

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT-OST-2018-0190]

Aviation Consumer Protection Advisory Committee; Notice of Public Meeting

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: This Notice announces the public meeting of the Aviation Consumer Protection Advisory Committee (ACPAC), to be held virtually on the topic of airline ticket refunds and related consumer protection matters.

DATES: The virtual meeting will be held on Monday, August 22, 2022, from 10:00 a.m. to 5:30 p.m., Eastern Daylight Time. The meeting is open to the public, subject to any technical and/or capacity limitations. Requests to attend the meeting must be submitted to

https://usdot.zoomgov.com/webinar/register/WN_e_B-NtXfT8KlqgoNCH3f7w. We encourage interested parties to register by Monday, August 15, 2022. Communication Access Real-time Translation (CART) and sign language interpretation will be provided during the meeting. Requests for additional accommodations because of a disability must be received at ACPAC_08.22.2022@dot.gov by August 15, 2022. If you wish to speak during the meeting, you should submit a request at ACPAC_08.22.2022@dot.gov no later than August 15, 2022.

ADDRESSES: The virtual meeting will be open to the public and held via the Zoom Webinar Platform. Virtual attendance information will be provided upon registration. An agenda will be available on the Department's Office of Aviation Consumer Protection website at <https://www.transportation.gov/airconsumer/ACPAC> in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: To register and attend this virtual meeting, please use the link: https://usdot.zoomgov.com/webinar/register/WN_e_B-NtXfT8KlqgoNCH3f7w.

Attendance is open to the public subject to any technical and/or capacity limitations. For further information, please contact Cristina Draguta, Attorney -Advisor, by email at Cristina.Draguta@dot.gov.

SUPPLEMENTAL INFORMATION:

I. Background

The ACPAC evaluates the Department of Transportation's current aviation consumer protection programs and provides recommendations to the Secretary for improving them, as well as recommending any additional consumer protections that may be needed.

The subject of airline ticket refunds was discussed in an ACPAC meeting held on December 2, 2021. The Department planned for the ACPAC to continue its discussion on airline ticket refunds after issuance of the Notice of Proposed Rulemaking (NPRM) on Airline Ticket Refunds and Consumer Protections (RIN 2105-AF04). On August 2, 2022, the Department issued the NPRM, which is available at <https://www.transportation.gov/airconsumer/latest-news>. The Department is now scheduling a meeting to provide the ACPAC further opportunity to discuss issues related to airline ticket refunds, particularly the proposals in the Department's NPRM.

II. Agenda

During the August 22, 2022, meeting, the Department will provide an opportunity for public input and continue the discussion on airline ticket refunds and related consumer protection matters. Regarding airline ticket refunds, the Department's NPRM proposes, pursuant to 49 U.S.C. 41712, which prohibits U.S. air carriers, foreign air carriers, and ticket agents from engaging in unfair practices in the sale of air transportation, to require carriers and ticket agents to provide requested refunds to passengers when a carrier cancels or significantly changes a flight to, from, or within the United States. The Department's existing rule has not defined the terms "significant change" and "cancellation" in regulation or statute. The Department proposes to clarify and codify that, under the

Department's rule requiring airlines to provide prompt refunds when ticket refunds are due and its rule requiring ticket agents to make refunds promptly when service cannot be performed as contracted, carriers and ticket agents must provide prompt ticket refunds to passengers when a carrier cancels or makes a significant change to a flight. The NPRM further proposes to define cancellation and significant change, including addressing whether new itineraries involving delayed arrivals or early departures of a certain length or additional stops constitute a significant change requiring a refund. The NPRM also addresses protections for consumers who are restricted or prohibited from traveling or determine not to travel consistent with public health guidance related to a serious communicable disease. Comments on the NPRM may be submitted into the rulemaking Docket (DOT-OST-2022-0089) at any time during the public comment period, including before and after the ACPAC meeting. This meeting will allow the ACPAC to hear from all interested stakeholders regarding the Department's proposals and what ACPAC should consider as it determines what recommendations, if any, to make to the Secretary on this topic.

III. Public Participation

The August 22, 2022, meeting will begin at 10:00 am EST, and the Department will provide time for opening remarks and present a summary of the Department's relevant regulations, an overview of the December ACPAC meeting, and an overview of the NPRM. The meeting will then transition to input from participants, including members of the public. There will be a lunch break and further input and discussion will continue in the afternoon to help inform the ACPAC members on what they should consider when making recommendations, if any, on this topic. To inform and enable the public to provide input, the Department summarizes the main proposals of the NPRM below and seeks information on the following questions regarding these proposals:

1. Ticket Refunds Due to Airline Cancellations and Significant Changes of Itineraries

a. Defining significant changes of itineraries.

The Proposal:

A “significant change of flight itinerary” is defined as a change to a covered flight itinerary made by a covered carrier where:

- (1) the consumer is scheduled to depart from the origination airport three hours or more for domestic itineraries and six hours or more for international itineraries earlier than the original scheduled departure time;
- (2) the consumer is scheduled to arrive at the destination airport three hours or more for domestic itineraries and six hours or more for international itineraries later than the original scheduled arrival time;
- (3) the consumer is scheduled to depart from a different origination airport or arrive at a different destination airport;
- (4) the consumer is scheduled to travel on an itinerary with more connection points than that of the original itinerary;
- (5) the consumer is downgraded to a lower class of service; or
- (6) the passenger is scheduled to travel on a different type of aircraft with a significant downgrade of the available amenities and travel experiences.

Question 1(a)(i): Should the Department define a “significant change of flight itinerary” that would result in a consumer being entitled to a ticket refund or should the Department continue its current practice to allow airlines to determine their own standards for flight itinerary changes that lead to refund eligibility?

Question 1(a)(ii): If the Department adopts a standard for significant early departure or arrival delays that would result in refund eligibility, should the standard be a set number of hours based on domestic vs. international itineraries, as proposed in the NPRM, or a tiered standard based on the total travel duration of an itinerary? Is there any other objective benchmark that should be considered as the basis of calculating whether a refund is due because of flight delays and early departures?

Question 1(a)(iii): Should the Department’s rule consider the change of origination or destination airport, or the increase of the number of connections a significant change that would result in a refund due?

Question 1(a)(iv): What types of aircraft downgrade should be considered as a basis for a consumer to request a refund? Should the determination be made on a case-by-case basis? Are there certain types of

changes in amenities or air travel experience as the results of aircraft downgrade that should automatically be considered significant for purposes of requiring a refund be offered?

Question 1(a)(v): Are there any other itinerary changes not proposed in the NPRM that should be considered “significant” for purposes of requiring a refund be offered?

b. Forms of Refund

The Proposal:

- *Airlines and ticket agents must refund passengers by returning the money in the original form of payment or by providing the refund in cash or a form of cash equivalent.*
- *Cash equivalent is defined as a form of payment that can be used like cash, including but not limited to a check, a prepaid card, funds transferred to the passenger’s bank account, funds provided through digital payment methods (e.g., PayPal, Venmo), or a gift card that is widely accepted in commerce.*
- *Airlines and ticket agents may offer other compensation choices such as travel credits or vouchers and store gift cards in lieu of refunds but must first inform consumers that they are entitled to a refund if that is the case.*
- *Airlines and ticket agents must disclose material restrictions, conditions, and limitations on the compensation options provided to the consumer.*

Question 1(b)(i): Should the Department’s rule mandate that refunds must be provided in the original form of payment, or should the Department allow airlines and ticket agents to choose another form of payment that is cash or cash equivalent?

Question 1(b)(ii): How should the form of refund affect the refund deadlines? For example, if a passenger purchased the ticket with a credit card but agrees to accept the refund by a check, which refund deadline (7 days or 20 days) should apply?

c. Obligations on Ticket Agents

The Proposal:

- *Ticket agents must provide prompt refunds to consumers when an airline cancels or makes a significant change to a flight itinerary that the ticket agents sold directly to consumers (i.e., the ticket agents’ identities are shown in the consumers’ financial charge statements).*
- *Ticket agents are permitted to deduct the service fee for booking travel or issuing tickets from the refund or charge a fee for issuing the refund, as long as the amount of the fee is based on a per-passenger basis and the existence of the fee was clearly and prominently disclosed to consumers at the time of ticket purchase.*

Question 1(c)(i): For an itinerary purchased from or through a ticket agent, which entity (the ticket agent or the airline) should be responsible for the refund when it is due? Is it reasonable to require the entity that “sold” the itinerary (i.e., the entity that shows in the consumer’s financial charge statement) be responsible for the refund?

Question 1(c)(ii): When issuing a refund requires actions by both a ticket agent and an airline, should the Department hold both entities liable regardless of which entity “sold” the ticket?

Question 1(c)(iii): If a ticket agent is relying on an airline to confirm that the consumer is eligible for a refund, should the Department allow the mandatory refund timeframes (7 days for credit card refund and 20 days for other forms of refund) to start only when the airline confirms refund eligibility?

Question 1(c)(iv): When issuing a refund that is due, is it reasonable to allow the ticket agents to retain the service charges for issuing the original tickets as the service has already been provided? Should the Department require that ticket agents clearly disclose such a fee retention when consumers purchase tickets?

2. Providing Travel Vouchers to Consumers Who are Restricted or Prohibited from Traveling, or Determine not to Travel Due to Concerns related to a Serious Communicable Disease

- a. Providing travel credits or vouchers to consumers who are restricted or prohibited from traveling or who determine not to travel consistent with public health guidance related to a serious communicable disease.**

The Proposal:

- *Airlines and ticket agents must provide non-expiring travel credits or vouchers to a consumer if, after purchasing the tickets, a government order was issued to prohibit the consumer from leaving the origination or entering into the destination or transition point, or if the government order renders the consumer’s travel meaningless.*

Question 2(a)(i): Should the Department's consumer protection rule cover only situations in which travel is made physically impossible by a government restriction (e.g., stay-at-home order or border closure) or should it also cover situations in which the restriction renders the travel meaningless (e.g., a situation in which a consumer traveling to attend an event would miss the event because of a mandatory quarantine requirement at the destination)?

Question 2(a)(ii): Should this requirement only apply during a public health emergency or apply whenever a government restriction or prohibition on travel related to a communicable disease is imposed?

Question 2(a)(iii): What types of evidentiary documents should airlines and ticket agents be permitted to request as a condition to issue credits or vouchers under this requirement?

b. Providing travel credits or vouchers to consumers who are advised by a medical professional or determine consistent with public health guidance not to travel to protect themselves from a serious communicable disease during a public health emergency.

The Proposal:

- *Airlines and ticket agents must provide non-expiring travel credits or vouchers to consumers who are advised by a medical professional or determine consistent with public health guidance issued by the CDC, comparable foreign agencies, or WHO not to travel by air to protect themselves from a serious communicable disease during a public health emergency.*

Question 2(b)(i): Is it reasonable to require airlines and ticket agents to issue travel credits or vouchers to consumers, who have purchased their tickets before the declaration of a public health emergency, because they have been advised by a medical professional or determined, consistent with public health guidance, that they need to postpone or cancel travel to protect themselves from a serious communicable disease?

Question 2(b)(ii): Should this requirement also cover consumers who have purchased their tickets after the declaration of the public health emergency but later find out that certain conditions (e.g., the

consumer's health condition) have changed and because of such change they need to postpone or cancel travel?

Question 2(b)(iii): Should this requirement cover only consumers who have legitimate concerns about their own health conditions, or should this requirement also cover:

- consumers who are reluctant to travel because of the risk they may bring to others (e.g., family members they care for); and/or
- consumers who are unable to travel alone because their travel companion decides not to travel due to health reasons (e.g., the minor child of a consumer who decides not to travel to protect his or her own health)?

Question 2(b)(iv): What types of evidentiary documents should airlines and ticket agents be permitted to request as a condition for issuance of credits or vouchers under this requirement?

The proposal:

- *Regardless whether there is a public health emergency, airlines and ticket agents must provide a non-expiring travel credit or voucher to a consumer who is advised by a medical professional or determines consistent with public health guidance issued by CDC, comparable foreign agencies, or WHO not to travel by air because the consumer has or may have contracted a serious communicable disease and the consumer's condition is such that traveling on a commercial flight would pose a direct threat to the health of others.*

c. **Providing travel credits or vouchers to consumers who have or may have a serious communicable disease.**

Question 2(c)(i): Is it reasonable to define a serious communicable disease, for the purpose of requesting a travel credit or voucher, as a communicable disease that is readily transmissible in the aircraft cabin environment and would likely cause significant health consequences?

Question 2(c)(ii): Are there concerns about potential abuse of this requirement? To prevent abuse, is it reasonable for airlines or ticket agents to request a written statement by a medical professional for the specific consumer requesting the credit or voucher?

Question 2(c)(iii): Instead of issuing travel credits or vouchers, are there other ways to protect the interests of affected consumers and promote public health, such as requiring airlines and ticket agents to waive the ticket change fees or keep the ticket open for future travel?

d. Type and value of travel credits or vouchers, supporting documentation, and service fees

The proposal:

- *The travel vouchers or credits provided to eligible consumers must be non-expiring.*
- *The value of the credit or voucher must be equal to or greater than the fare (including taxes and fees and unused ancillary service fees); ticket agents are allowed to deduct from the value any service fees paid for the issuance of the original ticket.*
- *Carriers and ticket agents may not impose conditions, limitations, and restrictions on the credits or vouchers that are unreasonable and would materially reduce their value in comparison to the original purchase prices.*
- *To determine whether a consumer is eligible for the travel credit or voucher under this proposal, airlines and ticket agents may require the consumer to present supporting documentation, as appropriate, such as government travel restriction orders or a statement from a medical professional.*
- *Airlines and ticket agents may impose a service fee for issuing the credit or voucher; the existence of the fee must be disclosed to consumers at the time of ticket sale.*

Question 2(d)(i): Is it reasonable to require airlines and ticket agents to issue non-expiring travel credits or vouchers to consumers who are restricted or prohibited from traveling, or advised by a medical professional or determines consistent with public health guidance not to travel due to concerns of a serious communicable disease? Instead of non-expiring credits or vouchers, is it adequate for consumer protection purpose to require the credit or vouchers be transferrable but with a limited validity period?

Should airlines and ticket agents be required to allow multiple transfers?

Question 2(d)(ii): What type of travel credits or vouchers would be preferred by most consumers— credits or vouchers of the same or greater value of the original ticket price, or credits or vouchers redeemable for the same itinerary in the future regardless of the price?

Question 2(d)(iii): Is it reasonable to allow carriers and ticket agents to charge a service fee for issuing the travel credits or vouchers?

3. Providing Refunds to Consumers Who are Restricted or Prohibited from Traveling, or Advised by a Medical Professional or Determine Consistent with Public Health Guidance not to Travel, Due to Concerns Related to a Serious Communicable Disease During a Public Health Emergency if Airlines or Ticket Agents Receive Significant Government Financial Assistance

The proposal:

- When there is a declaration of a public health emergency and DOT has published a determination that a covered carrier or ticket agent received significant government financial assistance as a result of the public health emergency, the covered airline or ticket agent must provide a requested refund to a consumer in lieu of the non-expiring travel credit or voucher as required by the proposal.
- In order to receive the refund, an eligible consumer must make a request from the carrier or ticket agent within 12 months of the date that DOT publishes a determination that the government financial assistance received by the carrier or ticket agent is significant.
- Airlines and ticket agents may charge a service fee for issuing the refund and may require supporting documentation from consumers to prove eligibility.

Question (3)(a): Should airlines and ticket agents be required to provide refunds, in lieu of travel credits or vouchers, to eligible consumers who are restricted, prohibited, or advised not to travel during a public health emergency due to concerns related to a serious communicable disease if the airlines or ticket agents receive significant government financial assistance related to that public health emergency?

Question (3)(b): For the purpose of this requirement, should the Department consider not only Federal government financial assistance provided to U.S. airlines and ticket agents, but also foreign central government financial assistance provided to foreign airlines and ticket agents selling air transportation to the United States?

Question (3)(c): Is the process proposed in the NPRM to determine what government financial assistance is “significant” reasonable (i.e., for each public health emergency, the Department would apply relevant factors in the determination and seek public comments before finalizing the threshold)?

Question (3)(d): What factors should be considered when the Department determines whether the amount of government financial assistance provided to an airline or ticket agent is “significant”? Is it reasonable to consider the size of the entity (annual enplanements for airlines, annual revenue and the

number of employees for airlines and ticket agents), year-over-year comparison of traffic and revenue before and after the declaration of the public health emergency, the amount of government financial assistance accepted in relation to the entity's annual revenue? Is it reasonable to also consider a foreign carrier's annual enplanement to and from the United States in addition to total enplanement globally? What other considerations are relevant in this determination? Should there be different standards for airlines and for ticket agents?

Question (3)(e): Is it reasonable to require consumers, who have not already requested a travel credit or voucher, to make a refund request from the airlines or ticket agents within 12 months after a determination has been made by the Department that the airline or ticket agent has received "significant" government financial assistance?

At the August meeting, individual members of the public will have an opportunity to make remarks. However, depending on the volume of requests for oral comments that we receive and the time available, we may not be able to hear from everyone who submitted a request. Any oral comments presented must be limited to the objectives of the committee and will be limited to three (3) minutes per person. Individual members of the public who wish to present oral comments must notify the Department of Transportation, no later than Monday, August 15, 2022, via e-mail at ACPAC_08.22.2022@dot.gov that they wish to present oral comments. The e-mail should (1) identify (by the question number as listed in this Notice) the specific question(s) on which you wish to provide comments; (2) state the organization or entity you are representing or that you are speaking as a member of the public; and (3) provide a written summary of the oral comments you wish to present at the meeting on the question(s). Due to the limited time during the meeting, the Department will review all speaking request submissions and notify those who are selected to speak in advance of the meeting. If there is an interest in addressing a question not identified in this Notice but related to airline ticket refunds, please identify that topic in your request. All prepared remarks submitted on time will be accepted and considered as part of the meeting's record.

Members of the public who do not wish to speak at the meeting but have comments that are specifically directed to the ACPAC members for consideration may submit their written comments electronically at any time prior to August 19, 2022, to the ACPAC Docket (DOT-OST-2018-0190). In addition, any substantive comments on the NPRM to be considered by the Department in the rulemaking should be submitted into the NPRM Docket (DOT-OST-2022-0089) directly.

IV. Viewing Documents

Documents associated with the ACPAC may be accessed in the ACPAC Docket (DOT-OST-2018-0190). Documents associated with the NPRM on Airline Ticket Refunds and Consumer Protections may be accessed in the rulemaking Docket (DOT-OST-2022-0089). Dockets may be accessed at <https://www.regulations.gov>. After entering the relevant docket number click the link to “Open Docket Folder” and choose the document to review.

Signed in Washington, D.C., on this 2nd day of August 2022.

John E. Putnam,
General Counsel.