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Testimony

'STRENGTHENING AIRLINE OPERATIONS AND CONSUMER PROTECTIONS'
STATEMENT OF SHARON PINKERTON, SENIOR VICE PRESIDENT, LEGISLATIVE AND REGULATORY AFFAIRS, AIRLINES FOR AMERICA
BEFORE THE
U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

February 9, 2023

Thank You

Airlines for America (A4A) appreciates the opportunity to testify on and bring a broader context to the state of airline operations and consumer protections. We value the Committee's continued interest and focus on our industry and these important issues. We are thankful for the many members of this Committee who have dedicated significant time and resources toward understanding the nuances and logistical challenges our interconnected aviation system can face every day in order to craft effective policies tailored to benefit safety, the traveling public and the men and women of our industry. No better example of this leadership was the crafting, enacting and implementation of the bipartisan Payroll Support Program (PSP).

PSP was critical to ensuring that U.S. airline employees remained on the job, ready to go and able to provide essential services throughout the pandemic, including transporting first responders, shipping medical equipment and eventually distributing vaccines. PSP ensured that U.S. airlines were able to make payroll and protect the jobs of flight attendants, pilots, gate agents, mechanics and others throughout the most harrowing months of the pandemic when the industry was in dire financial straits.

PSP was an overwhelming and widely recognized success—backed by labor unions and management in addition to the bicameral, bipartisan support in Congress—that kept employees on the job with a paycheck, healthcare and retirement contributions without straining federal, state and local unemployment programs. Without PSP, U.S. airlines would have been forced to implement massive layoffs, dramatically reduce service and cancel hundreds of aircraft orders.

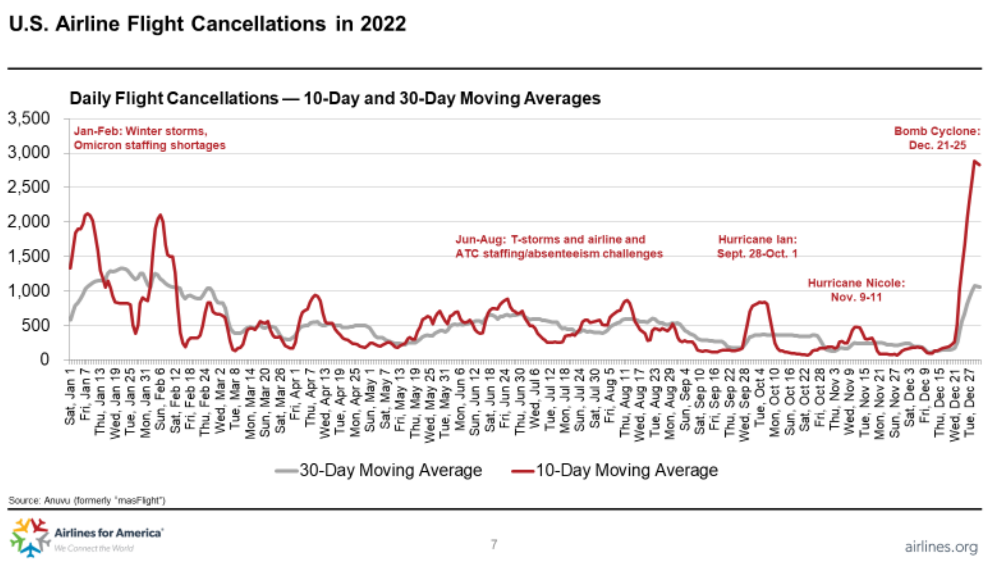
While PSP was many things, it was not a panacea for addressing all the economic impacts and unique challenges posed by a pandemic. However, it was an effective and necessary policy that provided an important human capital bridge and systemwide framework capable of responding to the resurgence in travel demand in 2022. While 2022 operations were certainly beset by many factors and challenges, we would not have seen or experienced the modicum of recovery without PSP. PSP was a successful tactical investment in critical infrastructure and human capital that put the U.S. well ahead of many of our international partners—and competitors—who did not have the foresight to invest strategically. The entire aviation industry is grateful for your work, vision and leadership.

2022/2023 Systemwide Operational Accountability

There is no doubt that 2022 was one of the most difficult operational years in history. However, air carriers took responsibility and quickly took actions to address issues within their control. Airlines take customer service commitments very seriously and, as a baseline, it is important to note that airlines have absolutely no incentive to delay or cancel flights and only do so when circumstances dictate. While the details of any specific given delay or cancellation are contingent on the unique operating variables that led to it, a wide array of challenges may contribute to the decision. Variables can certainly include circumstances within the airline's control, such as maintenance/crew issues or IT failures, and air carriers routinely take full responsibility and are accountable for those events both through Department of Transportation (DOT) rules and regulation compliance and enforcement actions and through the court of public opinion.

In fact, there are innate disincentives for air carriers to incur operational disruptions, exemplified by the recent Southwest Airlines incident in December 2022, which in part led not only to their participation in this hearing, but also to a DOT investigation and the significant financial impacts and ramifications outlined in my colleague's testimony. I can assure you that no one at Southwest, or any other airline for that matter, takes these events lightly and ever wants them to happen. But when they do, there is certainly no lack of accountability.

Conversely, we hope there can also be accountability and broader context applied to other factors and variables that lead to delays or cancellations. While U.S. airlines are doing everything possible to make improvements to operational factors within their control, there are many factors beyond their control—including extreme weather, air traffic control (ATC) staffing or systems issues, airport power outages, National Air Space (NAS) volume and law enforcement activity. One can also question where the incentives and disincentives lie for ATC and NAS accountability, and this is an area on which we would encourage the Committee to focus its attention and oversight. As an industry, we are committed to addressing issues on our end; the government, which is a critical component of our supply chain, should focus on its end and take accountability for failings as well.

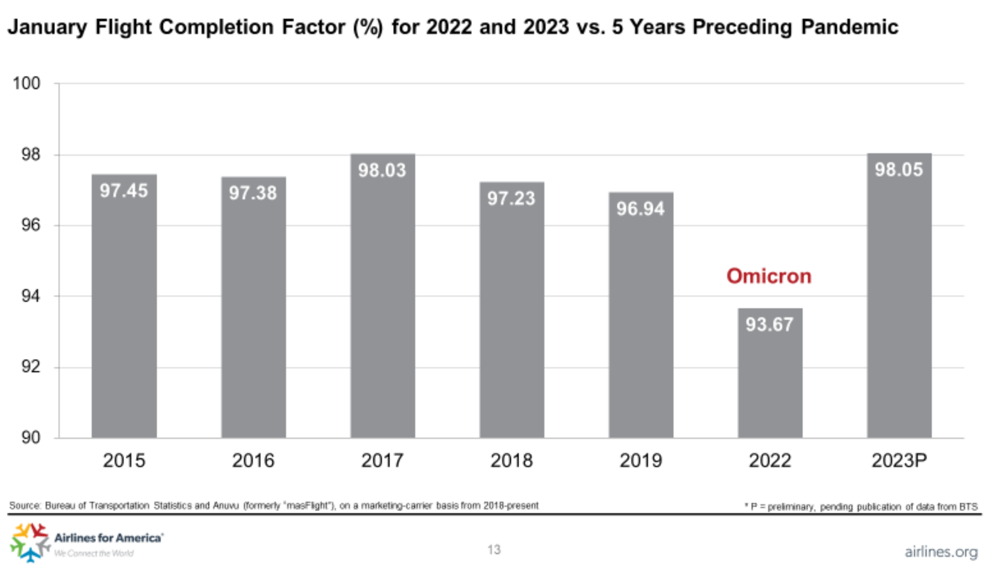


Analysis of 2022 data provides a good example for how broader review can provide context to what is actually happening across the aviation system. While acknowledging that DOT has not yet released data for December, for the first 11 months of 2022, 66 percent of flight cancellations in the system were caused by weather (56 percent) and the NAS (10 percent) collectively, as our nation experienced unprecedented weather events, ATC staffing shortages amid rising volume from commercial aviation and general aviation as well as an increase in commercial space launches.

Further, at the onset of 2022, the country experienced several significant winter storms and air carriers dealt with the unpredictable staffing/absenteeism challenges caused by the Omicron variant. Moving into the Memorial Day holiday and the summer months, the system experienced significant thunderstorm activity, carrier staffing challenges and numerous ATC facility and system challenges including staffing issues that resulted in ground delay programs and ground stops, along with several runway closures.

As we transitioned to the fall, the system had to deal with the impacts of Hurricane Ian in September and Hurricane Nicole in November, among others, and in the final week of December the country was hit with a bomb cyclone. Despite all these events, preliminary data show that U.S. airlines completed more than 97 percent of flights at U.S. airports in 2022—meaning that fewer than 3 percent of flights were canceled.

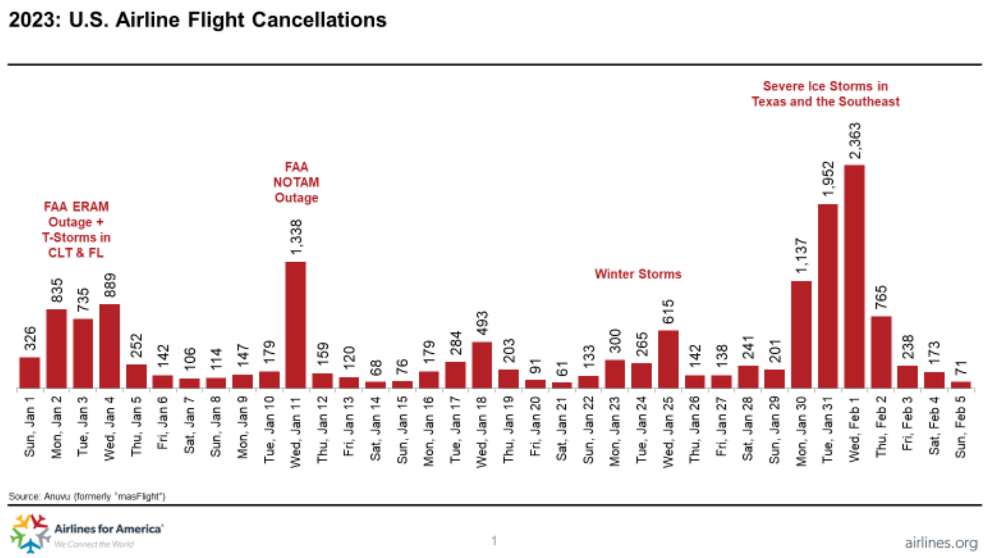
In January 2023, despite two major Federal Aviation Administration (FAA) system outages and several winter storms, airlines canceled just 2 percent of flights, better than January 2018, 2019 and 2022.



Some of the issues beyond the airlines' control included:

- January 2: The FAA En Route Automation Modernization (ERAM) system had a failure that forced the agency to order a ground stop, slowing traffic at Florida airports. Also, there was reduced visibility in Orlando (MCO) and Fort Lauderdale (FLL) along with winter storms in the west that brought low visibility, rain, and wind to San Francisco (SFO), as well as snow in Denver (DEN) that extended into Minneapolis (MSP) and Chicago.
- January 4: Thunderstorms in Charlotte (CLT) and central Florida.
- January 11: Nationwide ground stop due to a FAA Notice to Air Missions (NOTAM) system outage. Once the ground stop was lifted, airlines and airports struggled with managing compacted demand and recovering diversions resulting in particularly acute cancellations at Ronald Reagan National (DCA), LaGuardia (LGA) and CLT.
- January 25: Low visibility, snow and wind hit Chicago and Detroit; strong winds and low ceilings impacted LGA.

- January 30-31: Low ceilings in Las Vegas (LAS) reduced arrival/departure capacity during high-volume periods; winter storms with snow, ice and unusually cold temperatures impacted several airports in Texas and the Southeast.

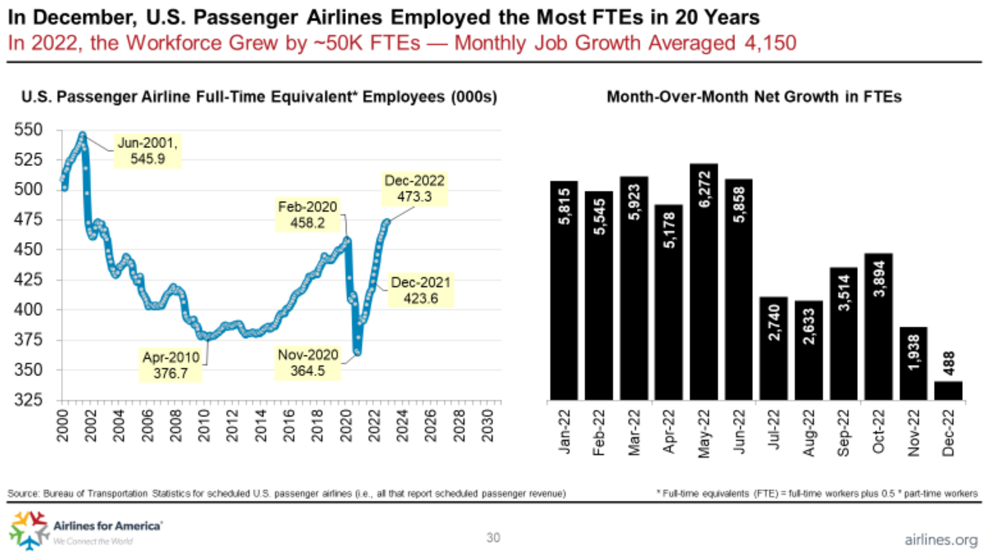


Despite these many challenges, airlines remain committed to using every tool at their disposal to provide a safe and smooth experience to the traveling public, and our industry will do all it can to maintain and continually improve operational reliability.

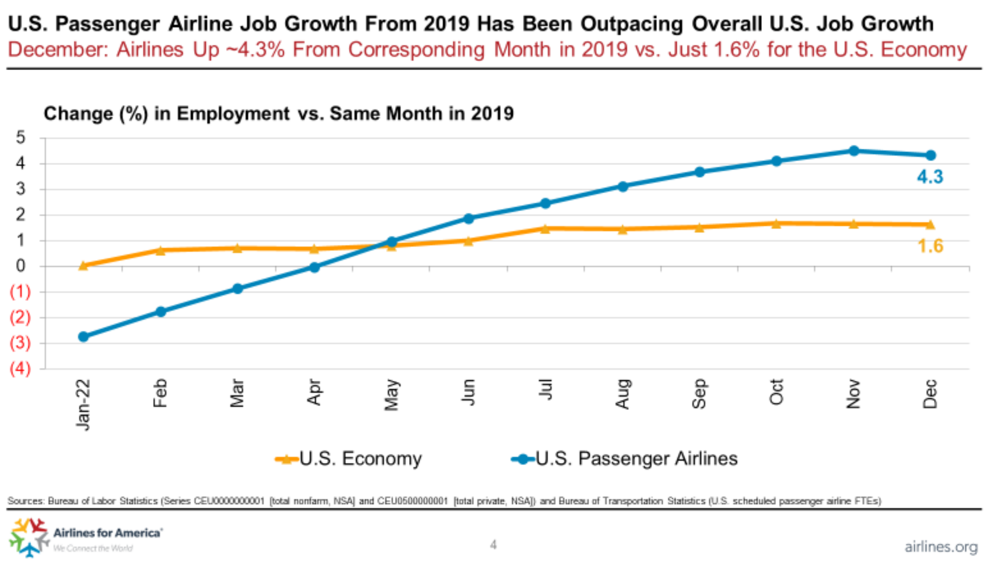
State of the Industry

Jobs & Staffing. U.S. airlines have had an acute focus on staffing and have been working diligently and continually to address operational challenges within their control by hiring additional staff and adjusting schedules to improve reliability. As 2022 progressed, carriers proactively reduced their scheduled departures from their initial levels by about 15 percent to improve operational reliability.

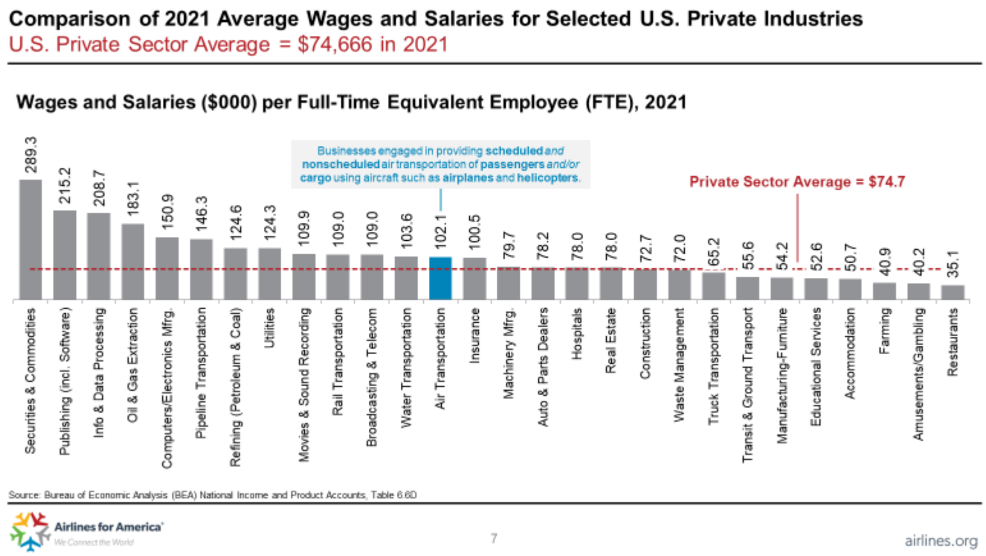
At the same time, like many other industries across the economy, airlines also quickly had to adjust to new employment realities and modify pre-pandemic staffing models. For example, in the second half of 2022, carriers continued to observe higher-than-pre-pandemic rates of absenteeism, and several carriers have indicated that they now require 5-10 percent more staff to operate the same amount of pre-pandemic capacity. These factors led to aggressive hiring tactics that have resulted in the U.S. passenger airlines adding 50,000 employees over the course of 2022.



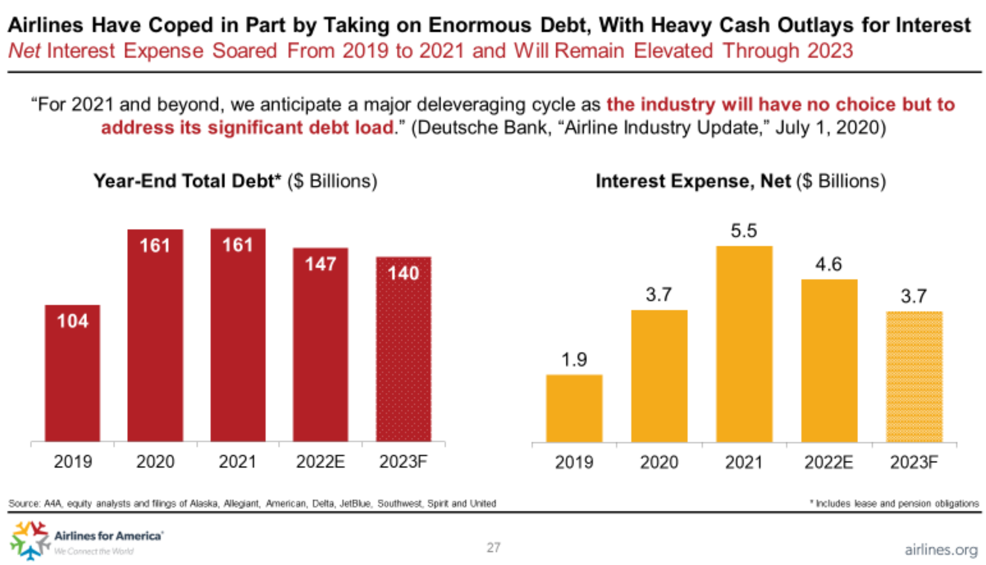
In fact, as of November 2022, U.S. passenger airlines had their highest employment level in more than 20 years (since July 2002) and were adding jobs at a rate more than twice that of the U.S. economy.



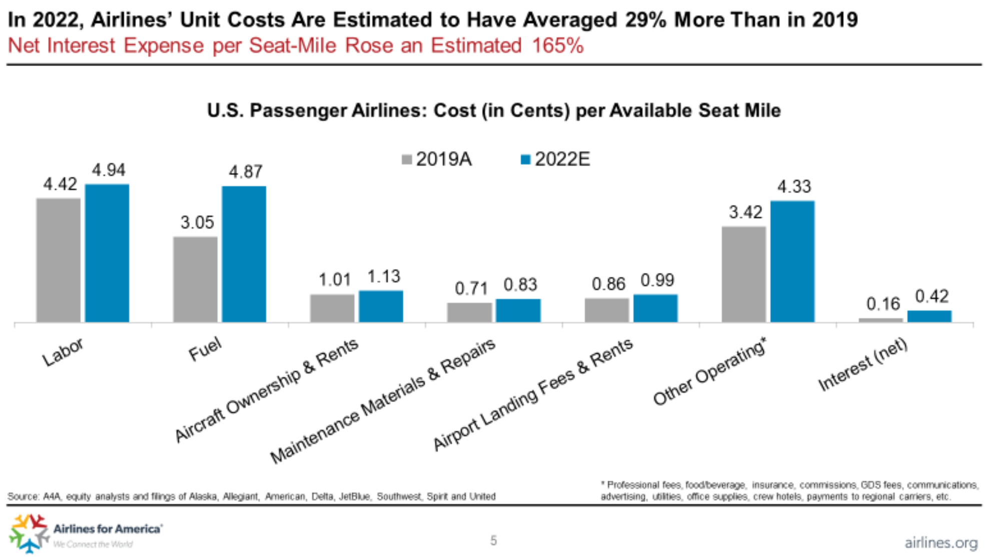
Carriers have also been focused on securing a pipeline of employees across the industry to accommodate future demand for air travel and have invested heavily in new programs, including apprenticeships, pilot academies and partnerships with universities. These pathways offer tremendous opportunities, and airlines are proud to offer high-quality, career track jobs that are well-paying and provide solid benefits. For example, in 2021, per the latest data point available from the Bureau of Economic Analysis, air transportation employees earned wages 37 percent higher than the average private sector employee.

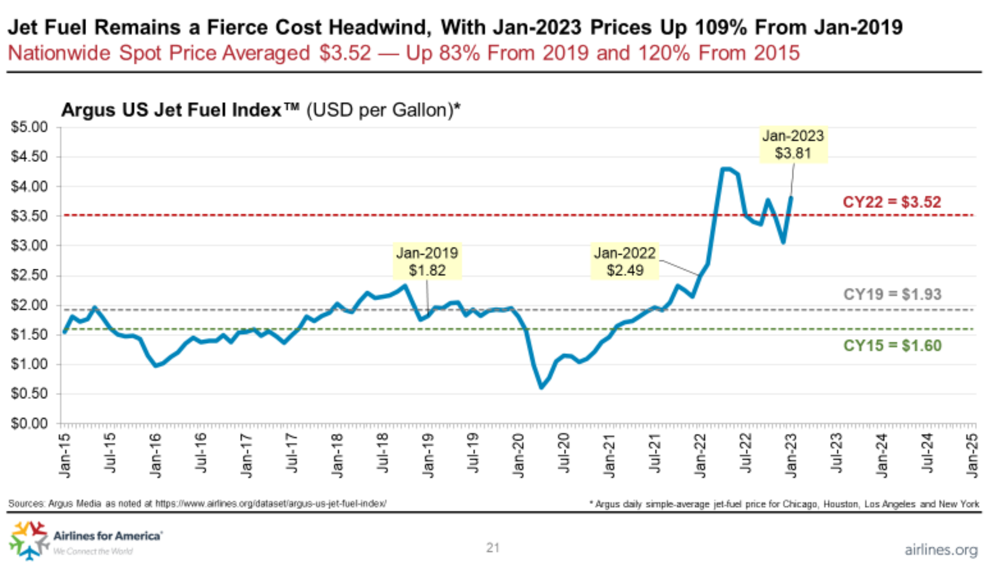


Debt. Even with all the public and private actions taken over the course of the pandemic, U.S. carriers amassed a significant amount of debt, which ended 2022 just shy of $150 billion in 2022. This debt comes with heavy cash outlays for interest. In fact, net interest expense tripled from 2019 to 2021 and will remain elevated through 2023. As of February 7, nine publicly traded U.S. airlines had published their full-year 2022 results, posting just $2.5 billion in pre-tax earnings—a modest 1.3 percent pre-tax profit margin. Notably, that comes on the heels of $49 billion in pre-lax *losses* recorded in 2020 and 2021 combined.



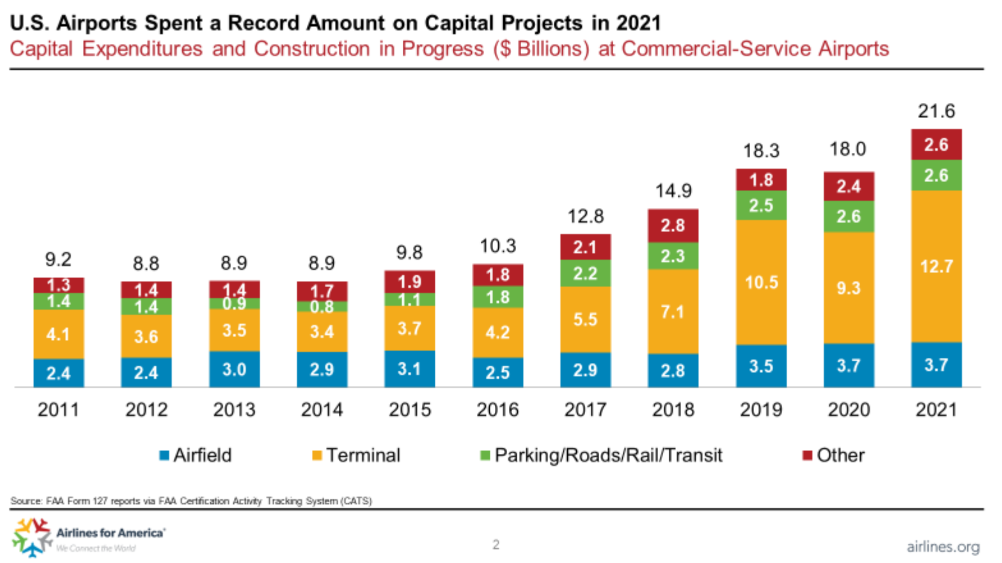
Costs. In 2022, U.S. airline unit costs, including interest expense, were approximately 30 percent higher than in 2019. This includes the higher costs in the price of jet fuel, which averaged 83 percent more in 2022 than in 2019 and, in January 2023, was 109 percent higher than in January 2019.





Record Reinvestment. U.S. passenger airlines are reinvesting record sums in their products to continually improve the customer experience, enhance operational reliability, increase efficiency and reduce emissions. In addition to aircraft, facilities and ground equipment, this includes a wide range of customer-facing technology initiatives that make it easier for travelers to shop for tickets and other services; check in for their journeys and navigate airports; check or track bags; to modify their itineraries; redeem vouchers or loyalty points; and to stay apprised in real-time of changes to their flights during irregular operations.

This has also been matched by record investments by U.S. airports, supported predominantly by rents, landing fees, parking fees, concessions, ticket taxes and other revenues generated from airport customers.



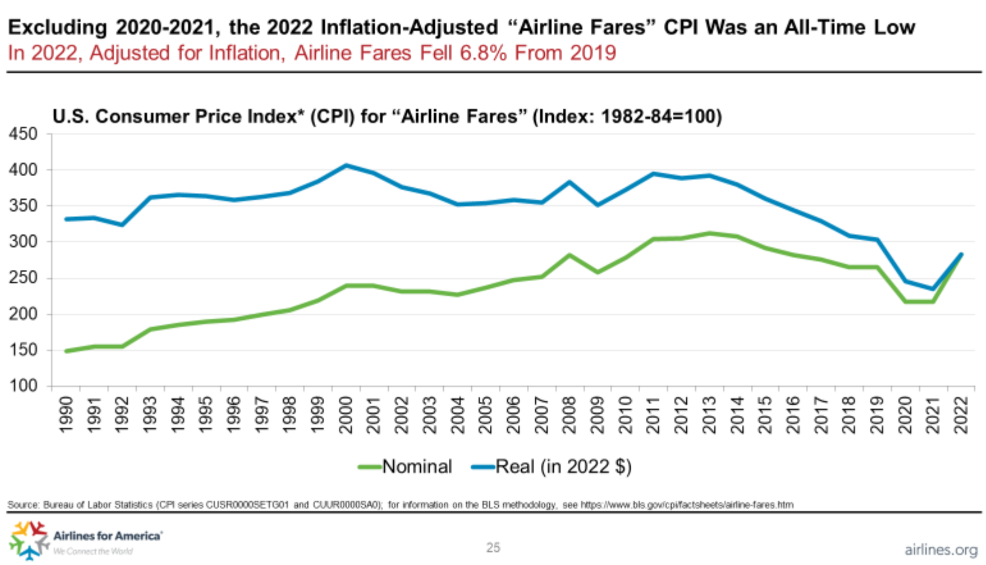
Deregulation Continues to Benefit Consumers

Prior to the pandemic, we were experiencing what many have called the "Golden Age" of air travel. U.S. airlines were flying a record 2.5 million passengers and more than 58,000 tons of cargo each day. Those record numbers were in large part because of two main factors: affordability and accessibility. Accounting for inflation, and including ancillary services, average domestic ticket prices fell 15 percent from 2014-2019, 22 percent from 2000-2019 and 44 percent from 1979-2019 – the 40-year period following the Airline Deregulation Act of 1978. Those lower fares made commercial air travel accessible to nearly all Americans. Air travel was opening doors, connecting loved ones and generating opportunity across all walks of life and economic circumstances demonstrating that air travel is not just for the affluent anymore.

While the financial repercussions of the pandemic will be felt for years, the value proposition to consumers for air travel is still strong: it is affordable and accessible, and airlines are reinvesting record sums to continuously improve the product. U.S. airlines strive to provide the highest levels of customer service, and commercial air travel in the U.S. is safer and more environmentally friendly than ever before thanks in large part to the competition and innovation unleashed by multiple decades of deregulated air service.

Airline Fares

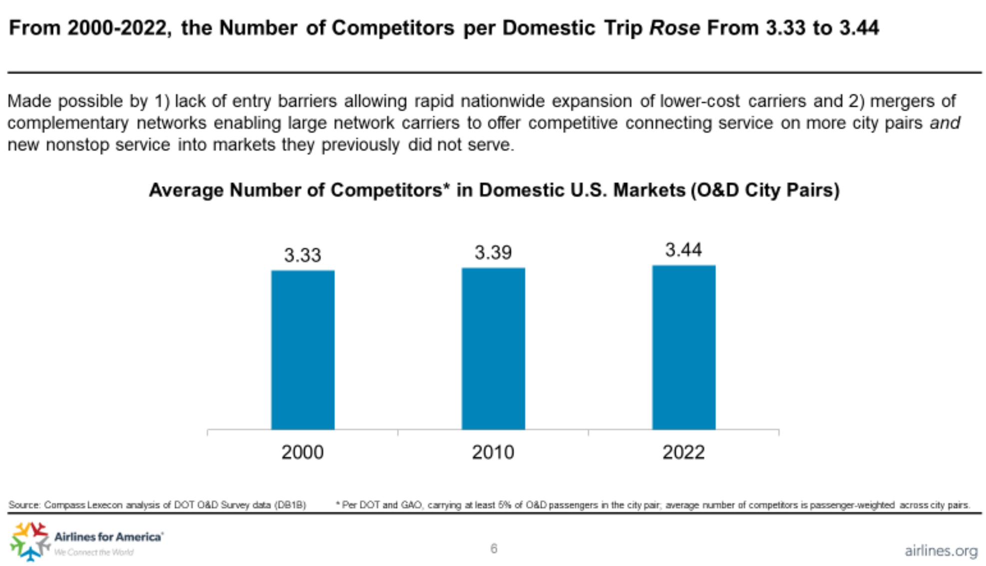
In 2021, domestic air travel (including ancillary fees) was 55 percent less expensive than it was in 1979. In 2022, inflation-adjusted fares averaged 6.8 percent below 2019. U.S. airlines have maintained this level of affordability while facing significantly higher costs, as detailed in the previous section.



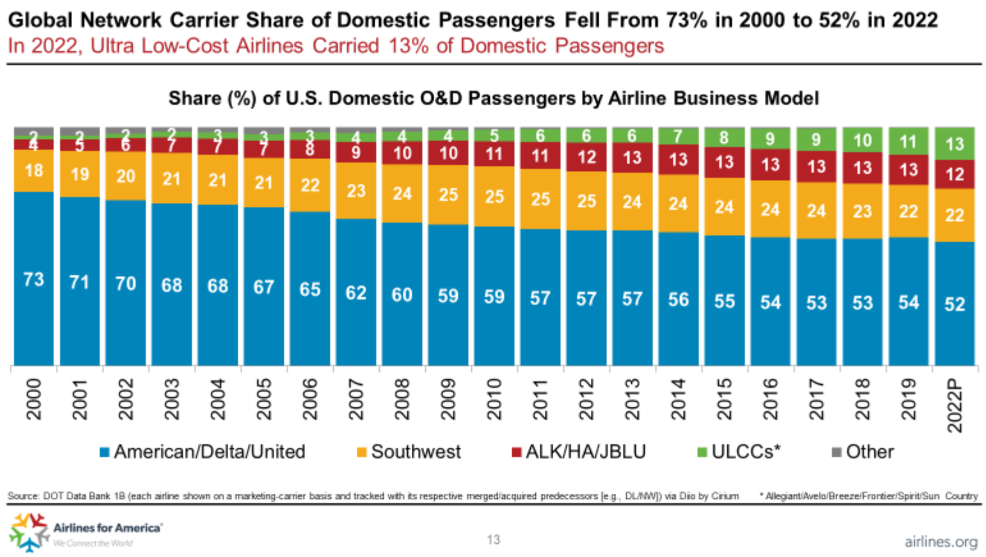
Competition, Consumer Protection & Reregulation

In November 2021, Compass Lexecon released a report[1] entitled 'The U.S. Airline Industry: Myths vs. Facts' which concluded that competition in the U.S. airline industry remains dynamic and robust, to the benefit of consumers, communities, the U.S. economy and airline employees. The report also summarizes that:

- Today's airline industry offers consumers more choices among and between carriers competing with different business models than ever before.
- The lack of entry barriers and more comprehensive networks made possible by mergers has resulted in the average number of competitors per domestic city pair *increasing* from 3.33 to 3.44 over the past two decades.
- Lower cost carriers have entered hundreds of new routes and now carry nearly half of all domestic passengers; nearly nine of ten domestic passengers have lower cost carrier options for their travel.
- Lower cost carriers (including new entrants) are growing several times faster than the U.S. global network carriers and have hundreds of additional aircraft on order to support future growth.
- Mergers between the large network carriers have enabled them to regain their financial footing and restore their growth, including to small communities that depend on their large hub and spoke networks.



[1] https://www.compasslexecon.com/wp-content/uploads/2021/11/The-U.S.-Airline-Industry-Myths-versus-Facts-November-17-2021.pdf



The facts and data show that passengers greatly benefit from vigorous airline competition, which creates greater choice and service options. Congress recognized the benefits to consumers when they acted on a bipartisan, bicameral basis to deregulate the airline industry in 1978. At the same time, Congress also recognized that DOT needed to be a principled regulator and granted DOT broad regulatory authority and charged the Department to regulate with three complimentary considerations, which remain part of DOT's mission today:

- Prevent unfair, deceptive, predatory or anticompetitive practices;
- Place "maximum reliance" on competitive market forces and on actual and potential competition; and
- Maintain an air transportation system that relies on actual and potential competition to provide efficiency, innovation and low prices, and to determine the variety, quality, and price of air transportation services.

We acknowledge the need for a principled regulator, and our industry does not oppose all regulations. Rather, we firmly believe that regulation of airline services or practices should only be promulgated in response to proven market failures or when DOT has evidence of the need for government intervention in the marketplace to prevent actual consumer harm. We believe the same complimentary considerations should be exercised by Congress.

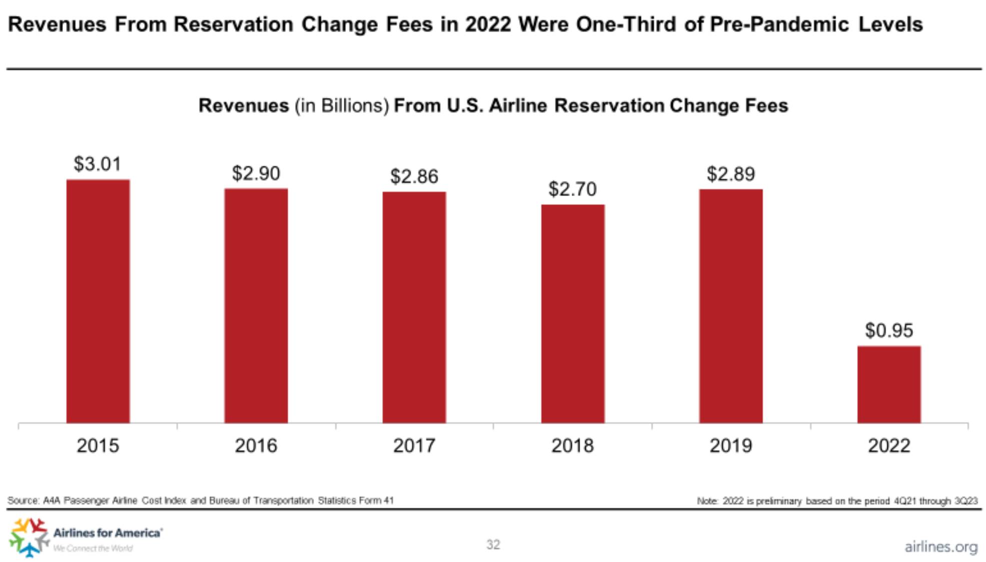
However, despite DOT's robust regulatory framework and the broad authority in this area, over the course of the pandemic our industry has needed to remain nimble and vigilant to many well-intended, but sometimes unnecessary, mis-guided and/or untimely, legislative and regulatory proposals. Some examples, among many others, are:

- Refunds. Some in Congress and the DOT, through a Notice of Proposed Rulemaking (NPRM), have proposed significant changes to DOT's airline refund requirements even though U.S. passenger airlines have been and remain keenly responsive to customers' refund interests. We support many of provisions in DOT's proposal, such as getting to a single definition of what constitutes a significant delay, but also have recommendations on how to ensure that some of these provisions are clear and do not have unintended consequences. Today, A4A member carriers abide by—and frequently exceed—all DOT regulations regarding these consumer protections, and there is no evidence of a market failure or unfair or deceptive practices in this area. In addition to other forms of compensation, the 11 largest U.S. passenger airlines issued more than $32 billion in customer refunds, or $900 million per month, between January 2020 and December 2022. This includes $11.2 billion in 2022 alone, exceeding 2019 by almost 50 percent. The $32 billion in refunds issued by these carriers equates to 65 percent of their $49.6 billion in PSP receipts. It is also worth noting that DOT received just less than one (0.86) complaint about refunds for every 100,000 U.S. airline passengers flown—a 90 percent improvement from the 2020 peak and airlines are working hard to reduce that number further in 2023. Additional regulation is simply not necessary.

- Ancillary Fees. The DOT has issued an NPRM which proposes to reregulate the disclosure and distribution of airline ancillary services and fees. A4A supports consumer protection regulation that advances the DOT's central obligation under airline deregulation to place maximum reliance on competitive market forces. Regulations that empower consumers to make intelligent choices in a competitive marketplace are consistent with airline deregulation. However, regulations that would stifle innovation and interfere with a thriving marketplace, such as those proposed in the NPRM, are fundamentally inconsistent with airline deregulation and will ultimately harm consumers. Competition—not government regulation—is the most reliable and efficient means to ensure air carriers deliver high-quality service, choice and value to their customers.

  Similarly, some in Congress have proposed instituting government-controlled pricing, establishing a private right of action and dictating private sector contracts. These proposals would completely unravel the positive policy benefits that consumers have reaped via deregulation of the airline industry; would decrease competition; and would inevitably lead to higher ticket prices and reduced services to small and rural communities.

A good example of the competitive market working is the evolution of change fees where competitors started to eliminate change fees and others in the market followed. Notably, in 2022, revenues from reservation change fees were just a third of what they were prior to the pandemic.



Stakeholders also have a number of effective and existing forums to transparently discuss and debate consumer protection issues. For instance, at Congress's direction, the DOT re-established the Aviation Consumer Protection Advisory Committee (ACPAC) in 2018 to advise the DOT Secretary in carrying out the DOT's activities related to aviation consumer protection. The ACPAC, with representatives of key stakeholders (airlines, airports, state and local governments and consumer protection groups), evaluates existing consumer protection programs, recommends improvements to such programs and recommends new protection programs, if needed.

Additionally, airlines and other stakeholders also work closely with the disability community and the DOT to proactively address accessibility issues. Similar to the ACPAC, the DOT established an Air Carrier Access Act Advisory Committee (ACAA Advisory Committee) in 2019 and includes committee members with expertise in accessibility, airline accessibility practices and aircraft design.

The ACPAC and ACAA Advisory Committees are valuable tools and provide a transparent and public forum for consideration of data and evidence concerning consumer protection issues. These Committees should be used as alternatives to rigid and proscriptive regulatory mandates.

FAA Reauthorization

As this Committee begins debate on the reauthorization of the FAA, we respectfully request that policymakers restrain from adopting punitive policies such as tax or fee increases or onerous rules and regulations that will otherwise hamper our industry, employees and customers. The cloud of the pandemic should not be used for convenient legislative opportunism to reregulate or refashion what was a highly competitive and burgeoning well-paid job creator prior to the pandemic. We should be moving forward, not backward to the early 1970s.

We would also encourage the Committee to take serious stock and review of the broader context and situational awareness we should all be attuned to going into this reauthorization. The last FAA reauthorization was passed in 2018. However, in the interim there has certainly been no lack of legislative activity which has included the Aircraft Certification, Safety, and Accountability Act and the Infrastructure Investment and Jobs Act, both containing significant policy and funding requirements --all of which have piled onto the FAA's workload and responsibilities.

The U.S. airline industry is in the early years of a very long road to full economic recovery; we also have an aviation safety regulator that is well behind schedule on existing mandates and that is struggling to just maintain a legacy ATC system, let alone operationalizing NextGen priorities. We would encourage Congress to fundamentally think about what needs to be done to structurally prepare the FAA for what is to come. Both from a resource and organizational perspective, is the FAA ready and capable of meeting existing demands along with the considerable challenges of the future like integration of new entrants into the ATC system? We think the answer to that question is clearly 'no'. Unfortunately, the FAA is on the precipice of being overwhelmed, if they are not already. Policymakers should keep this in mind as the legislative process moves forward.

With that context and foundation in mind, we are hopeful you will also consider proposals, among others, that address the following priorities:

- Adequate funding and accountability measures for ATC staffing and modernization;
- Workforce challenges, including increased diversity and supply (i.e., pilots and mechanics); and
- Increased resources for Sustainable Aviation Fuel (SAF) supply and related environmental improvements.

Conclusion

We are thankful for the opportunity to testify, and we look forward to working closely with the Committee over the coming months on many of these issues. From our perspective, the simple goals of the upcoming FAA reauthorization effort should be long-term stability, predictability and a Congressional understanding of 'do no harm,' all components of an aviation policy that will serve the FAA, industry and consumers well, especially at this moment in time.