



Carrier Responsibility For Responding to Consumer Complaints (Feb. 2016)

By David M. Endersbee and Alexander T. Simpson

The U.S. Department of Transportation (“DOT”) has heightened its regulation of airline consumer protection matters. For years, under authority vested in DOT by the Air Carrier Access Act, (49 U.S.C. § 41705), DOT has required that carriers provide “dispositive” responses to written disability-related complaints within 30 days of their receipt. More recently, pursuant to DOT’s authority in 49 § U.S.C. 41712 to prohibit unfair and deceptive practices, carriers have been required to acknowledge non-disability written complaints within 30 days of their receipt, and provide “substantive” written responses no later than 60 days after their receipt. Complaints – once a matter of simple customer relations – now require coordinated recordkeeping and careful attention in order to avoid DOT enforcement action.ⁱ

DOT has also issued formal guidance concerning carrier responses to written complaints made on behalf of third parties.

Disability-Related Complaint Requirements

14 C.F.R 382.155 sets forth detailed requirements for carriers responding to disability-related complaints. In order for a response to be “dispositive,” it must satisfy each element of DOT’s regulations, including, but not limited to: timeliness; admission or denial of a violation; remedial steps, if any; and advising the complainant of his or her right to pursue DOT enforcement action.

General Complaint Requirements

Responses to non-disability-related consumer complaints are governed by 14 CFR 259.7. Although carrier responses to these complaints are not subject to the same stringent requirements as disability-related complaints, DOT does require responses to be “substantive.” In guidance, DOT has stated that “substantive” means “a response that addresses the specific problems about which the consumer has complained,” i.e., as opposed to a form response.



The firm’s practice encompasses virtually every aspect of aviation law, including advising domestic and foreign airlines on compliance with the DOT’s rules on nondiscrimination on the basis of disability in air travel and passenger protections.

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Responding to Third Party Complaints

As carrier customer service personnel will be aware, complaints are often submitted by third parties on behalf of a passenger (e.g., an adult child on behalf of an elderly parent). DOT has issued guidance indicating, among other things, that (in many, but not all, cases) if a carrier's own privacy policies or national laws require it, a carrier may request that the third-party complainer submit evidence or assurance that the third-party has authorization to act on a passenger's behalf. DOT guidance also states that carriers implementing such policies should include this information on their web sites in the same location as the complaint filing information.

Use Caution When Responding

A frequent pitfall for carriers is providing complaint responses which do not, in DOT's view, fully or substantively address each aspect of a consumer complaint. In guidance intended for general consumer complaints, but equally applicable to disability-related complaints, DOT has stated that "[w]hen an individual complains in writing about more than one issue, the rule requires carriers to respond substantively to each specific allegation." In addition, if a complaint raises both disability-related and non-disability related complaint issues, carriers must ensure that the disability-related aspects of the complaint are given a "dispositive" response.ⁱⁱ Carriers must also carefully categorize disability-related complaints for inclusion in annual reports submitted to DOT.

Social Media

The Internet and social media have made it far easier for consumers to complain. DOT, besides requiring carriers to provide means for consumers to complain via mail and/or the carrier's own website, provides its own Internet-based complaint submission form. DOT analysts forward these complaints to carrier personnel for action, and in addition monitor and track carrier responses for timeliness and overall compliance.

The requirements discussed above apply to both U.S. and foreign carriers. Carriers are advised to carefully review DOT's consumer protection requirements to confirm that they are in compliance. In addition, because of the overlap of requirements, and the extensive reach of DOT's complaint-related regulations (tracking and annual reporting of disability-related complaints; ensuring timely and substantive responses to all complaints; disclaimers for social media, etc.), carriers are urged to consult with counsel to ensure complete compliance with DOT's varied requirements.

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ⁱ See, e.g., Southwest Airlines Co., Order 2013-5-1. DOT imposed a \$150,000 civil penalty against Southwest for (i) failing to provide timely and dispositive responses to disability-related complaints and (ii) failing to provide timely responses to general consumer complaints.

ⁱⁱ For example, a consumer complaint which expressed dissatisfaction with both an in-flight meal and with a carrier's wheelchair service would require a "substantive" response with respect to the meal, and a "dispositive" response with respect to wheelchair service. The "substantive" portion of the response concerning the meal would not need to be very detailed, but it would have to clearly relate to the essence of the complaint. In contrast, the "dispositive" portion of the response concerning wheelchair service would have to incorporate the specific complaint response elements required by 14 C.F.R. 382.155.