

U.S. Department of Transportation

Meeting of the Aviation Consumer Protection Advisory Committee (“ACPAC” or “Committee”) Summary of Meeting

Overview

The meeting took place from 9:30 am to 3:00 pm Eastern Time on December 2, 2021 using a virtual platform. The attached appendix identifies the individuals who attended the meeting. The webcast of the meeting is available at:

<https://www.transportation.gov/individuals/aviation-consumer-protection/december-second-meeting-acpac>.

Two topics were discussed at that meeting: (1) Airline Ticket Refunds and (2) Information for Consumers Adversely Affected by Airline Delays or Cancellations. The agenda and presentation materials that were provided at the meeting are available for public review at <https://www.regulations.gov>. After entering the docket number (DOT-OST-2018-0190), click the link to “Open Docket Folder” and choose the document to review.

Welcome and Housekeeping Matters (9:35 am to 10:00 am)

The morning session commenced with the ACPAC Designated Federal Official Blane A. Workie calling the meeting to order, going over housekeeping matters, and introducing the Committee members: (1) Maura Healey, Attorney General of Massachusetts, as the State or local government representative and Chair of the Committee; (2) John Breyault, Vice President for Public Policy, Telecommunications, and Fraud, as the consumer representative; (3) Patricia Vercelli, General Counsel, Airlines for America, as the airline representative; and (4) Mario Rodriguez, Executive Director of the Indianapolis Airport Authority, as the airport operator representative.

Ms. Workie welcomed the participants to the virtual meeting, reviewed logistical information, and gave an overview of the purpose and composition of the Committee. She also informed participants how questions could be submitted electronically during the virtual meeting and that individuals could post comments to the Committee’s docket.

Committee members had the opportunity to introduce themselves then John Putnam, the Department’s Deputy General Counsel gave brief remarks. Mr. Putnam welcomed everyone to the meeting and thanked the committee members for dedicating their time to address aviation consumer protection matters. Mr. Putnam noted that the Biden-Harris administration recognizes the importance of aviation consumer protection and competition, noting President Biden’s Executive Order on promoting competition in the American economy that directed the Department to protect air travelers from mistreatment. Mr. Putnam then highlighted some of the actions the Department has already taken to support aviation consumer protection, such as appointing two new advocates to the Committee, issuing a notice of proposed rulemaking on refunding fees for delayed check bags and fees for ancillary services that were not provided to passengers, and establishing an internal Department working group to evaluate the effectiveness of existing consumer protections.

Mr. Putnam described some of the actions the Department has taken in response to the impact of the Covid-19 pandemic on air travel, such as ensuring airlines and ticket agents comply with the legal requirement to provide refunds for canceled flights or significant travel changes and reaching a record-breaking settlement with Air Canada for its failure to provide timely refunds. Mr. Putnam also stated the Department will issue a notice of proposed rulemaking specifically addressing airline refunds and is exploring additional ways to enhance aviation consumer protection, such as considering the public's access to airline flight information and enhancing accessibility in air transportation for passengers with disabilities.

Mr. Putnam went on to discuss the Department's recently announced formation of a new ACPAC subcommittee, the Anti-discrimination Subcommittee. The Anti-discrimination Subcommittee will review airlines' policies, procedures, and practices to prevent discrimination against air travelers based on race, ethnicity, national origin, religion, ancestry, gender, gender identity, and sexual orientation. It will also develop recommendations for consideration by ACPAC on best practices related to training and other actions that can be taken by DOT, airlines, or others, to ensure nondiscriminatory delivery of airline programs and activities to air travelers.

Mr. Putnam closed by thanking members and attendees for their time and participation in the meeting.

Topic I: Airline Ticket Refunds

Following the welcome and introductory remarks, the morning session of the meeting began. The Committee first heard from speakers who presented on airline ticket refunds. After each presentation, the Committee was invited to ask questions and make comments

Background

Vinh Q. Nguyen, U.S. Department of Transportation, Office of Aviation Consumer Protection (OACP)

Mr. Nguyen provided an overview of the legal framework for airline ticket refunds and the Department's work in this area. Mr. Nguyen began by providing statistics about the number of complaints the Department has received from passengers. Mr. Nguyen said that in the five years before the COVID-19 pandemic, the Department received an average of 17,400 aviation consumer complaints per year and complaints about refunds accounted for about 8% of all aviation consumer complaints. But in calendar year 2020, the Department received over 102,000 aviation consumer complaints, and about 87% of those complaints were about airline refunds. Mr. Nguyen added that in all the complaints about airline refunds, about 80% involved instances where the consumer alleged that the airline cancelled or significantly changed flights and approximately 20% involved instances where the consumer elected not to travel and cancelled his or her flight.

Next, Mr. Nguyen stated that the Department's authority to regulate airline ticket refunds stems from 49 U.S.C. § 41712, which prohibits unfair and deceptive practices in air transportation or the sale of air transportation. Mr. Nguyen said that under the Department's "Defining Unfair or Deceptive Practices" regulation ("UPD Rule"), a practice is "unfair" to consumers if: it causes

substantial harm to consumers; the harm is not reasonably avoidable; and the harm is not outweighed by benefits to consumers or competition. Mr. Nguyen then explained how a carrier's refusal to refund passengers when the carrier cancels or significantly changes a flight, for whatever reason, met the elements of unfair as defined by the UPD Rule. Mr. Nguyen then turned to deceptive practices under the UPD Rule. He explained that a practice is deceptive to consumers if it is likely to mislead a consumer, who is acting reasonably under the circumstances, with respect to a material matter. Mr. Nguyen stated that OACP uses the deceptive practice factors to evaluate cases related to the disclosure of key terms and conditions of airline vouchers and credits. Mr. Nguyen added that in addition to the general prohibition on unfair and deceptive practices, carriers' Customer Service Plans must include a commitment that the carrier will provide prompt refunds when they are due as required under 14 CFR 259.5.

In connection with refund requirements moving forward, Mr. Nguyen stated that the Department has announced a rulemaking that would codify the Department's longstanding position that a carrier must provide a refund to passengers when the carrier cancels or significantly changes a flight. He added that the rulemaking would define "cancellation" and "significant change" and would also address protections for consumers who are unable to travel due to government restrictions. Mr. Nguyen said that the Department plans to issue the Notice of Proposed Rulemaking for this rulemaking in March 2022.

State Perspective

Matthew du Mee, Arizona State Attorney General's Office

Mr. du Mee provided the state perspective on airline ticket refunds. Mr. du Mee stated that in 1978, Congress chose to bar states from enforcing any law related to a price, route, or service of an air carrier. Mr. du Mee stated that in 1992, the U.S. Supreme Court ruled that this provision even covered advertising by airlines, and in 1995 and 2014, the U.S. Supreme Court ruled the same for frequent flier programs. As such, the Department is the only government entity that protects airline consumers. Mr. du Mee asserted that consumer protection for airline passengers should not be limited to the Department. He argued that Congress should repeal federal preemption of state consumer protection efforts for airline customers so the states could enforce their own laws related to unfair and deceptive acts and practices by airlines, or at a minimum, authorize state attorneys general to enforce federal airline consumer protection. Mr. du Mee also suggested that Congress should move consumer protection for airline customers to the Federal Trade Commission or the U.S. Department of Justice. Mr. du Mee claimed that he believes it would be an invaluable benefit to consumers and to competition if Congress allowed states to step in and protect air travelers or, at a bare minimum, to assist the Department with enforcing the Department's aviation consumer protection rules and regulations. Mr. du Mee added that in addition to airline ticket refunds, the Committee should also evaluate whether it is an unfair practice for airlines to charge an additional fee for families to sit together on flights, particularly families with children under 13 years old. Mr. Du Mee urged the Committee to also address whether it is a "material omission" for airlines to change type of planes or seats without telling consumers.

Consumer Perspective

Bill McGee, Consumer Reports

Mr. McGee provided the perspective of consumer advocacy organizations on airline ticket refunds. Mr. McGee stated that Consumer Reports and other consumer advocacy organizations also received an unprecedented number of complaints from air travelers in 2020. He stated that many of these complaints alleged that airlines would not provide refunds to passenger for flights that carriers cancelled or significantly changed. Mr. McGee asserted that while it is the Department's position that a carrier must provide a refund to passengers when the carrier cancels or significantly changes a flight, in reality, many consumers were not receiving the required refunds. Mr. McGee stated that because of federal preemption, state legislatures, courts, and attorneys general cannot get involved in airline issues and consumers are out of luck if the Department fails to act. Mr. McGee urged the Department to enforce penalties against all airlines that violate DOT refund regulations.

Mr. McGee said that consumer advocacy organizations also saw a large number of complaints in which airlines denied refunds to passengers who cancelled their flights because they did not want to travel due to health or safety concerns and/or government restrictions. He stated that he believes passengers should not be denied refunds when they are unable to travel due to government restrictions, health concerns, and canceled events.

Mr. McGee added that there are many unanswered questions about airline stated reasons for delays and cancellations. He indicated that airlines may state that a flight was cancelled due to weather and air traffic control so that they will not have to provide refunds to passengers. Mr. McGee asserted that the Department should look at airlines' internal procedures on this issue because canceled flights and delayed flights are directly tied to refunds.

Mr. McGee further stated that the Department's policies must be made clear to consumers and that more efforts are needed to educate consumers. He asserted that most consumer are not seasoned travelers and that only a small percentage of consumers know all the rules, nomenclature, and language related to air travel.

Mr. McGee concluded his presentation by urging the Department and Congress to investigate the airlines. He asserted that by Senator Markey's estimation, there is somewhere between \$10 to \$15 billion of unpaid refunds and that there is no other industry in the United States where consumers pay money for a product, do not receive the product, and yet the company still holds onto the money, earns interest on it, and tells consumers that they will have to use it later. He stated that in any other field, consumers would get a refund.

Question and Answer

After Mr. McGee concluded his presentation, the Committee was then invited to ask questions and make comments.

- Mr. Breyault asked Mr. Nguyen to describe whether the Department is considering updates to how it handles complaints based on its experience over the last 18 months and the large spike in complaints.
 - Mr. Nguyen stated that the Department hired additional temporary employees and recently extended terms for several part-time reemployed annuitants to handle complaints. Mr. Nguyen further stated that the Department is taking steps to upgrade and modernize its outdated consumer complaint system. Ms. Workie added the Department intends to initiate rulemakings to enhance the consumer protections for air travelers.
- Ms. Vercelli asked Ms. Workie whether all the refund complaints that the Department has received are violations of the Department's rules and policy.
 - Ms. Workie stated that not all the complaints have been analyzed. Ms. Workie added that if OACP sees that there is a pattern based on the complaints that have been analyzed that a particular airline is not providing refunds, OACP will not wait to finish analyzing all the complaints to initiate an investigation. OACP will move forward with an investigation based on the information that is currently available.
- Mr. Breyault asked whether consumers who first accepted vouchers can obtain cash refunds later.
 - Ms. Workie stated that the complaints related to vouchers tend to focus on consumers not being aware of all the restrictions of the voucher. Ms. Workie explained that based on the complaints received, OACP has focused its efforts on ensuring that airlines clearly notify consumers of the key terms and conditions of vouchers, such as the expiration dates, blackout dates, if vouchers can only be used once, what happens if there is a remaining balance, etc., when vouchers are offered to consumers.

Airline Perspective

John Heimlich, Airlines for America (A4A)

Mr. Heimlich began by stating he would present on the economics associated with ticket refunds in order to provide context about airlines' desire to balance the needs of their customers with their own stakeholders and cash flow.

Mr. Heimlich began describing airlines' reliance on the payroll support program (PSP). He stated that the PSP was not intended to make airlines whole, nor was it intended to make airlines cash flow neutral or positive. The PSP was intended to assist airline workers to avoid a major destabilization to the U.S. workforce, to the airline workforce, and to help better position us for the recovery. Mr. Heimlich stated that airlines would be in a dire situation if not for the PSP, even though most airlines are still operating in a cash flow negative situation.

Mr. Heimlich then discussed the statistics and data on issuing of cash refunds. He noted that there are overall benefits to the consumer to airlines offering nonrefundable or less-than-fully-refundable products. Mr. Heimlich stated that passenger carriers' total operating revenues, even considering the benefit of improved cargo revenues, remain below 2019 level, even a year and a half beyond the start of the recovery. He indicated that most analysts don't project revenues to return to even 2019 levels until the second half of 2022.

Mr. Heimlich went on to state that while the PSP was a wonderful program and directly benefited airline employees, it was not enough to make airlines cash flow neutral. Mr. Heimlich stated that PSP covered only 77% (or 56% based on a previous administration's interpretation of the CARES Act requiring airlines to repay 1% interest on the loan) of airline labor costs from April 2020 to September 2021. He stated that airlines are therefore forced to incur additional debt to remain operational. Mr. Heimlich stated that to service the debt that airlines took on, they are incurring about twice the pre-pandemic annual interest expense in cash outlays. This situation will last through 2024 with \$50 billion more debt on the balance sheet than airlines ended with in 2019. Mr. Heimlich stated that airlines borrowed \$94 billion from the private market, in addition to selling assets.

Mr. Heimlich then summarized that revenues for nine U.S. carriers were down 24% during Q3 2021 than Q3 2019, with the expectation that revenue will still be down 15% in Q1 2022.

Mr. Heimlich then detailed data relating to cash refunds provided by U.S. carriers. He stated that in 2019, airlines issued \$622 million per month in cash refunds. In 2020, airlines issued \$12.4 billion in refunds over the year, more than \$1 billion per month. Through October 2021, Mr. Heimlich indicated that the same carriers issued \$644 million per month in refunds, which is 3.5% more than in 2019 despite less passenger revenue.

Mr. Heimlich went on to state that with the increase in cash refunds rate relative to 2019 and substantial drop in cash refunds issued, airlines rate of cash refund issuance has almost doubled from 4.4% of passenger revenue in 2019 to 8.2% in 2021. In 2020, 25% of passenger revenue went right back to the customer in the form of cash refunds.

Mr. Heimlich stated that as carriers liberalized their change fees, began to issue an abundance of cash refunds, and pushed their deadlines for credits back, the number of refund-related consumer complaints came down dramatically. Moreover, Mr. Heimlich stated that there is a longstanding acknowledgement by the Department that there is value to offering a range of prices for a range of restrictions, citing a 2003 order issued by the Department.

Mr. Heimlich completed his presentation by summarizing that PSP expired September 30, 2021, and thus airlines are expecting \$3 billion pretax loss in Q4 2021 and the carriers recorded \$841 million in pretax losses even with the benefit of \$16 billion in PSP funds in the first three quarters 2021.

Ms. Workie thanked Mr. Heimlich for his presentation and introduced Jonathon Foglia.

Jonathon Foglia, Cozen O'Connor on behalf of Airlines for America (A4A)

Mr. Foglia began his presentation by expressing his gratitude to the Department for allowing airlines to participate and address issues for consideration in a refunds rulemaking.

Mr. Foglia stated that Airlines for America (A4A) believes that the Department should consider three points when addressing rulemaking on ticket refunds: (1) the decades-long history of how airlines have handled refunds; (2) the effectiveness of the Department's existing regulatory tools covering refunds; and (3) the public benefits flowing from nonrefundable tickets and their critical role in a post-deregulated airline industry.

Mr. Foglia stated that prior to the pandemic, airlines well understood the Department's policy that passengers are entitled to a refund when the carrier cancels a flight or makes a significant schedule change. He noted that airlines were highly effective at processing refunds prior to the pandemic, especially when faced with catastrophic events, such as the September 11th terrorist attacks. Mr. Foglia noted that in 2002, one-quarter of U.S. airlines were operating under bankruptcies, and that number grew to 43% in 2005. Despite this, Mr. Foglia stated that airlines met their obligations to provide refunds when due.

Mr. Foglia also pointed to other incidences where events caused mass cancellations, but airlines were able to comply with their refund obligations. He noted that the Department's regulatory scheme worked for several decades prior to the pandemic and airlines had a strong compliance track record, despite occasional enforcement orders.

Mr. Foglia then described the impact of the pandemic on the airline industry. He noted that in a one-month period at the start of the pandemic, passenger traffic decreased 94%. He further noted that through Q2 of 2020, airline revenue decreased 86%. As a result of the decrease in new bookings and unprecedented refund requests, airlines faced a cash flow crisis, raising the possibility of bankruptcy filings or even cessation of operations. Despite the crisis, Mr. Foglia noted that the Department used its existing enforcement resources to ensure the passengers impacted by canceled flights and significant changes to their itineraries were handled in accordance with DOT's longstanding ticket refund policy. Mr. Foglia noted that the Department opened 20 investigations into airline refund practices during the pandemics, highlighting that the Department's enforcement efforts had the desired effect.

Mr. Foglia further noted that A4A member airlines have frequently gone above and beyond the requirements of the Departments rules. Airlines have issued travel vouchers for passenger-driven cancellations for otherwise nonrefundable tickets, waived or eliminated applicable change fees, and voluntarily extended the validity period of travel credits.

Next, Mr. Foglia discussed the benefits of nonrefundable tickets. He stated that airline refund policies vary, and thus reflect the unique products and services offered by different airlines. He noted that nonrefundable fares enable airlines to dramatically lower ticket prices. He noted that nonrefundable fares are extremely popular with leisure passengers opting for lower fares. Mr. Foglia stated that airlines compete intensely for this segment of the market, not only based on price but on associated service elements. Mr. Foglia cautioned that the public benefits which resulted from lower priced nonrefundable fares could be undone by overregulation in this area.

Mr. Foglia then offered A4A's perspectives on the Department's refund rulemaking initiative. He stated that A4A supports the codification of the Department's longstanding refund policy into its regulations but suggested that regulations establishing a hard time limit to define a significant schedule change should be avoided. A4A believes airlines should be able to retain flexibility to define and compete based on their own policies but supports a disclosure requirement for each airline's policy. Mr. Foglia stated this approach follows the Department's traditional recognition that schedules are not a part of an airline's contract of carriage.

According to Mr. Foglia, overregulation may impede travel and options exist for the marketplace to mitigate the risk for travelers. A4A does not support the proposition that airlines should be required to provide refunds to passengers who hold nonrefundable fares and are unable or unwilling to travel due to a governmental restriction or advisory if the carrier operates the flight. He cautioned that such a requirement would undo the public benefits of nonrefundable fares and would distort the market, a policy which is contrary to the Airline Deregulation Act.

Mr. Foglia concluded that airlines are mindful of the harm that can result from harsh and inflexible policies. Mr. Foglia suggested that if the Department issues refund regulations, they should be narrowly tailored to encompass situations where airlines are prevented from operating a flight. Mr. Foglia ended by saying that the Department should proceed with the planned rulemaking in a considered manner with input from all stakeholders.

Ms. Workie thanked Mr. Foglia for his presentation and introduced the next speaker, Doug Lavin.

Doug Lavin, International Air Transport Association (IATA)

Mr. Lavin began by thanking the Committee for the opportunity to present the perspective of foreign air carriers. Mr. Lavin stated that his presentation focused on two topics: (1) the specific challenge of the Covid-19 pandemic on the airline industry and (2) general observations on the importance of pricing freedoms.

Mr. Lavin noted that global air traffic remained at 40% of pre-pandemic levels. He noted that the situation is worse for foreign airlines who face additional travel restrictions as new variants of the virus emerge. He further stated that lost airline revenue is not due to the virus itself, but rather government restrictions on travel which have been proven almost totally ineffective in controlling the spread of the virus.

Mr. Lavin presented data on airline refunds. He noted that refunds accounted for 5% of airline revenue pre-pandemic. At the start of the pandemic in April 2020, as a result of travel restrictions, cancellations, and a lack of new bookings, refunds equated to 93% of airline revenues. For 2020, Mr. Lavin noted that refunds equated to 35% of revenue on a global level. Mr. Lavin continued that IATA-member airlines have paid over \$40 billion in refunds due to the pandemic, suggesting \$65 billion payout in refunds globally. Mr. Lavin noted that even as airlines have reduced capacity, they have not been able to reduce expenses at the same rate. Mr. Lavin noted that almost half of airlines' costs cannot be reduced at short notice.

Mr. Lavin urged that the pandemic does not represent an appropriate context for Departmental rulemaking to cover business as usual. He noted that A4A and IATA members have functioned smoothly for several years without regulation. Mr. Lavin stated that IATA encourages the Department to be careful to preserve the tremendous choice and value offered to consumers in the deregulated area of price and services.

Mr. Lavin presented an example of how advance purchase and nonrefundable fares benefit both consumers and airlines. He stated that a ticket purchased approximately six months before travel is one-third cheaper than a ticket bought in the last month. He reiterated that the consumer benefits from lower fares while the airline benefits from greater predictability around loads. He stated this in turn enabled airlines to achieve higher load factors for the flight, which enabled average fares to be lowered overall.

Mr. Lavin concluded that the Department should proceed carefully when regulating airline refunds to avoid potential negative impact to consumers. He summarized that if airlines were forced to give additional flexibility on the cheapest tickets over and above what airlines have already provided during the pandemic, this would narrow the gap between fare categories. It follows that all tickets would be priced closer to the fares charged for the higher ticket classes which already allow for full flexibility. He stated this would have the greatest impact on the most price sensitive passengers who are least able to avoid higher fares.

Finally, he stated that the risk of overregulation could result in lost viability of marginal routes and the reduction of services and also lead to lower load factors which would increase the carbon dioxide emission per passenger, causing environmental harm.

Ms. Workie thanked Mr. Lavin for his presentation and announced a 10-minute break.

Questions and Answers on Airline Perspective

- Mr. Breyault asked Mr. Heimlich if the debt figures he stated were purely from private markets or if the figure included loans received from bailout legislation.
 - Mr. Heimlich responded that included both private loans and government loans.
- Mr. Breyault then asked a question about a comment made in an earlier presentation that airlines were holding \$10 billion worth of vouchers on their balance sheets. He asked how airlines record that value.
 - Mr. Heimlich answered that airlines record it as a liability, since it is a service the airline owes the customer at a future date.
- Ms. Vercelli asked for more information about the PSP program and the limitation on the use of funds and for the total value of refunds that were issued by airlines in 2020 and 2021.
 - Mr. Heimlich answered that the industry issued \$12.4 billion in refunds in 2020 and was on track to issue about \$8.6 billion in 2021. Regarding the PSP, Mr. Heimlich stated that there were restrictions on the use of the funds received by the

airlines in the CARES Act. The funds could only be used for salaries, wages, and benefits. Thus, Mr. Heimlich stated that airlines could not use PSP funds for refunds.

- Mr. Breyault asked Mr. Foglia if he could better define his statement that the Department or the Committee should avoid supporting general and undefined government restrictions related to refunds. Specifically, he asked if a federal health emergency would fall under the definition of a general and undefined government restriction of the type that he would have concerns about for purposes of mandating refunds.
 - Mr. Foglia answered that the position of A4A members is that for a governmental restriction to trigger a refund requirement through a regulatory obligation, it needs to be a restriction that prevents the carrier from operating.
- In response to Ms. Vercelli's question if the country is still under a national health emergency, Ms. Workie, Ms. Vercelli, and Mr. Breyault discussed refund requirements.
 - Ms. Workie confirmed that the state of emergency still exists. Ms. Vercelli stated that under an interpretation that airlines must provide refunds during a state of emergency, in theory, any passenger could still have their ticket refunded because the state of emergency is still in effect. Mr. Breyault clarified that he believes the Department's interpretation is that it does not have the authority to mandate retroactive refunds, absent specific authorization from Congress. Ms. Workie confirmed that the Department cannot mandate retroactive refunds through rulemaking, absent specific authorization from Congress. Ms. Workie clarified that the Department is considering additional consumer protections through rulemaking, but decisions have not been made on what those additional protections would be.

Ms. Workie introduced the next speaker, Steve Shur.

Travel Agent Perspective

Steve Shur, Travel Tech

Mr. Shur began his presentation by providing a brief overview of Travel Tech. He explained that Travel Tech is the trade association for travel intermediaries, such as global distribution systems (GDS), online travel agencies (OTA), meta search platforms, short term rental platforms, and travel management companies. Mr. Shur stated his presentation will focus on OTAs, which are largely used by leisure travelers.

Mr. Shur pointed out that OTAs are “true intermediaries” between passengers and airlines. OTAs facilitate a marketplace where consumers can comparison-shop for flights, where airlines have to compete for business on price and service, and give consumers a convenient and easy way to search, compare, and book flights and itineraries that best meet their needs.

Mr. Shur stated that when flights are cancelled or substantially changed, OTAs work with their customers to adjust itineraries or to obtain refunds and credits based on the applicable fare rules. Mr. Shur noted that OTAs have no role in determining when or if a passenger is eligible for a

refund. Mr. Shur then explained the process when a flight is cancelled or substantially delayed. First, the passenger's record is updated by the airline indicating the cancellation or delay, then both the airline and the ticket agent send notification to the traveler informing them that their flight has been canceled or delayed and that they should contact their agent. When the customer contacts the ticket agent, depending on the OTA they used and the tools they have at their disposal, the passenger is informed of the options available to choose from.

Mr. Shur explained that if the customer chooses to obtain a refund, the ticket agent will notify the airline that the consumer has requested a refund. Most commonly, the passenger is refunded directly by the airline. Mr. Shur noted that in some cases, the airline remits the refund back to the ticket agent, which is then remitted to the customer. Mr. Shur stated that when refunds are processed through the ticket agencies, the processing time varies, and depends on when the airline remits the refund to the travel agent. Mr. Shur stated that, anecdotally, most domestic airlines process refunds more quickly than foreign airlines. He noted that when the airline is processing the refund directly to the customer, the timeline is controlled by the airline. Mr. Shur stated that when refunds are remitted to the OTAs, they generally remit it to the passenger as soon as the funds are received from the airline.

Mr. Shur further noted that some OTAs charge booking and processing fees for cancellations and rebookings, and those fees vary by entity. Those fees, Mr. Shur stated, are disclosed to the passenger at the time of booking.

Mr. Shur summarized that, from the perspective of OTAs, the current refund process works for consumers, notwithstanding the unprecedented increase in refund requests that resulted from the pandemic. Mr. Shur noted that OTAs work closely with airlines to attempt to resolve customer service issues as quickly as possible. Mr. Shur concluded that OTAs have invested millions of dollars in innovations and technologies to be able to handle future spikes in customer service inquiries. Mr. Shur concluded that based on feedback from Travel Tech membership, he recommends that the Department seriously consider defining the term "significant delay" to ensure that consumers have clarity on when they are eligible for a refund.

Ms. Workie thanked Mr. Shur for his presentation. She then introduced the next speaker, Eben Peck.

Eben Peck, American Society of Travel Advisors

Mr. Peck began his presentation by stating that the American Society of Travel Advisors (ASTA) is a national trade organization representing all types of travel agencies, such as online, corporate, brick and mortar, etc. He noted that ASTA has 17,000 member companies, 98% of which are small businesses.

Mr. Peck stated that ASTA's general view is that airline refund rules should be as clear as possible and understandable to the lay person. He stated that the pandemic showed that many customers were not clear on their rights related to refunds. Mr. Peck noted that travel agents are subject to the same refund requirements as airlines under the Department's rules. However, he stated that the vast majority of transactions processed by ticket agents simply involve the travel

agent facilitating payment information to the airline. He stated that ASTA's position is that if the travel agency is not charging the consumer directly, they should not be responsible for providing the refund.

Following up on the presentation of Mr. Shur regarding the definition of "significant delay", Mr. Peck suggested that the Department should review the policies of the major U.S. carriers and either average the times or adopt the shortest timeframe in rulemaking.

Mr. Peck concluded by thanking the Department for recognizing travel agents as important stakeholders within the aviation industry. He noted that ASTA members were under grave economic threat but were not recipients of the PSP like airlines.

Ms. Workie thanks Mr. Peck for his presentation.

Questions and Answers

- Mr. Rodriguez asked how travel agents generate revenue from transactions where the passenger pays the airline directly for the ticket.
 - Mr. Shur stated that some travel agents charge a service fee while others have commercial agreements with the airlines that are akin to commissions. Mr. Rodriguez then asked if service fees charged by ticket agents are refunded to the passenger if they don't fly. Mr. Shur responded that he believed that because the service fee is charged when the booking service is provided, those fees are not refunded, because the service paid for already occurred.
- Mr. Breyault commented that that the ACPAC could consider a recommendation which includes a definition of a government restriction that may be put in place by international destinations, such as quarantine requirements, which would entitle a passenger to a refund.
- Mr. Breyault then asked for clarification on the statement that tickets purchased through travel agents are "most commonly" refunded to the passenger directly by the airline.
 - Mr. Shur stated that while he doesn't have a specific percentage to cite, Travel Tech's membership indicated that it is rare that the refund is provided by the travel agent.

Ms. Workie then concluded the morning session by thanking all the presenters.

Topic II: Information for Consumers Regarding Causes of Flight Delays and Cancellations

Overview

John Wood, U.S. Department of Transportation, Office of Aviation Consumer Protection

Mr. Wood began his presentation by describing section 413 of the FAA Reauthorization Act of 2018 which requires the U.S. Department of Transportation to review the categorization of delays and cancellations by airlines and to consider whether it is an unfair or deceptive practice for an air carrier to inform a passenger that a flight is delayed or cancelled due to weather alone

when other factors are involved. Mr. Wood added that section 413 states that DOT may consult the ACPAC to assist in conducting the review. Mr. Wood explained that the ACPAC that would consider the quality and quantity of information on causes of airline delays or cancellations provided to passengers adversely affected by an airline cancellation or delay, specifically whether incomplete information is an unfair or deceptive practice. Mr. Wood then introduced the presentations intended to assist the ACPAC in its consideration of the topic.

Cecelia Robinson, Department of Transportation, Office of Airline Information (OAI)

Ms. Robinson described the role of OAI, which is to collect, validate, and disseminate commercial airline data. Ms. Robinson explained that OAI compiles airline performance data reported to DOT by the airlines, including data on cause of airline delay. Ms. Robinson noted that DOT defines a delayed flight as a flight that arrives 15 minutes after its scheduled arrival time. Ms. Robinson clarified that the airlines that have at least 0.5 percent of total domestic scheduled service revenue must report delay data to DOT and that the cause of each delay must be reported using five categories, including: air carrier, weather, national aviation system, security, and late arriving aircraft. Ms. Robinson also explained that airlines must report the cause of cancellations using the same categories, except that the late arriving aircraft category does not apply to cancellations.

Ms. Robinson noted that historically late arriving aircraft delays accounted for the largest percentage of reported delay. Ms. Robinson explained that air carriers report multiple causes of arrival delay for a single flight in minutes. Ms. Robinson concluded by stating that additional information about airline reporting of delay and cancellation data to DOT is available in BTS technical reporting directives on the BTS website.

Bryan Baszczewski, Federal Aviation Administration, Air Traffic Organization (ATO), Office of Performance Analysis

Mr. Baszczewski explained that ATO uses a collaborative, flexible, system-wide approach to provide stakeholders with innovative tools and services that enhance the safety, security, and efficiency of the National Airspace System (NAS). Mr. Baszczewski explained that the FAA uses delay data to provide insight into how well its operational plan has performed. He said that the FAA reports facility level data on delays incurred through air traffic management actions and other events (thunderstorms, high winds, etc.) affecting the NAS. Mr. Baszczewski stated that the delay data are recorded and reported into ATO's Operations Network (OPSNET). He described reportable delays as those 15 minutes or more caused by the air traffic system involving any air carrier's aircraft in U.S. airspace. He clarified that delays initiated by the aircraft operator, such as late arriving aircraft or crew, or caused by other non-FAA entities are not reportable. Mr. Baszczewski explained that for departure delays, the delay clock starts when the aircraft enters FAA jurisdiction and ends when the aircraft departs the airport. Mr. Baszczewski explained that the FAA assigns a causal category to each reportable delay. He described that causal categories include weather events such as low ceilings, facility equipment failures, and runway traffic reductions such as congestion or noise abatement, and other events such as wildlife on the runway. Mr. Baszczewski concluded his presentation by informing the audience that additional information on OPSNET is available on the FAA website.

John Wood, U.S. Department of Transportation, Office of Aviation Consumer Protection

Mr. Wood presented on DOT's authority to prohibit airlines and ticket agents from engaging in unfair and deceptive practices in air transportation. Mr. Wood explained that for the purposes of DOT's unfair and deceptive practices statute, the terms unfair and deceptive are defined in DOT regulation. Mr. Wood explained that an unfair practice is a practice that causes substantial harm to consumers; the harm is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition. Mr. Wood explained that a deceptive practice is a practice likely to mislead a consumer acting reasonably under the circumstances with respect to a material matter. DOT's regulation defines material as a matter that is likely to have affected the consumer's conduct or decision with respect to a product or service.

Mr. Wood highlighted airlines' obligations regarding delays and cancellations, including the customer commitments made by airlines that airlines are required by DOT regulations to describe in the airline's customer service plan. Mr. Wood highlighted that airlines' legal obligations to customers also exist in the contract of carriage. Mr. Wood explained that airlines may condition consumer benefits on whether the cancellation or delay was in the control of the airline. Mr. Wood stated that whether an airline failing to provide complete information on the cause of delay to consumers is an unfair or deceptive practice depends on whether the elements of unfair and deceptive are met. Mr. Wood concluded his presentation by presenting questions that should be considered in evaluating whether an airline's failure to provide complete information would be an unfair or deceptive practice including: did the incomplete information result in substantial harm to the consumers; was the complete information reasonably available to the consumer in other ways; is the incomplete information material in that it resulted in the consumer not receiving or obtaining a benefit they were entitled to; and, was the complete information available to the consumer acting reasonably?

State Perspective

Matthew du Mee, Arizona State Attorney General's Office

Mr. du Mee began his presentation by stating that federal law largely prevents state attorneys general from protecting airline consumers and that DOT is not able to provide adequate protection.

Mr. du Mee observed that airlines rarely promise compensation for weather-related delays. He asserted airlines have a financial incentive to blame delays on weather as opposed to other factors because the airline would not have to provide compensation and consumers are likely more understanding about weather delays than air carrier caused delays. He believes consumers need accurate information about the reasons for a delay, so they can exercise their rights provided for under the contract of carriage, make informed decisions about their options at the appropriate time, and also decide whether to use the airline in the future.

Mr. du Mee stated that the CARES Act provided billions of dollars in Federal support to airlines but did not provide additional protections for consumers despite an increase in refund-related complaints. Mr. du Mee noted that in recent months, several airlines have had severe cancellation issues. Mr. du Mee highlighted consumer complaints received by the Arizona

Attorney General's office and noted that the Arizona Attorney General's office also enforces unfair and deceptive practices law with basically the same elements as the law DOT administers. Mr. du Mee stated that it is deceptive to give consumers misinformation about why a flight was cancelled and a material omission to tell consumers that a flight was cancelled due to weather when other undisclosed factors were necessary or sufficient causes of the cancellation. Mr. du Mee further stated that it is unfair to manipulate cancellation reasons in order to avoid giving refunds to consumers entitled to those refunds. It is also deceptive to promise refunds or reimbursements and fail to provide them.

Mr. du Mee reiterated that DOT should add consumer-focused employees and require airlines to give truthful information about delays to consumers and deliver what has been promised. Mr. du Mee further reiterated that Congress should authorize State attorneys general to enforce federal airline consumer protections and move consumer protection for airline customers to a more consumer-focused agency, such as the FTC or the U.S. Department of Justice.

Deception and Unfairness Under the Federal Trade Commission Act

Serena Viswanathan, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission (FTC)

Ms. Viswanathan began her presentation by clarifying that her remarks represent her own views and not the views of the FTC or any individual commissioner. Ms. Viswanathan then gave a brief overview of how the FTC evaluates deception and unfairness under its statute. She explained that the FTC is an independent agency that has consumer protection and competition jurisdiction in most economic sectors, but its authority does not cover air carriers and foreign air carriers. Ms. Viswanathan further explained that section 5 of the FTC Act prohibits unfair or deceptive acts or practices. In addition, section 12 of the FTC Act prohibits any false advertisement likely to induce the purchase of foods, drugs, devices, services, or cosmetics.

Ms. Viswanathan described the meaning of unfair and deceptive under the FTC Act. She explained that an act or practice is unfair if it causes or is likely to cause substantial injury to consumers, which is not reasonably avoidable by consumers themselves, and not outweighed by countervailing benefits to consumers or to competition. Ms. Viswanathan explained that practices contrary to established public policy may be evidence of an unfair practice but may not serve as a primary basis to determine unfairness. Ms. Viswanathan said that an act or practice is deceptive when there is a material representation or omission of information likely to mislead a reasonable consumer. She noted that intent to deceive is not required to prove a deceptive practice. She further explained that to determine materiality, the FTC looks at whether the information is important to consumers and likely to affect the consumer's choice, or whether consumers were likely to have chosen differently but for the deception. Ms. Viswanathan noted that materiality is presumed for certain claims or information, for example those significantly involving health and safety, efficiency, cost, quality, or warranties. She further explained that disclosure of a material fact is necessary to prevent the claim, practice, or sale from being misleading. To determine materiality, she explained that the FTC looks at the overall impression created by a practice, including whether silence gives rise to an implied, but false representation, or whether information was not disclosed that would have prevented the statements from creating a misleading impression.

Ms. Viswanathan then went into additional detail on the adequacy of disclosures. She explained that if disclosure of material information is needed to prevent deception, it must be clear and conspicuous. The disclosure must be prominent, easily understandable in wording and format, placed where consumers would look, and proximate to the claim it qualifies.

Ms. Viswanathan ended her presentation by describing the tools the FTC uses for consumer protection. The tools FTC uses include law enforcement actions, trade regulation rules, notices and letters, consumer and business education, and workshops and conferences.

Question and Answer

- Mr. Breyault asked Ms. Viswanathan whether generally airline contracts of carriage are adequate disclosures to consumers. Mr. Breyault expressed his concern that when there is a cancellation or delay, consumers may not be aware of what rights they have based on the contract of carriage, its length, and legalese.
 - Ms. Viswanathan responded that the FTC does not deal with airline issues but noted that she thinks it would depend on the materiality of the type of information that needs to be disclosed. She explained that in the consumer product context there might be situations where it is not appropriate to disclose something in a dense terms and conditions document. She said that it really depends on the situation because it is not possible to disclose everything up front.
 - In response Mr. Breyault recommended that the ACPAC consider how well contracts of carriage provide information to consumers regarding their rights when there is a delay or cancellation.
 - Ms. Workie noted that aside from the contract of carriage, DOT regulations require airlines to disclose to consumers in a customer service plan the accommodations that airlines provide when there are flight irregularities. Ms. Workie explained that the regulations require airlines to post the customer service plan on their website.
- Mr. Rodriguez then asked whether there is a disconnect between what airlines are reporting to DOT/BTS and what information they are providing to consumers.
 - Ms. Workie responded that DOT would not know whether there is a disconnect unless DOT conducts an investigation. Ms. Workie explained that DOT receives complaints, though not often, that the consumer did not receive an amenity because the airline asserted the flight disruption was caused by weather, but the customer believed otherwise. Ms. Workie stated that OACP would need to obtain the cause of delay reported by the airline from BTS and send an investigation letter to the airline for further review.

- Mr. Rodriguez then asked whether DOT has data on how many cases there are like this.
 - Ms. Workie responded that it is not a high complaint category for DOT. Ms. Workie noted that a lot of the complaints regarding cancellation or delay concern refunds as opposed to accommodations, but that is not to say it is not a concern. Ms. Workie further clarified that these types of complaints are not coded in their own complaint category, but DOT would know of the complaints because analysts performing the complaint intake identify complaints of concern.
- Mr. Breyault raised DOT precedent and ACPAC's role, asking whether the main cases or precedent that DOT would consider in evaluating an unfair or deceptive practice are published or described anywhere, and wondering whether the ACPAC has a role to play in making recommendations about the application of FTC like authority. He acknowledged that DOT modeled its unfair and deceptive practices authority after FTC authority, but stated he wondered whether there are consultations that happen between DOT and FTC about the application of unfair and deceptive practices authority in the airline space. He concluded by asking whether DOT can on its own apply precedents as it sees fit?
 - Ms. Workie responded that DOT coordinated with FTC during the unfair and deceptive practices rulemaking. Ms. Workie noted that, as Mr. Putnam stated earlier, DOT is working on another rulemaking on unfair and deceptive practices to make some changes to the hearing procedures and processes. Ms. Workie further noted that Mr. Putnam mentioned in his remarks that DOT is looking at a potential interpretive rulemaking on unfair and deceptive practices. Ms. Workie said that DOT would be looking at some of the types of things Ms. Viswanathan explained in her presentation to determine what sort of additional guidance on the unfair and deceptive components would be helpful to the public. Ms. Workie explained that President Biden's Executive Order on competition directed DOT to look at the definitions of unfair and deceptive. Blane noted that based on the other information shared today, DOT's definitions are consistent with what states and the FTC are looking at in terms of unfair and deceptive. Blane also explained that the definitions are also consistent with DOT practice before the definitions were codified.
- Mr. Breyault encouraged the ACPAC to consider how DOT can play a role in ensuring what an airline tells consumers is accurate because the information airlines provide has a material impact on a consumers' ability to obtain compensation.
- Ms. Workie assured the group that when DOT becomes aware of significant cancellations and delays, DOT contacts the airlines to remind them of their obligations, including the obligation to follow through with their customer service commitments. Ms. Workie said that DOT also lets the airlines know that DOT will review the complaints it receives against the airline and use the data the airline reports to DOT on the cause of delay to ensure that the airlines are providing consumers with the accommodations that they are entitled to. Ms. Workie expressed her awareness that some airlines have at times done more than they were required to do in these situations.

- Mr. du Mee commented that examining the cause that airlines reported for long delays, such as overnight delays, would be most relevant because airline obligations apply to these are the types of delays. Mr. du Mee noted that in these situations, as opposed to the typical 20 to 30-minute delay, the airline's incentive is much different as to whether the airline would admit fault or blame the delay on weather. Mr. due Mee asked if the information on longer delays is available.
 - Ms. Workie explained that BTS has a website with an Airline Arrival Performance Dashboard that the public can use to get information on delay. Ms. Workie described that users of the dashboard can customize their view of the data by airport and length of delay.

At the conclusion of the discussion, Ms. Workie announced a 10-minute break.

Airline Perspective

Bill McDonald, Airlines for America

Mr. McDonald began by describing the impact of weather events on air carrier systems operations. Mr. McDonald noted that all airlines have operational priorities, which are (in order): safety, legality, and efficiency and reliability. Mr. McDonald stated that weather has broad impact on airline operations. Weather issues can be multifaceted and widespread, or they can be more isolated. For example, he stated that a line of weather can extend from the bottom of Texas to the Great Lakes, thus impacting operations throughout the country. This can cause delays to be both direct and indirect.

Mr. McDonald noted that FAA data indicates that 70% of all air traffic delays are caused by weather, which explains why airlines most often describe weather as the root cause of a number of delays. He stated that airlines operate across multiple plans, such as scheduling, flight planning, crew planning, aircraft routing, maintenance planning, gate sequencing, aircraft and, passenger support. He stated each plan needs to be integrated for airline operations to successfully function. Moreover, he stated that each of those plans are established for a predicted environment. If that environment changes, the impact from anything that causes an untoward development can result in change and sometimes that change can be significant. He stated that weather can impact each of the plans, and the scope and scale is unique in each circumstance, even with built-in contingencies.

Mr. McDonald further described that there is no clear demarcation of when a weather event stops being the original or primary factor for a delay associated with a flight or sequence of flights. Weather can have an impact regardless of its location. He stated that weather can be at the point of origin affecting both departing flights and inbound arriving flights. Moreover, weather can impact takeoff conditions beyond tolerances that may have a delay for the crew and the airplane itself.

Additionally, Mr. McDonald stated that there may be required maintenance either before or after a flight and weather can impact flights when they are en route, causing them to change the route of flight, to hold, or to divert. He stated that the weather may impact the flight's destination, which is less visible to the passengers. Moreover, Mr. McDonald stated that the impact of

convective weather can be much more severe. That is characterized by unstable air that results in up and down drafts. It implies that there is a severe or greater turbulence, severe icing and low-level wind shear. It can be unpredictable, and it can be very severe.

Mr. McDonald then described the impact of weather on ground operations, such as causing delays getting aircraft to and from gates or requiring aircrafts to be deiced or refueled.

Mr. McDonald stated that most airlines' system operations have direct connections to Air Traffic Control. Mr. McDonald stated this allows airlines and the ATC to mitigate and observe the delays and try to find a way to work around them.

Mr. McDonald then described the impact weather has on aircraft and crew positioning. He stated that if a severe weather event takes place and flights are diverted or delayed, they might be out of position. He stated this implicates issues with the crews, with the aircraft, and passengers.

He stated that considering crews scheduling, airlines usually have a schedule that they build a month prior which is predicated on regular operations. He stated that weather delays can impact crews' duty time and legality under Part 117 of the Federal Aviation Regulations or collective bargaining agreements. He stated that crews are only allowed a certain amount of delay or certain amount of disruption in their schedule before they must be placed into extended rest. Once that happens, that has an impact downline for the remainder of the flight sequences. He stated that if a crew "times out," system operations must find an alternative, such as repositioning a crew or take a long delay. Mr. McDonald stated that most airlines do not have reserve crews waiting throughout the system to address these types of delays. This can result in extended delays to replace the crew or the aircraft.

Mr. McDonald concluded by describing that in a recent situation, a single weather event in Florida, combined with ATC staffing concerns, led to significant downrange impact for one airline's entire system.

David Heffernan, Cozen O'Connor, on behalf of Airlines for America (A4A)

Mr. Heffernan stated that his presentation would address the topic on two parts; first, describing the types of information that airlines provide about flight delays and cancellations, and second, by addressing the legal question of whether an airline's approach to such disclosures in the context of a weather event could give rise to an unfair or deceptive practice.

Mr. Heffernan stated that there are three categories of notifications and disclosures that airlines currently provide about flight delays and cancellations: (1) flight specific passenger notifications about known delays and cancellations; (2) updating passengers and consumers during ongoing weather events; and (3) data airlines are required to provide to DOT regarding flight delays and cancellations.

Regarding the first category, Mr. Heffernan explained that current DOT regulations requires airlines to notify passenger about known delays and cancellations. He stated that airlines must provide information about a change in the status of a flight within 30 minutes after the airline

becomes aware of the change. He further stated that the regulation does not require the airline to explain the reasons for delay or cancellation. Nonetheless, Mr. Heffernan stated that airlines often go beyond the minimum requirement and provide information about the reasons for delay or cancellation such as through an announcement by the gate agent in the terminal or by the pilot during an onboard delay. He also stated that airlines often provide flight status information through multiple channels, such as text messages, emails, toll-free phone numbers, or through airport flight information display systems.

Regarding the second category, Mr. Heffernan described that when an airline is experiencing a significant set of delays and cancellations across its system, airlines typically provide information via their website, social media, and press releases. He stated that when weather is the primary original cause of such disruptions, airlines will make that clear to passengers while also including additional details of the ripple effects of the weather event on an airline's network operations.

Mr. Heffernan stated that airlines have a strong interest in informing passengers about delays and cancellations, including the reasons for the delay. He stated that airlines want passengers to understand how weather events can affect an airline's operations in ways that may not be evident to passengers. Moreover, Mr. Heffernan stated that a weather event can cause ripple effects across an airline's network which delay the return to regular operations. He stated that he believes the airline's interests align directly with the public's desire for information and transparency.

Regarding the third category, Mr. Heffernan stated that DOT regulations currently require airlines to submit monthly on-time flight performance reports to the Department. He stated these reports must include information about the reasons for a delay or cancellation, specifying whether the cause was something within or outside the airline's control. He clarified that the while airlines are required to report specific information to the Department on the causes of delays, no such requirement exists to provide the same information to passengers. He stated that he believed it would be unrealistic and unreasonably burdensome to expect airlines to provide consumers almost real time updates on known factors contributing to a flight's delay while the delay is still occurring. He stated that any requirement to provide detailed reports in real time could increase the risk of unreliable or unverified information being distributed to consumers.

Mr. Heffernan then addressed the legal question of whether an airline's approach to weather-related disclosures could give rise to an unfair or deceptive practice. Mr. Heffernan began by describing the prohibition against unfair and deceptive practices. He reiterated that the test for deception is whether reasonable consumers are likely to be materially misled by an allegedly incomplete airline disclosure about the reasons for delay or cancellation. He stated that the key element of the deception test in this context is materiality, i.e., whether an airline is failing to disclose as other factors, such as unavailability of aircraft or crew during a flight delay or cancellation that was originally and primarily caused by weather, is likely to affect a passenger's conduct or decision about the airline's service.

Mr. Heffernan continued that the regulation on flight status change notifications focuses entirely on airlines updating passengers in as close to real time as possible about a delay or cancellation and a flight's updated status regardless of the reasons for the delay or cancellation. He stated that the deception test implies that if an airline is being intentionally deceptive, it must stand to gain from the deception. Mr. Heffernan questioned how an airline would benefit from deceiving consumers about additional reasons for delay or cancellation. He stated that in today's social media world, airlines can't obscure the cause of a cancellation or delay event. He surmised that those that try may face public criticism and embarrassment, which naturally deters deception.

Mr. Heffernan then stated that, as a legal matter, airlines have no incentive to withhold information. He stated that if weather is the primary or original factor for a delay or cancellation, an airline's refund obligations remain the same regardless of any downstream factors that flow from the weather event.

Additionally, Mr. Heffernan stated that while airlines are motivated to be transparent and communicative, there are sensible limits to the amount of detail that an airline can provide about all specific factors that may contribute to a cancellation or delay. For example, he stated that an airline shouldn't be expected to inform passengers that a weather delay will be slightly extended due to a reason that would not be viewed as material under the deception test. He summarized that if airlines were required to provide detailed explanations of all of the subsidiary factors contributing to a delay that was fundamentally caused by weather, that could create the risk that airlines would feel compelled to publish information, maybe unsubstantiated information, that the airline lacked adequate time to confirm. Such pressure to provide real time information could ultimately be a disservice to consumers.

Mr. Heffernan concluded by stating that the fundamental question is 'what information does a passenger need when their flight is canceled or delayed?' He stated that the current regulatory requirement that airlines to provide passengers with prompt flight status update notifications is sufficient. He stated that airlines' compliance with that requirement affords passengers the material information necessary to make decisions, such as if and when to head to the airport, and whether to request a refund or rebooking on another flight.

He stated his belief that while additional detail about the reasons for a delay or cancellation is important to informing passengers, that information is not material to a passenger's decision making. Thus, withholding such information does not meet the Department's test of an unfair or deceptive practice.

Question and Answer

- Ms. Workie began by asking Mr. Heffernan to provide more information on his statement that he does not see how not providing the reason for the delay or cancellation could be deceptive in light of the Department requirement for airlines to provide assurances in their customer service commitments on the accommodations airlines provide during irregular operations. She stated that she is trying to clarify how the information on the reasons for cancellations would not be material, because the consumer may have made its decision based on customer service commitments that are publicly available, one airline

versus another, and if there is a cancellation or a delay, the reason for that cancellation or delay could mean that the passenger is entitled to a particular benefit.

- Mr. Heffernan responded that some airlines' contract of carriage, to the extent they provide for amenities for flight irregularities, exclude delays or cancellations where the cause is outside the airline's control, such as weather. He stated airlines have no reason to withhold information about other factors such as these ripple effects across their operations when the original or primary cause is weather. As a legal matter, he stated that if weather is the original or primary factor, an airline's contractual obligation to provide amenities may not apply based on the wording of the contract of carriage. He stated that airlines actually go above and beyond their contractual obligations to try and minimize the inconvenience and get passengers to their destination, and in some cases, airlines do provide amenities even when they are not required to do so.
- Ms. Workie followed up and asked Mr. Heffernan how does an airline decide to apply its customer service commitments regarding providing services to passengers during controllable delays if the airline has a difficulty, in real time, determining the cause of the delay?
 - Mr. Heffernan stated that he believes the determination is entirely based on what information the airline staff are receiving from the airline's operations center.
- John Breyault asked if it is standard in the industry for airlines to provide accommodations to passengers who are disrupted during their travel.
 - Mr. Heffernan responded that the availability of accommodations is governed by the specific airline's contract of carriage.
- Mr. Breyault then asked Mr. McDonald if an impact to any one of the airlines' operational inputs can result in delays or cancellations.
 - Mr. McDonald clarified that his description of the various sections of airline operations was to show how each of these units can be impacted by weather.

Question and Answer Period for Public Participants and Closing Remarks

Ms. Workie then addressed questions from members of the public in attendance.

- Susan Grant asked if it should make any difference whether consumers who did not fly due to COVID bought nonrefundable tickets or the much more expensive refundable tickets when no one was in a position to know how the public health emergency was going to evolve or how long it would last.
 - Ms. Workie answered that the DOT's position is that to the extent the flight was canceled or significantly changed by the carrier, then it does not matter whether the passenger purchased refundable or nonrefundable ticket.
- Robert Silk directed his question to Bill McGee or Patricia Vercelli and asked: are any of the U.S. carriers providing refunds upon request to customers who cancel their travel plans for COVID-related health reasons, such as government guidance or because they have the virus or virus symptoms? If so, how many of them made those procedures written policy?

- Mr. McGee answered that, based on his research, no U.S. airline has made a blanket statement that anything other than flights that were canceled would generate refunds. He stated airlines may issue refunds on a case-by-case basis.
- Ms. Grant asked, in describing ticket prices as being lower than they used to be: are representatives of the airline industry taking into account that many things that used to be included in the ticket price, such as choosing one's seat, checking baggage, carrying on more than one bag, being served food and beverages, etc., are not included now and entail extra fees?
 - Ms. Vercelli answered that the information contained in John Heimlich's presentation included information on ancillary fees.

After determining that there were no further questions, Ms. Workie then ended the meeting by thanking the members of the committee, the speakers, and the staff at DOT for organizing and running this meeting.

The meeting was concluded at 3:00 pm.

APPENDIX

Committee Members Present

Maura Healey, Attorney General of Massachusetts, Chairman
 Mario Rodriguez, Executive Director of Indianapolis Airport Authority
 John Breyault, Vice President, National Consumers League
 Patricia Vercelli, General Counsel of Airlines for America
 Blane Workie, DOT Assistant General Counsel for Aviation Consumer Protection, Designated Federal Officer (DFO)

Members of the Public Present

1	Name	Organization
2	Stuart Hindman	U.S. DOT
3	Jonathon Foglia	Cozen O'Connor
4	Matthew du Mee	Arizona Attorney General's Office
5	Steve Shur	Travel Tech
6	Eben Peck	ASTA
7	Mindaugas Lescinskas	U.S. DOT
8	Bryan Baszczewski	FAA
9	Robert Nazareth	U.S. DOT
10	Cecelia Robinson	U.S. DOT
11	Serena Viswanathan	FTC
12	Doug Lavin	IATA
13	Bill McGee	Consumer Reports
14	John Wood	U.S. DOT
15	Kimberly Graber	U.S. DOT
16	Bill McDonald	Airlines for America
17	David Heffernan	Cozen O'Connor
18	John Heimlich	Airlines for America
19	Brad Elstad	Republic Airways
20	Chris Miller	U.S. DOT
21	Chat West	Mesa Airlines
22	Caitlin Harvey	U.S. DOT
23	Chad Heflin	IATA
24	David Kirstein	Kirstein and Young
25	Kevin Mitchell	Business Travelers Coalition
26	Elizabeth Kohl	U.S. DOT
27	Tracy Soto	Sunwing
28	Emmett O'Keffe	Booking.com
29	Randall Wald	
30	James Thumpston	KMA Zuckert
31	Kelly Yamanouchi	The Atlanta Journal-Constitution
32	Daniel Camejo	Avelo Airlines
33	Rachel Tang	Library of Congress
34	Ivy Harrison	U.S. DOT

35	Jana Leonard	Allegiant Air
36	Rachel Hayes	Massachusetts Attorney General's Office
37	Robert Gorman	U.S. DOT
38	Mark Dombroff	Fox Rothschild
39	Kimberly Hargett	U.S. DOT
40	Christopher Cooper	AOPA
41	Kim Reagan	U.S. DOT
42	Meghan Ludtke	American Airlines
43	Joanne Young	Kirstein and Young
44	Christy Tegarden	American Airlines
45	Norman Strickman	U.S. DOT
46	Fred Taylor	Southwest Airlines
47	Clereece Kroha	U.S. DOT
48	Robert Silk	Travel Weekly
49	Jim Conneely	United Airlines
50	Kahla Elliston	Spirit Airlines
51	Kathy O'Shea	U.S. DOT
52	Charlie Leocha	Travelers United
53	Vinh Nguyen	U.S. DOT
54	Kathy Kennedy	Alaska Airlines
55	Nicole Montgomery	SkyWest Airlines
56	Finnigan Hurst	
57	Graham Keithley	Airlines for America
58	Jessica Ilich	U.S. DOT
59	Laura Rodgers	JetBlue Airways
60	Michelle Minor	Alaska Air
61	Margaret Cummisky	Hawaiian Airlines
62	Linda Sherry	Consumer Action
63	Jonathan Carver	GAO
64	Gregory Wallace	CNN
65	Catherine Burnett	FAA
66	Donald Crowell	Kirstein and Young
67	Jason Park	Expedia Group
68	Drew Derco	Eckert Seamans
69	Evelyn Hitt	Massachusetts Attorney General's Office
70	Michael Goldman	Silverberg Goldman
71	Don Hainbach	Garofalo Goerlich Hainbach
72	David Smith	ATPCO
73	Cristina Draguta	U.S. DOT
74	Whitney Zimmerman	
75	Paul Aussendorf	GAO
76	Eric Felland	Eckert Seamans
77	Elise Steed	American Airlines
78	James Richards	Southwest Airlines
79	Jessica Klement	ASTA

80	Lori Barringer	U.S. DOT
81	Amy Suntoké	GAO
82	Livaughn Chapman	U.S. DOT
83	Diane Duthweiler	KIRO Radio
84	Phil Zager	Kirstein and Young
85	Andrew Appelbaum	Flyers Rights
86	Doug Mullen	Airlines for America
87	Eden Iscil	National Consumers League
88	Julie Moser	Republic Airways
89	Nobuyo Reinsch	Regional Airline Association
90	Li Reilly	Fareportal
91	Renee Roth	Breeze Airways
92	Andrew Orr	Eckert Seamans
93	Karin Kron	ATPCO
94	Jamie Hopkins	U.S. House of Representatives
95	Dean Griffith	Jones Day
96	James Stevens	Lufthansa
97	Amanda Pedigo	Expedia
98	Evelyn Sahr	Eckert Seamans
99	George Slover	Consumer Reports
100	Rich Swayze	Delta Airlines
101	Nicole Gurdoglanyan	JetBlue Airways
102	Maren Matal	Southwest Airlines
103	Lisa Bierman	Indianapolis Airport Authority
104	Maude-Emmanuelle Leblanc	Transport Canada
105	Teresa Wilkerson	American Airlines
106	Dallas Thomas	Southwest Airlines
107	Susan Grant	Consumer Federation of America