

February 17, 2021

The Honorable Pete Buttigieg
Secretary
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Secretary Buttigieg:

On behalf of the largest consumer groups representing travelers across the United States, congratulations on your confirmation as Secretary of Transportation. We welcome your appointment and look forward to working with you and the U.S. Department of Transportation (DOT) to fulfill DOT's statutory obligation to protect consumers. We share your commitment to achieving results by bringing people in and engaging stakeholders that you stated in your U.S. Senate confirmation hearing opening statement.

For too long, American consumers who participate in the travel economy have not been heard. As one way to address that, we respectfully ask for your support in providing consumers with a meaningful and genuine consumer representative, and state and local government representative, who have significant consumer protection experience to serve on the Aviation Consumer Protection Advisory Committee (ACPAC).

The four-person committee includes one consumer advocate and one representative each of the airline industry, U.S. airports and state and local government. The two-year term of the previous ACPAC members expired in November 2020. We urge you to appoint a new slate of members that genuinely represents key stakeholders in the travel marketplace.

As most recently constituted, it was nearly impossible for ACPAC to make pro-consumer recommendations to DOT. The airline and airport representatives frequently joined forces to block such recommendations, often with the support of the state and local government representative, and even the consumer representative.

Given this record, it is unsurprising to us that Airlines For America (A4A) – the trade group representing airlines on the ACPAC – recently wrote to you urging that the ACPAC and the Air Carrier Access Act Advisory Committee “be the primary vehicles for consideration of data and evidence concerning consumer protection issues.”¹

¹ Airlines for America. Letter to Secretary-designate Peter Buttigieg. January 18, 2021. Online: <https://s29755.pcdn.co/wp-content/uploads/2021/01/A4A-Letter-to-Sec-designate-Buttigieg-1.18.21.pdf>

While we believe that with meaningful, fair and balanced consumer representation ACPAC can play a constructive advisory role to DOT, there are also other opportunities to gather input that should be relied upon as well. Consumer and passenger advocacy groups on this letter meet quarterly with DOT's Office of Aviation Consumer Protection and we hope those meetings will continue.

In 2018, our organizations wrote to Secretary Chao expressing our concern about the most recent makeup of the ACPAC membership.² Specifically, we argued that the appointment of Maryland Secretary of Transportation Pete K. Rahn as the "state or local government representative" and Fran Smith of the Competitive Enterprise Institute as the "consumer representative" violated both the FAA Modernization and Reform Act of 2012 and the Federal Advisory Committee Act.

DOT refused to reconsider Secretary Rahn's or Ms. Smith's appointments. Your forthcoming appointment of four new members to the ACPAC is an opportunity to correct this error by previous DOT leadership.

ACPAC's state or local government representative has historically been a state attorney general, whose office has jurisdiction over consumer protection. We urge you to consider another well-respected state attorney general to serve as the state or local government representative on the ACPAC.

Yesterday, our fellow advocates at Consumer Reports released policy recommendations to DOT on aviation consumer protections.³ One of them was revamping ACPAC so that it "...provides a true consumer protection voice to the Department, with members who advocate on behalf of consumers."

For consumers of air travel, the lack of meaningful representation is even more serious because the airline industry is the only consumer-facing industry where its customers have no private right of action for unfair, deceptive and anticompetitive practices. Its absence eliminates the discipline present in other industries to respect consumers' rights. Congress never discussed nor intended this court-interpreted denial of legal protection when deregulating the airline industry more than 40 years ago.

² National Consumers League et al. Letter to the Honorable Elaine Chao. November 28, 2018. Online: https://nclnet.org/wp-content/uploads/pdf/Chao_Consumer_Letter_-_11-28-2018_FINAL_v2.pdf

³ Consumer Reports. "Aviation Consumer Protection Policy Recommendations for the Department of Transportation," February 16, 2021. Online: <https://advocacy.consumerreports.org/wp-content/uploads/2021/02/CR-recommendations-to-DOT-Airline-Consumer-Protections-2021.pdf>

As the sole agency with consumer protection for millions of American travelers, it is critical that the consumer representative on this important DOT advisory committee have deep experience in protecting airline consumers from industry abuses. We and our organizations have years of experience working with seasoned consumer advocates and we would be pleased to work with you to identify a potential appointee to the ACPAC. We further strongly recommend that you designate the consumer representative on the ACPAC as chair of the committee.

Thank you for your time and consideration. In your opening statement before the U.S. Senate, you talked about “government’s basic role of empowering Americans to thrive.” We look forward to speaking with you about how an essential step in achieving that goal – one we share with you – is for American consumers’ voices to be heard and considered when government policy is made.

Sincerely,

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