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Carrier Responsibility For Responding to Consumer Complaints (March 2014)

By David M. Endersbee and Alexander T. Simpson

The U.S. Department of Transportation (“DOT”) has heightened its airline consumer protection regulation. For years, under authority vested in DOT by the Air Carrier Access Act, (49 U.S.C. § 41705), DOT has required that carriers respond to written disability-related complaints within 30 days of their receipt by the carrier. 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 general, non-disability written complaints within 30 days of receipt, and, in most cases, to provide a substantive written response no later than 60 days of receipt. In addition, DOT has recently issued formal guidance concerning carrier responses to written complaints made on behalf of third parties. Complaints – once a matter of simple customer relations – now require coordinated recordkeeping and careful attention in order to avoid DOT enforcement action.ⁱ

Disability-Related Complaint Requirements

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

General Complaint Requirements

Responses to written consumer complaints that are not disability-related 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 these 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 mere 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, written 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 that (in many, but not all, cases) if a carrier's privacy policies or national laws require it, a carrier may request that the third-party complainant submit evidence or assurance that the third-party has authorization to act on a passenger's behalf. DOT has also stated 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 issue faced by carriers is providing written responsesⁱⁱ 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 addressed in accordance with DOT rules.

The Internet and social media have made it far easier for consumers to complain.ⁱⁱⁱ DOT, besides requiring carriers to provide means for consumers to complain, provides its own Internet-based complaint submission form. DOT analysts forward these complaints to carrier personnel, in addition to monitoring and tracking carrier responses for timeliness and overall compliance.

The requirements discussed above apply to larger U.S. and foreign carriers.^{iv} 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 various 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 In guidance, DOT has advised that carriers may respond to written complaints via phone calls, provided that the “carrier retains a record of the conversation(s) [for three years], including the name of the carrier employee, the name of the individual that the employee spoke with, the date and time of the call, and a summary of the substance of the conversation sufficient to permit a reviewer to determine whether the principal issues in the complaint were addressed as required by the rule.” See Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections (EAPP #2), Section VII, Question #7, Revised on June 15, 2012, available at <http://www.dot.gov/airconsumer>.

ⁱⁱⁱ Carriers are not required to respond to complaints submitted on social media (e.g., Facebook and Twitter) as long as the carrier “clearly indicate[s] on that website’s primary page that it will not reply to consumer complaints on that site and the carrier must direct consumer’s to the carrier’s mailing address and website or email location for filing written complaints.” *Id.* at Section VII, Question #8.

^{iv} In general, these requirements apply to “all the flights of a certificated or commuter air carrier if the carrier operates scheduled passenger service or public charter service using any aircraft originally designed to have a passenger capacity of 30 or more seats, and to all flights to and from the U.S. of a foreign carrier if the carrier operates scheduled passenger service or public charter service to and from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more seats.” 14 CFR § 259.2.

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