

United States Senate

WASHINGTON, DC 20510

October 3, 2019

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

Dear Secretary Chao:

We write to convey our concerns about the current membership of the Aviation Consumer Protection Advisory Committee (ACPAC), which both fails to comply with federal law and does not adequately represent the interests of the traveling public. We call on you to take immediate action to comply with the law by removing Frances Smith from the ACPAC and appointing a legitimate consumer advocate to fill her seat.

The FAA Modernization and Reform Act of 2012 directed the Department of Transportation (DOT) to establish an advisory committee to evaluate existing aviation consumer protection programs and, if necessary, provide the Secretary with recommendations to improve existing programs or create new ones.¹ Although Congress has reauthorized the ACPAC several times over the years, Congress has not changed its statutorily required composition. The Secretary has been, and remains, required to appoint four members representing each of the following interests: “(1) air carriers; (2) airport operators; (3) State or local governments with expertise in consumer protection matters; and (4) nonprofit public interest groups with expertise in consumer protection matters.”²

In filling the nonprofit-public-interest-group seat on the ACPAC, DOT has flouted the law. Rather than appointing a member from a nonprofit public interest group with expertise in consumer protection matters, DOT chose Frances Smith of the Competitive Enterprise Institute (CEI). CEI is a think tank with an anti-regulation agenda. It lacks any experience in aviation policy. Its own mission statement suggests a predisposition to oppose efforts to improve or expand the Department’s aviation consumer protection programs to better protect passengers.³ Frances Smith has no record of consumer advocacy on travel or other issues. In short, she is an entirely unqualified and inappropriate choice to serve as the traveling public’s voice on the ACPAC.

Prior to Frances Smith’s appointment, the nonprofit-public-interest-group seat was filled by an individual with proven expertise in consumer protection matters. Charles Leocha, the founder and Director of the Consumer Travel Alliance served on the ACPAC since the committee was formed in May 2012. He had the requisite background and experience to fill this seat on the

¹ FAA Modernization and Reform Act of 2012 sec. 411, Pub. L. No. 112-95.

² FAA Reauthorization Act of 2018 sec. 415, Pub. L. No. 115-254.

³ About CEI, Competitive Enterprise Institute, 2019, <https://cei.org/about-cei>.

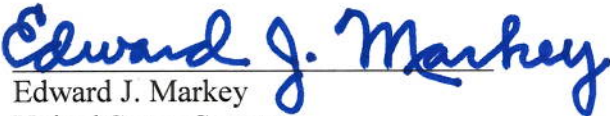
ACPAC. Myriad legitimate consumer protection groups are staffed by individuals suited to defend travelers on the ACPAC; Ms. Smith, regrettably, is not.

The flying public is legitimately upset with the commercial airline industry — over sky-high fees, massive IT meltdowns, shrinking seats, and the transparency of fare and fee information. As the nation's only aviation cop on the beat, it is the DOT's obligation to protect the flying public from abusive consumer practices — with the help of the ACPAC. At a minimum, this includes ensuring that the ACPAC has the congressionally mandated consumer representation. We ask that you replace Frances Smith with a legitimate consumer advocate and by October 21, 2019 respond to the following questions regarding her appointment to the ACPAC:

1. What was DOT's process for identifying candidates for the nonprofit-public-interest-group seat on the ACPAC?
2. Please explain how Frances Smith satisfied the statutory requirement that she represent "nonprofit public interest groups with expertise in consumer protection matters."
3. Please identify all experience that Frances Smith has advocating on behalf of consumers.
4. Did DOT request, and did Frances Smith disclose, information about potential conflicts of interest or ethics violations resulting from her work at CEI?

We thank you for your attention and response to this matter. If you have any questions about our request, please contact Eric Kashdan in Senator Markey's office at (202) 224-2742.

Sincerely,


Edward J. Markey
United States Senator


Richard Blumenthal
United States Senator