

February 6, 2018

The Honorable Elaine L. Chao
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Dear Secretary Chao,

The undersigned organizations write to express our concern with the revised service animal policies announced by Delta Air Lines (“Delta”) on January 19 and United Airlines (“United”) on February 1. We believe that these policies, which are slated to go into effect on March 1, are inconsistent with the Department of Transportation’s regulations implementing the Air Carrier Access Act (ACAA) (14 C.F.R § 382) and the Department’s “Guidance Concerning Service Animals in Air Transportation,” [68 Fed. Reg. 24,874 (May 9, 2003)]. Consequently, the Department must deem these revised policies to be in violation of the ACAA and advise Delta and United accordingly.

Delta’s revised service animal policy includes several key requirements that will impact all passengers with disabilities who use service animals. First, Delta’s revised policy requires all service animal users to submit a completed “Veterinary Health Form”¹ 48 hours prior to travel. Second, Delta’s revised policy requires all psychiatric service animal and emotional support animal users to submit, in addition, a completed “Confirmation of Animal Training” form² 48 hours prior to travel. On this form, the user of a psychiatric service animal or emotional support animal must confirm that the animal has been trained to behave in public and affirm that inappropriate behavior will lead to denied boarding of the animal or its removal from the aircraft. United’s revised policy would also require emotional support animal users to provide confirmation of training and a health certificate, to include an affirmation from a veterinarian “that there is no reason to believe that the animal will pose a direct threat to the health and safety of others on the aircraft or cause a significant disruption in service,” 48 hours prior to travel.³

¹ Delta, Trained Service Animal Request, <https://www.delta.com/content/dam/delta-www/pdfs/policy/TrainedServiceAnimal-RequiredForms.pdf> (last visited Feb. 6, 2018).

² Delta, Emotional Support/Psychiatric Service Animal Request, <https://www.delta.com/content/dam/delta-www/pdfs/policy/EmotionalSupportAnimal-RequiredForms.pdf> (last visited Feb. 6, 2018).

³ United, We Updated Our Policy Around Emotional Support Animals, <https://hub.united.com/united-emotional-support-animal-policy-2530539164.html> (last visited Feb. 6, 2018). We are proceeding under the belief that United’s new requirements for emotional support animals do not apply to psychiatric service animals (animals trained to assist a person with a psychiatric disability). However, it should be noted that United’s announcement states, “we do not require any documentation or advance notice from passengers who travel with service animals (other than for foreign travel if required by national law).” *Id.* Such a statement would seem to indicate that United fails to understand that psychiatric service animals are trained service animals as people with disabilities must provide advance notice and documentation to travel with these animals. See United, Service Animals, https://www.united.com/web/en-US/content/travel/specialneeds/disabilities/assistance_animals.aspx (last visited Feb. 6, 2018). Thus, although we believe that United’s new requirements do not apply to psychiatric service animals, it is not clear from United’s website, which provides conflicting information.

The ACAA prohibits disability-based discrimination in air travel. Under the ACAA, air carriers are required to “permit a service animal⁴ to accompany a passenger with a disability” during air travel. 14 C.F.R. § 382.117(a). The Department’s service animal guidance details a two-step process for carriers to use in determining whether a particular animal is a service animal and whether it should be allowed to travel with its user in the cabin. 68 Fed. Reg. at 24,875. A carrier may determine whether an animal is a service animal through means to include documentation, if needed. Specifically, evidence that an animal is indeed a service animal may include “identification cards, other written documentation, presence of harnesses, tags, or the credible verbal assurances of a qualified individual with a disability using the animal.” 14 C.F.R. § 382.117(d). The Department’s service animal guidance states, however, that while documentation may be requested in making such a determination, the Department “urges carriers not to require documentation as a condition for permitting an individual to travel with his or her service animal in the cabin unless a passenger’s verbal assurance is not credible.”⁵ 68 Fed. Reg. at 24,876.

Carriers are not required to allow a service animal to travel with the passenger if it presents either “a ‘direct threat to the health or safety of others,’ or a significant threat of disruption to the airline service in the cabin (i.e., a ‘fundamental alteration’ to passenger service.)” 68 Fed. Reg. at 24,875. A “direct threat” is “a significant risk to the health or safety of others that cannot be eliminated by modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.” 14 C.F.R. § 382.3. The Department’s guidance provides examples to help a carrier determine whether or not a service animal poses a direct threat: “animal displays threatening behaviors by growling, snarling, lunging at, or attempting to bite other persons on the aircraft.” 68 Fed. Reg. at 24,876.

Carriers are also not required to accommodate “certain unusual service animals (e.g., snakes, other reptiles, ferrets, rodents, and spiders) as service animals in the cabin.” 14 C.F.R. § 382.117(f). The Department’s regulation further states that for other animals presented, including miniature horses, pigs, and monkeys, the carrier is required to determine “whether any factors preclude their traveling in the cabin as service animals.” *Id.* Factors that can be considered include “whether the animal is too large or heavy to be accommodated in the cabin, whether the animal would pose a direct threat to the health or safety of others, whether it would cause a significant disruption of cabin service, [and] whether it would be prohibited from entering a foreign country that is the flight’s destination.” *Id.* The Department’s guidance states that such consideration of “unusual animals such as miniature horses, pigs and monkeys should be evaluated on a case-by-case basis.” 68 Fed. Reg. at 24,877.

Delta’s and United’s revised service animal policies contradict the Department’s regulations and guidance. First, Delta’s and United’s revised policies requiring health and vaccine verification go beyond the limits set by the Department on the documentation that carriers may demand of

⁴ A service animal is defined as “[a]ny animal that is individually trained or able to provide assistance to a qualified person with a disability; or any animal shown by documentation to be necessary for the emotional well being of a passenger.” 68 Fed. Reg. at 24,878.

⁵ “The purpose of the documentation is to substantiate the passenger’s disability-related need for the animal’s accompaniment, which the airline may require as a condition to permit the animal to travel in the cabin.” 68 Fed. Reg. at 24,876.

passengers travelling with service animals. Neither the regulation, 14 C.F.R. § 382.117, nor the Department's May 2003 guidance permits airlines to demand health verification for every service animal accompanying a person with a disability. The only documentation requirements allowed by the regulations and guidance concern whether an animal is a service animal (and documentation may be requested only if the passenger cannot provide credible verbal assurances) and, in the case of psychiatric service animals and emotional support animals, whether or not the animal is needed as an accommodation. *See* 14 C.F.R. § 382.117. The request for veterinary health information is not part of the consideration of whether an animal is a service animal, and would create significant burdens for people with disabilities attempting to travel by plane.

Nor is veterinary health information necessary to determine whether an animal would pose a direct threat or a fundamental alteration of passenger service. While evidence of veterinary health might be helpful in the event a passenger is bitten or otherwise harmed by a service animal, it does not indicate whether or not an animal would be a direct threat or whether its carriage would result in a fundamental alteration of the carrier's operations. Furthermore, the Department's own guidance indicates that any concerns with direct threat should be individualized and based on observable actions. *See* 68 Fed. Reg. at 24,876.

Whether or not service animals already have evidence of vaccinations is also irrelevant. Service animals that have received appropriate vaccines may still be poorly trained or even excellently trained but otherwise provoked or injured in a way that causes a negative incident. Access for service animals is an important civil right and where there is no evidence that a service animal has behavior problems, the passenger should not be subjected to additional documentation requirements, particularly requirements that go beyond the Department's regulations and guidance under the ACAA.

In addition, the Department's regulation specifically lists documentation items that a carrier may request 48 hours in advance, 14 C.F.R. § 382.27(c), and health information for a service animal is not among them. The Department's regulations simply do not allow a carrier to request veterinary health documentation 48 hours prior to the flight.

Second, Delta's and United's revised policies requiring affirmation of behavioral training go beyond the Department's limits on information that may be requested by a carrier. The Department's regulations allow carriers to request documentation regarding a passenger's need for a psychiatric service animal or emotional support animal. 14 C.F.R. § 382.117(e). The regulation details the types of documentation and information that a carrier may require. *Id.* An animal's training is not among them. *See* 14 C.F.R. § 382.117(e)(1)-(4).

The Department's service animal guidance allows carriers to inquire as to whether a *particular* animal has been trained to behave properly in a public setting. However, neither the Department's regulations nor its guidance allow a carrier to request that *all* users of a certain type of service animal provide assurances of the animal's training. Specifically, the Department's guidance states that carriers should "not make assumptions about how a particular unusual animal is likely to behave based on past experience with other animals." 68 Fed. Reg. at 24,877. The Department's guidance further states that "Before deciding to exclude the animal, [the

carrier] should consider and try available means of mitigating the problem.” *Id.* Examples given include “muzzling a dog that barks frequently, allowing the passenger a reasonable amount of time under the circumstances to correct the disruptive behavior, [or] offering the passenger a different seat where the animal won’t block the aisle.” *Id.*

If Delta or United determine that an advance assurance of behavior was problematic, how would either carrier be able to find mitigating measures as stated in the guidance? What will happen if the individual refuses to check the box to confirm that the animal has been trained but agrees that if the animal behaves inappropriately that it will be denied boarding or removed from the aircraft? Because the Department provides no guidance to carriers allowing this type of inquiry how will travelers who use psychiatric service animals or emotional support animals be able to determine whether or not their rights have been violated under the ACAA? Such a scheme is inconsistent with the Department’s regulations and guidance.

Under 14 C.F.R. § 382.27(c)(8), a carrier may require 48 hours advance notice for the transport of emotional support or psychiatric service animals in the cabin. However, the requirement is clearly linked to the documentation that a carrier can request about the need for a psychiatric service animal or an emotional support animal. *See* 14 C.F.R. § 382.117(e). Delta’s and United’s requirements for an affirmation of an animal’s training only add an additional barrier for passengers with disabilities who use psychiatric and emotional support animals, without providing any assurance that fraudsters won’t be able to continue fraudulently traveling with pets under the guise that they are service animals or emotional support animals.

Lastly, Delta’s policy also violates the Department’s guidance regarding the requirement to evaluate certain types of animals on a “case-by-case basis.” Specifically, Delta’s list of animals not permitted include animals with hooves.⁶ For example, miniature horses have hooves.⁷ Thus, Delta’s prohibition of animals without hooves without considering a hooved animal on a “case-by case basis” is on its face a violation of the Department’s regulations and guidance. *See* 14 C.F.R. § 382.117(f); 68 Fed. Reg. at 24,877.

According to the Department’s Semi-Annual Regulatory Agenda, the Department will move forward with an Advance Notice of Proposed Rulemaking in July. As disability rights organizations, we expect that any proposed regulation will permit passengers with disabilities who use trained service animals to travel with those animals without encountering barriers to access. This includes advance documentation requirements related to training, health, and, in the case of psychiatric service animals, third-party documentation regarding need. We also support continued access for emotional support animals. Both trained service animals and emotional support animals must be trained to behave appropriately. Furthermore, air carriers and their contractors must be required to train their employees in how to interact with people with disabilities who use these animals and how to observe animal behavior at the airport and in the passenger cabin.

⁶ Delta, [Flying with a Trained Service or Emotional Support/Psychiatric Service Animal, Animals Not Permitted](https://www.delta.com/content/www/en_US/traveling-with-us/special-travel-needs/service-animals.html), https://www.delta.com/content/www/en_US/traveling-with-us/special-travel-needs/service-animals.html (last visited on Feb. 6, 2018).

⁷ The Miniature Horse.com, [General Care of Miniature Horses](http://www.theminaturehorse.com/generalcare.htm), <http://www.theminaturehorse.com/generalcare.htm> (last visited on Feb. 6, 2018).

In the meantime, the Department must stop the proliferation of patch work service animal access requirements, and hold carriers to current service animal regulations and guidelines. Otherwise, the ACAA's protections for service animals may become meaningless. If you have any questions, please contact Heather Ansley, Associate General Counsel for Corporate and Government Relations with Paralyzed Veterans of America, at 202-416-7794 or by email at heathera@pva.org.

Sincerely,

American Association of People with Disabilities
Bazelon Center for Mental Health Law
Christopher & Dana Reeve Foundation
Disability Rights Education & Defense Fund (DREDF)
National Association of the Deaf
National Disability Rights Network
Paralyzed Veterans of America
The Arc of the United States
The National Council on Independent Living
United Spinal Association

Cc: Blane Workie, Assistant General Counsel, Office of Aviation Enforcement and Proceedings