

January 30, 2023

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Secretary Buttigieg,

Across the aviation industry, airlines and aviation companies are engaged in widespread, unfair, and harmful practices that hinder competition, jeopardize passenger and worker safety, and restrain our economy. Massive consolidation in the sector has led to unaccountable airlines that routinely rely on unfair and deceptive practices, and engage in unfair methods of competition to drive record profits at air travelers' and workers' expense. We are writing to bring an issue to your attention about a particular scheme deployed by many of these firms to trap aerospace workers in below-market salaries and suppress their ability to move to better-paying airlines through the use of so-called Training Repayment Agreement Provisions (TRAPs). We urge you to use your authority as Secretary to rein in these escalating risks to airline workers, air carriers, and the public.

Across the U.S. economy, illegal employer-driven debts arise from TRAPs—contracts that put workers on the hook to repay their employers for “costs” purportedly associated with routine on-the-job training.¹ Although employers argue that these provisions are a way to recoup the cost of teaching useful skills to employees who may depart sooner than anticipated, this assertion is pretextual. Instead, employers frequently use TRAPs to shift the costs of training on to workers and lock workers in jobs through arbitrarily determined employer-imposed debt that function as de facto non-compete clauses, especially during times of high turnover and demand for workers.

For example, consider Ameriflight, the nation's largest Part 135 cargo airline. Earlier today, a class action lawsuit brought by a former pilot alleges that rather than compete for pilots by offering higher wages, generous benefits, or a company culture where pilots are treated with respect, Ameriflight instead imposed restrictive employment terms onto newly hired pilots contracts beginning in early 2020.² In particular, the lawsuit alleges that Ameriflight used TRAPs to limit pilots from seeking better working conditions with other airlines, instead binding them for years to a firm that pilots alleged can be grueling.

¹ *Trapped at Work: How Big Business Uses Student Debt to Restrict Worker Mobility*, Student Borrower Prot. Ctr. (July 2022),

https://protectborrowers.org/wp-content/uploads/2022/07/Trapped-at-Work_Final.pdf.

² Complaint, *Fredericks v. Ameriflight, LLC*, No. 3:23-cv-01042, (D.P.R. filed Jan. 30, 2023) (Available at: <https://protectborrowers.org/wp-content/uploads/2023/01/Ameriflight-complaint.pdf>).

Under the company's TRAP, Ameriflight can pursue pilots who quit or who they fire within 18 to 24 months of training for training debts that can total between \$20,000 and \$30,000. The training in question is required of Ameriflight by the Federal Aviation Administration and cannot be transferred to another employer. If Ameriflight pilots change jobs, they need to repeat most of the training, rebutting any argument that employees could otherwise be gaming Ameriflight to have it foot the cost of their training. Moreover, the record cited in the recent class action shows this training is of little real value, despite the exorbitant "cost" that Ameriflight attributes to it.³ Much of this training is in-house and takes place on devices that use software that has been outdated for decades. Pilots who ask for an accounting of the actual cost of this training are ignored, and the debt likely far exceeds the training's actual value. Throughout their training, pilots are considered Ameriflight employees and earn only \$12.50 per hour (equivalent to only \$25,000 per year). Once they have completed training, they make their regular salary, which starts as low as approximately \$30,000 per year.

Ameriflight is just one example. Both passenger and cargo airlines, such as Airtech, Boutique Air, Executive Fliteways, Great Lakes Airlines, Mesa Airlines, and Skylink Jets, have also utilized TRAPs, and they have aggressively enforced these employment and consumer contract terms in the courts.⁴

It is long past time to eliminate TRAPs and other unfair and anti-competitive terms from employment contracts—and the Department of Transportation (DOT) has the sole authority and responsibility to do so for pilots and other aviation industry workers. Just this month, the Federal Trade Commission (FTC) proposed a historic rule banning non-compete and de facto non-compete agreements.⁵ This rule would outlaw many of the most harmful terms in employment agreements, including the most abusive TRAPs. However, because of a carveout blocking the FTC's ability to enforce the FTC Act against air carriers, this proposed rule would not protect employees of air carriers. Accordingly, DOT must act now to ensure that pilots receive the same protections from abusive non-compete agreements that FTC is contemplating for other sectors—and have the freedom to leave a job without penalty and or taking on crushing debt.⁶ Congress granted DOT the exclusive authority to enforce a prohibition on unfair or deceptive practices and unfair methods of competition by air carriers, which was modeled on Section 5 of the FTC Act,⁷ the same authority the FTC used for its blanket ban of non-competes. Because DOT can write aviation consumer protection rules, and investigate and prosecute airlines for unfair methods of competition, we urge you to utilize this authority swiftly.

³ *Id.*

⁴ Airtech, Inc. v. Justinic, No. 18-ci-1276 (Boone Cnty. Cir. Ct. filed Dec. 10, 2021); Boutique Air, Inc. v. Sticka, No. CGC-20-584536 (S.F. Super. Ct. filed May 22, 2020); Executive Fliteways, Inc. v. Caballero, 2007 N.Y. Slip Op. 32579 (N.Y. Sup. Ct.), Pittard v. Great Lakes Aviation, 156 P.3d 964 (Wyo. 2007); Schipor v. Mesa Airlines, Inc., No. 2:2017cv04044 (D. Ariz. filed Nov. 2, 2017); Skylink Jets, Inc. v. Klukan, 308 So. 3d 1048 (Fla. Dist. Ct. App. 2020).

⁵ Notice of Proposed Rulemaking for Non-Compete Clause Rule ("NPRM") (Jan. 5, 2023): https://www.ftc.gov/system/files/ftc_gov/pdf/p201000noncompetenprm.pdf.

⁶ 49 U.S.C. § 41712(a).

⁷ 15 U.S.C. § 45(a).

The consequences of abusive contract terms like TRAPs reverberate across the airline industry for both workers and passengers. When airlines are unable to compete for pilots and other aviation workers because those workers are unable to leave their job without significant financial harm or are otherwise restricted from doing so, it can lead to pilot shortages which cause chronic flight cancellations and unreliable schedules.⁸ President Biden's 2021 Executive Order on Promoting Competition in the American Economy calls for the Secretary of Transportation "to better protect consumers and improve competition" in the airline industry.⁹ TRAPs impose a significant financial burden on workers and foster monopsony in labor markets by reducing worker mobility and bargaining power.

The DOT can actualize President Biden's vision by using its authority to shield workers from unfair and anti-competitive efforts by the aviation industry. We urge you to address the airline industry's unfair and deceptive labor market practices and protect working people. We welcome the opportunity to discuss these issues with you or your staff. For further information, please contact SBPC Senior Policy Advisor Chris Hicks (chris@protectborrowers.org).

Sincerely,

Student Borrower Protection Center
American Economic Liberties Project
Open Markets Institute
Towards Justice

Cc: Rohit Chopra, Director, Consumer Financial Protection Bureau
Lina Khan, Chair, Federal Trade Commission
Jen Howard, Chief Competition Officer, U.S. Department of Transportation

⁸ Rob Wile, *The Days Of 'Fun Flying' Are Long Gone: How U.S. Air Travel Became A Nightmare*, NBC NEWS (Jan. 21, 2023), <https://www.nbcnews.com/business/consumer/whats-going-on-with-air-travel-today-how-to-fix-it-rcna66501>.

⁹ The White House, "Executive Order on Promoting Competition in the American Economy," July 9, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.