to work more closely with their vendors to ensure that the repairs and replacements are completed promptly.

Question 1: Are there sufficient vendors available to repair or replace passengers' personal wheelchairs or scooters? What is the average turnaround time once the vendor has the passenger's wheelchair in its possession?

The department should not make any requirements for prompt repair and replacement of mishandled devices contingent on the number of vendors available. In the proposed language for prompt assistance to deplane, we agree with the department's proposal that prompt means that personnel and proper equipment are available when the passenger needs the service. The department should use a similar approach for prompt repair, that the carrier must ensure that its contractors have a sufficient number of vendors available when needed by the passenger. In addition, the option for the passenger to elect their preferred vendor decreases the burden on the carrier.

An average turnaround time for repairs cannot be estimated. The timeline for a repair is dependent on the extent of the damage, as significant damages could take a longer time to repair; the type of mobility device damaged, for example, a manual wheelchair may be repaired more quickly than a power wheelchair; the availability of the parts to repair the wheelchair; securing a replacement wheelchair that provides the same functionality and safety as the destroyed wheelchair; the physical location of the passenger; and many other factors. However, the carrier must not use any of these factors as a pretext to failing to promptly repair or replace the passenger's mobility device. Instead, the carrier must make their best efforts to always

⁷³ Refunds and Other Consumer Protections, *supra* note 72.

expeditiously repair or replace the passenger's mobility device. Any additional time a mobility device user is unable to utilize their medically prescribed and individually configured medical equipment, jeopardizes their safety. Likewise, without a fully functioning mobility assistive device, an individual's independence and quality of life are diminished.

Question 2: What are airlines' current policies and procedures related to replacing, repairing, and/or reimbursing passengers for damaged wheelchair and scooters, including how costs are determined? Do disputes arise between passengers and airlines over the costs to repair or replace damaged wheelchairs and scooters? If they do, how are these disputes resolved?

Currently, after a carrier damages or loses a mobility assistive device, the passenger must file a claim while at the airport. They are then given the number for the carrier's wheelchair repair vendor who will do an assessment of the damage. The wheelchair repair vendor makes the determination of the extent of the damage, which parts may need to be repaired or replaced, and whether the mobility device must be completely replaced. The passenger must use the carrier's wheelchair repair vendor and does not have the option for the carrier to reimburse a vendor of their choice. In addition, the passenger is generally not consulted on whether a part or the entire wheelchair should be repaired or replaced. It is imperative that a comprehensive damage assessment be made as quickly as possible to prevent further delays in the repair or replacement process. Allowing the passenger to elect their own assessment, repair, or replacement company or vendor could help streamline this process. This also includes allowing the passenger to switch their choice if there are unforeseen delays with their chosen vendor or the carrier's wheelchair repair vendor.

We agree with the department's proposal that the costs for any repairs or replacements be billed directly to the airline so the passenger is not forced to pay these costs up front. However, the department proposes that if a dispute were to arise between parties for the cost of the repairs, the *passenger* should submit quotes, receipts, or other similar documentation to the carrier to prove or substantiate these costs. The department's reasoning for the preferred vendor to bill the carrier directly is to ease the burden on the passenger and expedite the process. To accomplish this, the department must not require the passenger to submit these documents. Instead, any disputes in the cost must be resolved between the carriers and vendors directly.

Question 3: Should the Department consider stricter and detailed timelines rather than using a reasonableness standard to which airlines must adhere when handling wheelchair and scooter repairs and replacement?

Based on the numerous factors that impact the timeline for a repair or replacement, a strict timeline is unfeasible. However, in determining whether the timeline was reasonable, the department should consider the steps the carrier takes to ensure a proper number of vendors are available and use of systems for tracking the repairs and replacements. In addition, the department should review requirements for carriers to make temporary repairs, which can be accomplished on-site at the airport or with a local vendor, that allow the passenger to continue to use their personal wheelchair until a full repair can be completed. This option may also allow

the passenger to continue their travels with their personal mobility device, not be subjected to the use of an ill-fitting loaner wheelchair, and mitigate additional expenses. Even with a temporary repair, the process for a full assessment of needed repairs should be promptly commenced. A temporary repair must not delay any permanent repairs needed for the long-term safety of the passenger. All options for temporary repairs, which must be promptly followed-up with an assessment for a permanent repair, or the use of a temporary wheelchair must be presented to the passenger and accepted by the passenger in order to proceed.

Question 4: Are certain types of wheelchairs and scooters no longer repairable or replaceable?

Often, when a manufacturer discontinues a mobility device, the company offers parts for years after discontinuing the model. Some companies focus on the sale of replacement parts for wheelchairs and offer parts for discontinued models. In addition, some parts are utilized by other companies and manufacturers or there are universal parts that can be purchased. There are many options for purchasing replacement repairs, even after a model is discontinued. In the rare instances when there are no parts that can be purchased to repair the wheelchair, the carrier must determine that the device is irreparable and replace the mobility device.

A mobility device can always be replaced. Sometimes when manufacturers discontinue a specific model, they offer a model that has the same or greater functional and safety customizations. If this is not an option, the carrier must cover the cost of a mobility assistive device that provides the same or greater functionality and safety. Throughout the process, the passenger must be consulted on their options. The passenger must be included in the decision-making process of ensuring the new device can meet their needs.

Question 5: Are all repairs handled only by Durable Medical Equipment (DME) suppliers and should the Department address this issue in rulemaking? Would proprietary agreements or right-to-repair laws impact this or any of the current proposals set forth in this NPRM?

All repairs should be handled by certified and/or credentialed wheelchair or other mobility device repair technicians. However, the department should not address this further in the rulemaking. Purported “right-to-repair” laws fall outside the scope of this rulemaking. In the department’s comments, the agency should note that vendors must consult the warranties of the mobility device to ensure that no warranties are voided during the repair process. If, for example, the warranty requires repairs to be completed by a specific vendor, with wheelchair users having the option to choose their own vendor, the wheelchair user can ensure that no warranties are voided during the repair process.

Question 6: Do disputes arise between passengers and airlines over whether a repair or a full wheelchair or scooter replacement is necessary based on the level of damage to the wheelchair or scooter? If they do, who should be responsible for ultimately determining whether a wheelchair or scooter is “fixable”? If the carrier (or the carrier’s chosen vendor) makes the determination, should the passenger then be given an opportunity to independently review their determination and carry out their own assessment?

The carriers must allow the passenger to participate in all decision-making after their mobility device is damaged or destroyed. This includes the option to choose which company/vendor will conduct the assessment and/or conduct the repair or replacement. In addition, if the carrier's vendor conducts an assessment and the passenger does not agree with the vendor's determination, the passenger must have the opportunity to appeal this decision and request an assessment be made by a different individual. For example, if the determination is that the wheelchair can be repaired, but the passenger believes that repairs would not return the wheelchair to the same safe condition as before the mishandling, they should be able to obtain a second opinion. In addition, the passenger should have the opportunity to submit any documentation to support their appeal.

Question 7: Does travel insurance cover wheelchairs or scooters if lost or damaged during a trip? If so, how much of the cost to replace wheelchairs or scooters can be recouped? Should the airline's cost be limited to whatever is not paid by the travel insurance, or is baggage/wheelchair travel insurance often secondary (i.e., consumer must first file a claim with airline before filing a travel insurance claim)?

The department should not consider any exceptions for carriers or additional burdens for the passenger even if they have traveler's insurance. Most domestic travelers do not purchase travelers insurance.⁷⁴ Even if the passenger has traveler's insurance, some companies consider mobility aids to be baggage or a personal effect and provide a minimal daily per diem when the mobility device is delayed or a limited reimbursement rate for loss or damage. In addition, in instances where the device is lost, the insurance policy providers can require extensive documentation including police or other local authority reports or documentation from the appropriate party responsible for the loss.⁷⁵ Other policies completely exclude lost, delayed, or stolen wheelchairs from any type of coverage.⁷⁶ Furthermore, the passenger's pre-existing condition can also exclude them from coverage for additional expenses offered, e.g., medical expenses and coverage for trip delays or interruptions.⁷⁷ Also, any rules for passengers to first file with their traveler insurance company, will ultimately delay any repairs or replacements. As traveler's insurance is rarely purchased; coverage for delayed, damaged, or lost mobility devices,

⁷⁴ David Tan & Carlo Caponecchia; COVID-19 and the Public Perception of Travel Insurance, Ann Tour Res (Sept. 2021), doi: 10.1016/j.annals.2020.103106 (reports that only 12.8% of US-based travelers usually purchase travel insurance), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8453478/#bb0090>.

⁷⁵ Travelex, Travel America, Travel Protection Policy, 19 ("Proof of Loss. The Insured must furnish the Travel Insurance Administrator with proof of Loss. Proof of Loss includes police or other local authority reports or documentation from the appropriate party responsible for the Loss."), available at https://partner.travelexinsurance.com/documentation/displaydocument.ashx?filename=TAB-0620_0202_11207.pdf#_ga=2.143005874.621893109.1715718723-1323431957.1715718723.

⁷⁶ AGA Service Company, Individual Travel Insurance Policy, E-12 (2022) ("The following items are not covered...Wheelchairs and other mobility devices..."), available at <https://www.allianztravelinsurance.com/api/certificates/download/all?ProductID=28703&State=DC>.

⁷⁷ Zurich American Insurance Company, Individual Travel Insurance (Oct. 1, 2022) ("We will not pay for loss or expense caused by or incurred resulting from a Pre-Existing Condition including death that results therefrom."), available at https://www.travelinsurance.com/brochure/April/GoReady_Choice_Plan_CW.pdf.

if not completely excluded, is nominal; the burdensome documentation needed for passengers to substantiate traveler's insurance claims; that passengers can be denied benefits solely on the basis of their pre-existing condition; and the delays that will ultimately result in filing first with insurance providers, the department must not include any prerequisites on the passenger before filing a claim with the carrier.

Question 8: PVA previously stated that once an airline has completed a wheelchair repair and returned the device to the passenger, the passenger needs to be given an opportunity to test the wheelchair and confirm whether the repairs are indeed adequate. Do airlines currently provide passengers the opportunity to test a repaired wheelchair or scooter to confirm whether the repairs are adequate? Should the NPRM's first option include a "testing period"? If so, how long should the passenger have to carry out this review and determine whether additional repairs by the airline are necessary?

To ensure the repaired or replaced mobility device meets the functional and safety needs of the passenger, a "testing period" should be allowed. In addition, further damage may not be apparent until certain parts are repaired. The vendor should require a reasonable timeframe for the passenger to ensure that their mobility device is now in the same condition it was prior to being damaged, that any further damage can be covered by the carrier, and that the repair was properly and safely completed. We recommend the passenger have a fifteen-day testing period from the date of the return of their mobility device, aligning with the timeframe to file a damage claim, to ensure the repairs have been safely and properly completed or their replacement wheelchair meets their functional and safety needs. Vendors generally already have a guarantee period on any repairs. Similar guarantees should be offered to passengers whose repairs are paid for by the carrier. In addition, any replacement wheelchairs should have the same manufacturer's warranty as if it was individually purchased by another payer.

Question 9: PVA also advocated for an additional option where, at the passenger's request, an airline would be required to provide a minor "temporary wheelchair repair" that is essentially sufficient to get the passenger out the door of the airport with their personal wheelchair so that they can continue on with their journey as planned to the maximum extent possible and seek out a "full repair" at a later time and date. Does this option seem reasonable to airlines and to passengers with disabilities? Would airlines logistically be able to do this? What exactly would a "temporary wheelchair repair" entail, and is this something that wheelchair repair vendors already offer/provide? If required, would airlines then need to have a vendor on-site at the airport to handle this? And if so, what types of costs would be associated with this option?

As already outlined, the carriers should offer temporary repairs, either on-site at the airport or through a local vendor, as an option for the passenger to continue using their personal device until the device can be fully repaired. This may also mitigate additional expenses to be paid by the passenger and the carrier. In accordance with passenger options to choose their preferred vendor, the carrier must also cover payment for any costs if the passenger chooses a preferred vendor for a temporary repair. These temporary repairs should be scheduled at the passenger's

convenience, even outside of business hours, and at the place of their choosing. Even with a temporary repair, the process for a full assessment of needed repairs should be promptly commenced. Temporary repairs would encompass any repair that can be completed for the passenger to continue to use their wheelchair until a thorough assessment of the damage can be completed.

4. Loaner Wheelchair Accommodations

The safety, health, wellbeing, and dignity of the passenger with a disability must always be the highest priority. For power wheelchair users, loaner wheelchairs will likely not be able to fully provide all the same functional and safety needs as the passenger's customized wheelchair prescribed to treat their health condition. However, this does not absolve a carrier from providing a loaner wheelchair or other accommodation that can reasonably meet equivalent functional mobility needs and guarantee the passenger's safety. We again emphasize that to alleviate health and safety risks and any additional incurred costs while the passenger cannot use their personal mobility device, carriers must promptly and expeditiously repair or replace the passenger's mobility aid.

However, in the event that no other accommodation is available, the carrier must provide loaner wheelchairs until the repairs or replacement processes are complete. The carrier should also have the option for the passenger to elect another accommodation that better suits their functional mobility needs and guarantees their safety, with the cost covered by the carrier, if the loaner wheelchair offered is insufficient. We agree with the department that carriers must consult with the passenger to determine the accommodation needed. All accommodations, whether that be a loaner wheelchair or another option, must fit the passenger's functional and mobility needs, to the maximum extent possible, but guarantee their safety-related needs.

Question 1: What types of customizations should be required under this proposal, how much such customizations generally cost, and how quickly such customizations can be completed?

The estimate for customizations cannot be quantified. Some passengers may have customized manual wheelchairs while others may have customized power wheelchairs, depending on their disability and prescriptive mobility device. But the safety and wellbeing of the passenger must always be the highest priority. The department proposes that the loaner wheelchair provide, upon request, functional, safety-related, and medically necessary customizations, to the extent possible. However, this language must be amended. When the passenger has a highly customized wheelchair, it may be impossible to provide a loaner wheelchair that gives the passenger equivalent or greater mobility functions. However, the safety-related needs of the passenger must always be met. The carrier must consult with the passenger to determine which accommodation best meets their functional needs and guarantees their safety.

The Department should amend the language under 14 CFR § 382.130(e):

“While the passenger is waiting for his or her mishandled personal wheelchair or scooter to be returned, repaired, or replaced, you must use your best efforts to work with the passenger and to provide an adequate loaner wheelchair or scooter *or other accommodation that meets the passenger’s functional and mobility-related needs, to the maximum extent possible, and guarantees the passenger’s safety-related needs.* You must pay for the cost of the loaner wheelchair or scooter *or other accommodations needed until the repair or replacement of the passenger’s personal assistive device is completed.*”

Question 2: Can the loaner wheelchair requirements be easily implemented by airlines and do they meet the needs of individuals with disabilities who experience wheelchair mishandlings?

The requirements for loaner wheelchairs or other accommodations cannot be dependent on whether they can be easily implemented. The ACAA does not state that only accommodations that can be easily implemented are required. Instead, the safety and dignity of the passenger are intrinsically at the core of the ACAA. The carrier must always prioritize the safety of the passenger. We urge the department to require the carriers to provide loaner wheelchairs or other accommodations that best meet the functional needs of the passenger, to the maximum extent possible, and guarantee their safety-related needs. This can be best accomplished by consulting with the passenger and offering these options for the passenger to choose what accommodation meets their needs.

Question 3: If an individual with a disability incurs additional, associated costs because the loaner wheelchair provided by the airline restricts his or her mobility or independence, should the airline be responsible for reimbursing the individual for those costs? What are these potential costs? What documentation should individuals provide to airlines to substantiate these costs? Should there be a limit to the airlines’ liability?

Carriers must reimburse the passenger for provable direct and consequential costs because the passenger must use a loaner wheelchair or other accommodation that restricts their independence or results in additional medical issues. Providing a loaner wheelchair is sufficient proof that a passenger may have additional expenses. Costs could include additional medical services needed due to the use of a loaner wheelchair that is not individually customized to the extent of their personal device; medical supplies or services needed when the passenger experiences limited function or mobility without their personal wheelchair; wages lost by the impacted passenger because of their functional limitations; additional personal care services, like the need to hire a care support professional or a family member taking leave from work to assist the passenger with activities of daily living; additional transportation needed when the passenger cannot use their standard mode of transportation without their personal mobility device; and any other direct and consequential incurred costs. A carrier could require reasonable documentation to verify these costs including receipts; documentation showing wages lost by the impacted passenger because of their functional limitations; documentation showing payments to a care support professional or the loss of wages of another who had to care for the passenger; invoices; and written statements attesting to the financial losses.

With the accommodation for providing a loaner wheelchair, we do not object to the department placing a reasonable standard for coverage based on the restriction of mobility and independence. However, this should not be a minimal per diem or other nominal set dollar amount, but coverage sufficient to ensure that the passenger can maintain their functional-related needs while waiting for the return of their personal device or an equivalent replacement device. The carrier must provide payments within seven business days, similar to the period associated with passenger refunds.⁷⁸ Although carriers may dispute paying for any additional services or expenses, requiring them to cover these expenses not only remedies the additional costs paid by the passenger, but also incentivizes carriers to implement policies that result in fewer mishandlings. In addition, this can encourage the carriers to work more closely with their vendors to ensure that the repairs and replacements are completed promptly.

C. Enhanced Training for Certain Airline Personnel and Contractors

Too often, the air travel experience subjects a passenger with a disability to emotional stress and physical injury. The wheelchair attendants who assist passengers with mobility impairments frequently demonstrate that they are not able to safely assist a passenger who must board and deplane using an aisle chair. In addition, passengers who use wheelchairs typically experience great fear, often well founded, that their mobility assistive device will be mishandled. Improper and ineffective training contributes to the number of mishandled mobility devices and injuries to passengers.

In addition, all training must fully educate all personnel – whether they are employees of airlines or of the airlines’ contracted services providers – on the carrier’s requirements and passengers’ rights under the ACAA. Passengers have been threatened with forcible removal from the aircraft by emergency services and police; required to drag themselves to the front of the aircraft when an aisle chair to deplane was not readily available; soiled themselves after being stranded in airport wheelchairs; told the carrier could not transport their mobility device due to the lithium-ion battery; and faced many other experiences due to the personnel not knowing ACAA requirements. Although training to proficiency is already required under the ACAA,⁷⁹ the number of damaged mobility devices, injuries to passengers, and passenger experiences indicate that training must be improved. This can be accomplished by promulgating clear training requirements that provide the competency levels needed to physically assist passengers, handle wheelchairs or scooters, or provide relevant assistance for passengers with disabilities in accordance with the personnel’s responsibilities.⁸⁰

⁷⁸ Refunds and Other Consumer Protections, *supra* note 72.

⁷⁹ 14 CFR 382.141(a)(1).

⁸⁰ We recommend the department consider establishing a task group of stakeholders from the Air Carrier Access Act Advisory Committee to develop a generic model of a competency-based curriculum that includes at a minimum the following topics, as well as those recognized in Volpe, Training Issues Related to Providing Assistance to Wheelchair Users at Airports and Wheelchair Handling at Airports Literature Review and Summary, prepared for United States Department of Transportation (Feb. 27, 2024) (See, for example, the list at 5.1.3, 5.1.4, 5.1.5, and 5.1.6 topics that include hands on practice on lifting and transferring that is safe for both passengers and workers; respecting the dignity of passengers with disabilities; effective communication skills; disability cultural competence;

In general, commercial air travel is statistically a very safe mode of transportation. However, passengers who use mobility devices face significant safety risks when flying due to concerns with boarding and deplaning using aisle chairs and the transport of their devices. Failing to train personnel to competency in providing physical assistance and handling mobility devices unnecessarily endangers the safety and dignity of the passenger and can result in physical injuries, damaged and destroyed mobility devices, medical expenses, loss of independence, diminished quality of life, loss of human dignity, and in some cases, loss of life.⁸¹

A research study conducted in 2013, published in the *Journal of Public Health Policy*, recommended that research be conducted on best practices for airline personnel physically assisting individuals with mobility disabilities, similar to existing interventions developed to avoid injury for baggage handlers. The study concluded that personnel would benefit from knowing the proper techniques for transferring travelers and the use of mechanical lifts and other devices to prevent occupational injury. It noted that training should include, “ergonomic principles, disability, and mobility impairment; skills training in methods and approaches used for safe patient handling; and instruction in proper techniques for using lift and transfer devices.”⁸²

Under the current language of the ACAA, carriers are required to train all personnel who deal with the traveling public “to proficiency” in the ACAA requirements and other applicable regulations; the carriers’ procedures concerning the provision of air travel to passengers with disabilities, including the proper and safe operation of any equipment used to accommodate passengers with a disability; and for personnel involved in providing boarding and deplaning assistance, the use of the boarding and deplaning assistance equipment used by the carrier and appropriate boarding and deplaning assistance procedures that safeguard the safety and dignity of passengers.⁸³ However, the number of passengers who receive unsafe and ineffective physical assistance and/or are injured during aisle chair transfers is indicative of inadequate training.⁸⁴ It is imperative that the training of all personnel who handle mobility devices or provide physical assistance to passengers with disabilities be enhanced so passengers are provided safe carriage on commercial aircraft consistent to that provided for passengers without disabilities. Furthermore, all personnel who provide physical assistance to passengers with disabilities or handle mobility devices must be able to successfully demonstrate to a qualified instructor that they are able to safely provide physical assistance in boarding and deplaning. They must receive

inclusion of the disability community in training programs; provisions for recurrent trainings; development of the peer-to-peer support system; and training best practices and accessibility for workers with limited English language literacy and/or proficiency, for example the use of the IBEST model that combines native language instruction and simultaneous workplace English Language instruction), available at <https://www.regulations.gov/document/DOT-OST-2022-0144-0008>.

⁸¹ See *Fulton v. United Airlines, Inc.*, 4:17-cv-00528.

⁸² Lisa Mary Brown, et al., *Improving Transfer Task Practices Used with Air Travelers with Mobility Impairments: A Systematic Literature Review*, *Journal of Public Health Policy*, 11-12 (Nov. 2013), available at https://www.researchgate.net/publication/258823515_Improving_transfer_task_practices_used_with_air_travelers_with_mobility_impairments_A_systematic_literature_review.

⁸³ 14 CFR 382.141.

⁸⁴ PVA ACAA Survey at 24.

more frequent refresher trainings and reassessments to confirm competency levels are maintained. Personnel must also be provided with properly maintained equipment that meet requisite standards for the safety of the personnel and passenger.

The FAA Reauthorization Act reemphasizes Congress’s mandate to improve the safety for mobility device users in air travel by requiring training be enhanced for employees and contractors who assist wheelchair users in boarding or deplaning using an aisle chair/other boarding device and personnel who handle passengers’ wheelchairs and scooters. The law requires the department to enhance training requirements and issue rulemaking to develop the minimum training standards. The law includes training requirements and timelines, but the language specifically states that these requirements are “at a minimum.”⁸⁵ The department has the authority to develop training requirements and standards *beyond the minimum* to ensure safe and dignified air travel for mobility device users. As now required, an employee or contractor must successfully demonstrate their competency to physically assist a passenger or handle a mobility device *before* providing assistance to a passenger or stowing a passenger’s mobility device. With effective training, including competency assessments, passengers and their mobility devices will be provided heightened safety and be able to receive assistance in a dignified manner.

Peer-to-Peer Training

In many service occupations, workers often provide peer-to-peer support for their co-workers as they deliver services to customers, patients and other clients, including air travel passengers. Air carrier service workers, that provide physical assistance for passengers with disabilities, have informally developed an analogous system to cope with the shortcomings of the current training system and its failure to prepare them adequately for their jobs. In healthcare settings, experienced workers with high levels of competence are a valuable asset to patients, to their co-workers, and to their employers. We recommend building upon air carrier service workers’ current practices, to augment the competence-based training model advocated above, and supplement it by developing a peer-to-peer training model.

Question 1: Are the proposed amendments to the training requirements in Part 382 sufficient to address concerns and inadequacies with current training practices?

The proposed amendments do not fully ensure that passengers can fly with safety and dignity. Despite current requirements that employees and their contractors be trained to proficiency, passengers are repeatedly injured and thousands of mobility devices are mishandled each year. The level of training an employee receives must accurately reflect the employee’s work responsibilities, especially the employee’s responsibilities in interacting with passengers who have different levels of functional abilities.⁸⁶ For example, employees who physically assist

⁸⁵ FAA Reauthorization Act, Sec. 542(b); Sec. 543(b).

⁸⁶ For example, International Air Transport Association has adopted a competence-based standard for relevant workers. The standards note that training is an essential element in ensuring a safe regulatory regime. The training is mandatory for all persons involved in the handling and carriage of dangerous goods, including battery-powered wheelchairs and mobility aids, to be trained to competently perform the function for which they are responsible.

passengers transfer to and from aisle chairs or with other transfer equipment must receive a high level of training prior to lifting a passenger. There is a drastic difference in the skill levels needed for an employee providing assistance in pushing an airport wheelchair from those who must physically lift passengers or use other transfer equipment. In addition, it should be noted that, at times, personnel who have not been trained as wheelchair attendants have assisted with physical passenger lifts.

We have identified multiple studies that reviewed the air carriers' ability to assist individuals with disabilities in safely boarding and deplaning an aircraft. Overall, the studies found that additional and recurrent training is needed for personnel – whether they are employees of carriers or of the contracted services providers – on the specific needs for individuals with mobility disabilities and the use of physical transfer techniques. One study concluded, “Participants generally viewed current training systems as having room for improvement. The most frequently mentioned training-related factors were the need for specialists to deliver content-specific information about services to travelers with disabilities and a need for more extensive, standardized, and ongoing (recurrent) training about specific types of disabilities, effective communication with travelers, and assistance with difficult physical transfers.”⁸⁷

The department should adopt training program requirements utilizing a certification-like process and competency assessments. Throughout the training process, all tasks must be thoroughly and successfully demonstrated to a qualified instructor. Training programs must also ensure that the trainers have personally completed hands-on transfers and are qualified to train others. All competency assessments and successful demonstrations must be completed before an employee or contractor physically assists a wheelchair user who needs an aisle chair or other transfer equipment or handling a passenger's wheelchair or scooter.⁸⁸

We emphasize that personnel must demonstrate they can properly perform the task in the work environment. For example, if an employee is demonstrating their ability to perform a manual transfer, they must demonstrate they can perform this transfer in an airport as well as in an aircraft setting. Individual steps and components involved in providing passengers physical assistance must require individual competency assessments, including: passenger transfers, transfer equipment, and proper lifting techniques; on-board wheelchair assistance; airport wheelchair push assistance; physical assistance in emergency situations; assessing common challenges; and effective communication with passengers with disabilities and their caregivers.

See International Air Transport Association, *Guidance on the Transport of Mobility Aids*, First Edition (Feb. 2023), 33-34. (“Appropriate training for all staff in air travel service delivery is vital for providing quality service to persons with disability consistently and respectfully. It is essential that all airline staff know their responsibilities and can perform them competently.”).

⁸⁷ Michael J. McCarthy, *Improving the United States Airline Industry's Capacity to Provide Safe and Dignified Services to Travelers with Disabilities: Focus Group Findings*, Disability and Rehabilitation (Jan. 2011), 2612, 2618, available at https://www.researchgate.net/publication/51797047_Improving_the_United_States_airline_industry%27s_capacity_to_provide_safe_and_dignified_services_to_travelers_with_disabilities_Focus_group_findings.

⁸⁸ FAA Reauthorization Act, Sec. 542(b)(1); Sec. 543(b)(1).

We recommend each air carrier have an in-house lead that oversees all training curricula, programs, assessments, and reassessments related to disability accommodations to ensure they meet all federal requirements.

The training programs must be designed similarly to certification programs for other industries, e.g., classroom training sessions; successfully demonstrating they can safely perform this task in a controlled/simulated environment; shadowing personnel performing these functions in an airport setting; and performing the task in an airport or aircraft setting while supervised, but without guidance or direction. A list of topics is a necessary, but not sufficient, requirement for improving training. Of greater importance is the need to emphasize the thoroughness and quality of the training and ensuring personnel have developed competency through demonstrations and assessments.

Although training is currently required for “proficiency,” applying a competency level assessment approach and successful demonstrations for each type of assistance can better safeguard the safety and dignity of the passenger. A successful demonstration means the individual can perform the task or function with the actual use of equipment or procedures without instruction or guidance. Proficiency must be demonstrated by meeting a well-defined level of achievement. Competent means possessing the skills, knowledge, experience, and judgment to perform the task or skill.⁸⁹ Only after the employee or contractor has completed the competency assessment for that task or skill can they provide that assistance to the passenger or handle or stow a passenger’s mobility device.

Plain Language & Training Best Practices

All training should be developed and provided in plain language. Plain language training has been found to improve employee production and decrease employee errors.⁹⁰ With fewer errors, plain language training can lead to increased safety of passengers and personnel. In addition, all training materials and instructions should be developed using best practices for adult learners and individuals with limited English proficiency.⁹¹ Workers who are non-native English speakers may also need some instruction in their native language to ensure that they are able to achieve full comprehension of the required training.⁹²

Effective Communication

⁸⁹ See generally, Occupational Safe and Health Administration, Training Requirements in OSHA Standards, 28, available at <https://www.osha.gov/sites/default/files/publications/osha2254.pdf>.

⁹⁰ PlainLanguage.Gov, Plain Language: Its Effect on Organizational Performance, available at <https://www.plainlanguage.gov/resources/articles/its-effect-on-organizational-performance/>.

⁹¹ Resources available at <https://www.lep.gov/>.

⁹² There are successful models for workplace training that combine instruction in a worker’s native language while also teaching basic workplace English that carriers can use in the development and administration of their training. One example is the IBEST model developed in Washington State. See Washington State Board for Community and Technical Colleges, Integrated Basic Education Skills and Training (I-BEST), <https://www.sbctc.edu/colleges-staff/programs-services/i-best/>.

The department should also include language under 14 CFR § 382.141(2), that requires personnel to be trained on communication skills that enhance their ability to effectively communicate with passengers with mobility disabilities and their caregivers. In addition, the communication method must be accessible for the passenger based on their disability and language. For effective communication, personnel may need to provide auxiliary aids and services necessary to communicate effectively with a passenger due to their disability. The FAA Reauthorization Act mandated effective communication requirements for airline personnel or contractors who assist wheelchair users who board or deplane using an aisle chair or other boarding device.⁹³ However, we urge the department to adopt this language and apply it more broadly. We recommend the language be explicitly included and apply to all employees and contractors subject to provisions under the ACAA.

“382.141(2)(iii): You must ensure such employees and contractors are trained on how to effectively communicate with, and take instruction from, the passenger.”

We also recommend the department include effective communication training requirements for taking instruction from the caregiver, if the passenger is non-verbal or unable to communicate their needs. Effective communication training should be required for all personnel providing services – whether they are employees of carriers or of the contracted services providers – who deal with the traveling public. The department should also incorporate a requirement that workers receive training on disability cultural competency with respect to the transportation needs of passengers with all types of disabilities.

Wheelchair Experts & Transfer Experts

As the carriers have a trained CRO to assist with disability-related complaints, designated wheelchair and transfer experts can contribute significantly to resolving the complex issues that can occur when problems arise. This individual should have advanced training, similar to a CRO, and serve as a peer leader that can provide meaningful assistance to ensure the passenger and their mobility device are safe throughout the air travel experience.

Partnering in Training Development, Administration, and Auditing

The proposed 14 CFR § 382.141(a)(5) requires carriers to “consult” with organizations representing individuals with disabilities when developing or making significant impact changes to training programs, policies, and procedures. However, this language does not require these organizations represent mobility device users and, depending on the disabilities represented by the organization, may not have sufficient knowledge to provide meaningful feedback. In addition, without continuous engagement and accountability in developing, administering, and implementing the training, it cannot be assured that the training is being properly conducted and that passengers and their mobility devices will be safe.

⁹³ FAA Reauthorization Act, Sec. 542(b)(1)(C).

The FAA Reauthorization Act directs the department to consider requirements for carriers to “partner” with national disability and disabled veterans organizations representing individuals who use wheelchairs and scooters in “developing, administering, and auditing training.”⁹⁴ We urge the department to proactively adopt these requirements in this final rule. We also recommend that individuals consulted from these organizations include mobility device users. These requirements provide additional protections for passengers with disabilities as these organizations will be involved throughout the development of the training, administering the training to personnel, and continuous auditing of the training programs to ensure they are effective to protect the safety and dignity of passengers. In addition, this will allow passengers to be protected without additional use of department resources. The department must be proactive in finalizing strong training requirements, without waiting until a travesty occurs or complaints are filed. Proactive actions contribute to the general safety of commercial air travel. But, if any ACAA complaints are filed, the department should thoroughly investigate and review the training programs used by the carrier to determine if ineffective training is the source of any violations.

In line with the FAA Reauthorization Act, we recommend the department amend the proposed language of 14 CFR § 382.141(a)(5) to:

“You must partner with national disability and disabled veterans organizations representing individuals who use wheelchairs and scooters in developing, administering, and auditing training.”⁹⁵

We also strongly recommend that these partnerships be expanded to include representatives of the employees of carriers’ service providers who are the recipients of training and provide the service. Their inclusion can further achieve the department’s aims of producing and maintaining a competent workforce that can safeguard passengers’ safety and dignity. It is essential that the service workers provide their experiences as training standards are enhanced, developed, implemented, and audited. These representatives can also provide feedback on the efficacy of any current or new training programs, policies, and procedures.

Thus, we recommend the inclusion of the below proposed language to 14 CFR § 382.141(a)(5).

“You must also partner with representatives of employees responsible for lifting and transferring of people with disabilities.”

Question 2: Should the Department impose more specific training requirements rather than identifying the topics that airlines must cover as part of the training? For example, the Department is aware of existing standards for caregivers to provide safe patient assistance involving lifting and transferring. Would it be more beneficial to require training standards such

⁹⁴ See FAA Reauthorization Act, Sec. 542(c)(1); Sec. 543(c).

⁹⁵ *Id.*

as these? And if so, which ones should be considered and what are the associated costs of the training?

Yes, the department should require training to include elements of safe patient handling (SPH) programs such as those used in the healthcare industry. The FAA Reauthorization recommends the department consider whether personnel who assist with boarding and deplaning assistance for passengers with limited or no mobility should receive training incorporating procedures from medical professionals on how to properly lift these passengers.⁹⁶ We recommend the department proactively include language requiring training to incorporate best practices, policies, and procedures used for transfers in the healthcare and homecare contexts. Due to the high incident rate of injuries to both workers and patients in performing manual lifts in the healthcare industry, substantial research has been published to improve the safety for all parties. Carriers should leverage these best practices to expeditiously lower injury risks and better protect all parties.

Manual lifting of patients in the healthcare industry revealed that an untrained worker with inadequate equipment can result in serious worker injuries.⁹⁷ In response, the healthcare industry has increasingly used SPH programs as an effective way to prevent occupational injury and improve patient safety. These training programs provide evidence-based training and curriculum for SPH training; ensure the training is sound and the curriculum is effective in improving the staff knowledge; and provide useful tools to increase effectiveness of the training program.⁹⁸ The ultimate goal is to move participants beyond simply knowing content to applying what they have in the appropriate environmental setting. Thus, the airline industry would be well served by adopting, as appropriate, these practices developed, evaluated, and implemented by their healthcare counterparts.

Specifically, we recommend the department include language under 14 CFR § 382.141(3)(i), that carriers include the best practices already developed to increase safety for patients in the healthcare and home care settings:

“training on proper lifting techniques should be developed consistent with safe patient handling best practices.”

The U.S. Department of Veterans Affairs (VA) is often cited for SPH best practices. The guidebook used by the VA notes the changes in the definition for a “lift team.” Previously, it was defined as “two physically fit people, competent in lifting techniques, working together, using mechanical equipment...” However, the VA has redefined its procedures to note, “True lift teams are those with special education in patient handling and mobility and the use of [safe patient handling and

⁹⁶ FAA Reauthorization at Sec. 542(c)(3).

⁹⁷ Centers for Disease Control and Prevention, Safe Patient Handling Training for Schools of Nursing, Curricular Materials (Nov. 2009), available at <https://www.cdc.gov/niosh/docs/2009-127/pdfs/2009-127.pdf?id=10.26616/NIOSH PUB2009127>. See also Brown, *supra* note 84.

⁹⁸ Centers for Disease Control and Prevention, *supra* note 99.

mobility] technology.”⁹⁹ The guidebook emphasizes that with an inadequate lift team, both staff and the patient are at risk. However, when the staff has lifting expertise through properly implemented training and has the proper number of staff to perform the lifts, the programs are successful. The department should require training programs adopt relevant procedures similar to those used in the healthcare industry for SPH to increase the safety of the passenger and personnel.

In addition, the healthcare industry has moved away from manual transfers towards using assistive transfer equipment to reduce the rate of injuries.¹⁰⁰ Some international carriers have also transitioned from physical transfers to using assistive mechanical and sling equipment. Like in the healthcare setting, the use of mechanical and sling lifts should be promoted to improve passenger and personnel safety. We recommend the department move forward with a study recommended by the Air Carrier Access Act Advisory Committee on the design of aisle chairs and the use of lift devices to improve the transfer process for wheelchair users. This is also consistent with the FAA Reauthorization Act that requires the department to consider whether carriers should use a lift device, instead of an aisle chair to board and deplane passengers with mobility disabilities.¹⁰¹

Despite the question related to additional costs, the cost of enhanced training should not be determinative in any regulatory requirements in light of the human toll that improper lifting has taken. The overall goal to provide safe and dignified air travel cannot be quantified. In addition, when passengers and personnel are safe, ultimately, the carriers benefit financially by reducing costs incurred by the passenger and workforce injuries.

Question 3: Are the proposed topics to be covered when training personnel and contractors who handle passengers’ wheelchairs sufficient (i.e., common types of wheelchairs and other mobility aids and their features; airport and airline equipment used to load and unload wheelchairs and other mobility aids; and methods for safely moving and stowing wheelchairs, including lifting techniques, wheelchair disassembly, reconfiguration, and reassembly, and securement in the cargo compartment of the aircraft)? If not, what additional topics should the Department consider requiring?

The training for all personnel – whether they are employees of carriers or of the contracted services providers – who handle mobility devices must be similar to the tiered certificate-type training and competency level assessments outlined above. Baggage handlers have some of the highest rates of injuries of any private industry.¹⁰² With certificate-type trainings, successful demonstrations, and competency level assessments, injuries to mobility device handlers should decrease and reduce the number of mishandled devices. Mobility device handlers must be able

⁹⁹ The Facility Guidelines Institute, Patient Handling and Mobility Assessments 2d, 419-420 (2019), https://www.fgiguilines.org/wp-content/uploads/2019/10/FGI-Patient-Handling-and-Mobility-Assessments_191008.pdf.

¹⁰⁰ Centers for Disease Control and Prevention, *supra* note 99.

¹⁰¹ FAA Reauthorization Act, Sec. 542(c)(2).

¹⁰² Brown, *supra* note 84, at 2-3.

to successfully demonstrate their competency in how to properly handle and configure, at a minimum, the most commonly used power and manual wheelchairs and scooters for stowage on each aircraft type operated by the air carrier; how to properly review any wheelchair or scooter instruction or information provided by the passenger or the wheelchair or scooter manufacturer; and how to properly load, secure, and unload wheelchairs and scooters, including how to use any specialized equipment for loading or unloading, on each aircraft type operated by the carrier.¹⁰³ The employee or contractor must successfully demonstrate these skills through competency assessments before handling a passenger's mobility device. We would encourage the department to review the work of the RESNA ATAT Committee¹⁰⁴ and IATA's Mobility Aids Action Group¹⁰⁵ to learn more about information that would be useful to air carriers and their employees who handle mobility assistive devices.

Question 4: Are the proposed topics to be covered when training personnel and contractors who provide physical assistance to passengers with disabilities sufficient (i.e., safe and dignified physical assistance, including transfers to and from personal or airport wheelchairs, aisle chairs, and aircraft seats; proper lifting techniques to safeguard passengers; how to troubleshoot common challenges when providing physical assistance; and proper use of equipment used to physically assist passengers with disabilities)? If not, what additional topics should the Department consider requiring?

With each transfer, risk of injury to both the air traveler and the assisting worker increases; each with its own consequences. Manual lifts are a high-risk activity and a primary cause of injuries for workers in many industries.¹⁰⁶ Thus, we recommend the department include language under 14 CFR § 382.141(3)(i), that carriers include the best practices already developed to increase safety for patients in the healthcare and home care settings. This includes transitioning from manual lifts to mechanical or sling lifts. The department must require the carriers assign specific personnel to board and deplane passengers with significant mobility disabilities. Personnel that physically lift passengers or operate transfer equipment must receive heightened training than those who provide other types of assistance, e.g., transporting a passenger in an airport wheelchair. Before assisting a passenger, personnel must successfully demonstrate how to safely use the aisle chair or other boarding device, including the use of all straps, brakes, and other safety features; how to properly and safely operate mechanical lifts, slings, or other transfer equipment; how to assist in the transfer of passengers to and from their wheelchair, the aisle chair, and the aircraft's passenger seat, either by physically lifting the passenger or using a mechanical or sling device for the lift or transfer; and how to effectively communicate with, and

¹⁰³ FAA Reauthorization Act, Sec. 543(b)(1).

¹⁰⁴ Rehabilitation Engineering and Assistive Technology Society of North America, Assistive Technology for Air Travel, *information available at* <https://www.resna.org/AT-Standards/Air-Travel>.

¹⁰⁵ International Air Transport Association, Guidance on the Transport of Mobility Aids (Feb. 2023), *available at* <https://www.iata.org/contentassets/7b3762815ac44a10b83ccf5560c1b308/iata-guidance-on-the-transport-of-mobility-aids-final-feb2023.pdf>.

¹⁰⁶ Brown, *supra* note 84.

take instruction from, the passenger¹⁰⁷ or caregiver, if the passenger is non-verbal or unable to communicate their needs.

This training must be “hands on” and the individual should receive recurrent trainings with competency assessments, including their ability to follow direction from the passengers on how to properly assist. Personnel must also be provided with properly maintained equipment that meet requisite standards for the safety of the personnel and passenger. Training could include: classroom training sessions; successfully demonstrating they can safely perform this task in a controlled/simulated environment; shadowing employees and contractors performing these functions in an airport or aircraft setting; and performing the task in an airport and aircraft setting while supervised, but without guidance or direction.

Question 5: Is the Department's proposed definition of hands-on training reasonable? What other factors, if any, should the Department consider when defining hand-on training?

The proposed language for “hands-on training” is not reasonable to ensure the safety of the passenger or personnel. The use of a life-sized model does not equate to the reality of transferring an individual, who may be a different shape, weight, or size than the model used during training. The passenger’s specific disability could also impact the passenger’s physicality and mobility abilities or limitations, which cannot be replicated with a model. Training should have a tiered approach as outlined in other sections, with competency demonstrated at each level. We recommend the definition of hands-on training under 14 CFR § 382.3 mean:

“Training that is received by an employee or contractor by a qualified instructor where the employee or contractor successfully demonstrates their ability to safely perform the task in the work setting.”

We again emphasize the need for a tiered certificate-type training approach, for both initial and refresher training, with competency level assessments demonstrated for each type of assistance or mobility device handling.

Question 6: Is the proposed frequency of recurrent training (at least once every 12 months) reasonable? Should the Department require more frequent training (e.g., once every six months) or less frequent training (e.g., once every 18 months or once every 24 months)? What are the costs and logistical considerations associated with such training for airline employees and contractors?

The FAA Reauthorization Act requires employees and contractors be recertified on the job every eighteen months by a relevant superior.¹⁰⁸ However, Congress explained that these requirements are the *minimum* and the department should finalize rulemaking that further protects passengers with disabilities. Disability rights advocates have urged the department to

¹⁰⁷ FAA Reauthorization Act, Sec. 542(b)(1).

¹⁰⁸ FAA Reauthorization Act, Sec. 542(b)(3); Sec. 543(b)(2).

require recurrent training every six months.¹⁰⁹ In consideration of both proposals, we recommend the department adopt a requirement for refresher training every twelve months. Moreover, the responses by airline service providers to the department’s 2021 training survey demonstrate that nearly half of these companies are already providing recurrent training on an annual basis, even though this was not required by current regulations.¹¹⁰ We also recommend the department clarify that the “relevant superior” be an employee or contractor who is on the line and customer facing, supervises employees or contractors who provide this type of assistance, and sufficiently trained to administer and review competency assessments. Furthermore, if a carrier uses mechanical or sling lifts or other transfer devices, personnel must be immediately trained on how to use them. Personnel must not operate such devices until they have successfully demonstrated how to properly and safely use these devices to transfer passengers.

Question 7: Should other types of airline employees and contractors be subject to the enhanced training requirements set forth in this proposal? For example, reservation agents gather information about consumers’ travel needs and ticket counter agents handle consumer inquires, including disability related accommodation requests. Also, while managers may not directly assist individuals with disabilities or handle wheelchairs, they are often responsible for overseeing the airlines’ processes and personnel. Is the existing requirement that individuals who deal with the traveling public be trained as appropriate to their duties sufficient?

The NPRM clarifies that air carrier personnel and contractors who deal with the traveling public include, but are not limited to, customer service agents, flight attendants, reservation agents, and wheelchair attendants. Any personnel who deal with the traveling public must receive training and recurrent training, as outlined in the final rule, in accordance with their duties, e.g., effective passenger communication, which falls under the duties of personnel beyond those providing physical assistance. Effective communication training with the passenger or caregiver if the passenger is non-verbal or unable to communicate their needs, should apply to all personnel that deal with the traveling public. This would include, but is not limited to, those who assist passengers with disabilities in reserving flights and travel needs, assists with mobility device damage claims, notifies passengers of their rights under the ACAA, and those who deal with the traveling public generally. We recommend all trainings include disability cultural competence to further educate personnel on how to treat passengers with disabilities with dignity.

Managers and supervisors, though they may not directly assist the traveling public, must receive the same training as any personnel under their management, with the same timelines, e.g., recurrent training every twelve months. Then, if a manager is contacted regarding an issue, they can effectively, safely, and competently assist. Supervisory and managerial personnel must also

¹⁰⁹ See Senate version of the FAA Reauthorization Act of 2024 (S.1939).

¹¹⁰ See Report of the Subcommittee on Assistance at Airports and on Aircraft Related Training (July 2021), prepared by the Air Carrier Access Act Advisory Committee’s Subcommittee on Assistance at Airports and on Aircraft and Related Training, DOT-OST-2018-0204, 30, available at <https://www.regulations.gov/document/DOT-OST-2018-0204-002>.

be familiar with the topics and processes covered in the training and recurrent trainings to ensure that their supervision is supportive of and consistent with the trainings that workers receive.

D. Improved Standards for Onboard Wheelchairs (OBWs)

In July 2023, the department issued a final rule to improve the accessibility of lavatories on large single-aisle aircraft. The purpose of improving access to these lavatories is to ensure that air travel is safe and accessible to individuals with disabilities, including those with mobility disabilities.¹¹¹ The final rule addressed not only requirements for accessible lavatories on large single-aisle aircraft but also included enhanced performance standards for onboard wheelchairs (OBW).

The department is now seeking comment regarding whether the enhanced performance standards should apply to all OBWs, as well as whether twin-aisle accessible lavatories should meet the same size standards as those now required for the accessible lavatories on large single-aisle aircraft. In general, we believe that improvements in lavatory access, including better standards for OBWs, that were made in the 2023 final rule should apply broadly to OBWs and accessible lavatories on aircraft. These requirements were arrived at through a successful negotiated rulemaking in 2016 and reflect the overall efforts of the department to improve the safety and dignity of wheelchair users and other passengers who are unable to use a traditional aircraft lavatory as a result of a disability. Thus, these requirements should be integrated into the ACAA regulations.

In addition to expanding the availability of OBWs that meet the enhanced performance standards, the department should require carriers to provide information about the availability of these devices to passengers requesting mobility assistance. We believe that the department should further modify § 382.65 to include providing information on improved OBWs to passengers with disabilities and requiring annual training for personnel regarding the availability of these devices for use in flight. Section 551 of the FAA Reauthorization requires carriers to provide information about the availability of OBWs to passengers who report using a wheelchair and on a publicly available website. Requiring additional training related to OBWs specifically is a foreseeable requirement in light of the department's proposal to significantly expand the usage of OBWs meeting enhanced performance standards.

OBW Wheelchair Stowage Space

Question 1(a): What should happen if the improved OBWs do not fit within the pre-existing stowage space?

In the 2023 final rule, the department determined that it would be unacceptable to exempt carriers from using the improved OBW simply because it would not fit in the pre-existing stowage

¹¹¹ U.S. Department of Transportation, Final Rule - Accessible Lavatories on Single-Aisle Aircraft, RIN No. 2105-AE89 (Aug. 1, 2023) available at <https://www.transportation.gov/airconsumer/final-rule-accessible-lavatories-single-aisle-aircraft-PDF>.

space.¹¹² The department went on to require carriers to stow the OBW in any other available stowage space where it can be safely accommodated and seek any necessary approval from the FAA to stow the OBW in this alternate location. The same approach should apply to twin-aisle aircraft equipped with OBWs meeting the department's enhanced standards. The department's should require air carriers to use any FAA-approved OBW stowage location, not just its preferred or existing stowage location. Air carriers' primary concern should be ensuring that the OBWs provide safe and dignified access for passengers with disabilities who rely on it to access the lavatory.

Question 1(b) Should airlines be required to expand the existing on-board wheelchair stowage space of the aircraft, or modify the interior arrangement of the lavatory or the aircraft to enable the OBW to fit?

Carriers must take any steps necessary to ensure that passengers with disabilities and others with limited mobility who need an OBW to access the lavatory are able to use one. OBWs equipped with the enhanced performance standards provide significant support and safety to passengers. The critical function OBWs serve with respect to lavatory access should require carriers to expand OBW stowage space on the aircraft, or modify the interior arrangement of the lavatory or the aircraft to enable the improved OBW to fit, if necessary. This is particularly the case for twin-aisle aircraft, which are used for long-haul flights and already required to have at least one accessible lavatory.

Since 1992 and 2010 for U.S. carriers and foreign carries respectively, delivered twin-aisle aircraft have had to include at least one lavatory of sufficient size to permit a qualified individual with a disability to enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's OBW, while affording privacy equivalent to that afforded ambulatory users.¹¹³ We believe carriers should be required to expand the existing OBW stowage space for all aircraft, but at the very least, twin-aisle aircraft should be modified if needed for stowage of a proper OBW.

Question 1(c) Would it be sufficient if the Department requires airlines to stow the OBW in another space that exists (e.g., an overhead compartment) where it could fit consistent with FAA safety standards as the Department did for OBWs stowed on large single-aisle aircraft?

No, it would not be sufficient to limit the requirement for a proper OBW to only those aircraft that allow stowage in an existing space. We understand that OBWs can be safely stowed in a number of different FAA approved locations and believe that one would likely be available, even if not the preferred location. However, if an approved location is not available, then we would expect carriers to make any necessary aircraft modifications needed to ensure that a proper OBW can be made available to passengers with disabilities. Twin-aisle aircraft already have an accessible lavatory and the need to make sure that safe access is available now necessitates more stringent requirements for OBWs.

¹¹² *Id.*

¹¹³ 14 CFR 382.63(d).

Dates for Improved OBWs

Question 2(a): The Department has proposed that any aircraft with 60 or more passenger seats and an accessible lavatory delivered after October 2, 2026, be equipped with the improved OBW. The Department already requires that large single aisle aircraft delivered after this same date have improved OBWs. Is the date selected reasonable? Why or why not?

The date selected by the department is reasonable. In the 2023 final rule on lavatories, the department stated the time frame of the effective date would allow carriers, aircraft manufacturers, and OBW manufacturers to develop accessible lavatory interiors, training programs, accessibility information, compliant OBWs, and appropriate OBW stowage space. The department also noted it would address expansion of the OBW standards to other aircraft as part of this current rulemaking. Therefore, stakeholders have been aware of the possibility that the OBW standards could be expanded to other aircraft since the publication of the 2023 final rule. Using the same compliance date as that included in the final rule gives stakeholders enough time to make necessary adjustments to meet the new OBW requirements. Ensuring safe and dignified access to an accessible lavatory should not depend on whether a passenger is on a large single-aisle or twin-aisle aircraft. We believe the department should require any aircraft with 60 or more passenger seats and an accessible lavatory delivered after October 2, 2026, be equipped with the improved OBW.

Question 2(b): The Department also proposes a date certain, five years after October 2, 2026, when all OBWs must meet the improved performance standard. Is this date reasonable? If not, what would be a more reasonable time frame, and what would be the costs and benefits of that approach?

There are currently OBWs on the market that advertise themselves as being compliant with the updated safety and accessibility standards in the 2023 final rule. If OBWs that meet all the required standards can be purchased now, then carriers should not be given a five-year implementation period. To ensure the safety and dignity of passengers who use wheelchairs, all OBWs should meet the enhanced performance standards by October 2, 2026. The enhanced OBW requirements promote the safety and dignity of passengers with disabilities and their implementation should not be unnecessarily delayed.

A more immediate date certain for all OBWs to meet the enhanced performance standards would also decrease the occurrences of confusion related to the department's new final rule on refunds and other consumer protections. In that final rule, the department is requiring a refund to a passenger with a disability and other passengers on the same reservation who choose not to fly because the person with a disability does not accept a significant change of flight itinerary resulting from a change in aircraft or class of service that results in the unavailability of one or more accessibility features needed by the person with a disability. The department stated it believes that a change in the flight itinerary that reduces accessibility of air travel to a person with

a disability must entitle not only that individual to a refund but also other individuals on the same reservation.

In a situation where a passenger with a disability faces a change from an aircraft with an OBW with the enhanced standards to an aircraft with an OBW without the enhanced standards, it causes confusion on whether the aircraft substitution has impacted an accessibility feature needed by a passenger with a disability. Passengers who need an OBW to safely access a lavatory should not be required to use one available that does not meet enhanced standards, but an agent could view this change as insufficient to determine that an accessibility feature is not available. Being forced to use an OBW that does not meet the enhanced standards affects only people with mobility disabilities. It does not ensure non-discriminatory treatment of passengers with disabilities consistent with safe and dignified carriage of all passengers on air carriers.

Availability of Improved OBWs in Marketplace

Question 3(a): In this NPRM, the Department is proposing to require airlines to acquire OBW that comply with as many of the proposed safety and accessibility requirements as are available. The Department is also proposing that airlines inform the Department that an OBW meeting a safety or accessibility requirement is unavailable if that is the case. Is this the right approach?

Yes, this is the right approach. The requirements the department is proposing are consistent with the requirements for carriers that will be acquiring OBWs with the enhanced performance standards for large single-aisle aircraft delivered after October 2, 2026.

Question 3(b): Should the Department require airlines to retain records of the unavailability of OBWs that meet all the proposed safety and accessibility requirements instead of informing DOT? What would be the costs and benefits of any such modifications?

The department should require carriers to inform the department if OBWs meeting all the requirements are not available as this is consistent with the requirements for carriers who will be acquiring OBWs with the enhanced performance standards for large single-aisle aircraft delivered after October 2, 2026. As part of that notification, however, we would support carriers being required to provide the department with supporting documentation underlying their determination that a proper OBW is not available. The department should then evaluate the submitted information and post it on the public docket for this rulemaking to inform passengers about the determination. Such an action should have little cost as carriers would need to make a thorough sweep of the marketplace as part of their efforts to comply with the regulation.

E. Size Standard for Lavatories on Twin-Aisle Aircraft

Question 1: Is the 95/95 standard, which has been adopted for future new single-aisle aircraft lavatories, appropriate for twin-aisle aircraft lavatories? Why or why not?

In the 2023 final rule, the department adopted performance standards for accessible lavatories on large single-aisle aircraft that would ensure a lavatory is of sufficient size to accommodate larger passengers with disabilities and their assistants.¹¹⁴ We believe that the 95/95 standard was appropriate for large single-aisle aircraft and that accessible lavatories on twin-aisle aircraft should meet these same standards. Currently, twin-aisle aircraft are required to have one accessible lavatory, large enough to accommodate a passenger on the OBW behind a closed door. As PVA's comment filed in response to proposed twin aisle comments stated, "the experience of passengers with disabilities in using these lavatories is varied".¹¹⁵ Some passengers describe the accessible lavatories as very small and potentially dangerous due to the lack of room for assistance and unsafe OBWs.¹¹⁶ Requiring the 95/95 standard for twin-aisle aircraft would address these concerns. It is imperative that a uniform performance standard for lavatories, whether in twin-aisle aircraft or large single-aisle aircraft, be in place to ensure a consistent, safe, and dignified experience for passengers with disabilities accessing an aircraft lavatory.

Question 3(a): What would be the incremental benefits for passengers with disabilities, and other passengers, in adopting a 95/95 standard?

The difference between the current twin-aisle accessible lavatory and a 95/95 standard accessible lavatory might be the difference between having access and not having access to a lavatory on a long-haul flight. For those passengers, the benefit to having an accessible lavatory that allows them to use it in a safe and dignified manner is hard to quantify. The department has already determined that an accessible lavatory meeting a 95/95 standard is necessary even in the confines of a single-aisle aircraft. Although twin-aisle aircraft are required to have an accessible lavatory of some type, simply providing "good enough" access for passengers with disabilities is not sufficient. Such a standard does not promote the safety and dignity of wheelchair users or other passengers with disabilities who need access to a lavatory during a flight.

Question 4: If the Department adopted a 95/95 standard for twin-aisle aircraft, what would be an appropriate time frame for implementation? What factors should the Department consider when setting an implementation time frame?

In the 2023 final rule, the department stated that ten years ordered/twelve years delivered implementation period for accessible lavatories on large single aisle aircraft was necessary and appropriate.¹¹⁷ The department also expressed that any further extension would unnecessarily impose burdens on passengers with disabilities who will be forced to wait longer to enjoy the basic human dignity of being able to use a lavatory on a long-haul flight. Twin-aisle aircraft are generally used for the longest international flights and already have a requirement for an accessible lavatory. Without implementation of the 95/95 standard, there will continue to be twin-aisle aircraft lavatories that are not fully accessible.

¹¹⁴ *Id.*

¹¹⁵ Comment from Paralyzed Veterans of America, DOT-OST-2021-0137-0350, 10, available at <https://www.regulations.gov/comment/DOT-OST-2021-0137-0350>.

¹¹⁶ *Id.*

¹¹⁷ 14 CFR Part 382 (2023).

We echo the sentiments made in our previous comment that lack of accessible lavatories poses significant difficulties and risks for individuals with disabilities. The department should require implementation of the 95/95 standard for twin-aisle aircraft to ensure consistencies with accessible lavatories in large single-aisle aircraft. Furthermore, carriers have previously agreed that the 95/95 standard is an appropriate reference measure for an assisted transfer within limited space of a lavatory.¹¹⁸

The requirements for foreign carriers with twin-aisle aircraft to have an accessible lavatory were put into place in 2008. Aircraft ordered after May 13, 2009, or delivered after May 13, 2010, were required to include an accessible lavatory. We believe that the 95/95 requirement should apply in the same timeframe. Specifically, twin-aisle aircraft ordered one year after the final rule or delivered two years after the final rule, must include a 95/95 standard accessible lavatory. If a carrier replaces a lavatory on an existing twin-aisle aircraft starting one year after the final rule is published, then it must be replaced with one meeting the 95/95 standard. This is also in line with implementation of the requirement for accessible lavatories on twin-aisle aircraft operated by foreign carriers.

F. Refund of Fare Difference When Passengers' Wheelchairs Cannot Fit on Preferred Flight

Since the publication of the NPRM, the department issued a final rule on refunds and other air travel consumer protections for flight cancellations and significant changes to a passenger's reservation.¹¹⁹ That rule provides some relevant guidance for the inquiries in this NPRM. Furthermore, to ensure passengers who use wheelchairs are ensured safe accommodations in air travel, the department must thoroughly consider the implications caused when a passenger's mobility device cannot be transported on their preferred flight or the carrier denies transport to the passenger solely based on the dimensions of the passenger's mobility device.

Simply offering a refund for the original fare does not fulfill the carrier's obligations to provide certain accommodations for a passenger's disability. If the carrier only offers a refund, and the passengers must then book a more expensive flight, the carrier is imposing additional charges for a needed service. Further, the restricted number of flight options for passengers with power wheelchairs points to a systemic problem in commercial aviation – the limited aircraft accessibility for wheelchair users and their assistive devices. Until aircraft can readily accommodate power wheelchairs and other assistive devices, carriers should be required to provide additional accommodations to passengers. In addition, even if the passenger purchased the ticket through a third-party reservation service/ticketing agent or with an alternate means of payment, e.g., carrier rewards points/miles, vouchers, or travel credit, carriers must cover the expenses for any additional accommodations.

¹¹⁸ Final Rule - Accessible Lavatories on Single-Aisle Aircraft, *supra* note 113.

¹¹⁹ Refunds and Other Consumer Protections, *supra* note 72.

Passengers with disabilities are not at fault when commercial air travel carriers do not consider the needs of passengers who use mobility devices. The status quo of discriminating against passengers who use wheelchairs will only be disrupted and improved when changes are made to finally accommodate carriage and stowage of mobility devices and providing safe and dignified boarding and assistance. The department must extend protections for passengers with disabilities beyond fare refunds and require carriers to provide additional accommodations to ensure passengers who use mobility devices are not denied travel by air or its benefits. In addition, when carriers deny travel for passengers with disabilities based on the dimensions of their mobility device or require the passenger to purchase a more expensive flight they could effectively exclude some passengers with mobility disabilities from air travel. Only with additional accommodations can the nondiscrimination provisions of the ACAA – a prohibition of denying transportation to passengers with disabilities – be upheld.

Furthermore, we recommend the department require all policies to be prominently displayed on the website, including any webpages devoted to passengers with disabilities, passengers who use mobility devices, and any time the passenger enters the size of their mobility device in reserving the ticket. Passengers must also be provided this information orally during the reservation process or when they are notified the aircraft cannot transport their mobility device. Any notifications of the passenger’s rights should explain, in plain language, that any fare refunds and provisions of alternate modes of transportation or other accommodations only apply to passengers on the same reservation. With this, passengers with disabilities will have notice that they should ensure all travel companions, including caregivers and family members, are booked under the same reservation code. Without this information, passengers and their travel companions may reserve tickets with separate purchases, especially if they must use different forms of payment. Non-immediate family caregivers may need to purchase their ticket separately and use their personal payment form. The carrier should also have the option for passengers to contact the carrier after reserving their tickets to have travel companions moved to their reservation code. Appropriate personnel – whether they are employees of airlines or of the airlines’ contracted services providers – must also be trained in these policies. Transparency of all policies is essential for travelers with mobility disabilities to be notified of their rights.

Question 1: How often does this issue arise for individuals with disabilities who travel by air with their personal wheelchairs and scooters?

Although exact statistics are not known for how often this issue arises, this issue could *potentially* arise with any flight for a mobility device user. But United Airlines’ recently implemented filter on their reservation pages, offers direct examples of the limited flight options for mobility device users. In testing this filter for flights between two hub airports, only twenty percent of the flights were marked as being able to accommodate the power wheelchair.¹²⁰ Another test search for

¹²⁰ A search for flights from Washington Dulles International Airport (IAD) to Los Angeles International Airport (LAX) was conducted. The search included a passenger with a wheelchair that is 25-inches wide and 33-inches high, which is smaller than many power wheelchairs, with a wet-cell battery. Only seven out of thirty five flight options indicated that the passenger’s mobility device could be transported on the aircraft. (Search conducted on May 7, 2024).

flights between non-hub airports, showed that no flight, out of the eleven flight options, could accommodate the passenger's mobility device.¹²¹ This effectively denies a passenger who uses a mobility device transportation by the carrier. Furthermore, the filter tool is based on the aircraft at the time of the search. If the aircraft changes, the traveler would not be aware their mobility device will not fit especially if the passenger does not indicate they will be traveling with a mobility device or provide the dimensions of the mobility device. In addition, a carrier cannot require the passenger to provide advance notice that they are traveling on the flight and use a mobility device.¹²² Thus, a carrier must take all necessary steps to accommodate the transport of the passenger's mobility device.

Question 2: Do any airlines currently offer individuals with disabilities rebooking on another flight on the same airline at no additional cost when their wheelchairs or scooters cannot be carried on their originally booked flights and if the subsequent flights have higher fares?

When a carrier sells a passenger who uses a mobility device a flight ticket, they enter into a contract agreeing to transport the passenger. The ACAA then requires carriers to transport the mobility aid of passengers with disabilities.¹²³ When the carrier cannot fulfill this contract, they must provide any needed accommodations to transport the passenger and their travel companions. Under a recent settlement with United Airlines, the department required the carrier to refund the fare difference for passengers who use the flight filter, their preferred flight cannot stow their wheelchair without the need to tip it, and they must purchase a more expensive flight that can accommodate their wheelchair.¹²⁴ The department should use this requirement as the baseline, especially since other carriers do not have flight filters, to require all carriers to pay the fare difference when passengers are forced to book a more expensive flight. Passengers should have the option to file for a fare refund immediately after booking the ticket to ensure there is no surcharge on the passenger with a disability.

Question 3: Do any airlines currently offer individuals with disabilities alternate transportation on other airlines or other modes of transportation (i.e., a train, bus, or rental car) at no additional cost when their personal wheelchairs and scooters cannot be carried on their originally booked flights? If so, how does this process work? Do airlines book the alternate transportation on other airlines or other modes of transportation or do individuals with disabilities have to first purchase the alternate transportation and then ask the airline to reimburse the costs? If not, what are the reasons or challenges to providing this accommodation?

¹²¹ A search for flights from Hector International Airport (FAR) in Fargo, North Dakota to Gerald R. Ford International Airport in Grand Rapids, Michigan indicated that zero of the eleven flights could fit a passenger's mobility device. The search included a passenger with a wheelchair that is 25-inches wide and 33-inches high, which is smaller than many power wheelchairs, with a wet-cell battery. (Search conducted on May 7, 2024).

¹²² 14 CFR 382.25.

¹²³ 14 CFR 382.121; 14 CFR 382.125(a).

¹²⁴ Agreement Between U.S. Department of Transportation and United Airlines (Sept. 27, 2023), available at <https://www.transportation.gov/sites/dot.gov/files/2023-09/United%20and%20DOT%20Agreement%20on%20Accessibility.pdf>.

Carriers do not typically offer alternative transit options on other modes of transportation. One wheelchair user shared her recent experience trying to book a flight. The carrier informed her they could not transport her mobility device and suggested that she would need to fly with a different carrier. As the airport was only serviced by a limited number of direct flights, she was unable to book an airline ticket and instead took a bus. Under the ACAA, carriers cannot exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services.¹²⁵ If a carrier cannot transport the individual's mobility device, this is a de facto denial of transport. Thus, they should be required to offer alternative transportation. The choices must be presented to the passenger with a disability, who can choose the accommodation. Alternative transportation options must meet the accessibility needs of the passenger with a disability, whether that be a new flight with the carrier or other airline, or another mode of transportation, e.g., a train, bus, or rental car.

Question 4: Do airlines currently offer individuals with disabilities the lower fare if the individual points out that he or she was unable to take the flight with a lower fare because his or her wheelchair could not fit in the cargo compartment?

United Airlines currently has a policy that refunds the fare difference if the passenger cannot take their preferred flight because the aircraft cannot accommodate their mobility device.¹²⁶ However, the process is burdensome and qualifiers may be impossible to meet. To qualify for a fare difference refund, the policy requires the passenger to show: (1) both flights were operated by United or United Express, despite the carrier being a member of a large global alliance network; (2) both flights must have the same origin and destination; and (3) both flights must be non-stop or have connections. Under these conditions, the possibility of qualifying for a fare refund may be limited or impossible. Furthermore, the policy is not prominently displayed, even after the passenger inputs the dimensions of their mobility device while searching for a flight.

With an already limited number of flight possibilities that can accommodate their mobility device, there may be no flights that have the same origin, destination, and be non-stop or with connections. Beyond these strict requirements, the passenger must show screenshots of the flight they were unable to take, which must be clear and easy to read. Only after they completed their trip do they have the option to request a refund of the fare difference. Even if the passenger's flight meets these conditions, failing to take a clear screenshot renders them ineligible. United's policy has strict conditions, that are not transparent to the customer, and place a surcharge on the customer if they must wait until after the completion of their flight to apply for a fare refund. Most other carriers have no posted policies.

¹²⁵ 14 CFR 382.11(a)(3).

¹²⁶ United Airlines, Wheelchair Assistance and Mobility Services, Mobility and Wheelchair FAQ, What if I Have to Take a More Expensive Flight so my Wheelchair Can Fit?, *available at* <https://www.united.com/en/us/fly/travel/accessibility-and-assistance/wheelchair-assistance.html>.

Question 5: Should the Department require airlines to rebook individuals with disabilities on another flight on the same airline at no additional cost when their wheelchairs or scooters cannot be carried on their originally booked flights? Should this be limited to flights on the same airline or should it be expanded to flights on other airlines or other modes of transportation (i.e., a train, bus, or rental car)? Should this only apply to instances when wheelchairs or scooters cannot fit on the passenger’s flight or should it apply to other types of disability accommodations (e.g., the passenger’s originally booked flight cannot accommodate the passenger’s seating needs; or the passenger’s originally booked flight does not have an accessible lavatory)?

When the carrier cannot provide services that the ACAA requires, e.g., transporting the passenger’s mobility device, the department must require carriers to accommodate the passenger, including rebooking the passenger and their travel companions, on a new flight, whether that be on the carrier’s flight or another airline, or providing a different mode of transportation. Carriers should not be permitted to deny transportation of a passenger’s mobility assistive device except under the circumstances outlined in 14 CFR 382.125(c).¹²⁷ Though not required, many carriers will provide rebooking at no additional cost for passengers when their flight is cancelled.¹²⁸ When carriers cannot transport a passenger’s mobility device, they are effectively canceling the flight for that person and their travel companions. Unlike passengers without disabilities, who may have a wide range of flight options when their flight is canceled, the options for passengers who use mobility devices may be limited. Without rebooking, the carrier could be denying air transportation for these passengers. To fulfill the purpose of the ACAA, the department must require carriers to rebook the passengers, even on another carrier.

In addition, most large U.S. carriers will provide meal cash/vouchers, complimentary hotel accommodations, and ground transportation to and from the hotel in the event of cancellations, when appropriate.¹²⁹ The provision of meal cash/vouchers, hotels, and accessible ground transportation must also be provided, when appropriate, if the passengers are rebooked. The air travel consumer rule gives passengers the option to accept rebooking or request a refund. In line with that guidance, passengers with disabilities should have the option to accept the new flight or another accommodation for themselves and their travel companions.

If there are no flight options, the carrier must provide alternative modes of transportation, e.g., train, bus, or rental car. As one search for flights showed that zero out of eleven would accommodate the passenger’s mobility device,¹³⁰ passengers with mobility devices needing these origins and destinations are denied air transportation by that carrier. To ensure passengers are not excluded from the benefits of air travel, the benefit to travel from one city to another, carriers

¹²⁷ 14 CFR 382.125(c) (“You must provide for the checking and timely return of passengers’ wheelchairs, other mobility aids, and other assistive devices...except (1) Where this practice would be inconsistent with Federal regulations governing transportation security or the transportation of hazardous materials.”).

¹²⁸ Airline Customer Service Dashboard (visited on May 10, 2024), *available at* <https://www.transportation.gov/airconsumer/airline-customer-service-dashboard>.

¹²⁹ *Id.*

¹³⁰ United Airlines Flight Search, *supra* note 123.

must provide alternative modes of transportation if they are unable to accommodate the passenger's mobility device. The department must also mandate that the air carrier cover any additional or increased cost of the alternative transportation, such as overnight accommodations, meals, and ground transportation necessary for the passengers to be transported to their destination city.

If there are multiple accessible modes of transportation to the destination, the passenger with a disability must have the option to choose the specific mode of transportation. Some seemingly accessible modes of transportation may not actually be a viable option for individuals with disabilities. For example, if a rental car is offered as alternative transportation and the rental car company does not have vehicles with hand controls immediately available, this may not be a feasible option. Not only should passengers always have the choice of their accommodation, they are also the ones who know what is needed for their safety.

Similar requirements should apply to any situation when the carrier cannot accommodate the passenger's disability for other reasons. The final rule on refunds and consumer protections applies when a carrier makes a significant change to the flight, which includes a change that impacts needed accessibility features.¹³¹ However, simply offering a refund does not fulfill the carrier's obligations to provide certain accommodations for a passenger's disability. If the carrier only offers a refund, and the passengers must then book a more expensive flight on another carrier, the passenger is being charged for required services. Thus any protections must be extended to any situation when the carrier cannot provide the facilities, equipment, or services that the ACAA requires. Furthermore, we recommend the department require all policies to be transparent to the customer, including being prominently displayed on the webpages, or being orally provided by personnel.

Question 6: Should the Department require airlines to refund the fare difference when passengers must book more expensive flights because their personal wheelchairs and scooters cannot be carried on cheaper flights? If so, in what situations should airlines be required provide refunds of the fare difference? Should airlines only provide a refund of the fare difference when the passenger's preferred flight itinerary that cannot accommodate the wheelchair and the more expensive flight itinerary that can accommodate the wheelchair have the same origin and destination, are on the same day, and have the same number of legs, stops, and connection points (if applicable)? Should airlines be required to provide a refund of the fare difference even if the preferred flight itinerary and the more expensive flight itinerary are not on the same day or do not have the same number of legs, stops, or connection points are different? Should a refund of a fare difference be required only if the preferred flight and the more expensive flight are offered by the same airline?

The department must require carriers to refund the fare difference when the carrier is unable to transport the passenger's mobility device. Carriers cannot impose charges for providing facilities,

¹³¹ Refunds and Other Consumer Protections, *supra* note 72.

equipment, or services that the ACAA requires.¹³² Since the ACAA requires carriers to transport the passenger's mobility device,¹³³ forcing the passenger to book a more expensive flight imposes an additional charge on the passenger for a service required by the ACAA. In addition, the ACAA requires carriers to provide passengers with the same benefits of air travel as those provided to passengers without disabilities.¹³⁴ Passengers who use mobility devices should not be denied the benefit of choosing a cheaper flight because of their disability. To avoid any additional charges to the passenger with a disability and to ensure the passenger has the same benefits as passengers without disabilities, i.e., the option to choose a cheaper flight, the carrier must refund the fare difference. Furthermore, any refunds must also extend to the passenger's travel companions.

The qualifications for a fare refund cannot be so limited that a passenger is denied this accommodation. For example, under United Airlines' policy, the possibility of qualifying for a fare refund may be limited or impossible. With an already limited number of flight possibilities that can accommodate their mobility device, there may be *no* flights that have the same origin, destination, and are non-stop or have connections. A carrier may use the same type of aircraft for specific legs of a flight or between specific airports. If these aircraft cannot transport the passenger's mobility device, the passenger may not even have the option to choose a similar flight at all. The passenger may also be forced to choose a different carrier solely based on the type of aircraft used by their preferred carrier.

Furthermore, many other carriers do not have flight filters for the dimensions of mobility devices and there are no posted policies for size requirements or indication on whether an aircraft can transport their device. Instead, they must wait for a notification after already purchasing their ticket that their mobility aid cannot be transported, sometimes when they are already at the airport. Refunds cannot be limited to only when the new flight has the same origin and destination, are on the same day, and have the same number of legs, stops, and connection points. The department must implement broad requirements for refunds of fare differences, such as extending flight options to nearby airports. Otherwise, some passengers will never be eligible for the refund and not have the benefit of electing a cheaper flight, a benefit offered to passengers without disabilities.

The department considers it a deceptive or unfair practice or method to fail or refuse to make proper refunds promptly when services cannot be performed as contracted or representing that such refunds are obtainable only at some other point, thus depriving persons of the immediate use of the money to arrange other transportation, forcing them to suffer unnecessary inconveniences and delays, or requiring them to accept transportation at higher cost, under less desirable circumstances, or on less desirable aircraft than that represented at the time of sale.¹³⁵ To comply with similar air travel consumer protections, the department must require policies that carriers must refund any fare difference for a more expensive flight and allow the passenger to

¹³² 14 CFR 382.31(a).

¹³³ 14 CFR 382.121; 14 CFR 382.125(a).

¹³⁴ See 14 CFR 382.11(a)(3) ("You must not exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons...").

¹³⁵ 14 CFR 399.80(l).

submit for a refund immediately upon paying for their ticket. These refunds should be prompt, i.e., seven business days for credit card purchases and twenty calendar days for other forms of payment, in alignment with air travel consumer protections.¹³⁶ Furthermore, we recommend the department require all policies to be transparent to the customer, including being prominently displayed on the webpages, or being orally provided by personnel.

Question 7: Should airlines be permitted to require passengers to take certain steps to obtain a refund of the fare difference? If so, what are those steps? What types of proof or documentation, if any, should passengers with disabilities be required to submit to airlines when requesting a lower fare or seeking a reimbursement of the fare difference?

Carriers must not impose unreasonable barriers to obtaining a refund in the fare difference. Beyond United Airlines' strict requirements for a refund, the passenger must also provide screenshots of the flight they were unable to take, which must be clear and easy to read. Only after they completed their trip do they have the option to request a refund of the fare difference. The policies are also not transparent to the customer. Even if the passenger's flight meets the strict conditions, failing to take a clear screenshot renders them ineligible. To avoid deceptive or unfair practice or methods, the carriers must permit passengers who qualify for a refund an easy process to do so.

Carriers can still request reasonable documentation. They could request the passenger to provide the dimensions of their mobility device. The carrier could also request that the passenger provide documentation of the fare of the preferred flight they would have booked if their mobility device could be accommodated on that flight. However, the type of documentation cannot be limited, for example, by only accepting a screen shot of the fare price. Not all passengers book their tickets online or solely on the carrier's website. Furthermore, the ability to take a screenshot of the fare may not be accessible for the passenger due to their disability or lack of electronic devices with that technology. In the alternative, passengers must be able to submit any type of documentation to prove the fare rate, e.g., providing the fare rate and the date of their search or call; printed copies of the fare rates; photos of the rates, that are not necessarily screenshots; correspondence with reservation personnel with the fare rate; or any other type of documented evidence showing the rate. To ensure that new rules, under this rulemaking, and the consumer protection rule are consistent, we recommend the consumer protection rule be adopted by incorporation, such as the prohibition against carriers retaining a processing fee when refunds are issued.

Question 8: Once a passenger completes the necessary steps and submits all the necessary documentation, should airlines be required to provide passengers a refund of the fare difference within seven days of receiving necessary documentation when ticket was purchased by credit card? Why or why not?

¹³⁶ Refunds and Other Consumer Protections, *supra* note 72.

The consumer refunds final rule requires refunds to be provided within seven business days, for credit card purchases, and within twenty calendar days for other forms of payment. We recommend any refunds under the ACAA be consistent with these timelines.

Question 9: What are the potential benefits of these proposals to passengers who use wheelchairs and scooters?

Adopting requirements to refund the fare differences will allow passengers who use mobility aids to have the same air travel benefits as passengers without disabilities, the option to elect cheaper flights. Furthermore, requiring carriers to accommodate passengers when they cannot transport their mobility device, e.g., through refunds, rebooking, or providing alternative modes of transportation, will ensure that passengers who use mobility devices have the same opportunities and benefits to air travel as those without disabilities. The passenger must always have the option to choose the accommodation that best safeguards their safety and dignity. Providing the same accommodations for the passenger's travel companions is also essential to safeguard the passenger's safety and dignity. The passenger may need assistance from these individuals during their travels or at their destination. Also, without offering the same accommodations to the passenger's travel companions, the passenger with a disability may be forced to travel separately and not receive the same benefits to air transportation as their companions without disabilities.

Thank you for the opportunity to provide comments on this important matter. If you have any questions, please contact Heather Ansley, Chief Policy Officer, with PVA at HeatherA@PVA.org or Danica Gonzalves, Senior Advocacy Attorney, with PVA at DanicaG@PVA.org.

Sincerely,

Access Living
Access Ready Inc.
All Wheels Up
ALS Association
American Association of People with Disabilities
American Council of the Blind
Association of People Supporting Employment First (APSE)
Autistic Self Advocacy Network
Autistic Women & Nonbinary Network
Blinded Veterans Association
Christopher & Dana Reeve Foundation
Cure SMA
Disability Law Center
Disability Law Center (MA)
Disability Law Colorado
Disability Rights Mississippi
Disability Rights Arizona
Disability Rights Arkansas

Disability Rights California
Disability Rights Center - NH
Disability Rights Education & Defense Fund
Disability Rights Maine
Disability Rights Michigan
Disability Rights New Mexico
Disability Rights North Carolina
Disability Rights Oregon
Disability Rights Pennsylvania
Disability Rights South Carolina
Disability Rights Tennessee
Disability Rights Vermont
DRC Kansas
Epilepsy Foundation
Family Voices
Hand in Hand: The Domestic Employers Network
Hawaii Disability Rights Center
Hearing Loss Association of America
I AM ALS
Indiana Disability Rights
Mississippi Coalition for Citizens with Disabilities
Muscular Dystrophy Association
National Council on Independent Living
National Disability Institute
National Disability Rights Network (NDRN)
National Multiple Sclerosis Society
Native American Disability Law Center
North Dakota Protection & Advocacy Project
Paralyzed Veterans of America
Parent Project Muscular Dystrophy
RespectAbility
Service Employees International Union
The Arc of the United States
The Seeing Eye, Inc.
United Spinal Association
World Institute on Disability
Wounded Warrior Project