



Public Hearing Minutes
Notice of Proposed Rulemaking: Airline Ticket
Refunds and Consumer Protections

March 21, 2023

Washington, D.C.

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Overview and Introductory Remarks

On March 21, 2023, the U.S. Department of Transportation's (Department or DOT) Office of Aviation Consumer Protection (OACP) held a public hearing on the Notice of Proposed Rulemaking: Airline Ticket Refunds and Consumer Protections (published on March 3, 2023) using a virtual platform. The agenda and presentation materials that were provided at the hearing are available for public review at <https://www.transportation.gov/airconsumer>. The proposed rulemaking is available on regulations.gov under the docket number DOT-OST-2022-0089.

The attached appendix identifies the individuals who spoke at the hearing. The webcast of the hearing is available at:

https://www.transportation.gov/airconsumer/Airline_Refund_NPRM/March21_Public_Hearing_Recording.¹

Ms. Blane Workie, the Assistant General Counsel, OACP, and appointed Hearing Officer, opened the hearing by explaining logistics for speakers and summarizing the three topics that would be discussed at the hearing:

- (1) Whether consumers can make reasonable self-determinations regarding contracting a serious communicable disease.
- (2) Whether the documentation requirement (medical attestation and/or public health guidance) is sufficient to prevent fraud.
- (3) How to determine whether a downgrade in amenities or travel experiences qualifies as a "sufficient change of flight itinerary" that would entitle an individual to a ticket refund.

Comments by Participants on the Hearing Topics

First Topic: Can consumers make reasonable self-determinations regarding contracting a serious communicable disease.

Andrew Appelbaum (FlyersRights) [6:20]

Mr. Appelbaum commented that consumers can make reasonable self-determinations regarding contracting a serious communicable disease. He stated that during the COVID-19 pandemic, many passengers avoided flying due to their own self-determination that they were COVID-positive. He also noted that, in April of 2020, passenger traffic dropped by over 95%. He concluded that consumers could be trusted to make the right decision not to fly when sick.

John Breyault (The National Consumers League) [8:20]

¹ The summary of each speaker's comment below is identified by a timestamp that marks the beginning of the comment in the recording.

Mr. Breyault first expressed his concerns about the Department's procedural rule on public hearings and commented that his organization and other associations believe these hearings may create unnecessarily burdensome hurdles before any enforcement action or rulemaking can be completed.

Regarding the first hearing topic, Mr. Breyault stated that DOT should not accept the assumption that consumers will abuse this proposed right, nor should it accept the assertion that consumers exercising this right will significantly increase costs to airlines. Mr. Breyault stated that DOT should reject the argument that consumers cannot make reasonable self-determinations regarding contracting a serious communicable disease. Mr. Breyault further commented that the exercise of the proposed right is not without cost to consumers. He stated that should an airline determine that a passenger is serially abusing this right, nothing would prevent the airline from refusing service to such a passenger in the future. He argued that the exercise of this right is consistent with the CDC's longstanding approach that advises people to stay home while they are sick. He also stated that airlines are required to issue only travel credits not refunds, which means airlines can continue to earn interest from the money consumers used to purchase the tickets until the credits are used. He commented that airlines can also sell the vacated seats, likely for a higher price because it would be closer to travel dates.

Graham Keithley (A4A) [13:12]

Regarding the first hearing topic, Mr. Keithley commented that the Department should conclude that it is not reasonable for laypersons to make self-determinations based solely on public health organization guidance that they have or may have a serious communicable disease and that their condition is such that traveling on a commercial flight would pose a direct threat to the health of others. Mr. Keithley further commented that nearly all the data sought by the Department in the public hearing notice will not answer the question regarding whether consumers can make reasonable determinations because there is no current standard applied for seeking credits or refunds for a "serious communicable disease." In addition, Mr. Keithley stated that the information sought by the Department on airlines' current practice, the cost for airlines to verify the claims, the types of disease that consumers are claiming, and the volume of consumers' requests have nothing to do with the reasonableness of consumers' self-determinations.

Paulo Alves (MedAire) [18:03]

Mr. Alves stated that he is a medical doctor and provided background on his credentials and experience in the air space medical field. He commented that he represents MedAire, a company that services 16 U.S.-based airlines and many large international carriers flying to and from the United States. Mr. Alves explained that MedAire reviews issues on a daily basis regarding inflight medical events and their prevention by making assessments on passengers' medical certificates and passengers' ability to fly when they are visibly unwell. Mr. Alves further described situations handled by MedAire during the COVID-19 pandemic to assess whether passengers' claims

regarding inability to wear a mask during flights were legitimate. Regarding the first hearing topic, Mr. Alves stated that from his experiences he strongly believes that making a self-determination regarding communicable disease is not a simple matter. Mr. Alves stated that in preparation for this hearing, he researched medical literature and could not find good support for an approach of self-determination for many different medical conditions, including infectious diseases. Mr. Alves opined that only properly trained medical professionals can ultimately make these determinations. Mr. Alves concluded that if the practice of self-determination is to be entertained, strict and specific criteria need to be applied, and such criteria should be subject to change according to prevailing public health guidance issued by central health authorities.

Richard Gomez (MedAire) [24:21]

Regarding the first hearing topic, Mr. Gomez commented that the Department should analyze the topic from an operational perspective. He stated that MedAire trains crew members on how to handle medical conditions and how to comply with the Air Carrier Access Act regulation, 14 CFR Part 382. Mr. Gomez stated that there could be confusion among airline staff regarding the requirement of this NPRM and the requirement of Part 382. Mr. Gomez expressed his concern that the terminology associated with Part 382 and the terminology proposed in this NPRM, such as “direct threat” and “serious conditions” and “easily transmittable” is not aligned and stated that the Department should look into achieving some alignment with Part 382 to avoid confusion. Mr. Gomez also commented that 14 CFR 382.23(c) contains a statement regarding “communicable disease” and required documentation and very specific criteria for a document and suggested that it should be aligned with the proposal.

Bill McGee (American Economic Liberties Project) [27:23]

Mr. McGee commented that the conversation was a bit too narrow as COVID-19 highlighted and spotlighted problems with flight refunds that many have been speaking about for years. Mr. McGee commented that he understood the constraints of the current rulemaking and that it focuses on pandemics and medical events such as COVID-19. However, Mr. McGee argued that COVID-19 was not the cause of the problems with flight refunds. He suggested that it merely highlighted them in a dramatic way, as the DOT received a record number of complaints from consumers. Mr. McGee emphasized the need to address the inherent problems built into the system, both related and unrelated to COVID-19.

Ms. Workie requested that the discussion focus on the first hearing topic, whether consumers can make reasonable self-determinations regarding communicable diseases.

Mr. McGee continued his comments by stating that during the pandemic, many consumers expressed concerns about their elderly parents, people who were immunocompromised, or children who were advised by their doctors to not travel, yet because the flights were not cancelled, they did not know what to do. Mr. McGee stated that this issue was compounded by airlines routinely

offering vouchers where a cash refund is due and consumers are not aware of it. Mr. McGee concluded his comment by stating that within the context of COVID or other medical crisis or not, vouchers should not have an expiration date and he urged the DOT to consider further rulemaking that will expand beyond the context of the medical issues such as COVID.

Ms. Workie asked Mr. McGee whether he has a position on whether consumers can reasonably make self-determinations on contracting a serious communicable disease.

In response, Mr. McGee stated that his organization believes that consumers are not in the best position to make those determinations and if consumers are advised by doctors or other medical professionals or family members that they should not travel, these concerns should be respected.

Mr. Kevin Mitchell (Business Travel Coalition)

Mr. Mitchell was called to speak but due to technical issues, he was unable to be heard.

Dr. Nardell (Harvard Medical School) [36:27]

Dr. Nardell introduced himself as a part of the Harvard School of Public Health team that advised the airlines through A4A about the safety or lack thereof of traveling during COVID-19 pandemic. Dr. Nardell stated that his area of expertise is airborne transmission of disease during transportation and that as a lung physician, his perspective is to try to assess the potential for individuals to judge whether they have a serious transmissible infection. Dr. Nardell provided the example of an individual who has contracted COVID and tested positive at home, and stated that for those individuals, everyone especially airlines would agree that they should not be on an airplane. Dr. Nardell stated that however, there is a huge grey zone for viral respiratory infections that may even be related to COVID but there are no tests for them. Dr. Nardell commented that during a pandemic or epidemic, one should err on the side of assuming there was a respiratory infection, particularly when accompanied by a fever. However, he stated that beyond that, it is really difficult for an individual to be sure that they have a communicable disease. Dr. Nardell further commented that even for fever, it is hard to document after the fact and some level of documentation is probably needed. But we should not expect all airline passengers having a fever to go to the emergency room for documentation due to cost and emergency rooms already being overburdened.

Ms. Workie asked whether in Dr. Nardell's view, in some cases consumers can make reasonable self-determinations, and in other cases, they cannot.

Dr. Nardell stated that this is a fair statement, and that overall and outside of a pandemic, it is very difficult to make self-determinations. Dr. Nardell concluded that it is very difficult to self-determine that one has a serious communicable disease in a way that is operationally honest and

fair to both sides.

Ms. Workie referred to the comment regarding being operationally honest, and asked whether Dr. Nardell's concern is about the self-determination not being accurate, or about fraud or lack of proper documentation, or both.

Dr. Nardell stated that his concern is for both. He further elaborated that the concern is about the accuracy of people when they believe they have a serious communicable disease (noting that there are tests for COVID but not for flu), and there is also the issue of whether this very reasonable public health precaution can be used by someone who has a change of travel plan for some reason. Dr. Nardell stated that it is not in his area to make a comment on whether the potential for abuse is a reasonable ground to prohibit self-determination. However, he noted that individuals cannot say with certainty whether they have a communicable infection in many cases. Dr. Nardell raised the question on whether we should err on the side of assuming infection or assuming no infection and potentially allowing someone with communicable disease to fly. Dr. Nardell also commented that there are intermediate steps that can be done to reduce risk on flights. Specifically, he commented that wearing masks on flights could reduce the risk of passing communicable disease to others, and that wearing a mask can also protect people who were vulnerable to infections.

Doug Lavin (IATA) read the comments of Dr. David Powell, who was in New Zealand and not able to join live because of the time difference: [48:31]

Dr. Powell's statement introduced himself as a medical doctor specializing in occupational and aerospace medicine and stating that since 2018, he served as the medical advisor for IATA. Dr. Powell stated that in this capacity he has been focusing on addressing COVID responses including evaluating scientific literature and developments, understanding the impact of COVID-19 government restrictions on commercial airlines, and advising airlines on determining ways to best handle the pandemic and its consequences. Dr. Powell pointed out that as the NPRM notes, airlines today already regularly accommodate passengers by offering travel credits or vouchers to passengers who have been diagnosed by a medical doctor as having a communicable disease that could threaten the health of other passengers on an aircraft. Dr. Powell commented that airlines would tend to make the determination on the validity of the passenger's claim in these circumstances through reviews of the medical documentation provided by airline medical advisers, either in house or contracted by external organizations such as MedAire. Dr. Powell noted that most communicable diseases are not contagious until the person is already unwell and therefore, passengers tend not to travel when they pose a risk. Dr. Powell also noted that COVID-19 was unusual in this regard as it became clear that it is possible to infect others before becoming symptomatic.

Dr. Powell stated that he believes a final rule in this area must provide greater guidance as to what

should or should not be considered a threat to other passengers in an aircraft environment. He commented that as noted in the NPRM, some communicable diseases such as HIV and MPox pose no credible threat to other passengers, and the same is true for encephalitis, malaria, and other diseases that could fall within the definition of 42 CFR 70.1. Dr. Powell pointed out that certain diseases that could be considered communicable in other locations may be less threatening in aircraft environment due to cabin conditioning flow rates, filtration systems, and other aircraft characteristics making transmission significantly less likely than in other public gathering locations. Dr. Powell suggested that any final rule should highlight only those diseases that medical consensus suggests is likely to be spread by aerosols or droplets in an aircraft environment as “serious communicable diseases,” which is likely to include only respiratory infections that are highly contagious such as measles or COVID-19 and perhaps in unusual cases, gastrointestinal ones such as Norovirus. Dr. Powell opined that any medical assessment even by medical professionals, needs to have the information on what is a “serious communicable disease” to adequately determine the risk onboard. On the information sought by the Department, Dr. Powell stated that airlines keep only limited statistics on reasons for accepting or rejecting travel, and airlines are unlikely to have statistics on “unreasonable self-determination” because they require doctors to make the best determination without providing further details. Dr. Powell commented that the NPRM offers no evidence that the current system does not address the relatively rare occurrence when passengers should not travel due to having contracted a communicable disease. Dr. Powell stated that the medical system is based on the premise that trained medical professionals are best positioned to diagnosis diseases, weigh medical risks, and prescribe appropriate management. Dr. Powell further commented that any final rule in this area must require passengers seeking a refund or voucher to present documentation verifying that, one, the medical professional has seen the passenger and assessed them for a particular serious communicable disease and, two, that the presence of that passenger in the aircraft threatens the safety of other passengers. Dr. Powell described this as critical proof.

In summary, Dr. Powell urged the Department to resist the urge to allow airline passengers to self-diagnose, whether to avoid going to the doctor or to obtain a refund. He advised that the Department should eliminate the self-diagnose option from any final rule, to provide a short list of likely conditions of concern, require that any definition of communicable disease recognize the unique nature of aircraft environment, and provide that the airline’s medical service be given the final determination in any case of doubt.

Second Topic: Whether the Medical Documentation Requirement in the Proposed Rulemaking is Sufficient to Prevent Fraud.

Andrew Appelbaum (FlyersRights) [59:43]

Mr. Appelbaum stated that medical attestations and/or public health guidance are sufficient to prevent fraud. He commented on airlines’ analogizing the situation of passengers fraudulently

claiming a communicable disease to the situation where a small percentage of passengers fraudulently obtain paperwork that allows them to bring a pet animal onboard as an emotional support animal. Mr. Appelbaum stated that in the emotional support animal situation, airlines face potential injury of losing revenue for transporting the animal as a pet as well as potential safety and health concerns. Mr. Appelbaum stated that in contrast, in the instance situation, passengers are much more likely to use the credit for future travel that they already paid for when they are not facing a quick expiration date. Mr. Appelbaum concluded that no rule will prevent one hundred percent of fraud and instances of fraud should be investigated and punished.

John Breyault (The National Consumers League) [1:01:53]

Mr. Breyault stated that NCL believes that DOT's requirement for medical attestation and/or public health guidance in the proposed rulemaking is sufficient and well-conceived. Mr. Breyault commented that the Department should discard the industry petitioners' concerns which rest on a flawed assumption that consumers will have such an incentive to obtain travel credits under the proposal that the cost will outweigh public health and consumer protection benefits. Mr. Breyault argued that there is little incentive for consumers to engage in fraud related to the proposal because the appeal of fraud is that it nets fraudsters a monetary gain. He stated that there is no monetary gain here in this instance when a consumer simply avoids a loss by obtaining a travel credit or a voucher. Mr. Breyault urged DOT to reject the industry's argument that the emotional support animal experience is analogous to this proposal. He similarly rejected a comparison to medical marijuana documentation. On dealing with large scale fraud if it arose, Mr. Breyault suggested that DOT and the FTC could use their respective enforcement powers to hold serial abusers accountable. Mr. Breyault concluded that the public benefits of the proposal outweighed the costs to air carriers.

Ms. Workie asked Mr. Breyault to clarify whether his comment regarding consumers being less likely to engage in fraud applies only to the proposal on travel credits and vouchers and whether his view would be different on the proposal regarding requiring refunds to be issued if triggered by an airline receiving government financial assistance. In response, Mr. Breyault stated that his comment related to travel credits and vouchers, that requirement would not create an incentive for abuse because there is no possibility for monetary gain from utilizing the right proposed in the rule. He further commented that he does not believe the proposal on refunds due to government financial assistance would likely pass because there are a number of high hurdles that would have to occur, and the probability of the occurrence is remote.

Graham Keithley (A4A) [1:07:32]

Mr. Keithley stated that the question at hand has serious implications for consumers and airlines. He stated that the industry instituted extensive measures based on data and science to allow consumers to travel safely during the pandemic. He also stated the industry supports some of the Department's proposed rules and offered an alternative of providing consumers limited time credits

during a public health emergency, but with heightened documentation requirements. He suggested that the Department should conclude that the documentation proposal is not sufficient to prevent fraud. Mr. Keithley stated that the hearing request initiated by the airline industry on this issue is broader than the questions posed by the Department in the hearing notice and the airlines' request pertains to whether the documentation requirement was sufficient to prevent fraud based on the airlines' ability to validate the options. Mr. Keithley offered that other speakers from the airline industry would address this broader question. Mr. Keithley further commented that the data sought by the Department in the hearing notice will not answer the questions at hand. Specifically, he stated that both the basis of current medical attestations provided to airlines by consumers, and the types of medical professionals currently providing such attestations, have no bearing on the actual adequacy of the documentation to prevent fraud under the posed standards for credits or refunds, especially when airlines' current standards differ from those proposed. He further stated that U.S. airlines typically don't provide credits or refunds when the passenger only "may have" a communicable disease or when the consumer wants to protect him or herself from a communicable disease. He noted that Part 382 requires the medical professional to be, at least, the passenger's physician. He argued that even then, the airline can require the passenger to undergo specific review under certain circumstances. He also commented that the types of guidance "affecting air travel (whatever that means) currently issued by public health authorities has no bearing on whether providing such information is adequate to prevent fraudulent claims." He opined that what matters is the validity of public health issued guidance related to communicable diseases and whether, with no other information presented to the airline, simply providing such guidance would allow airline to determine the consumer is or is not making a fraudulent claim. Mr. Keithley concluded his comment by stating that the proposed documentation standard will only confuse consumers into believing that they may only need to submit unsubstantiated attestations or public health guidance to support their claims.

Paulo Alves (MedAire) [1:11:21]

Mr. Alves stated that his comments regarding whether the medical documentation requirement in the proposed rulemaking is sufficient to prevent fraud were strictly from the medical standpoint, not on the economic aspects around the question. He emphasized the unique competence of a properly trained medical professional to diagnose and attest to the presence of a transmissible disease. He noted that was particularly the case during the ever-changing scenario of emergent or re-emergent epidemics. He described the ideal situation in which the public health authority issues the criteria and guidelines to be recognized and attested to by the properly trained medical professional working in tandem. He noted that during the COVID-19 pandemic, false testing and vaccination certificates occurred and further noted the proposed requirement would apply to U.S. and international airlines flying into the United States and not always following the same documentation requirements or quality control that is practiced in this country. He stated that the combination of both elements stated before is the best practice possible to minimize fraud and abuse to a manageable level.

Richard Gomez (MedAire)

Mr. Gomez was called to speak on this issue but he appeared to be offline.

John Fogila (A4A) [1:14:12]

Mr. Foglia stated that A4A is generally supportive of the core aspects of DOT's proposal as it relates to airlines' cancellations and significant changes to itineraries. He commented that A4A's concerns regarding the proposal requiring airlines to issue non-expiring credits or vouchers to passengers who cancel travel due to serious communicable diseases go beyond fraud and extend to the unworkability of the proposal, its premise as a matter of policy, and regulatory overreach by a transportation regulatory agency to the area of public health, for which DOT lacks expertise. He stated that the NPRM fails to recognize and address that the non-expiring travel credit or voucher does not include cost associated with passengers who never seek to cancel tickets. He suggested that DOT should not rush to finalize the rule before examining the risk of unintended consequences. On the specific information sought by the Department on this issue, Mr. Foglia commented that A4A and its members do not have complete information. He commented that A4A members that currently require medical documentation in connection with passenger conditioned itinerary changes typically require the documentation to be a medical document issued by a treating physician. He further stated that even in cases where documentation issued by a non-treating physician is allowed, the airlines would require the documentation to be on official letterhead. He offered that airlines make determinations on whether an investigation of the authenticity of the certificate is warranted on a case-by-case basis. He stated that the current level of fraud is low because most airlines' policies would not contemplate allowing passengers to self-certify their conditions or produce public health guidance without an accompanying statement by a treating physician.

On DOT's request for information regarding the types of public health authorities that issue guidance affecting air travel, he stated that many airline members do not routinely track this information because, in the current environment, change and cancellation fees for most fares have been eliminated.

Mr. Foglia further identified a number of NPRM aspects that A4A believes depend on factual issues that are genuinely in dispute. First, he stated that the NPRM assumes the medical professional completing the attestation possesses sufficient knowledge of not only the communicable disease but also the passenger's current condition. He asserted that if this medical professional is not the passenger's treating physician and has not examined the passenger, the objective reliability becomes highly questionable and the possibility of fraud is heightened. Second, he stated that the NPRM seems to assume that the required production of relevant public health guidance will reduce fraud. He asserted that, for example, guidance recommending an individual

having been exposed to serious disease refrain from travel for a set number of days would not prevent unscrupulous individuals who have not had any exposure from misusing the guidance. Third, he stated that the NPRM assumes that the guidance produced by the passenger will be authentic yet there's no provision in the draft rule text addressing validation by airlines. As to medical documentation, he commented that in contrast to Part 382, the NPRM would not require that the passenger be under the actual treatment of the medical professional, nor would it require such documentation to at least be on the professional's letterhead and identify the jurisdiction where it was issued. Fourth, he commented that DOT's implicit assumption is that airlines have the ability, if they so choose, to confirm the authenticity of the documentation through reasonable inquiry without external efforts. He offered that this is not the case, for example, with public health guidance not widely posted on a governmental website.

Finally, he commented that there are claims made in the NPRM that A4A wishes to briefly address. Regarding the NPRM's claim that the proposal will promote public health and safety by discouraging travel by persons who have contracted or been exposed to a communicable disease, he commented that this is highly questionable given that there's little to no correlation between the non-expiring travel credit proposal and slowing communicable disease spread, a point the Department's own regulatory impact analysis concedes. Regarding the NPRM's claim that it will benefit consumers by protecting their financial interests and expenditures made on tickets, he commented that any such benefit may very well be eliminated by the proposal's longer-term impact on ticket pricing. He elaborated that airlines will not be able to resell seats suddenly returned to inventory because of passengers who have availed themselves of the non-expiring travel option. He stated that to recoup their losses and account for the longer-term liability of non-expiring travel credit, airlines may have to increase fares, and, in some cases, that means routes may be rendered uneconomical, potentially leading to service cuts.

In conclusion, Mr. Foglia recommended that DOT should abandon the non-expiring travel credit proposal because the proposal will do nothing to stop communicable disease spread, and DOT has failed to include in the proposed rule text sufficiently robust safeguards against fraud and abuse.

David Lee (A4A) [1:24:09]

Mr. Lee introduced himself as an economist from A4A and stated that his presentation would be focusing on data aggregated by A4A on significant fraud associated with customers who claim that their pets were emotional support animals (ESAs). Mr. Lee stated that the topic of ESA is relevant to this hearing because it demonstrates why carriers are concerned about the potential fraud that will result from this rulemaking. He commented that the ESA issue also demonstrated that fraud occurs when a regulation fails to define or loosely defines terms and allows passengers to make suggestive interpretations that carriers were prevented from disputing, questioning, or validating. He stated that the ESA data clearly demonstrates that fraud was material and substantial. He commented that from 2016 to 2019, the number of ESAs traveled had more than doubled,

skyrocketing from 540,000 in 2016 to 1.13 million in 2019 and that by 2019, U.S. carriers expressed they were carrying over 3,000 ESAs per day. Mr. Lee stated that DOT ultimately changed the definition of a service animal to exclude ESAs. He stated that the DOT's final rule adopting the new definition addresses inconsistent definitions for service animals among federal agencies and the increasing frequency of incidents of traveler's fraudulently representing pets as service animals.

Mr. Lee stated that the refund rulemaking similarly creates new, ambiguous, and inconsistent standards, including medical related standards unknown to federal health agencies regarding "serious communicable disease." He stated that, much like the previous ESA rule, the refund NPRM fails to adequately present standards and it prevents airlines from questioning the validity of a consumer's claim and making airlines totally rely on a passenger's self-determination.

Mr. Lee commented that U.S. airlines have been and remain responsive to refund requests and they frequently exceed DOT recommendations regarding consumer protections. He stated that there is no evidence of a market failure or unfair or deceptive practice in this area.

On refund data, Mr. Lee provided that annual cash refunds in 2021 and 2022 exceeded pre-pandemic 2019 level and in 2022, the 11 largest U.S. carriers issued \$11.2 billion in refunds. Mr. Lee noted that DOT received less than one complaint about refunds for every 100,000 passengers.

Third Topic: How to Determine Whether a Downgrade of Amenity Or Travel Experiences Qualifies For A Ticket Refund.

Andrew Appelbaum (FlyersRights) [1:32:28]

Mr. Appelbaum commented that the guiding principle behind the answer to this question should be whether a typical passenger would have booked a flight knowing that they would receive a downgrade of amenities or travel experiences. He stated that this should not be a unilateral discretion by airline executives. He provided that while the loss of Wi-Fi, the lack of a long catalog of movies, the lack of drinks, or the presence of cloth instead of leather seats could be inconvenient, it largely does not represent a significant downgrade. He added that a change should qualify as significant if it results in the loss of accessible lavatories, less accessible maneuvering for individuals with disabilities, decreased storage for wheelchairs, smaller seat size that presents a risk for airline safety, or a plane that is statistically less safe based on fatality, crash statistics, and pilot incident reports related to design and defects. Mr. Appelbaum commented that leaving this question to the discretion or the good behavior of the airlines will lead to ever shifting standards subject to the unilateral verification of the policy.

John Breyault (The National Consumers League) [1:36:44]

Mr. Breyault urged the DOT to reject the airlines' suggestion that carriers should be allowed to develop their own criteria for what constitute a refundable downgrade beyond a narrow presupposition where a traveler's mobility device is affected. He argued that if carriers were given such latitude, it is highly likely that carriers would define a significant downgrade so narrowly as to make the DOT's proposed right unusable by most consumers. Mr. Breyault suggested that DOT should adopt a definition that covers as many services as possible to give consumers the flexibility to determine what is and is not a significant downgrade. He stated that such a broad definition would incentivize airlines to provide the services they advertise to their customers. He argued that the crux of a consumer's decision to pursue a refund is because a consumer paid for a service not provided. He commented that consumers often find out about the downgrade while already at the airport after having already invested considerable time in the trip. He stated that a refund would allow the consumer to purchase a competing flight ticket that does offer the service. He further commented that due to the historically high load factors and airline pricing, it is likely that airlines would obtain higher revenue when reselling a seat after a consumer exercised their refund right.

Heather Ansley (PVA) [1:39:50]

Regarding how to determine whether a downgrade of amenity or travel experiences qualifies for a ticket refund, Ms. Ansley emphasized the unique needs of passengers with disabilities, particularly wheelchair users, and highlighted the importance of considering these needs when finalizing airline ticket refund rules. She stressed that not all passengers are similarly situated and that certain flight itinerary changes can have severe consequences for some passengers.

Ms. Ansley commented that for passengers relying on mobility devices, changes in accessibility features or the aircraft's capabilities, such as the inability to transfer their wheelchair, can disrupt their entire trip. She commented that some passengers require specific seating accommodations or arrangements for safety, such as nearby seating for travel companions. She stated that the inability to provide necessary seating or dimensions and the presence of inaccessible lavatories can significantly impact these passengers.

Ms. Ansley stated that flight itinerary changes that involve switching to an aircraft without an accessible lavatory or requiring extended layovers can result in passengers being unable to eat, drink, or use the restroom for additional periods of time, and indicated that these consequences are deemed significant and must be taken into consideration.

Ms. Ansley also discussed the significance of changes in the number of layovers and stated that passengers with disabilities often prefer direct flights or those with fewer layovers due to safety concerns. She stated that adding layovers can be stressful and dangerous, as it increases the likelihood of damage or loss to mobility devices, which may lead to further complications and injuries. She further stated that the choice of layover airports is also important, as specific airports may offer accessibility features necessary for the passengers' travel. She noted that wheelchair

users have limited options for accessible ground transportation, and changing the arrival or destination airport can result in a lack of accessible transportation options. She concluded that this serious deviation from the planned itinerary is a significant change.

Ms. Ansley emphasized that passengers with disabilities should not be forced to accept flights that cause unnecessary inconveniences or undesirable circumstances and further noted that the negative impact of air travel extends not only to the passengers but also to those they need to travel with them to assist them during the journey or at the destination, as in some cases those individuals may be traveling only to assist. Ms. Ansley stated that therefore any determinations regarding significant changes should be made categorically, and not on a case-by-case basis, considering the challenges and negative impacts faced by these passengers.

On procedural burdens, Ms. Ansley stated that passengers should not be required to disclose detailed information about their disabilities to prove the significance of a change's impact on accessibility. She stated that DOT and the airlines must assume that such changes are significant for passengers who meet specific criteria, such as requesting an aisle chair or using a wheelchair or scooter.

Ms. Ansley further stated that the rule should require airlines and ticket agents to provide alternative transportation options if a flight is canceled, delayed, or significantly changed. She commented that the carrier should promptly select new opportunities that meet the needs of the passengers, even considering other airlines if necessary, and at no additional cost. She further stated that the requirements for ticket refunds and alternative transportation should consider the entire party, including caregivers or travel companions.

Laura Chadwick (Travel Tech) [1:46:45]

Regarding how to determine whether a downgrade of amenity or travel experiences qualifies for a ticket refund, Ms. Chadwick, on behalf of Travel Tech, stated that the organization supports the Department's decision to define significant changes to flight itineraries, as it brings uniformity and clarity to the experiences of passengers facing weather or staffing issues. Ms. Chadwick commented that while Travel Tech did not address the question of downgrades in amenities or travel experiences as a significant change to flight itineraries in its comments, it is supportive of the DOT's efforts to establish uniformity or clarity for refunds or credits. She acknowledged the concerns raised by airlines at the hearing regarding the difficulty in determining such downgrades as significant changes and how this might create confusion for ticket agents. She stated that ticket agents rely on airlines to make refund and credit determinations and enforcing these decisions can be challenging. She noted that what a downgrade of amenities or travel experiences qualifies as a significant change to flight itinerary, as determined by airlines will, likewise, create confusion for ticket agents in explaining the determinations to customers.

Furthermore, she raised concerns about the proposed rule's requirement for ticket agents to provide refunds within seven days, while it takes up to 11 days for them to secure refunds from the airline's payment and refund systems. She argued that imposing such a timeline before the funds are returned by the airline would be an undue burden on ticket agents. She encouraged the Department to revise this aspect of the proposal to consider the limitations of airline payment and refund systems that are beyond the control of ticket agents.

Kimberly Ellis (Travel Management Coalition) [1:50:18]

Regarding how to determine whether a downgrade of amenity or travel experiences qualifies for a ticket refund, Ms. Ellis noted the importance of clear rules for ticket agents regarding refund eligibility. She stated that determining whether a downgrade in amenities or travel experiences qualifies for a refund should ultimately be airlines' decision, not the ticket agents'. She stated that ticket agents require clear regulations from regulatory bodies and guidelines from the airlines on when a customer is eligible for a refund, credit, or voucher.

Ms. Ellis stressed that without clear rules, ticket agents may be forced to make guesses about refund eligibility, which could expose them to liability risks. She reiterated that ticket agents play a supportive role and that it is the airlines' responsibility to establish transparent guidelines for determining customer eligibility. She expressed hope that the final rule will provide further clarity on the roles of ticket agents and corporate travel managers in this process.

John Fogila (A4A) [1:52:56]

Regarding how to determine whether a downgrade of amenity or travel experiences qualifies for a ticket refund, Mr. Fogila stated that as an initial matter, A4A generally supports DOT's defining "significant change" under which refunds are due to nonticketed-holders if the alternative arrangement provided by the airline is not accepted. He noted that A4A agrees with using an hours-based standard to measure the significance of schedule change, and A4A agrees that a change to the origin or destination should entitle a passenger to a refund if the traveler no longer wishes to travel.

Mr. Foglia stated that DOT should not look at the refund requirement to cover a significant downgrade of the much more nebulous and undefined concept of available amenities and travel experiences. He commented that the principal objective of the proposed rule is to provide consumers greater consistency and predictability around flight irregularities that entitle non-refundable ticket holders to a refund. He stated that the proposal on significant downgrade undercuts this consistency. He commented that the proposal lacks manageability and relies too heavily on subjective expectations of travelers. He opined that regulation based on vague concepts of significant downgrades to amenities or travel experiences creates problems for all parties involved and worsens the customer experience. He elaborated that the lack of clear definitions for terms like "significant" and "amenities" makes it difficult for customers to understand the scope of the regulation, leading to time-consuming and unsatisfactory case-by-case adjudications by airlines

and the Department. Mr. Foglia questioned whether DOT wants to be in the position of subjectively making determinations on matters such as changes in aircraft type or differences in Wi-Fi service and onboard entertainment options. He argued that the proposed rule's text, followed by interpretive guidance or frequently asked questions, is not an orderly or disciplined way to regulate.

Mr. Foglia contended that the proposal is legally deficient due to its vagueness and lack of clearly defined terms. He commented that if the DOT proceeds with a final rule addressing significant downgrades, it should explicitly limit qualifying downgrades to those identified in airlines' DOT-required customer service plans. He stated that this approach would provide greater consistency and clarity for passengers and be more manageable for airlines and the DOT compared to the current NPRM.

Ms. Workie asked for clarification from Mr. Foglia whether he stated that beyond the impact of mobility devices, there is no need for anything else being included as a significant downgrade. Mr. Foglia stated that in terms of the rule text proposed in the NPRM, this would be a definition for significant downgrade that A4A would support. He further clarified that A4A and its member airlines support the concept that the inability to transport a mobility device should entitle the passenger to a refund. He provided that A4A will have further comments during the reopened comment period.

Chad Heflin (IATA) [2:02:52]

Mr. Heflin introduced himself as the head of legislative affairs with IATA. Regarding how to determine whether a downgrade of amenity or travel experiences qualifies for a ticket refund, he commented that the NPRM does not provide evidence that amenity downgrades are a significant transportation issue not already addressed by airline customer service policies. He noted the lack of definitions in the NPRM for terms like "significant downgrade," "comparable amenity," and "amenity" and stated that will lead to differing views between airlines and passengers. He noted that different passengers value different amenities, and airlines offer a wide range of amenities that can vary by plane.

Mr. Heflin stated that airlines will not be able to decide on a case-by-case basis if something is a significant downgrade, which will result in unwarranted complaints and unsatisfied customers. He argued that the proposed rule, as drafted, will have the unintended consequence of requiring airlines to provide passengers travel credits that would not have been available otherwise. He offered that carriers compete based on the level of customer service they provide, and they strive to accommodate customers during flight disruptions and minimize disruptions.

Mr. Heflin commented that the proposed rule is too subject to interpretation and lacks uniform application. However, he agreed that there should be a rule specifically addressing situations where

a mobility aid cannot be accommodated on a new aircraft. He stated that he supports the proposal by A4A to require carriers to establish their own criteria for a significant downgrade in amenities eligible for a refund and publish those criteria on their websites. He added that this approach would allow the DOT to hold carriers accountable to their established criteria, similar to how they hold carriers to published customer service and tarmac delay contingency plans.

Alicia Hinton (Adjunct Professor of Law) [2:07:29]

Ms. Hinton introduced herself as an adjunct professor of law with experience in consumer law. Regarding how to determine whether a downgrade of amenity or travel experiences qualifies for a ticket refund, she argued against explicitly defining "significant change" and suggested using an objective analysis based on a reasonable consumer standard instead. She stated that she researched how other regulatory bodies define "significant change" and found limited information. She emphasized the need for case-by-case analysis. Ms. Hinton encouraged the Department to provide guidance but not adopt rigid definitions. She commented that courts should be the appropriate forum for consumers to raise claims, allowing for the development of legal opinions to guide the airline industry and consumers in a more responsive manner than lengthy legislative processes. Ms. Workie asked if Ms. Hinton was against a rigid definition, what her thoughts are on achieving consistency. Ms. Hinton stated that significant change is very difficult to define because it is circumstance and fact-based. Ms. Hinton stated that there is a scale or a range on what may be absolutely significant to everyone on one end of the spectrum and changes that are not significant to everyone on the other end. She stated that the area in the middle would need case-by-case analysis. She advocated for DOT guidance because she does not believe it is possible to lock in a definition that contemplates all situations for airline customers.

Ms. Workie then stated that the last two speakers listed on the agenda, William McGee and Kevin Mitchell, were not available to speak but would be filing comments in the docket. She reminded the attendees that comment period for the rulemaking had been reopened for seven days.

Ms. Workie offered an opportunity for anyone in the audience to speak on the three topics of the hearing. As no one indicated that they wished to make oral comments, Ms. Workie ended the hearing by thanking the speakers and the staff at DOT for organizing this hearing.

The hearing was concluded.

Appendix A - Agenda

U.S. DEPARTMENT OF TRANSPORTATION



Public Hearing

Notice of Proposed Rulemaking: **Airline Ticket Refunds and Consumer Protections**
March 21, 2023

10:00 – 10:05 **Opening Remarks (5 min)**
 Blane Workie, Designated Hearing Officer

10:05 – 11:05 **Topic 1: Whether consumers can make reasonable self-determinations**
 regarding contracting a serious communicable disease. (60 min)

SPEAKERS

1. **Andrew Appelbaum** (*FlyersRights.org*)
2. **John Breyault** (*National Consumers League*)
3. **Graham Keithley** (*A4A*)
 Paulo Alves (*MedAire*)
 Richard Gomez (*MedAire*)
4. **William McGee** (*American Economic Liberties Project*)
5. **Kevin Mitchell** (*Business Travel Coalition*)
6. **Dr. Ed Nardell** (*Harvard Medical School/A4A*)
7. **Dr. David Powell** (*IATA*, remarks to be presented by **Doug Lavin**)

11:05 – 11:45 **Topic 2: Whether documentation requirement (medical attestation and/or**
 public health guidance) is sufficient to prevent fraud. (40 min)

SPEAKERS

1. **Andrew Appelbaum** (*FlyersRights.org*)
2. **John Breyault** (*National Consumers League*)
3. **Graham Keithley** (*A4A*)
 Paulo Alves (*MedAire*)
 Richard Gomez (*MedAire*)
 Jonathan Foglia (*A4A*)
4. **David Lee** (*A4A*)

11:45 – 12:00 **BREAK (15 min)**

12:00 – 1:00 **Topic 3: How to determine whether a downgrade of amenities or travel**
 experiences qualifies as a “significant change of flight itinerary” that
 would entitle an individual to a ticket refund. (60 min)

SPEAKERS

1. **Heather Ansley** (*Paralyzed Veterans of America*, remarks to be presented by **Danica Gonzalves**)
2. **Andrew Appelbaum** (*FlyersRights.org*)

- 3. John Breyault** (*National Consumer League*)
- 4. Laura Chadwick** (*Travel Tech*)
- 5. Kimberly Ellis** (*Travel Management Coalition*)
- 6. Jonathan Foglia** (*A4A*)
- 7. Chad Heflin** (*IATA*)
- 8. Alice Hinton** (*Law Office of A. L. Hinton*)
- 9. William McGee** (*American Economic Liberties Project*)
- 10. Kevin Mitchell** (*Business Travel Coalition*)

1:00

Additional comments from attendees and Closing Remarks