

Congress Should Resist Legislating in Reaction to United Airlines' Recent Passenger Bumping Incident

The recent forced removal of a United Airlines passenger by airport security officers from a flight at Chicago's O'Hare International Airport to make room for the airline's employees has prompted calls in Congress for increased regulatory oversight by the U.S. Department of Transportation (DOT) of airline policies regarding oversales and the involuntary bumping of passengers. Senate Commerce Committee Chairman John Thune (R-S.D.), Senate Commerce Committee Ranking Member Bill Nelson (D-Fla.), Senate Aviation Subcommittee Chairman Roy Blunt (R-Mo.), and Senate Aviation Subcommittee Ranking Member Maria Cantwell (D-Wash.) have sent a letter to both United CEO Oscar Munoz and Chicago Department of Aviation Commissioner Ginger Evans requesting a "full accounting" of the forcible removal of the United passenger and demanding answers to questions regarding the airline's and airport's handling of the situation. In addition, 21 Democratic senators, including Senate Minority Leader Chuck Schumer (D-N.Y.), have submitted a lengthy set of questions to United regarding the carrier's bumping policies and its handling of the incident. DOT has announced that it is reviewing the incident. In the U.S. House of Representatives, Transportation and Infrastructure Ranking Member Peter DeFazio (D-Ore.) and Aviation Subcommittee Ranking Member Rick Larsen (D-Wash.) requested that DOT provide the results of its review of the incident to Congress. Congressmen Rodney Davis (R-Ill.) and Dan Lipinski (D-Ill.) also called for "further review" of the incident by DOT and Congress.

The incident has also prompted legislative proposals to restrict airlines' oversales and bumping policies further. Senator Richard Blumenthal (D-Conn.), a frequent critic of the airline industry's treatment of passengers, announced plans to introduce an airline passenger "bill of rights" and called on DOT to investigate the United incident and airlines' oversales practices. Blumenthal said that his proposed bill would include provisions requiring that a minimum of \$1,350 in compensation be provided to bumped passengers (that amount is currently the maximum required by DOT regulations) and restrictions on when airlines can bump passengers due to an airline's need to accommodate its employees. He also plans to include provisions making it easier for consumers and states to sue airlines. Senator Chris Van Hollen (D-Md.) announced that he is drafting a "Customers Not Cargo Act" to prohibit airlines from forcibly removing passengers due to an oversold flight situation once they have boarded the aircraft. Congressman Neal Dunn (R-Fla.) announced plans to introduce similar legislation, the "Secure Equity in Airline Transportation (SEAT) Act," that would prohibit airlines from removing seated customers from flights due to overbooking and require them to seek volunteers to give up their seats before passengers are allowed to board the aircraft. The bill would require DOT to amend its oversales regulations governing airlines' treatment of passengers with confirmed tickets on oversold flights.

Such legislative actions and any regulatory actions by DOT as a result of the United incident would be an overreaction to what was an isolated event. The vast majority of oversold flight situations are resolved before passengers are seated on the aircraft, and airlines generally are able to increase denied boarding compensation amounts until enough passengers are found to relinquish their seats voluntarily. In addition, DOT currently has regulations (14 C.F.R. Part 250) that regulate how airlines implement their involuntary bumping procedures and compensate passengers for relinquishing their seats in an oversales situation. DOT also has statutory authority (49 U.S.C. section 41712) to investigate and bring an enforcement action against air carriers or their agents for "unfair and deceptive practices." Furthermore, DOT's latest *Air Travel Consumer Report* shows that the number of involuntarily bumped passengers reported by the 12 largest U.S. air carriers, which operate the vast majority of flights in the U.S., has declined to a rate of 0.62 per 10,000 passengers for 2016, which, according to DOT, is "the lowest annual rate based on historical data dating back to 1995."



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In addition, United and other airlines are currently reviewing their policies and procedures for handling the involuntary bumping of passengers on oversold flights, especially when it comes to bumping such passengers who are already seated onboard the aircraft. United has discontinued the policy of requesting law enforcement to remove a customer from aircraft in an oversales situation unless such passenger poses a safety or security concern. United also announced that it would compensate all of the passengers who were onboard the affected Chicago-Louisville flight. In addition, the Chicago Department of Aviation has placed on leave the security officers who were involved in the incident. Furthermore, other airport authorities, including the Port Authority of New York and New Jersey, have issued policy statements limiting their security officers' assistance to airlines in physically removing passengers from flights in involuntary bumping situations.

Airlines' policy of overselling of seats on any given flight are a function of market forces: in a narrow-margin business, airlines must strive to operate at as close to 100 percent load factor as possible. This would not be possible without oversales because some passengers inevitably fail to show up for their flight or need to change their flight. When the number of passengers who show up for a flight with reservations exceeds the number of seats on the flight, market forces typically provide the solution: the airline offers compensation and benefits to passengers who volunteer to take another flight, and if an insufficient number of volunteers are not forthcoming, it is incumbent on the airline to increase its compensation offer. Airlines have well-developed practices to entice such volunteers, so the number of cases in which a passenger is involuntarily denied boarding is very small, and in those cases, minimum levels of compensation are mandated by law. In short, the recent incident on United Airlines was an anomaly and not evidence of the need for additional legislation or regulations with industry-wide effect.

Please contact David Heffernan for more information regarding issues raised in this Alert.