



October 2020

AVIATION CONSUMER PROTECTION

Increased Transparency Could Help Build Confidence in DOT's Enforcement Approach

GAO Highlights

Highlights of [GAO-21-109](#), a report to congressional committees

Why GAO Did This Study

Consumer advocates, airlines, and other stakeholders have raised concerns about how DOT enforces aviation consumer protection requirements. DOT has the authority to enforce requirements protecting consumers against unfair and deceptive practices, discrimination on the basis of disability or other characteristics, and other harms.

The FAA Reauthorization Act of 2018 contained a provision for GAO to review DOT's enforcement of consumer protection requirements. This report examines: (1) DOT's approach to the enforcement of aviation consumer protections and the results of its efforts, and (2) selected stakeholder views on this approach and steps DOT has taken to address identified concerns. GAO reviewed DOT data on consent orders and consumer complaints; reviewed other DOT documentation related to its enforcement program; interviewed DOT officials and selected industry and consumer stakeholders, including advocacy organizations, which we identified from prior work and a literature review; and identified leading practices for regulatory enforcement.

What GAO Recommends

GAO is making two recommendations, including: that DOT publish information describing the process it uses to enforce consumer protections, and that DOT take additional steps to provide transparency into the results of its efforts. DOT concurred with these recommendations.

View [GAO-21-109](#). For more information, contact Andrew Von Ah at (202) 512-2834 or vonaha@gao.gov.

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What GAO Found

The Department of Transportation's (DOT) enforcement approach generally uses a range of methods to encourage compliance with consumer protection regulations, including conducting outreach and information-sharing, issuing guidance, and sending non-punitive warning letters for those violations that do not rise to the level that warrants a consent order. DOT usually enters into consent orders when it has evidence of systematic or egregious violations. Such orders are negotiated between DOT and violators (e.g., airlines) and typically include civil penalties. DOT officials see benefits from using consent orders, which can include credits for actions taken to benefit consumers or to improve the travel environment. Annual consent orders increased from 20 in 2008 to 62 in 2012, but then generally declined to a low of eight in 2019. GAO's analysis showed that the decline in consent orders was most marked among those issued against non-air carrier entities (e.g., travel agents), those addressing certain types of violations such as advertising, and orders containing smaller civil penalty amounts. DOT officials said that the agency did not change its enforcement practices during this time.

Examples of DOT's Compliance Promotion and Enforcement Efforts



Compliance promotion: Activities to encourage regulated entities to comply with consumer protections, such as outreach, responses to frequently asked questions, guidance, scheduled meetings, and other communication with regulated entities.



Non-punitive enforcement: Enforcement actions, such as (unpublished) warning emails or letters addressed to individual violators. These warnings are designed to help violators achieve compliance and to resolve issues before they require punitive enforcement.



Punitive enforcement: Legal actions before an administration law judge (rare) and consent orders (common) to address systematic or egregious violations. Negotiated with violators, consent orders are published and seek, among other things, to deter similar violations.

Source: GAO analysis of Department of Transportation (DOT) information. | [GAO-21-109](#)

Airlines and consumer advocates GAO interviewed said that DOT's enforcement process lacked transparency, including into how investigations were conducted and resolved and about when and why DOT takes enforcement actions. Moreover, DOT publishes limited information related to the results of its enforcement activities, notably information about the number and type of consumer complaints it receives as well as issued consent orders. DOT does not publish other information such as aggregated data about the number or nature of open and closed investigations or issued warning letters. DOT is taking some actions to increase transparency, such as developing a publicly available handbook, but none of those actions appears to fully address the identified information gaps such as information about the results of investigations. Some other federal agencies provide more information about enforcement activities, including publishing warning letters or data about such letters. Publishing additional information about how DOT conducts investigations and enforcement, and about the results of enforcement activities, could improve stakeholders' understanding of DOT's process and help build confidence in its approach.

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Abbreviations

A4A	Airlines for America
ACAA	Air Carrier Access Act of 1986
ACPAC	Aviation Consumer Protection Advisory Committee
COVID-19	Coronavirus Disease 2019
DOT	Department of Transportation
FAA	Federal Aviation Administration
FMCSA	Federal Motor Carrier Safety Administration
OACP	Office of Aviation Consumer Protection
OECD	Organisation for Economic Cooperation and Development
OMB	Office of Management and Budget
PHMSA	Pipeline and Hazardous Materials Safety Administration
RAA	Regional Airline Association
TSA	Transportation Security Administration

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October 13, 2020

The Honorable Roger F. Wicker
Chairman
The Honorable Maria Cantwell
Ranking Member
Committee on Commerce, Science and Transportation
United State Senate

The Honorable Peter A. DeFazio
Chairman
The Honorable Sam Graves
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

Each year millions of passengers depend on the U.S. aviation system to safely transport them to their destinations, and the vast majority of these passengers travel without incident. In some cases, however, passengers have been negatively impacted by service interruptions such as delayed or cancelled flights, mishandled or lost baggage, or have been subjected to discrimination, among other things. Such incidents may result in a minor inconvenience, or they may impose serious hardships on affected passengers. The Office of Aviation Consumer Protection (OACP) within the Department of Transportation (DOT) enforces laws and regulations designed to protect consumers in several ways. In our November 2018 report, we focused on two such activities: DOT's efforts to help ensure airlines' compliance with consumer protection requirements and to educate passengers about their rights.¹ DOT also issues regulations on aviation consumer protection and civil rights, investigates alleged violations of federal laws and regulations, and, in the most serious cases, takes enforcement action. This report builds on our prior work with a focus on DOT's enforcement of consumer protection regulations.

Consumer advocates, airlines, and other stakeholders have raised concerns about how DOT enforces consumer protections, including how OACP makes enforcement decisions, among other issues. In addition to these longer-standing concerns, the Coronavirus Disease 2019 (COVID-

¹GAO, *Airline Consumer Protections: Additional Actions Could Enhance DOT's Compliance and Education Efforts*, [GAO-19-76](#) (Washington, D.C.: Nov. 20, 2018).

19) pandemic's impact on the aviation industry in 2020 generated increased attention on DOT's enforcement of consumer protections. During this time, the number of consumer complaints sent to DOT increased many-fold and the nature of those complaints changed, with many addressing ticket refunds. Concurrently, airlines faced unprecedented service disruptions posed by the pandemic and associated financial challenges.

Section 411 of the FAA Reauthorization Act of 2018 provides for GAO to conduct a study to consider and evaluate DOT enforcement of aviation consumer protection laws and regulations.² This report:

- describes DOT's approach to the enforcement of aviation consumer protections and the results of its efforts, and
- examines selected stakeholders' views on DOT's enforcement approach and steps DOT has taken to address identified concerns.

To collect information on DOT's approach to enforcing consumer protections, we identified applicable laws and regulations and reviewed DOT documentation. We also interviewed officials with OACP (formerly the Office of Aviation Enforcement and Proceedings). To understand the results of DOT's enforcement from 2008 through 2019, we analyzed agency data on consumer complaints submitted to DOT and enforcement actions, notably consent orders, which are a type of settlement in which an entity, such as an airline, agrees to cease and desist from future violations and, in most cases, pay a civil penalty or complete specified corrective actions in order to avoid litigation before an administrative law judge. We reviewed the data to categorize the orders and complaints by various characteristics, such as by types of violation. To assess the reliability of DOT's data, we reviewed DOT documentation, analyzed data to identify any outliers and look for inconsistencies, and interviewed OACP officials about how the data were collected and used. We determined that the data were sufficiently reliable for our purposes.

To collect stakeholders' views on DOT's enforcement approach, we interviewed advocates for consumers (five groups); persons with disabilities (two groups); and anti-discrimination advocacy organizations (two groups); as well as industry stakeholders including airline representatives (four airlines); Airlines for America (A4A); the Regional

²Pub. L. No. 115-254, § 411, 132 Stat. 3186, 3331.

Airline Association (RAA); an industry attorney; and an association representing travel agents.³ These selected stakeholders represent a variety of perspectives, but they do not represent everyone affected by DOT's enforcement of consumer protections. We identified stakeholders to interview using prior GAO work and a literature review. We asked these selected stakeholders about DOT's enforcement role broadly, including about potential obstacles to effective enforcement. We also used overarching principles of regulatory enforcement and inspections—identified through a literature review—to facilitate a discussion of broad themes for effective and efficient enforcement during these interviews. These principles were developed by the Organisation for Economic Cooperation and Development (OECD) to provide a framework to support initiatives to improve regulatory enforcement.⁴

To assess steps DOT has taken that address concerns identified in interviews with selected stakeholders, we looked at federal standards and criteria related to those aspects of enforcement we discussed with stakeholders, including federal standards for internal control and open governance and interviewed OACP officials. In particular, we assessed DOT's decision-making procedures against applicable Standards for Internal Control in the Federal Government for communicating key information internally and externally, as well as the principles of transparency, participation, and collaboration set forth in the Office of Management and Budget's (OMB) *Open Government Directive*.⁵ We also reviewed enforcement policies, fact sheets, and other public information from a variety of federal agencies, including other agencies within DOT to determine how these policies compared to those of OACP. See appendix III for more information on our scope and methodology.

We conducted this performance audit from May 2019 to October 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain

³See appendix III for the specific advocacy groups, airlines, and other industry stakeholders we selected.

⁴The OECD is an international organization, founded in 1961, which brings together member countries (including the United States) and partners that collaborate closely on key global issues at national, regional, and local levels. See OECD (2014), *Regulatory Enforcement and Inspections, OECD Best Practice Principles for Regulatory Policy*, OECD Publishing (<http://dx.doi.org/10.1787/9789264208117-en>).

⁵See GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014) and OMB, *Open Government Directive*, [Memorandum M-10-06](#) (Dec. 8, 2009).

sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Aviation Consumer Protections under Federal Law








DOT is responsible for ensuring airlines and other entities engaged in air transportation or the sale of air transportation—such as travel agents and tour operators—comply with a number of federal consumer protections for airline passengers, including civil rights requirements (see fig. 1). Some consumer protections are established in federal statute, such as the Air Carrier Access Act of 1986 (ACAA), as amended, which prohibits airlines from discriminating against individuals based on a disability.⁶ Other consumer protection regulations have been promulgated by DOT under its statutory authority to prohibit unfair or deceptive practices, or unfair methods of competition by airlines, among other activities.⁷ Under this authority, DOT has promulgated various regulations to enhance certain consumer protections, such as those addressing tarmac delays and prompt refunds.⁸ OACP monitors compliance with and investigates potential violations of DOT’s aviation consumer protection requirements.

⁶Pub. L. No. 99-435, 100 Stat. 1080 (Oct. 2, 1986) (codified as amended at 49 U.S.C. § 41705).

⁷See 49 U.S.C. § 41712.

⁸14 C.F.R. § 259.4 (tarmac delay contingency plans) and 14 C.F.R. § 259.5 (customer service commitments, including prompt refunds). For more information about the consumer protection regulations that DOT enforces, see [GAO-19-76](#).

Figure 1: Examples of Aviation Consumer Protections

	Full fare advertising: Published airline and ticket agent fares must include all mandatory taxes and fees.
	Unauthorized operations: Air carriers must have authorization from DOT before providing or advertising air transportation.
	Tarmac delay: Unless there is a safety, security or air traffic control related reason, airlines cannot keep passengers on the tarmac for more than three hours for a domestic flight, or four hours for an international flight, without providing an opportunity to deplane, and must provide food and water within two hours of a delay.
	Disability: Airlines cannot discriminate against passengers on the basis of disability, and must make reasonable accommodations for their needs.
	Liability for mishandled baggage: Airlines cannot limit their liability for lost or damaged baggage to less than set amounts, and must provide proper notice of liability limits.
	Accounting and data reporting: Foreign and domestic air carriers must follow certain accounting practices and report certain data to DOT.
	Oversales: Air carriers must request volunteers for denied boarding when a flight is oversold, must provide compensation to passengers involuntarily denied boarding, and must provide a statement describing the terms of the compensation.
	Refunds: Airlines and ticket agents must adhere to certain refund requirements, including processing refunds within stipulated time periods.
	Discrimination: Air carriers are prohibited from discriminating against passengers based on race, color, national origin, religion, sex, or ancestry.
	Customer service plan: Certain airlines must adopt and adhere to customer service plans with 12 required elements.

Source: GAO analysis of statutes and U.S. Department of Transportation regulations. | GAO-21-109

Note: Here “air carriers” includes state carriers or U.S. carriers and foreign air carriers, although under 49 U.S.C. § 40102(a) “air carrier” is defined as “a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.”

In its oversight and enforcement role, DOT does not represent individual consumers alleging violations of federal consumer protections, but rather seeks to protect consumers in the aggregate. Further, individual consumers cannot bring lawsuits themselves under applicable federal statutes, and state consumer protection laws generally do not apply to airline passengers, because of federal preemption.⁹ Consequently, although consumers may pursue claims for breach of contract,

⁹The Airline Deregulation Act of 1978 largely deregulated U.S. airlines’ business practices, including removing federal control over airline pricing and routes, and state and local governments are generally preempted by federal law from regulating airlines’ prices, routes, or service. See 49 U.S.C. § 41713(b)(1).

passengers and others, when they may have been harmed, are limited in their ability to sue under state or local consumer protection laws. Further, according to OACP officials, DOT does not have the ability to require compensation for passengers or other aggrieved consumers in the absence of a negotiated agreement, such as a consent order, with the violator.¹⁰

DOT's Consumer Protection Activities and Staff

The 16 attorneys and 14 analysts and consumer affairs specialists in OACP conduct the following five key activities to help ensure regulated entities comply with consumer protection requirements:

- **Providing compliance assistance to the industry.** OACP staff assist regulated entities in complying with requirements by publishing guidance and other information, such as topic-specific webpages, and responding to questions and requests for information from regulated entities.
- **Processing consumer complaints.** DOT receives consumer complaints via its website, by mail, or through a telephone hotline. OACP analysts review each complaint, code it based on the consumer's perception of events, and transmit it to the relevant entity, such as an airline, for its response.¹¹ When the analysts identify potential systematic violations, or particularly egregious violations, they can refer those violations to OACP attorneys for investigation and possible enforcement action. The vast majority of complaints are not found to be potential violations. From 2008 through 2019, OACP staff processed over 173,000 such complaints, and as of February 2020, they had identified over 8,100 potential violations.¹² In our November 2018 report, we recommended, and DOT concurred, that it assess its procedures and training material for coding passengers' complaints to help ensure coding consistency and that potential

¹⁰See 49 U.S.C. § 46301.

¹¹The analysts categorize the complaints by the predominant issue identified by the passenger (e.g., disability, advertising, etc.) and by whether the complaint includes a potential violation. Using the analysts' coding and categorization of the complaints it receives, DOT publishes aggregated complaint data in its monthly *Air Travel Consumer Report*. The report is designed to assist consumers with information on the quality of services provided by the airlines.

¹²As of June 2020, data on potential violations were incomplete, particularly for 2019, given the amount of time needed to review and process complaints. See appendix II for more information regarding consumer complaints received by DOT from 2008 through 2019.

consumer protection violations are properly identified. In that report, we found that DOT’s guidance for coding consumer complaints did not consistently include definitions or examples that illustrate appropriate use or help analysts select among the various complaint categories.¹³

- **Inspecting airlines.** OACP analysts and attorneys have conducted two types of inspections to determine airlines’ compliance with consumer protection requirements. Since 2015, on-site inspections of airlines’ operations at airports have examined the airline staff’s knowledge of certain consumer protection requirements and the availability and accuracy of signage and documentation. OACP conducted in-depth inspections at airline headquarters starting in 2008, but has not done so since September 2016 due, in part, to a shift in focus to statutorily mandated priorities, which limited staff available to conduct inspections, and budget unpredictability, according to OACP officials.¹⁴
- **Investigating potential violations.** OACP investigates potential violations identified through inspections, consumer complaints, reported data (e.g., airline on-time performance and mishandled baggage), referrals from entities within DOT, and other sources, either individually or in combination. According to OACP officials, attorneys determine whether to open an investigation into identified potential violations by weighing numerous factors, including whether they believe an airline or other entity is systematically violating consumer protection requirements. Such a systematic violation could establish a “pattern or practice” of noncompliance.¹⁵ DOT is required to investigate every complaint alleging a violation of the ACAA, and the

¹³In 2018, we recommended that DOT should assess its procedures and training manuals for coding airline passengers’ complaints. GAO closed this recommendation in August 2020. See [GAO-19-76](#).

¹⁴From 2008 through 2016, OACP analysts and attorneys conducted inspections at airline headquarters to assess compliance with a variety of regulated areas such as the inclusion of certain information on the airline’s website and the proper reporting of data to DOT (e.g., mishandled baggage and on-time performance data), as well as examining customer service policies and passenger complaints received directly by the airlines, among other things.

¹⁵DOT has not specifically defined what constitutes a “pattern or practice,” but DOT documentation indicates that a practice generally requires more than one isolated incident, although a single incident could indicate a practice if it reflects company policy, training, or lack of training.

agency has committed to doing the same for potential violations alleging discrimination.¹⁶

- **Pursuing enforcement.** When investigations result in a determination that a violation occurred, DOT may pursue enforcement through a variety of methods, such as warning letters or consent orders. See below for further information.¹⁷

DOT's Enforcement Approach Focuses on Improving Compliance and Reserves Consent Orders for Egregious or Systematic Violations

DOT Uses Industry Outreach, Warning Letters, and Other Efforts to Strengthen Compliance

As described by OACP officials, DOT relies on a cooperative approach to protect consumers, seeking to increase industry compliance through flexible means such as guidance, one-on-one compliance assistance to resolve consumer complaints, and warning letters, while pursuing enforcement if warranted to deter misconduct, typically by negotiating consent orders containing civil penalties with violators. OACP officials said that they believed this approach works because it results in regulated entities addressing problems earlier—and before issues necessitate an enforcement action or cause greater consumer harm—and often with more benefits for consumers than if OACP used a strictly punitive approach. The officials said that they believe encouraging regulated entities to provide good customer service may enhance the “air travel environment” for passengers and can result in airlines and others exceeding minimum legal requirements. OACP officials explained,

¹⁶If such an investigation finds a violation, OACP will send a warning letter to the violator. As with other types of violations, the agency may pursue a further investigation and possible additional enforcement if it identifies systematic or egregious violations.

¹⁷For investigations that do not identify a violation, DOT may close the case with a letter of no violation or an administrative closure, among other results. Administrative closures include cases closed with an e-mail warning of violations, a finding of no violation, or a finding of insufficient evidence.

however, that DOT's ability to pursue consent orders or litigation is a critical component of its approach, because such actions help ensure regulated entities cooperate with DOT and deter unlawful practices.

Although, as noted above, DOT does not does not represent individual consumers alleging violations of federal consumer protections, OACP may take some actions to address individual consumers' issues under certain circumstances. DOT recommends that consumers raise concerns with airlines or other regulated entities first, which OACP officials said can often lead to a faster resolution. If a concern is not adequately addressed, however, DOT encourages consumers to file a complaint with DOT. In some cases, OACP staff may communicate informally with regulated entities to resolve issues before they necessitate an enforcement action or cause greater consumer harm, according to OACP officials.

OACP uses various measures to encourage broader industry compliance, such as issuing guidance, notices, or frequently-asked-questions, meeting and sharing information with regulated entities, and working with regulated entities to address compliance problems.¹⁸ For example, OACP officials said that they may meet with regulated entities after issuing new regulations to inform them of their obligations and answer any questions they may have about how to comply. In the case of a regulation addressing website accessibility, after OACP staff found that many airline websites did not comply, officials met with airlines and disability advocates to discuss the regulation and how airlines could become compliant.¹⁹ The officials said that through this type of collaborative process, they believed that better accessibility of the airlines' websites was obtained for passengers with disabilities than would have resulted if DOT had used a more punitive approach.

DOT has issued hundreds of warning letters (and warning emails) since 2008 to address violations that have not yet risen to the level of a pattern or practice, according to agency officials, or when violations have not yet

¹⁸OACP has issued a range of guidance on complying with its regulations, such as specific issue-area enforcement policies, frequently asked questions, and notices—some of which are publicly available on the agency's website. As an example, see DOT, *Enforcement Policy Regarding Reporting of Mishandled Baggage and Wheelchair Data* (Oct. 31, 2018).

¹⁹14 C.F.R. § 382.43(c) (website accessibility requirements).

demonstrated consumer harm.²⁰ DOT intends these letters to be non-punitive and to help violators achieve compliance, according to officials. The letters warn the recipients that DOT may take enforcement action if DOT finds further similar violations in the future—which could pertain to both the past and newly identified violations—and may also provide information on what the recipient needs to do to comply. DOT has issued warning letters to both individual regulated entities and, in certain circumstances, to a segment of the aviation industry more broadly. For example, in 2011 DOT sent a warning letter to the association that represents the major global distribution systems in the United States warning about potentially deceptive airline or schedule information online.²¹

In 2016, when airlines self-reported violations of the DOT’s new or impending disability regulations, DOT began entering into settlement agreements with airlines under which the airlines agreed to take actions that go above and beyond minimum legal requirements and DOT agreed to forego enforcement for a period of time, including not issuing a consent order or assessing any civil penalties. For example, after three airlines told DOT they would not be ready to comply with new requirements for accessible kiosks, DOT exercised its prosecutorial discretion to allow the airlines to delay their compliance in exchange for the installation of a larger number of accessible kiosks than would otherwise have been required.²² OACP officials stressed that such agreements are an option following the self-disclosure of non-compliance with applicable regulations.

²⁰In addition, as noted above, DOT sends a warning letter to the relevant entity whenever an investigation of a disability complaint finds a violation; DOT considers this letter an “informal warning of violation.”

²¹Global distribution systems are companies whose computer systems display airline flight schedule and fare information so that travel agents can query it to “book” (i.e., reserve and purchase) flights for consumers. The letter noted that DOT had identified occasions when through these systems online travel agents may have intentionally biased or distorted airline airfare and schedule information, and warned that DOT could take enforcement action to ensure consumers did not receive deceptive information.

²²Nondiscrimination on the Basis of Disability in Air Travel: Accessibility of Web Sites and Automated Kiosks at U.S. Airports, 78 Fed. Reg. 67882 (Nov. 12, 2013) (codified at 14 C.F.R. pt. 382, 399; 49 C.F.R. pt. 27).

DOT Responded to the COVID-19 Pandemic by Giving Airlines Additional Flexibility in Complying with Certain Consumer Protections

From March through May 2020, consumers filed vastly more complaints with DOT than usual in those months, many of which alleged, among other things, that airlines did not provide adequate refunds for flights cancelled as the result of the COVID-19 pandemic. These complaints followed the drastic curtailing of air travel as airlines significantly reduced their flight schedules and passengers cancelled bookings.²³ At the same time, airline flight cancellations, and consumers' decisions to cancel bookings, caused many consumers to seek refunds from the airlines. DOT data show that consumers filed 46,834 complaints from March through May 2020, including 41,043 refund complaints—a huge increase over the 3,634 total complaints and 433 refund complaints made during the same period a year before. DOT requires airlines to promptly refund a ticketed passenger when the airline cancels the passenger's flight or makes a significant change to the passenger's flight schedule and the passenger chooses not to accept any alternatives offered by the airline, such as a voucher for future travel.²⁴ However, passengers who purchase non-refundable tickets are generally not entitled to refunds or vouchers for trips they cancel themselves.

Beginning in March 2020, DOT issued a series of guidance documents to address the effects of COVID-19.²⁵ This guidance often gave airlines additional flexibility, such as allowing airlines to screen passengers from certain countries and, under certain circumstances, to deny boarding to

²³For example, Transportation Security Administration (TSA) data show that only 10.5 million passengers passed through TSA checkpoints in April and May 2020—only 7 percent of the 144.6 million passengers who did so a year earlier.

²⁴Airlines must provide refunds within 7 business days if a passenger paid by credit card, or within 20 business days if a passenger paid by cash or check. (Codified at 14 C.F.R. § 259.5(b)(5)). DOT has not defined the terms "cancellation" or "significant change," and DOT has allowed the airlines to develop their own reasonable interpretations of those terms, but airlines cannot retroactively change them to disadvantage passengers. Airlines have developed differing definitions of the amount of delay that constitutes a "significant change." See GAO, *Commercial Aviation: Information on Airline IT Outages*, [GAO-19-514](#) (Washington, D.C.: June 12, 2019).

²⁵See, e.g., DOT, *Enforcement Notice Regarding Denying Boarding by Airlines of Individuals Suspected of Having Coronavirus* (Mar. 2, 2020); DOT, *Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel* (Apr. 3, 2020); and DOT, *Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel* (May 12, 2020).

them when they displayed symptoms of COVID-19.²⁶ In April 2020, DOT issued guidance stating that the agency had not changed its refund requirements, but that DOT would not take enforcement action against airlines that had provided passengers travel vouchers (in lieu of refunds to which they were entitled) in light of the challenges facing the industry. However, to avoid future enforcement action airlines were required to correct any misinformation that had been disseminated about refund eligibility and to ensure that their personnel understood the circumstances under which refunds must be made.²⁷ Subsequent DOT guidance clarified that the previous absence of a requirement for airlines to provide refunds or travel vouchers to passengers who purchased non-refundable tickets and cancelled their own travel still applied, even if the passengers cancelled their travel in response to health or safety concerns related to COVID-19.²⁸

DOT Uses Consent Orders to Address Systematic or Egregious Violations Because They Offer Greater Flexibility to Craft Remedies and Require Fewer Agency Resources

Rather than taking an alleged violation case before an administrative law judge, DOT has long relied on negotiated consent orders when an enforcement action is deemed appropriate, such as for allegations of patterns or practices of violations or (more rarely) egregious cases that may indicate larger problems or that caused substantial harm to the public. OACP officials said that the agency considers a variety of factors—such as the frequency and extent of consumer harm—when determining whether to pursue enforcement actions. However, the officials said that the determination is ultimately based on a review of all of the factors of each case and no two cases have the same factors or are exactly comparable. As a result, the decision to pursue enforcement

²⁶DOT, *Enforcement Notice Regarding Denying Boarding by Airlines of Individuals Suspected of Having Coronavirus* (March 2, 2020). These countries were China, South Korea, Iran, Italy, and Japan, which were under travel health notices from the Centers for Disease Control and Prevention in March 2020.

²⁷DOT, *Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel* (Apr. 3, 2020). More specifically, the notice required that the airline (1) contacts, in a timely manner, the passengers provided vouchers for flights that the carrier cancelled or significantly delayed to notify those passengers that they have the option of a refund; (2) updates its refund policies and contract of carriage provisions to make clear that it provides refunds to passengers if the carrier cancels a flight or makes a significant schedule change; and (3) reviews with its personnel, including reservationists, ticket counter agents, refund personnel, and other customer service professionals, the circumstances under which refunds should be made.

²⁸DOT, *Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel* (May 12, 2020).

actions cannot be reduced to an exact science, according to the officials. OACP officials said they consider how long the conduct persisted and draw distinctions between unintentional mistakes, which DOT generally seeks to redress by working with the airline or other regulated entity instead of pursuing a consent order, and violations that establish patterns or practices of noncompliance.²⁹

According to OACP officials, using consent orders has a number of advantages. The officials said that unlike legal actions before an administrative law judge, which if successful would only result in a civil penalty paid to the U.S. Treasury, consent orders allow for greater flexibility in crafting a resolution. Accordingly, DOT only had two cases resolved by an administrative law judge from 2008 through 2019, a period during which DOT negotiated 380 consent orders. Although OACP officials said that they cannot require violators to provide compensation to consumers, consent orders can allow DOT to negotiate for some form of compensation, such as travel vouchers, or other benefits for consumers, in addition to any civil penalty assessed. The officials said that regulated entities are motivated to provide compensation, sometimes even before any enforcement action is commenced, so that they can request consideration of amounts spent on compensation when negotiating the amount of a civil penalty. Consent orders also enable DOT to negotiate provisions that encourage future compliance, such as potential penalties that could apply if an entity commits another similar violation, or commit the entity to certain improvements to its operations that go above and beyond regulatory requirements. The officials also noted that negotiating consent orders is more cost-effective and requires fewer resources than legal action. Further, DOT publishes its consent orders, and OACP officials believe that in doing so these orders can have a deterrent effect on both individual violators and the entire industry, as well as educating the industry about what conduct DOT considers to be in violation of consumer protection requirements. Finally, OACP officials asserted that violators tend to be willing to enter into a negotiated consent order because of OACP's ability to pursue actions in front of an administrative law judge when appropriate.

Based on our review, DOT has used consent orders to address violations affecting both small and large numbers of consumers, as well as some

²⁹As previously noted, DOT generally views a "practice" as more than one isolated incident, although a single incident could indicate a practice if it reflects company policy, training, or lack of training.

violations that could cause potential consumer harm but did not include examples of actual harm to specific consumers. For example:

- **Violations against multiple consumers.** A DOT investigation resulting in a 2019 consent order examined one airline’s operations and determined that 13 flights carrying 1,534 passengers had violated DOT’s tarmac delay rule.³⁰
- **Violations against a limited number of consumers.** A discrimination investigation found that three passengers had been removed from flights in violation of federal anti-discrimination statutes. DOT found that these actions warranted a consent order that was issued in 2020.³¹
- **Violations with potential harm to consumers:** A 2018 consent order was negotiated to address incidents where, in response to requests by OACP staff during an airport inspection, one airline’s staff either did not produce copies of the airline’s denied-boarding statement or produced copies with outdated compensation amounts.³² The consent order stated that it would help deter future similar violations by the airline and other carriers but did not identify any individual consumers who were harmed or any complaints received.

Most DOT consent orders—374 of 380 issued from 2008 through 2019—levied a civil penalty. Penalty amounts cannot exceed the applicable statutory maximum and, according to OACP officials, are designed to prioritize future compliance over punishment as well as benefit

³⁰U.S. Department of Transportation, *American Airlines, Inc., Order 2019-2-23*, DOT-OST-2019-0001 (February 28, 2019). Covered airlines with flights departing from or arriving at U.S. airports are required to take various actions when their planes are delayed on the tarmac for extended periods, including providing passengers with an opportunity to leave the airplane before 3 hours (4 hours for international flights) except in certain safety, security, or air-traffic-control circumstances, and to provide food and water during a tarmac delay that lasts 2 hours or longer. 49 U.S.C. § 42301; 14 C.F.R. Part 259.

³¹U.S. Department of Transportation, *Delta Air Lines, Inc., Order 2020-1-9*, DOT-OST-2020-0001 (Jan. 24, 2020). Airlines are prohibited from discriminating against passengers on the basis of race, color, national origin, religion, sex, or ancestry. 49 U.S.C. §§ 40127(a), 41310.

³²U.S. Department of Transportation, *Air Canada, Order 2018-5-27*, DOT-OST-2018-0001 (May 22, 2018). Under 14 C.F.R. § 250.9, air carriers must furnish passengers who are denied boarding involuntarily from flights on which they hold confirmed reserved space, a written statement explaining the terms, conditions, and limitations of denied boarding compensation, and describing the carriers’ boarding priority rules and criteria.

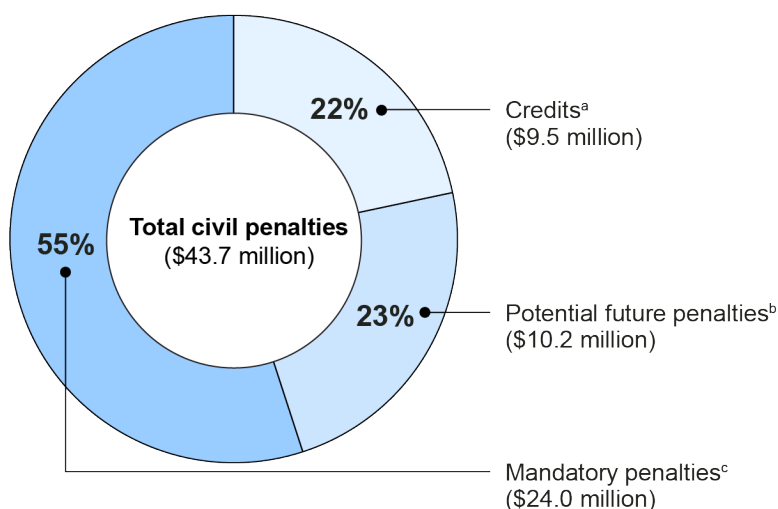
consumers.³³ OACP attorneys consider a range of factors when determining the appropriate amount of penalties to be assessed in consent orders. According to DOT internal documentation, those factors include, among other things, the number of violations, the length of time violations continued, the harm caused, whether the violations were inadvertent or deliberate, and the alleged violator's enforcement history. Regarding determinations about whether or not to pursue civil penalties and the amount of penalty that is appropriate for a particular enforcement action, OACP officials said that weighing these penalty factors is more of an art than science, because the circumstances of each case vary. In order to achieve consistency among their enforcement cases, OACP attorneys refer to prior enforcement decisions when resolving cases and determining penalties, according to agency officials. For example, OACP internally tracks penalties by case type (e.g., advertising, tarmac delay, or overbooking violations), and has begun to develop methodologies that include mathematical formulas to assess civil penalties for certain types of violations based on the results of its tracking.

Penalties assessed by DOT may include one or more of three components: mandatory penalties, credits, and potential future penalties (see fig. 2). From 2008 through 2019, mandatory penalties accounted for slightly more than half of the total penalty amounts assessed, with credits and potential future penalties each accounting for slightly over 20 percent. OACP officials said that credits and potential future penalties help encourage future compliance and obtain benefits for consumers, consistent with DOT's goal of prioritizing compliance over punishment. For example, a 2015 consent order for tarmac-delay rule violations assessed a \$1,600,000 total penalty, which included a \$600,000 mandatory penalty, a \$300,000 potential future penalty, a \$269,000 credit for travel vouchers and refunds issued to passengers, and a \$431,000 credit toward the airline's acquisition and operation of surface

³³The statute also provides that a separate violation occurs for each day violation continues or, if applicable, for each flight involving the violation. 49 U.S.C. § 46301. The caps on fines are adjusted annually for inflation, most recently in 2019. 84 Fed. Reg. 37059 (July 31, 2019); Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, 129 Stat. 599, codified at 28 U.S.C. § 2461 note. Different maximum penalties may apply for different violations, such as \$34,174 for violations of certain aviation economic regulations and statutes not involving individuals or small businesses, \$1,503 for those same violations for individuals or small businesses, \$13,699 for discrimination violations and \$3,418 for individuals or small businesses that violate 49 U.S.C. § 41712, the unfair and deceptive practices statutory provision.

management and surveillance systems to monitor aircraft location.³⁴ OACP officials noted that some of the improvements required by consent orders, such as the development and implementation of new technologies, cost more to implement than the credit provided in exchange.

Figure 2: Types of Civil Penalties Assessed by DOT for Aviation Consumer Protection Violations (2008–2019)



Source: GAO analysis of Department of Transportation (DOT) data. | GAO-21-109

Note: All dollar amounts are in nominal dollars, which are not adjusted for inflation.

^aAlso referred to as an “offset,” a credit is the portion of a penalty that is not required to be paid to the U.S. Treasury in consideration of funds expended by the entity to provide passenger compensation and/or to implement specific service improvements, both of which must be above and beyond what is required by existing requirements.

^bA potential future penalty is the portion of a penalty that the entity would be required to pay if DOT determined that the entity violated certain requirements during a specified period of time in the future.

^cA mandatory penalty is the portion of a penalty that must be paid to the U.S. Treasury immediately or in installments over a specified period of time.

³⁴The credits for passenger compensation corresponded to the actual amount of refunds and 80 percent of the value of vouchers provided by the airline. *U.S. Department of Transportation, Southwest Airlines Co., Order 2015-1-10*, DOT-OST-2015-0002 (Jan. 15, 2015). All dollar amounts are in nominal dollars, which are not adjusted for inflation.

The Total Number of Consent Orders Declined from 2012 through 2019, Mostly Attributable to a Decline in the Number of Orders Assessing Smaller Penalties

Our review found that the total number of consent orders issued annually increased from 2008 through 2012, but generally declined from 2012 through 2019 (see fig. 3). For each of the 12 years in our selected time frame, DOT issued consent orders against both U.S. commercial and foreign air carriers, as well as other entities, such as smaller U.S. carriers (e.g., charter airlines and air taxi companies) and travel agents. The overall decline in the total number of orders since 2012 was most pronounced for orders assessing penalties of \$200,000 or less and for orders involving entities other than U.S. commercial and foreign air carriers (e.g., travel agents and charter airlines). See appendix I for additional analysis of consent orders.

Figure 3: DOT’s Aviation Consumer Protection Consent Orders and Total Assessed Civil Penalties by Type of Violator (2008–2019)

Year	U.S. commercial carriers ^a		Foreign carriers ^b		Other ^c		Total	
	Orders	Penalties ^d (dollars in thousands)	Orders	Penalties (dollars in thousands)	Orders	Penalties (dollars in thousands)	Orders	Penalties (dollars in thousands)
2008	8	490	3	195	9	470	20	1,155
2009	11	1,315	5	202	14	1,082	30	2,599
2010	16	2,137	9	330	27	1,200	52	3,667
2011	17	3,960	17	860	25	1,264	59	6,084
2012	9	880	25	1,900	28	1,355	62	4,135
2013	18	4,670	9	785	19	1,636	46	7,091
2014	4	475	12	1,755	8	445	24	2,675
2015	6	1,920	5	220	4	295	15	2,435
2016	15	4,880	10	1,105	3	370	28	6,355
2017	12	2,780	4	270	3	165	19	3,215
2018	6	705	10	1,070	1	65	17	1,840
2019	3	1,795	3	597	2	70	8	2,462
Total	125	26,007	112	9,289	143	8,417	380	43,713

Source: GAO analysis of Department of Transportation (DOT) data on consent orders for different categories of respondents. | GAO-21-109

Note: All dollar amounts are in nominal dollars, which are not adjusted for inflation.

^a“U.S. Commercial Carriers” is defined as those air carriers authorized to operate under a 14 C.F.R. Part 121 certificate. These carriers are generally large, U.S.-based airlines, regional carriers, and cargo operators.

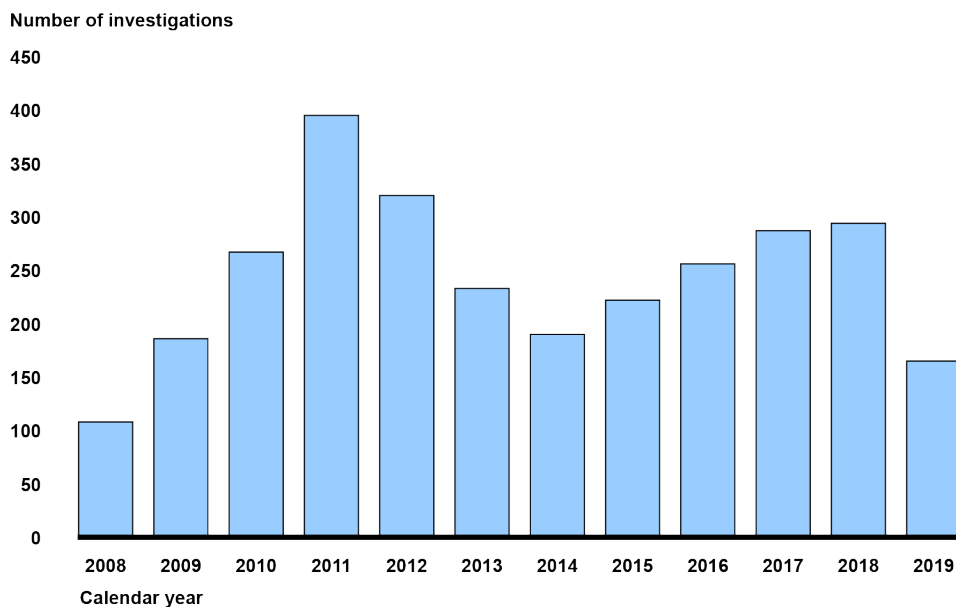
^b“Foreign carriers” is defined as those foreign air carriers authorized to operate in the United States under 14 C.F.R. Part 129.

^cThe “Other” category includes travel agents, other U.S. carriers such as charter airlines and air taxi companies, and other parties to consent orders not included in the “U.S. Commercial Carriers” and “Foreign Carriers” categories.

^dAssessed penalties may include assessed fines, credits, and potential future penalties.

Our analysis indicates that the trend in consent orders from 2008 through 2019 was not matched by the trend in investigations during the same period. During this same time frame, OACP conducted 2,923 investigations of potential consumer protection violations. Although the number of annual investigations peaked at 395 in 2011, and declined through 2014, investigations rose steadily from 2014 through 2018.³⁵ (See fig. 4.)

Figure 4: Aviation Consumer Protection Investigations Initiated Annually by DOT (2008–2019)



Source: GAO analysis of Department of Transportation (DOT) data. | GAO-21-109

When we asked OACP officials whether any trends we identified in the number or nature of consent orders reflected any changes in DOT’s enforcement approach, OACP officials said that the agency had not changed its enforcement practices from 2008 through the present.

³⁵As we previously reported, investigations not resolved by consent orders resulted in a range of outcomes, including warning letters, findings that no violations were committed, and administrative closures for reasons such as lack of evidence. See [GAO-19-76](#).

Interviewed officials, however, noted that the proportions of OACP's resources that are spent on different activities, including outreach, enforcement, and rulemaking, varies from year to year, so OACP may invest more or less resources in enforcement actions that result in consent orders in some years than others. In addition, according to OACP staff, whether a consent order is appropriate in a particular case depends on the facts of each case so the number of consent orders will vary from year to year, depending on the results of completed investigations. Further, the officials noted that regulatory changes, such as clarifying changes in the full fare advertising and codeshare disclosure regulations, likely contributed to the post-2012 declines in consent orders for certain types of violations by increasing companies' understanding of their responsibilities.³⁶ Meanwhile, some selected stakeholders we interviewed suggested that new regulations may have resulted in an increase in the number of consent orders in the immediate years after their issuance. For example, DOT's issuance of final rules addressing passenger protections in 2009 and 2011 corresponded with an increase in consent orders in the 2008 to 2012 timeframe.³⁷

OACP officials stressed that, in light of the range of other activities undertaken by the agency, the number of enforcement actions and penalties assessed do not fully measure how successful DOT has been in obtaining industry compliance with consumer protection requirements. Rather, OACP officials emphasized that the performance of DOT's consumer protection program needs to be considered within the larger context of their comprehensive enforcement efforts. As discussed in greater detail below, we recommended in 2018 that DOT develop performance measures for its consumer protection activities, including enforcement, but DOT has not yet finished developing those measures.

³⁶DOT's full fare advertising rule (14 C.F.R. Part 399), which required advertised fares to include all mandatory taxes and fees, may have led to a decline in the numbers of full fare advertising consent orders by clarifying DOT's advertising requirements and thus making compliance easier, according to agency officials.

³⁷*Enhancing Airline Passenger Protections*, 74 Fed. Reg. 68983 (Dec. 30, 2009); *Enhancing Airline Passenger Protections*, 76 Fed. Reg. 23110 (Apr. 25, 2011).

Selected Stakeholders Said They Lacked Visibility into OACP's Enforcement Process and Held Different Views about the Role DOT Should Play

Selected Stakeholders Expressed a Lack of Understanding of How and When OACP Pursues Enforcement

Providing clarity in rules and processes is a key principle for effective and efficient regulatory enforcement and inspections, according to OECD.³⁸ Moreover, federal internal control standards related to transparency call for agency management to communicate information in a way that external parties can help the agency achieve its objectives. These standards also call for agencies to estimate the significance of risks to achieving agency objectives and for the development of appropriate performance measures.³⁹ In addition, OMB's *Open Government Directive* explains that increasing transparency by expanding access to information promotes accountability.⁴⁰ Stakeholders we spoke with about the clarity of DOT's approach generally expressed dissatisfaction with their lack of understanding of how the office carries out its enforcement efforts in three areas, including the process itself, how the agency accounts for risk to consumers, and the effectiveness of its activities.

Limited Transparency into OACP's Enforcement Process and Results

Selected industry stakeholders stated that they generally understood the process used to begin investigations (e.g., based on complaints or inspections), but some did not understand when and why investigations were continued or closed. Investigations often seem to continue without clear milestones or ending points, these stakeholders noted. For example, according to representatives from one airline, OACP does not always send close-out letters to indicate that investigations have been

³⁸As mentioned above, the Organisation for Economic Cooperation and Development (OECD) has identified principles for regulatory inspections and enforcement. For more information about the OECD, see <http://www.OECD.org>.

³⁹See [GAO-14-704G](#).

⁴⁰OMB (2009).

finalized without an enforcement action. Further, several stakeholders noted that OACP can sometimes raise questions to an airline or other potential violator years after an initial investigation was initiated and make extensive information requests. Consumer advocates also said there is a lack of transparency into how and when OACP decides to issue a warning letter instead of a consent order, among other decisions. Finally, airline representatives we spoke with stated that they do not have insight into decisions to *not pursue* enforcement, in part because the main source of information on OACP's enforcement actions—consent orders—by their very nature only provide transparency into when enforcement is pursued.

Unlike some other agencies within DOT, OACP has published limited information describing its process for investigations or enforcement. The office's website, for example, provides information about the regulations that it enforces, but does not include information about how it makes enforcement decisions. Other DOT agencies publish guidance on compliance and enforcement, including the Federal Motor Carrier Safety Administration (FMCSA) and the Federal Aviation Administration (FAA).⁴¹ FAA's publicly available enforcement order, for example, documents the objectives of FAA's compliance and enforcement program, including how the agency approaches enforcement.⁴² This order describes how FAA carries out investigations, among other things, and provides criteria for when FAA would encourage compliance or pursue administrative or legal enforcement actions, as well as describing follow-on actions for each option.

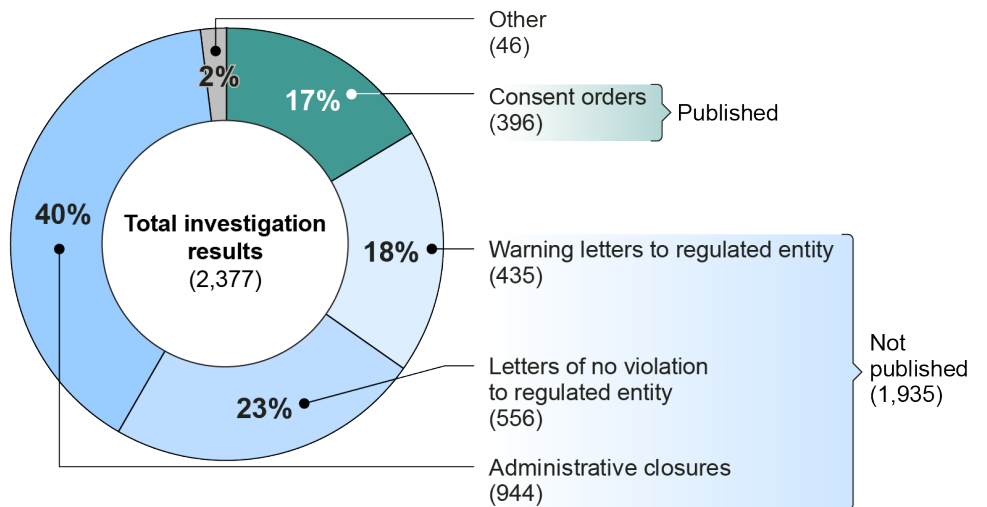
Stakeholders we spoke with said that they look at publicly available results, such as the number of complaints received in broad categories and consent orders issued. These public results, however, may provide an incomplete understanding of OACP's enforcement of consumer protections. Our analysis showed that information about the results of the vast majority (over 80 percent) of consumer protection investigations OACP initiated from 2008 through 2017 is not publicly available (see fig. 5). Furthermore, while OACP officials encourage regulated entities to read published consent orders, opportunities to obtain insight into OACP's enforcement of consumer protections are particularly limited in

⁴¹Information about FMCSA's Compliance, Safety, and Accountability program, including its enforcement process, is provided on the agency's website at <https://csa.fmcsa.dot.gov/About> (accessed Aug. 2020).

⁴²FAA *Compliance and Enforcement Program*, Order 2150.3C (effective Jan. 24, 2020).

areas where few consent orders have been issued (e.g., unlawful discrimination). OACP does not release information about investigations that do not result in a negotiated consent order, nor does it publish warning letters, in part, because such letters are intended to be non-punitive, according to agency officials.

Figure 5: Information Published by DOT about the Results of its Aviation Consumer Protection Investigations (2008–2017)



Source: GAO analysis of Department of Transportation (DOT) data from its case management system as of August 2018. | GAO-21-109

Notes: Administrative closures include cases closed with an email warning of violations, a finding of no violation, a finding of insufficient evidence, or other miscellaneous reasons indicating that an enforcement action was not necessary.

“Other” includes dismissal orders, letters of abeyance, verbal corrections, and adjudicated complaints.

As of August 2018, 87 (of 2,464) investigations were still open. These investigations were excluded from the analysis.

Although OACP officials explained that to some extent the consumer protection enforcement process is not transparent by design given that it is a law-enforcement activity, they said the office is taking some steps to increase transparency. For example, they stated that they are developing a new handbook (or other published document) that would provide

additional clarity into OACP's enforcement process.⁴³ As of August 2020, however, OACP officials were not able to provide specific information about what they intend to include in the handbook because the document is still being developed. Nor did they provide a timeline for issuance. As a result, it is not clear that the handbook will include timely information that will be useful for stakeholders, such as the factors used by OACP to make investigation or enforcement decisions. Without such information, stakeholders will continue to have questions about OACP's enforcement process, questions that in turn may affect their confidence in OACP's decision-making.

According to OACP officials, they have not yet contemplated providing increased public information about the results of their enforcement actions, such as the number of annually issued warning letters. This information, as well as the types of consumer protection violations identified in the warning letters, could be provided without jeopardizing confidentiality and the non-punitive nature of OACP's warning letters. Furthermore, such information could potentially come from OACP's recently updated case-management system, which is intended to track cases from onset through conclusion.⁴⁴ Although OACP officials noted that the system is intended for internal use, they acknowledged it could potentially be used to provide certain information for external stakeholders. Some of DOT's modal agencies (e.g., Pipeline and Hazardous Materials Safety Administration (PHMSA)) as well as other federal agencies (e.g., Food and Drug Administration) publish some information about issued warning letters, such as the nature of

⁴³In December 2019, the Department of Transportation published a final rule that provided a comprehensive revision and update on administrative rulemaking, guidance, and enforcement procedures across the agency. According to OACP officials, the new rule has not changed the office's practices, but rather codified certain processes and procedures. See *Administrative Rulemaking, Guidance, and Enforcement Procedures*, 84 Fed. Reg. 71714 (Dec. 27, 2019).

⁴⁴In April 2020, OACP officials told us that the office was working with a contractor to develop the new system. Officials explained that under the existing system, it can be difficult to access needed information, such as how investigations are initiated. We found in 2018 that OACP's case management system allowed attorneys to track investigations, but that it lacked functionality that would allow OACP officials to more efficiently use data to inform key activities, such as making compliance and enforcement decisions. We recommended that DOT should assess options for updating its system in [GAO-19-76](#), and the office is currently working to implement new functions, according to agency officials.

Stakeholders Expressed
Confusion about OACP's Use
of Risk-Based Decision-Making

complaints, and some make public the actual warning letters.⁴⁵ According to PHMSA, information provided on the website—including warning letters—is intended to enhance public understanding of PHMSA's enforcement program. By publishing some information about warning letters that OACP issues to address consumer protection violations in the aviation industry, it could help stakeholders better understand—and have greater confidence in—a broader range of the OACP's enforcement activities.

OECD principles emphasize that enforcement activities should be risk-based to reduce the risk that the most significant violations are not adequately addressed and to target resources effectively. Prioritizing investigations of potential violations based on the level of harm to consumers they pose and the likelihood of being able to effectively bring an enforcement case is also consistent with standards for internal control in the federal government. Those standards call for agencies to estimate the significance of risks to achieving agency objectives—in this case objectives related to enforcing compliance and protecting consumers.⁴⁶

However, stakeholders we spoke with raised concerns about the extent to which OACP considers risk to consumers in its enforcement decision-making. The stakeholders also raised concerns about how OACP weighs the complaints it receives when identifying issues of concern. For example, consumer advocates stated that the number of complaints received in a certain area might not be a good measure of the magnitude of risk posed by certain types of violations to consumers. For example, one lost or damaged wheelchair that could affect a person's mobility may be more serious than a series of overly delayed baggage delivery cases that could inconvenience travelers. Airline representatives also raised concerns about how OACP assesses the magnitude of consumer risk on the basis of the complaints it receives, particularly in areas where the airlines have received fewer complaints themselves. Airline representatives pointed to instances of OACP enforcement when, in their

⁴⁵The Pipeline and Hazardous Materials Safety Administration (PHMSA), for example, has a public database that shows all warning letters issued since 2002. The FDA publishes information about warning letters on its website, and the FTC publishes closing letters. See https://primis.phmsa.dot.gov/comm/reports/enforce/WL_opid_0.html; <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/compliance-actions-and-activities/warning-letters>; and <https://www.ftc.gov/enforcement/cases-proceedings/closing-letters-and-other-public-statements/commission-closing-letters>, respectively (all accessed Aug. 2020).

⁴⁶See [GAO-14-704G](#).

view, there was no substantial consumer harm. For example, an industry stakeholder said that even though consumers financially benefitted from a free airline ticket offer, the offer had to be discontinued because the airline had not disclosed that consumers were still liable for applicable taxes. Representatives from several of the airlines we spoke with also pointed to investigations based on what they considered not to be legitimate grounds. In these cases, OACP requested additional information—including internal complaint data—based on a consumer complaint that did not itself indicate a violation or on media coverage.

As discussed above, OACP officials told us they consider a variety of factors when making enforcement decisions, including the extent of consumer harm. However, these factors are not published anywhere and stakeholders we spoke with were not otherwise aware of them. Based on our discussions with officials, it is not clear whether the new handbook discussed above will include information about how OACP considers risk. We found that other agencies within DOT provide greater clarity into risk-based decision-making. FAA's enforcement order, for example, explains that the agency may consider various factors, including evidence of violation history, compliance disposition, and corrective action when determining if a violation occurred, and whether or not to pursue an enforcement action and impose a sanction.⁴⁷ Without providing some transparency into OACP's consideration of risk in consumer protection enforcement, stakeholders may continue to lack insight into how OACP is prioritizing its investigations and protecting consumers.

Performance Measures Still Needed to Determine the Effectiveness of DOT's Approach

The use of data and evidence—including performance measures—to guide enforcement and to measure results (i.e., outcomes) is a key OECD principle. In our November 2018 report, we found that DOT had established objectives for each of its five consumer protection activities, but lacked performance measures for three of those activities: providing compliance information to airlines, inspecting airlines, and pursuing enforcement actions.⁴⁸ Consistent with standards for internal control in the federal government, we recommended that DOT establish performance measures for its three remaining activities so that performance toward those objectives can be assessed. DOT concurred with this recommendation and is currently taking steps to finalize these new performance measures.

⁴⁷FAA Enforcement Order 2150.3C (2018).

⁴⁸See [GAO-19-76](#).

During the course of our current work, stakeholders we spoke with were unaware of whether DOT uses performance measures to assess the effectiveness of its enforcement actions. In the absence of performance measures to assess outcomes, consumer advocates and others told us that the numbers of complaints and consent orders and the amounts of penalties are the only information publicly available to provide insight into OACP's enforcement. However, both selected stakeholders and OACP officials acknowledged that complaints and consent orders, by themselves, are poor measures of effectiveness, in part, because they do not reflect the range of activities undertaken to increase compliance or address violations.⁴⁹

OACP officials told us that in response to our recommendation, they have been considering potential performance measures and recently provided information to GAO regarding those measures. OACP officials told us their efforts to date to address our recommendation include consulting with other agencies to identify useful performance measures. As we previously reported, a full understanding of the extent to which it is achieving its compliance goal with consumer protection requirements will better position DOT to determine whether any programmatic changes may be warranted.

Selected Stakeholders Had Differing Views on DOT's Enforcement Role, Some Aspects of Which OACP Is Assessing

By and large, regulatory enforcement involves a multitude of activities and approaches and different regulatory agencies pursue compliance and enforcement differently.⁵⁰ In our discussions about the OECD principles for enforcement, selected stakeholders focused on key principles related to professionalism; the balance between regulatory and market forces (referred to as selectivity by the OECD); and the compliance promotion role.⁵¹

⁴⁹As we reported in [GAO-19-76](#), complaint data have limitations as a measure of service quality because, according to academic literature, a substantial portion of dissatisfied individuals do not complain and the perceptions of service quality by individuals who complain may not be representative of other individuals who experience the same level of service or of the complainants themselves. Moreover, as passengers form impressions, they may not rely solely on objective information, but rather there is a tendency for a perception created in one area to influence a person's opinion in another area.

⁵⁰For more information about various enforcement approaches, see GAO, *Federal Regulations: Key Considerations for Agency Design and Enforcement Decisions*, [GAO-18-22](#) (Washington, D.C.: Oct. 19, 2017).

⁵¹See appendix III for more information about the OECD principles.

OACP Makes Efforts to Meet with Industry as well as Consumer Groups, and Has Protections to Help Ensure Staff Independence

We heard general agreement from stakeholders whom we spoke with that OACP attorneys and staff are professional and that staff are knowledgeable about aviation's consumer protection issues. For example, representatives from one anti-discrimination group pointed to OACP's consistent efforts to address denial-of-service allegations based on race or religion that, in their view, have led to good outcomes as airlines are motivated to address discrimination.⁵²

Selected stakeholders expressed concerns about the extent to which DOT may be swayed by certain perspectives, notably those of major airlines or by press coverage. Consumer advocates and representatives for a travel association noted that airlines, in particular, have appeared to have greater access to DOT officials and that the agency appears to defer to airlines when addressing consumer concerns. For example, these advocates said that DOT officials have had regular meetings with industry representatives, but few such opportunities have existed for advocates and others. OACP officials emphasized that they view meetings with industry stakeholders as key to their efforts to boost compliance, which they said ultimately benefits consumers. In addition, OACP officials pointed out that they began meeting regularly with advocates for consumers and other groups in 2019. The frequency and focus of these meetings has been developed in consultation with advocates, while previously meetings had occurred on an "ad hoc" basis. OACP officials also expressed confidence that the newly formed or reconstituted advisory committees, such as the Aviation Consumer Protection Advisory Committee (ACPAC) and the ACAA Advisory Committee, will give consumer and other advocates a voice in improving how DOT carries out its consumer protection responsibilities.⁵³ These committees are required by statute to assess current regulations, make recommendations, and recommend any additional consumer protections that may be needed to protect consumers. Consumer, disability, and anti-discrimination advocates we spoke with were pleased that the ACPAC and other advisory committees had been stood up, but they expressed

⁵²Although an airline has the legal authority to refuse to transport an individual who it decides is unsafe, federal law prohibits any airline decision to refuse to transport that is based on the person's race, color, national origin, religion, ethnicity, or sex. 47 U.S.C. § 40127.

⁵³As required by the 2018 FAA Reauthorization Act, DOT has revived the Aviation Consumer Protection Advisory Committee (ACPAC) and established the Air Carrier Access Act Advisory Committee (ACAA Advisory Committee). Pub. L. No. 115-254, §§ 415, 439, 132 Stat. 3186, 3333, 3345 (2018).

some concern about whether membership of the ACPAC adequately represents consumer perspectives.

OACP officials explained that the office has policies in place to ensure that the decisions of individual attorneys and analysts are consistent, such as ensuring that there are layers of review of decisions. In addition, in response to a prior GAO recommendation, the office has updated guidance for the analysts who code complaints, as mentioned above.⁵⁴ The officials also explained that no attorneys are assigned to a single airline for all enforcement matters, for example, to ensure independence, although particular attorneys may focus on certain subject matters if they have expertise. In previous work, we identified policies that agencies can implement to ensure that employees maintain their independence and reduce the risk of so-called regulatory capture, which occurs when regulators act in the interest of the industry they are regulating rather than in service of the public good.⁵⁵ Those policies include requiring layers of review to help ensure that decision-making on cases is not concentrated in a single employee.

Selected Consumer Groups
Advocated for a More
Proactive DOT Role, While
Industry Representatives Said
DOT Should Enforce Only
When Market Forces Fail

Consumer and other advocacy groups we contacted argued that DOT could be more proactive in its enforcement of consumer protections. According to advocates, a more proactive approach could enable OACP to, among other things, tackle broader industry behavior that harms consumers as opposed to using what they perceive as a piecemeal approach focusing on individual violators or certain types of violations.

- **Identify and address widespread issues.** Consumer and other advocacy groups we contacted argued that OACP could use consumer complaints to identify—and then investigate—patterns or practices that are potentially problematic beyond a single entity mentioned in a complaint. For example, one anti-discrimination advocate we spoke with suggested that OACP could look at airline policies in general, if it had identified through complaints that at least one airline did not have affirmative anti-discrimination policies. According to agency officials, OACP may look to determine whether a broader problem exists if they identify a need to do so and the

⁵⁴See [GAO-19-76](#).

⁵⁵For more information about best practices for ensuring independence and avoiding regulatory capture, see GAO, *Large Bank Supervision: OCC Could Better Address Risk of Regulatory Capture*, [GAO-19-69](#) (Washington, D.C.: Jan. 24, 2019).

circumstances warrant the potential burden that broad investigations can place on airlines or other regulated entities.

- **Identify and fill regulatory gaps.** Consumer advocates pointed to areas that are not currently regulated and suggested that DOT should take steps, such as initiating rulemaking, to fill those regulatory gaps. Advocates said OACP could be more proactive in identifying such gaps by, for example, identifying patterns in complaints that do not currently involve potential violations of current regulations. When asked the extent to which OACP identifies areas that would benefit from increased enforcement activity or additional rulemaking, OACP officials told us that the agency takes several steps to do so, including reviewing complaints and meeting regularly with selected advocacy and consumer groups, as mentioned above. These officials did not, however, tell us that they had identified issues requiring additional consumer protections.
- **Address compensation or damages in consent orders.** Disability advocates and others noted that in the absence of a consumer right of action, they would like to see OACP pursue damages or other measures to make affected consumers whole, such as seeking higher reimbursement rates for damaged wheelchairs beyond the cost of the chair itself. OACP officials emphasized that when it enforces regulations and assesses penalties through its formal legal enforcement process, it cannot require that violators go above and beyond in terms of compensating individual passengers. However, as noted above, entering into consent orders gives OACP additional flexibility in the types of remedies it may seek and to which regulated entities may agree.
- **Expand enforcement.** Advocates we spoke with believed DOT could expand enforcement under its existing authorities. DOT is currently conducting rulemaking addressing its unfair and deceptive practices authority and the proposed new rule includes a definition of the terms “unfair” and “deceptive,” as well as clarification that enforcement hinges on consumer harm.⁵⁶ According to OACP officials, the proposed definitions would generally align with those included in comparable FTC regulations. Industry stakeholders groups we interviewed favored those definitions because they would provide clarity. Consumer advocates, however, stressed that DOT has a unique enforcement role, given federal preemption for consumer protections. In comments made to DOT regarding the proposed rule,

⁵⁶*Defining Unfair or Deceptive Practices*, 85 Fed. Reg. 11881 (Feb. 28, 2020).

they expressed concerns that the new rulemaking would overly constrain DOT's flexibility.

Advocates we spoke with were also disappointed with the pace at which DOT has addressed congressional mandates to assess the need for new policies or regulations, as well as the decision not to pursue several new regulations in response to mandates, which they saw as reflecting a pro-industry bias. Most recently, the FAA Reauthorization Act of 2018 required DOT to consider developing or addressing certain new consumer protections, including those related to seating families with young children together and sexual assaults aboard aircraft.⁵⁷ According to OACP officials, the agency seeks balance and avoids rushing to decisions, and in the cases of family seating and sexual assaults aboard aircraft, it did not determine that new rulemakings were warranted after convening stakeholders and assessing the potential benefits and costs of developing new consumer protections.⁵⁸ The agency has carried out rulemakings in other areas in response to mandates, including proposed new rules addressing traveling with service animals and accessible lavatories on single-aisle aircraft, among others.⁵⁹

Industry representatives we spoke with held a notably different view of DOT's appropriate role, suggesting that DOT can rely even more on the market to provide adequate consumer protection because providing good customer service is fundamental to the success of their businesses. Airline representatives described actions they take to provide good customer service, such as designating staff to respond to consumer complaints and establishing internal performance measures that are linked to the number of complaints received by DOT or by the airlines themselves. Airlines have also taken actions to address certain violations, such as those aimed at reducing involuntary denied boardings.⁶⁰ Further,

⁵⁷Pub. L. No. 115-254, § 339A, 132 Stat. 3186, 3283 (2018).

⁵⁸Regarding in-flight sexual assault, DOT established the National In-Flight Sexual Misconduct Task Force as a subcommittee of the ACPAC. This task force listened to first-hand accounts from passengers and flight attendants who experienced in-flight sexual misconduct to inform the report that it issued to the ACPAC on March 16, 2020. See DOT, [A Report on Sexual Misconduct on Commercial Flights by the National In-Flight Sexual Misconduct Task Force](#) (Washington, D.C.: Mar. 16, 2020).

⁵⁹See, *Traveling by Air with Service Animals*, 85 Fed. Reg. 6448, (Feb. 5, 2020) and *Accessible Lavatories on Single-Aisle Aircraft*, 85 Fed. Reg. 27 (Jan. 2, 2020).

⁶⁰For more information about involuntary denied-boarding incidents and the range of actions airlines have taken to reduce them, see GAO, *Airline Consumer Protections: Information on Airlines' Denied Boarding Practices*, [GAO-20-191](#) (Washington, D.C.: Dec. 10, 2019).

airline representatives stated that some issues that have attracted public attention and calls for additional DOT oversight—such as family seating—were not reflected in airlines’ internal complaint data and that the market has largely addressed these concerns as airlines voluntarily adopt their own policies or guidelines. Industry representatives acknowledged, however, that airlines and others compete amongst themselves on the level of customer service they provide. This contrasts with aircraft safety, for example, where there is collaboration among stakeholders to address problems.

Selected Industry Stakeholders Suggested Separation of DOT’s Enforcement and Compliance Roles

Industry stakeholders told us that airlines and others are hesitant to contact OACP about consumer compliance issues for fear of potentially triggering an enforcement investigation or action. Representatives from one airline pointed to a 2017 consent order to illustrate the hazards of self-reporting violations of consumer protections. According to the order, after new airline reporting requirements for the number of animals transported—and calculations for the proportion of animals that had died—were rolled out, one airline found in a self-audit that it had included too many animals (i.e., non-household pets) in its total count, which mistakenly reduced the proportion it reported to OACP.⁶¹ The airline disclosed its mistake and the data discrepancy to OACP before the data were published in the *Air Travel Consumer Report*, according to airline representatives. According to the consent order, OACP determined that the enforcement action, including an \$80,000 fine, was appropriate considering the nature and extent of the violation and would serve as a deterrent against future violations by the airline and others. OACP officials stated that, in their view, the airline had not voluntarily brought attention to the violation but had rather done so in response to agency inquiries. Regulated entities that contact OACP about consumer compliance issues before being contacted by the Department are treated more favorably, they explained.

While acknowledging that circumstances are not completely analogous, industry stakeholders point out that other entities within DOT, most notably FAA, separate their compliance and enforcement functions. To improve safety across the industry, FAA encourages the self-disclosure of safety violations and the circumstances around those violations. Toward that end, FAA has developed non-punitive self-reporting programs for

⁶¹See *U.S. Department of Transportation, United Airlines, Inc. Order 2017-9-1*, DOT-OST-2017-0001 (Sept. 1, 2017).

airlines, pilots, and air-traffic controllers, and the extent to which such disclosures can be used as the basis of an enforcement action is limited. FMCSA also has a program that allows motor carriers to develop and implement a voluntary plan to improve identified safety issues with protections against enforcement actions.⁶²

OACP officials stated that they have considered separating compliance from enforcement, but believe that their current approach has allowed for coordination with industry to enhance compliance and improve the aviation travel environment. There are no requirements that OACP separate its compliance and enforcement roles, and as noted above, there are many different regulatory compliance and enforcement approaches. OACP officials believe that it can be beneficial for the compliance and enforcement roles to be combined. For example, an analyst reviewing passenger complaints may see a potential problem and call the airline to discuss, according to OACP officials. In this way, and as mentioned above, it may be possible to address consumer protection issues more quickly, thereby helping consumers, and avoiding the need for enforcement actions, although there is no guarantee that OACP will not pursue enforcement later.

Conclusions

DOT currently provides limited public insight into its aviation consumer protection enforcement approach and the results of its enforcement actions. While OACP officials said they are taking actions to bring additional transparency into OACP's investigation and enforcement process through the development of a handbook or other documentation, they did not provide us with evidence that the information to be provided will offer additional clarity into the process OACP uses to investigate potential consumer protection violations, to assess risk, and to pursue enforcement actions. Furthermore, OACP does not currently intend to make public any information about the many violations that OACP identifies each year that do not result in a consent order and are instead corrected through a warning letter or other action. Without providing additional insight into these areas, industry stakeholders, consumer advocates, and consumers themselves may continue to lack full confidence in OACP's enforcement process and the results of its enforcement efforts.

⁶²FMCSA encourages improved compliance as part of its Compliance, Safety, Accountability program, under which a carrier may develop and implement a voluntary plan with the help of safety investigators, in some circumstances, in response to safety problems.

Recommendations

We are making the following two recommendations to the Assistant General Counsel for the Office of Aviation Consumer Protection (OACP) in the Department of Transportation's Office of the Secretary:

- The Assistant General Counsel should provide additional information on the process OACP uses to investigate potential consumer protection violations, to assess risk, and to pursue enforcement actions and establish a timeframe for doing so. Such transparency could be provided through the handbook that OACP is currently drafting or through other public means such as providing additional information on its website. (Recommendation 1)
- The Assistant General Counsel should take steps to provide transparency and clarity into the results of OACP's enforcement of consumer protections, including investigations that do not result in a consent order. Such information could be aggregated data about cases, investigations, or warning letters. (Recommendation 2)

Agency Comments

We provided a draft of this report to DOT for review and comment. In its written comments reproduced in appendix IV, DOT concurred with our recommendations. DOT also provided technical comments that we incorporated, as appropriate.

We are sending copies of this report to the appropriate congressional committees, DOT, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at 202-512-2834 or vonaha@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix V.



Andrew Von Ah
Director, Physical Infrastructure Issues

Appendix I: Analysis of Consent Orders Negotiated by the Department of Transportation

The Office of Aviation Consumer Protection (OACP) within the Department of Transportation (DOT) negotiates consent orders with entities such as airlines or others that have been found to have systematically—or egregiously—violated consumer protection laws and regulations. As described above, our analysis of consent orders issued from 2012 through 2019 by DOT showed that the total number of consent orders issued annually increased from 2008 through 2012, but generally declined from 2012 through 2019. However, our analysis also found that the types of violations addressed and the amounts of penalties assessed in those orders varied over time. Orders addressing certain types of consumer protection violations declined from 2013 through 2019, including those involving advertising, while orders addressing other types of violations showed no notable trends, such as tarmac delays. Table 1 includes types of violations with more than five consent orders issued over the 2008 through 2019 period. DOT issued fewer consent orders for other types of violations, such as discrimination, for which DOT issued two orders.

Table 1: Numbers of Consent Orders Issued by DOT Containing Selected Types of Violations (2008–2019)

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	Total ^a
Full fare advertising	10	10	19	22	25	11	7	4	6	3	3	2	122
Operations	4	9	14	9	12	5	5	2	4	1	1	2	68
Accounting and data reporting ^a	2	3	8	4	1	8	2	4	4	4	0	1	41
Tarmac delay ^b	—	—	0	1	5	8	4	2	2	6	5	4	37
Disability	2	2	7	4	6	4	1	0	6	2	3	0	37
Code-share disclosure	0	4	2	12	6	7	3	0	0	0	0	0	34
Liability for mishandled baggage	0	1	3	4	5	1	1	1	4	1	2	0	23
Customer service plan	0	0	0	0	3	3	0	2	7	3	5	0	23
Oversales	2	2	2	0	0	1	0	1	5	2	2	0	17
Baggage fee disclosure ^c	—	—	—	—	8	3	1	0	1	0	0	0	13
Unfair and deceptive practices of ticket agents	0	2	6	1	1	0	0	1	0	1	0	0	12
Refunds	0	1	0	0	1	1	0	0	1	2	1	0	7

Source: GAO analysis of Department of Transportation (DOT) data. | GAO-21-109

Note: This chart only includes types of violations addressed by more than five consent orders over the 2008–2019 period. The numbers of violations in this table may add up to more than the total number of consent orders because some consent orders address more than one type of violation.

^aAccounting and data reporting includes a range of requirements, including accounting and reporting requirements for 14 C.F.R. Part 121 and 14 C.F.R. Part 129 air carriers, as well as data reporting requirements for tarmac delays, airline on-time performance, animal incidents, mishandled baggage, and oversales.

**Appendix I: Analysis of Consent Orders
Negotiated by the Department of
Transportation**

^bThe tarmac-delay regulation came into effect in 2010 and was expanded in 2011. 14 C.F.R. Part 259.

^cThe baggage-fee disclosure regulation came into effect in 2012. 14 C.F.R. § 399.85.

Those orders assessing penalties of \$200,000 or less accounted for the sharpest decline in the number of consent orders issued from 2012 through 2019 (see table 2). Many of these penalties were assessed for advertising violations and against ticket agents or others, including U.S. commercial airlines. In contrast, the numbers of orders assessing penalties greater than \$200,000 remained relatively constant during this time. Larger penalties throughout the period tended to address tarmac delays and disability rights violations by U.S. commercial airlines.

Table 2: Civil Penalty Amounts in DOT’s Aviation Consumer Protection Consent Orders by Tier (2008–2019)

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
\$1–\$50,000	11	20	38	39	32	16	8	8	15	6	6	4
\$50,001–\$100,000	7	6	9	12	22	14	7	3	3	4	4	0
\$100,001–\$200,000	2	1	2	6	6	8	3	2	6	4	4	0
\$200,001–\$500,000	0	2	2	0	2	4	4	0	1	2	3	2
\$500,001–\$1,000,000	0	1	1	1	0	1	0	0	1	0	0	2
\$1,000,001–\$2,000,000	0	0	0	1	0	2	0	1	2	1	0	0

Source: GAO analysis of Department of Transportation (DOT) data. | GAO-21-109

Note: All dollar amounts are in nominal dollars, which are not adjusted for inflation. This table does not include six consent orders that did not contain civil penalties.

Appendix II: Analysis of Consumer Complaints Received by the Department of Transportation

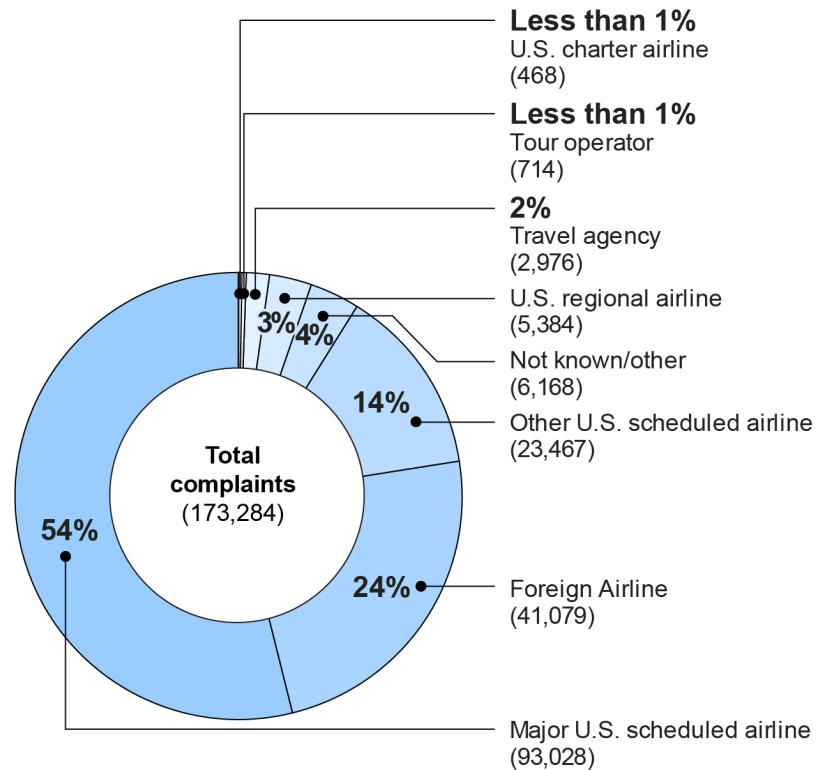
The Department of Transportation's (DOT) analysts in the Office of Aviation Consumer Protection (OACP) receive, code, and track consumer complaints received by DOT via its website, by mail, or through DOT's telephone hotline. As part of their review, these analysts code each complaint based on the consumer's perception of events, including by the predominant issue identified by the passenger and the type of respondent (e.g., airline or travel agent), and transmit it to the relevant respondent. Based on the information in the complaint and the respondent's response, the analysts also code whether the complaint includes a potential violation. From 2008 through 2019, OACP processed over 173,000 of these complaints. The office publishes data about consumer complaints it receives, including the type of complaint and respondent, monthly in its *Air Travel Consumer Report*.

Consumers filed vastly more complaints than is typical in the spring of 2020 during the Coronavirus Disease 2019 (COVID-19) pandemic. These complaints alleged, among other things, that airlines did not provide adequate refunds for cancelled flights. DOT data show that consumers filed 46,834 complaints from March through May 2020, including 41,043 refund complaints—a huge increase over the 3,634 total complaints and 433 refund complaints made during the same period a year before.

Over Half of Consumer Complaints Concerned Major Domestic Airlines

Over the 2008 through 2019 period, consumers filed over 173,000 complaints against entities regulated by DOT. (See fig. 1). Over half of the consumer complaints (over 93,000) received by DOT during the period concerned major U.S. scheduled airlines, and about a quarter of the complaints concerned foreign airlines (over 41,000). The remainder of the complaints concerned other U.S. airlines, travel agencies, tour operators, and other entities.

Figure 6: Aviation Consumer Complaints Received by DOT by Type of Respondent (2008–2019)

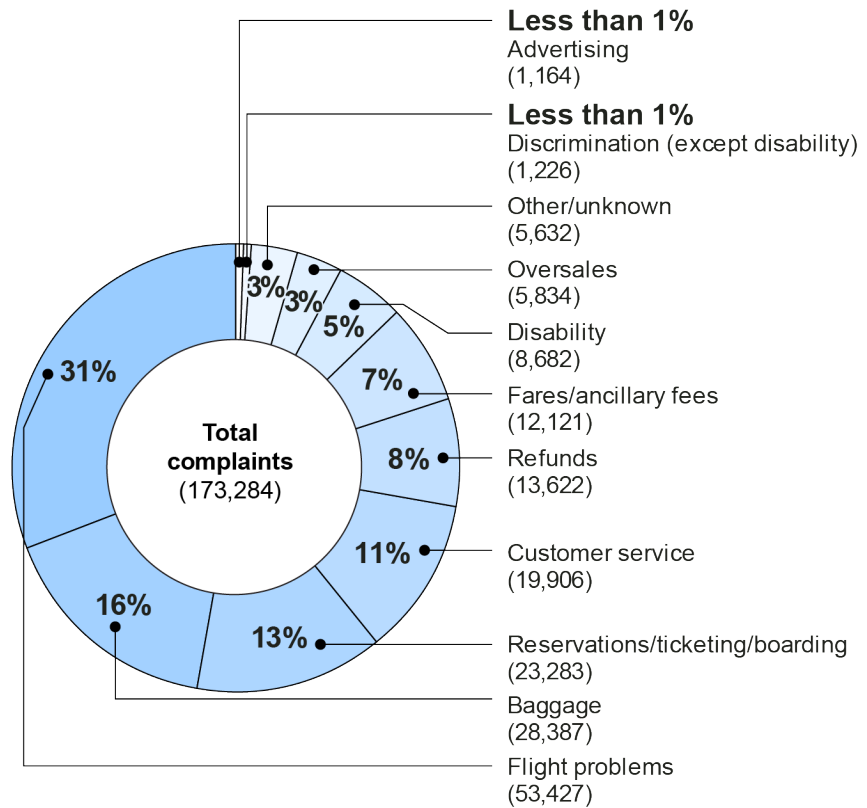


Source: GAO analysis of Department of Transportation (DOT) data. | GAO-21-109

Few Consumer Complaints Were Considered Potential Violations

Consumer complaints received by DOT concerned a wide range of topics, and OACP analysts coded the complaints based on the consumers' perceptions of events. Based on that coding, flight problems, such as cancellations and delays, represented the largest category of complaints received by DOT over the 2008 through 2019 period, accounting for over 53,000 (of the over 173,000) complaints, as shown in figure 2. Other categories with relatively large numbers of complaints included baggage, reservations/ticketing/boarding, and customer service, each of which accounted for more than 10 percent of total complaints.

Figure 7: Aviation Consumer Complaints Received by DOT by Type of Issue (2008–2019)



Source: GAO analysis of Department of Transportation (DOT) data. | GAO-21-109

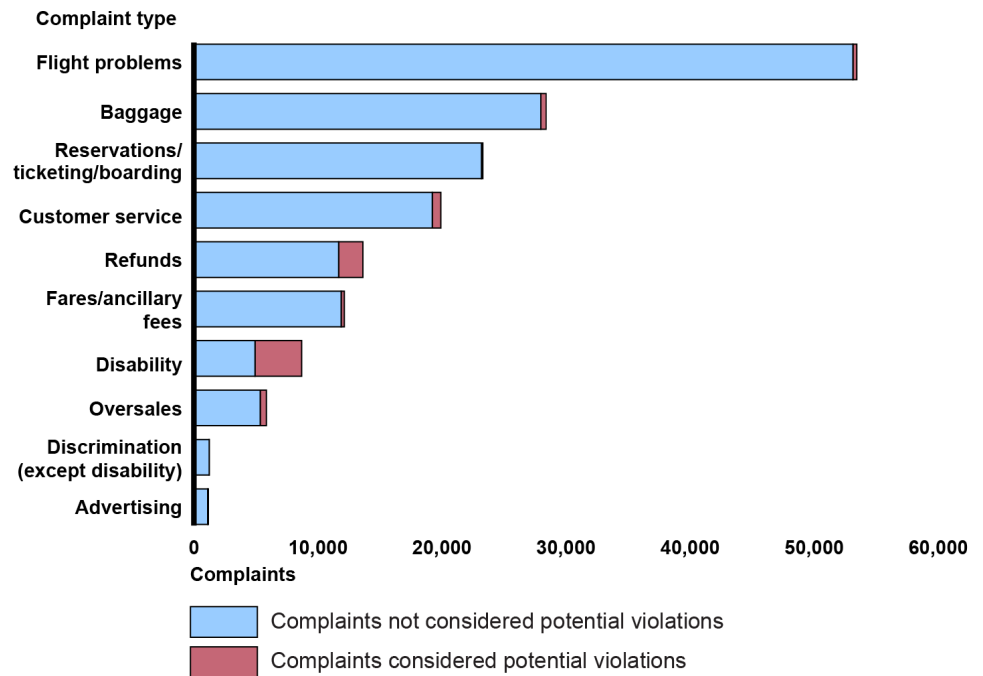
Many consumer complaints do not address areas regulated by DOT. Overall, our analysis showed that OACP analysts determined that relatively few complaints—about 5 percent of the complaints received from 2008 through 2019—included potential violations of consumer protection requirements.¹ The proportion of potential violations is much higher for complaints alleging a disability-related violation or a refund issue, however, than for other types of violations.² (See fig. 3.) Notably, 43 percent (3,754 of 8,682) of disability complaints were found to be a

¹OACP analysts consult with complaint respondents (e.g., airlines or travel agents) to determine if a consumer complaint includes a potential violation of consumer protection requirements, a process that takes some time. As a result, data on potential violations are incomplete for our timeframe, particularly for 2019.

²As described above, DOT investigated all disability and discrimination complaints received by the agency, unlike other types of complaints.

potential violation, accounting for nearly half of all potential violations. By contrast, less than one percent (315 of 53,427) of flight problems—such as cancellations and delays—were found to involve a potential violation of consumer protection regulations, although this area involved the largest number of consumer complaints during the period we reviewed.

Figure 8: Aviation Consumer Complaints and Potential Violations by Type (2008–2019)



Source: GAO analysis of Department of Transportation (DOT) data. | GAO-21-109

Note: DOT analysts code each complaint by whether the complaint includes a potential violation. The data in the table above reflects this coding. OACP analysts consult with complaint respondents (e.g., airlines or travel agents) to determine if a consumer complaint includes a potential violation of consumer protection requirements, which takes some time. As a result, data on potential violations are incomplete for our timeframe, particularly for 2019.

Rates of Consumer Complaints Have Varied over Time

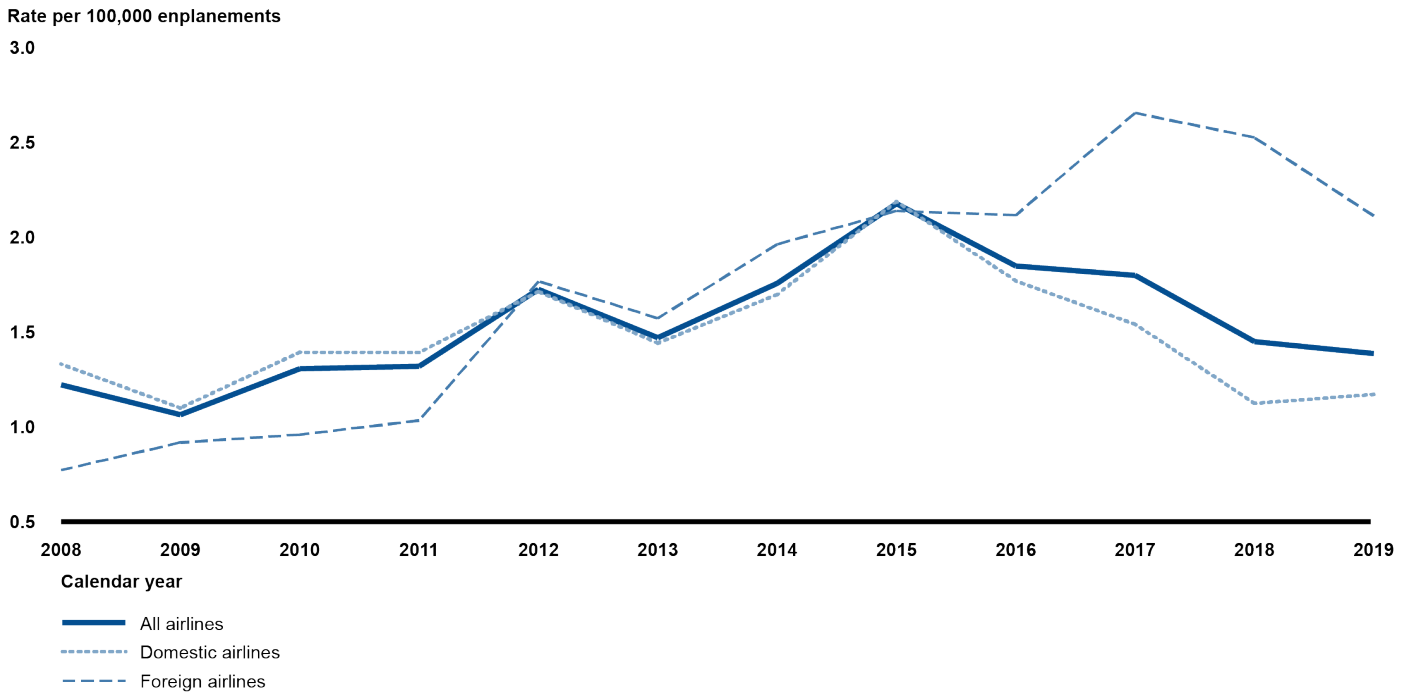
Focusing on complaints against airlines specifically, the rate of complaints per 100,000 enplanements against both domestic and foreign airlines increased between 2008 and 2015, before declining through 2019.³ Complaints against U.S. airlines generally followed the trend for all airlines through 2015 but declined more than the trend for all airlines after

³This analysis focuses specifically on airlines, which represented over 94 percent of complaints, because those are the entities for which we could calculate rates per enplanement.

Appendix II: Analysis of Consumer Complaints Received by the Department of Transportation

that. In contrast, the rate of complaints against foreign airlines increased between 2015 and 2017, before declining through 2019, although it remained higher than the trend for all airlines. (See fig. 4.) OACP officials noted that there could be many reasons for changes in the numbers of complaints over time, such as increases in complaints following news coverage of specific incidents or mergers between large carriers. For example, OACP officials said that they saw an increase in family seating complaints after an advocacy group encouraged air travelers to file complaints in this area.

Figure 9: Rates of Aviation Consumers' Complaints Received by DOT per 100,000 Enplanements (2008–2019)



Source: GAO analysis of Department of Transportation (DOT) data. | GAO-21-109

Appendix III: Objectives, Scope, and Methodology

Section 411 of the FAA Reauthorization Act of 2018 provides for GAO to conduct a study to consider and evaluate the Department of Transportation's (DOT) enforcement of aviation consumer protection laws and regulations.¹ This report (1) describes DOT's approach to the enforcement of aviation consumer protections and the results of that approach; and (2) examines selected stakeholders' views on DOT's enforcement approach and assesses steps DOT has taken that address identified concerns.

This report follows our November 2018 report, which assessed activities undertaken by DOT to help ensure airlines' compliance with consumer protection requirements and to educate passengers about their rights, among other things.² We incorporated from that report descriptive information about DOT's enforcement activities and extended some data analysis from that report—which covered 2008 through 2017—through 2019.

To collect information on DOT's approach to enforcing consumer protections, we identified applicable laws and regulations and reviewed DOT enforcement-related documentation. We also interviewed officials with the Office of Aviation Consumer Protection (OACP) within DOT's Office of the General Counsel.³ To understand the results of DOT's enforcement, we analyzed agency data on enforcement actions, notably consent orders, from 2008 through 2019. We categorized consent orders by various characteristics, including by the violations addressed, the type of violator, and the amount of civil penalties, and identified trends in the data over time. We also analyzed DOT data on consumer complaints received by DOT from 2008 through 2019 and categorized them by similar characteristics. (See app. II.) We interviewed OACP officials and stakeholders to determine if changes in the consent order and complaint data over time reflected any differences in enforcement, in their views. To assess the reliability of both sets of data, we reviewed DOT documentation and analyzed data to identify any outliers and to look for inconsistencies, and we interviewed OACP officials about how the data were collected and used. We determined that the data were sufficiently

¹See Pub. L. No. 115-254, § 411, 132 Stat. 3186, 3331 (2018).

²GAO, *Airline Consumer Protections: Additional Actions Could Enhance DOT's Compliance and Education Efforts*, [GAO-19-76](#) (Washington, D.C.: Nov. 20, 2018).

³In June 2020, DOT's enforcement office was renamed the Office of Aviation Consumer Protection; it had previously been called the Office of Aviation Enforcement and Proceedings.

reliable for our purposes. Finally, to understand how, if at all, the Coronavirus Disease 2019 (COVID-19) pandemic had affected DOT's enforcement of consumer protections, we interviewed OACP officials and reviewed notices put out by the agency.

To collect stakeholders' views on DOT's enforcement approach, we interviewed OACP officials and selected stakeholders. We asked these stakeholders general questions about DOT's role and potential obstacles to enforcement, among other things, and addressed key principles identified for regulatory agencies' investigations and enforcement, as discussed below. To evaluate actions DOT has taken to address identified concerns, we looked at federal standards and criteria related to those aspects of enforcement we discussed with stakeholders, including federal standards for internal controls, open governance, and regulatory capture. In particular, we assessed DOT's decision-making procedures against applicable *Standards for Internal Control in the Federal Government* for communicating key information internally and externally, as well as the principles of transparency, participation, and collaboration set forth in the Office of Management and Budget's (OMB) *Open Government Directive*.⁴ We also reviewed enforcement policies, factsheets, and other public information from a variety of federal agencies, including other administrations within DOT (e.g., the Federal Aviation Administration and Federal Motor Carrier Safety Administration).

Through a literature review, we identified key principles for regulatory enforcement and inspections developed by the Organisation for Economic Cooperation and Development (OECD), an international organization founded in 1961 when the Convention on the Organisation for Economic Cooperation and Development was established.⁵ These principles, according to OECD, are designed to provide an overarching framework to support initiatives to improve regulatory enforcement through inspections, making them more effective, efficient, and less burdensome for those who are inspected, and at the same time less

⁴See GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014) and OMB, *Open Government Directive*, [Memorandum M-10-06](#) (Dec. 8, 2009).

⁵The OECD brings together member countries (including the United States) and partners that collaborate closely on key global issues at national, regional and local levels.

resource demanding for governments.⁶ The 11 principles address the design of the policies, institutions, and tools for promoting effective compliance and the process of reforming inspection services to achieve results. (See table 1.) We used these principles to guide our discussions with stakeholders about DOT’s consumer protection enforcement approach broadly. In terms of reporting, we focused on those principles that were most relevant to the engagement, informed by our interviews with selected stakeholders.

Table 3: OECD’s Principles for Enforcement and Inspections

Evidence-based enforcement	Enforcement should be grounded in data and evidence, and results should be evaluated regularly.
Selectivity	Promoting compliance and enforcing rules should be left to market forces, private sector actions, and civil society activities wherever possible.
Risk focus and proportionality	Enforcement should be proportional to the level of risk, and enforcement actions should aim at reducing the actual risk posed by infractions
Responsive regulation	Enforcement should allow for differentiation depending on the profile and behavior of specific businesses, accounting for risk and the effectiveness of different options.
Long-term vision	Governments should adopt policies on regulatory enforcement and inspections, and establish institutional mechanisms with clear objectives and a long-term strategy.
Coordination and consolidation	Inspection functions should be coordinated and, where needed, consolidated, thereby reducing duplication and overlap to better use public resources, reduce regulatory burdens, and maximize effectiveness.
Transparent governance	Governance structures and human resources policies for regulatory enforcement should support transparency, professionalism, and results-oriented management.
Information integration	Information and communication technologies should be used to maximize a focus on risks, promote coordination and information sharing, and ensure an optimal use of resources.
Clear and fair process	Rules and processes for enforcement and inspection are clear, including decision-making processes, rights and obligations, and the powers of enforcement officials.
Compliance promotion	Transparency and compliance should be promoted through the use of appropriate instruments such as guidance and other practices to increase regulatory certainty, among other things.
Professionalism	Inspectors should be trained and managed to ensure professionalism, integrity, consistency, and transparency.

Source: Adapted from the Organisation for Economic Cooperation and Development (OECD) Best Practice Principles for Regulatory Policy: Regulatory Enforcement and Inspections (2014). | GAO-21-109

To collect stakeholders’ views on DOT’s enforcement of consumer protections, we interviewed advocates for consumers (five groups),

⁶OECD has published both a report describing the principles and a companion toolkit. See OECD, *Regulatory Enforcement and Inspections, OECD Best Practice Principles for Regulatory Policy* (OECD Publishing, Paris: 2014) and *OECD Regulatory Enforcement and Inspections Toolkit* (OECD Publishing, Paris: 2018). (See <http://dx.doi.org/10.1787/9789264208117-en> and <https://doi.org/10.1787/9789264303959-en>).

persons with disabilities (two groups), and anti-discrimination advocacy organizations (two groups), as well as industry stakeholders including airline representatives (four airlines), Airlines for America (A4A), the Regional Airline Association (RAA), an industry attorney, and an association representing travel agents. (See table 2.) We identified these stakeholders using prior GAO work and a literature review. We interviewed representatives from the four largest airlines, in terms of schedule enplanements (American Airlines, Delta Air Lines, Southwest Airlines, and United Airlines). The advocates for consumers and others were selected because these groups are active in the area of aviation consumer protection. Although the selected stakeholders we interviewed do not represent the views of all potential stakeholders, we selected them to provide balance between industry representatives and consumer advocates. Our interviews included general questions about DOT's enforcement role, trends in enforcement, and potential obstacles—and their suggested improvements—to DOT's enforcement approach, among other things, as well as a discussion addressing the key OECD principles discussed above.

Appendix III: Objectives, Scope, and Methodology

Table 4: Stakeholders Interviewed to Solicit Views on the Department of Transportation’s Enforcement of Aviation Consumer Protections

Airlines	American Airlines Delta Air Lines Southwest Airlines United Airlines
Advocates for persons with disabilities	National Disability Rights Network, http://www.ndrn.org Paralyzed Veterans of America, https://pva.org
Anti-discrimination groups	Council on American-Islamic Relations (CAIR), https://www.cair.com National Association for the Advancement of Colored People (NAACP) Legal Defense and Educational Fund, https://www.naacpldf.org/
Consumer advocates	Consumers Union, https://consumersunion.org FlyersRights, https://flyersrights.org National Consumers League, http://www.nclnet.org Travel Fairness Now, https://www.travelfairnessnow.org Travelers United, https://www.travelersunited.org
Other industry representatives ^a	Airlines for America (A4A), https://www.airlines.org American Society of Travel Advisors (ASTA), https://www.asta.org David Heffernan, Attorney, Cozen O’Connor, https://www.cozen.com Regional Airline Association (RAA), https://www.raa.org

Source: GAO methodology. | GAO-21-109

^aAccording to representatives that we spoke with from RAA, regional airlines typically operate under the contracts of carriage of their partner carriers and have minimal interactions with DOT related to consumer protection enforcement.

Appendix IV: Comments from the Department of Transportation



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

Assistant Secretary
for Administration

1200 New Jersey Avenue, SE
Washington, DC 20590

September 30, 2020

Andrew Von Ah
Director, Physical Infrastructure Issues
U.S. Government Accountability Office (GAO)
441 G Street NW
Washington, DC 20548

Dear Mr. Von Ah:

The Office of Aviation Consumer Protection, a unit within the Office of the General Counsel, U.S. Department of Transportation (Department), is dedicated to protecting the rights of airline passengers and, when necessary and in the public interest, takes enforcement action to ensure that airlines comply with aviation consumer protection requirements. The Department actively engages with stakeholders, including regulated entities and consumer advocacy groups, as part of a multifaceted approach to ensuring compliance with aviation consumer protection laws.

Specifically, the Department's ongoing aviation consumer protection enforcement program includes:

- Establishing and maintaining direct channels of communication with regulated entities, allowing for open communication regarding compliance questions and swift resolution of issues;
- Using multiple approaches to obtain overall industry compliance with aviation consumer protection requirements, including issuing enforcement notices and providing topic-specific information on airlines' obligations and passenger rights on the Department's website;
- Focusing its resources on processing and responding to the high volume of refund complaints received given the impact of the COVID-19 public health emergency on air travel; and
- Issuing consent orders in a manner that fulfills the Department's aviation consumer protection mission while balancing the interests of individual consumers with the need to maintain a competitive aviation industry.

Upon review of the GAO's draft report, we concur with the two recommendations. We will provide a detailed response to each recommendation within 180 days of the final report's issuance.

We appreciate the opportunity to respond to the GAO draft report. Please contact Madeline M. Chulumovich, Director, Audit Relations and Program Improvement, at (202) 366-6512 with any questions or if you would like to obtain additional details.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kelli Stash".

Deputy Assistant Secretary for Administration

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Andrew Von Ah at (202) 512-2834 or VonAhA@gao.gov.

Staff Acknowledgments

In addition to the individual named above, other key contributors to this report were Ed Laughlin, Assistant Director; Molly Laster, Analyst-in-Charge; Tobias Gillett; David Hooper; Gina Hoover; Delwen Jones; Josh Ormond; Minette Richardson; Pamela Snedden; and Janet Temko-Blinder.

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