



February 3, 2023

Aviation Consumer Protection Advisory Committee  
U.S. Department of Transportation  
1200 New Jersey Ave SE  
Washington, DC 20590

Docket ID: DOT-OST-2018-0190

Dear Committee Members:

Thank you for the opportunity to provide our views on several items discussed at the Aviation Consumer Protection Advisory Committee's (ACPAC) January 12 meeting on the U.S. Department of Transportation's ("DOT" or "the Department") proposals on airline ticket refunds and ancillary fee transparency.<sup>1</sup>

With regard to the Notice of Proposed Rulemaking (NPRM) on ticket refunds, as the Department knows ASTA's main concern is that under certain circumstances travel agencies would be required to pay refunds to clients for cancelled or significantly changed flights out of pocket, regardless of whether or not the agency is in possession of the client's funds.<sup>2</sup> As such, we appreciate the committee's recognition of the cash flow problem this proposal, if adopted in the final rule, would create for our member companies, especially the smaller ones. This is reflected in the committee's adoption on January 12 of Proposed Recommendation 4A, under which, in cases where the ticket agent is the merchant of record, the airline would be required remit funds back to the agency within seven days of receiving a refund request, and agents who qualify as a small business under the U.S. Small Business Administration's (SBA) size standards would have an additional seven days to refund the client.<sup>3</sup>

While ASTA believes that this recommendation should apply to *all* ticket agents, large or small, if Proposed Recommendation 4A becomes part of the final rule it will be a substantial improvement over what was first proposed in August 2022. Critically, by requiring the airline to remit funds to the agent before the agent's refund obligation commences, it addresses the basic principle we have been vocalizing throughout the debate on this proposal, namely, that ticket agents should not be required to pay client refunds when they don't possess the funds in question. This principle has also been reflected in the Department's longstanding interpretation of existing regulations, expressed most recently in a May 2020 enforcement notice.<sup>4</sup>

While Proposed Recommendation 4A adheres to this principle (at least with respect to small businesses), Proposed Recommendation 4B goes in the opposite direction. Covering transactions where tickets are purchased by cash,

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<sup>1</sup> [Airline Ticket Refunds and Consumer Protections](#), Notice of Proposed Rulemaking, Docket DOT-OST-2022-0089, 87 Fed. Reg. 51550 (August 22, 2022) and [Enhancing Transparency of Airline Ancillary Service Fees](#), Notice of Proposed Rulemaking, Docket DOT-OST-2022-0109, 87 Fed. Reg. 63718 (October 20, 2022).

<sup>2</sup> See ASTA's [comments](#) on the Airline Ticket Refunds and Consumer Protections NPRM.

<sup>3</sup> [Aviation Consumer Protection Advisory Committee](#), U.S. Department of Transportation, January 12, 2023.

<sup>4</sup> U.S. Department of Transportation, [Frequently Asked Questions Regarding Airline Ticket Refunds Given The Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel](#) (May 12, 2020).

check and other non-credit card forms of payment, 4B states the committee's view that the DOT proposal needs no revision – the ticket agent must refund the client within 20 days of receiving a refund request, regardless of whether or not the agent has access to the funds in question. It is unclear to us why the committee's concern about cash flow pressures for small travel agencies manifests in a favorable recommendation in credit card transactions but not for transactions in which a different form of payment is used. Again, we welcome the committee's recognition of the NPRM's potential negative impact on our smaller members, but respectfully request that it revise its views on this question to align 4A and 4B with respect to when the ticket agent's refund obligation is triggered.

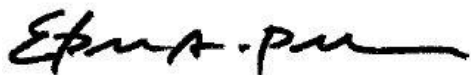
With regard to the airline ancillary fee NPRM, we were disappointed to see the committee dismiss out of hand ASTA's proposal to provide travel advisors a measure of flexibility in disclosing airline fees to clients in "offline" transactions (over-the-phone, face-to-face, etc.). To be clear, ASTA would support a number of alternative approaches to solving this problem, some of which the NPRM identifies, including "explaining that fees may apply and referring the consumer to the carrier or ticket agent's website, provided that the website is accessible to consumers with disabilities,"<sup>5</sup> but we suggested this approach due to its appearance in the Department's most recent attempt to regulate ancillary fee disclosures – the 2017 proposal on baggage fee disclosures, which stated, "In any oral communication with a prospective consumer...[a] ticket agent must inform a consumer, **upon request**, of the fees for a first checked bag, a second checked bag and one carry-on bag."<sup>6</sup>

Subsequent to that discussion came a related one in which committee members recommended the Department go beyond a hypothetical "opt-out" disclosure regime for online transactions mentioned in the NPRM and instead implement an *opt-in* regime for online bag fee disclosures, to avoid online consumers being overwhelmed with fee information they don't want or need. We respectfully point out that this is *precisely* what we are suggesting for offline transactions, and would vehemently oppose a final rule that allows for streamlined disclosures in online transactions while making offline transactions so cluttered with disclosures as to be virtually impossible to execute. We also observe that one of the reasons the ASTA proposal was rejected was due to its apparent conflict with the new proposed §399.85(k), which makes it an unfair and deceptive practice to collect a fee without disclosing it in advance. However, draft §399.85(k) makes no distinction between online and offline transactions, calling into question whether the committee's opt-in recommendation would also conflict with that provision.

We feel strongly that the final rule should provide ticket agents with greater flexibility than is currently contemplated in the NPRM with respect to the timing and frequency of ancillary fee disclosures in both online and offline transactions. As a result of airline creativity and aggressiveness in charging these fees, if the NPRM becomes final as-is<sup>7</sup> consumers will be presented with an overwhelming amount of information when shopping for air travel, most of which will either not apply to them, will already be known or will otherwise not require repeated disclosure. This overload of information threatens to drive customers away from the valued service and critical support that travel agencies provide and into the arms of the airlines themselves.

Thank you for considering ASTA's views on these critical issues. If you have any questions about these or any issue related to the travel industry, don't hesitate to contact me at (703) 739-6842 or [epeck@asta.org](mailto:epeck@asta.org).

Yours Sincerely,



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American Society of Travel Advisors, Inc. (ASTA)

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<sup>5</sup> Op. cit at 63729.

<sup>6</sup> [Transparency of Airline Ancillary Service Fees](#), Supplemental Notice of Proposed Rulemaking, Docket DOT-OST-2017-0007, 82 Fed. Reg. 7536 (January 19, 2017). Emphasis added.

<sup>7</sup> It is worth noting that Congress is due to reauthorize the Federal Aviation Administration and related aviation programs this year, and we fully expect to see proposals that attempt to address airline service issues by adding new consumer disclosures to ticket agents' already-substantial regulatory burden.