



September 7, 2022

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 address the Aviation Consumer Protection Advisory Committee's (ACPAC) August 22 meeting on the U.S. Department of Transportation's (DOT) recently published proposal on airline ticket refunds and consumer protections.<sup>1</sup> Please accept this letter as a supplement to my oral remarks at the meeting.

The American Society of Travel Advisors (ASTA) is the national trade association for travel agencies of all shapes, sizes and business models. Our 17,000 member companies include brick-and-mortar agencies, home-based advisors, travel management companies, online travel agencies and many hybrid models in between. As "ticket agents" in the eyes of the statute,<sup>2</sup> our members are regulated entities and ASTA is a longtime participant in Department proceedings, including having testified before this committee multiple times.

We appreciate the Department's focus on improving the airline refund system, which has been a particular pain point for travel agencies and their clients since the onset of the coronavirus (COVID-19) pandemic. Our members have spent innumerable hours "chasing refunds" on behalf of clients since March of 2020 – and will continue to do so regardless of the outcome of the current rulemaking.

Advocating for clients in this manner is a core part of the travel agency value proposition. It is also noteworthy that as part of our Code of Ethics, ASTA already requires members to "remit any undisputed funds under their control" when circumstances dictate that a refund is due to the consumer.<sup>3</sup> Violations of the Code can result in expulsion from the Society.

As such, during the Committee's December 2021 meeting, ASTA supported several provisions that ended up in the Notice of Proposed Rulemaking (NPRM) you are now considering,

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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. 51,550 (August 22, 2022).

<sup>2</sup> See [49 U.S. Code § 40102](#) (Definitions).

<sup>3</sup> [American Society of Travel Advisors \(ASTA\) Code of Ethics](#) (December 15, 2020).

including codifying what circumstances airline schedule changes and flight cancellations will trigger a refund; expanding refund rights for passengers unable to fly due to pandemic-related government travel bans; and protecting the ability of travel agencies to charge professional fees related to airline bookings, which are charged for the agency's services and not for the flight itself.

That said, we are concerned about DOT's proposal to make it an unfair business practice for a ticket agent to refuse to provide requested refunds to consumers when an airline has cancelled or made a significant change to a scheduled flight and the consumer finds the alternative transportation offered by the carrier or the ticket agent to be unacceptable. The Department clarifies the scope of this proposal in the narrative accompanying the new proposed regulations (though not in the regulations themselves) as follows: "The proposed refund requirements for ticket agents applies to airfare or airfare inclusive travel package transactions in which the ticket agents' identities are shown in the consumer's financial charge statements, such as debit or credit card charge statements, indicating that, from the consumer's perspective, the ticket agent is the ultimate recipient of the funds irrespective of whether the ticket agent is in possession of the consumer funds at the time of the refund request."<sup>4</sup>

While limiting this obligation to transactions where the agency is the "merchant of record" substantially narrows the proposal's reach, we continue to question both its fairness and practicality. This is because: (i) in air transactions it is exceedingly rare for agencies to be in possession of client funds for any meaningful period of time – even in merchant model transactions – and thus be in a position to issue a prompt refund; and (ii) agencies have no control over the alternative transportation offered to the consumer.

This new approach – imposing a refund obligation regardless of whether or not the agency has possession of the funds in question – overturns the Department's longstanding interpretation of existing regulations, expressed most recently in a May 2020 enforcement notice.<sup>5</sup> In that notice, the Department outlined that ticket agents must provide a refund only when all of the following conditions are met:

- An airline cancels or significantly changes a flight;
- An airline acknowledges that a consumer is entitled to a refund; **AND**
- Passenger funds are possessed by a ticket agent.

This likely explains why – according to the Department's website – no enforcement action against ticket agents related to refunds has been taken since at least 2003.<sup>6</sup>

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<sup>4</sup> [Airline Ticket Refunds and Consumer Protections](#), at 13.

<sup>5</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).

<sup>6</sup> U.S. Department of Transportation. [Ticket Refunds: A Compilation of Rules, Guidance, Enforcement Orders and Other Related Information Regarding Aviation Ticket Refunds](#).

In ASTA's view, the prospect of being "on the hook" for refunds regardless of whether the agency has access to the funds in question could disrupt the airline distribution system in unknowable ways. It could also prove to be such a financial risk that many agencies may elect to no longer sell air tickets, depriving consumers of valuable consultative services and comparative shopping options. This disruption could be substantial indeed – travel agencies are a vital distribution channel for air travel, responsible for the sale of over 640,000 air tickets per day in the United States in July 2022 alone.<sup>7</sup>

We are reviewing the entirety of the NPRM in advance of drafting our formal comments and have begun the process of consulting extensively with our members on the issues it raises as well as related issues discussed during the hearing, such as timing and mechanics of refunds for agent-booked tickets under the current system and suggested approaches to ensure consumers seeking a refund aren't passed back and forth between airlines and ticket agents.

But for now, we urge the Department – and the Committee – in the strongest possible terms to eliminate from the proposal any obligation of a ticket agent to issue a consumer refund when the agency does not control the funds in question.

Thank you for considering ASTA's views on this critical matter. If you or your staff have any questions about this or any issue related to the travel industry, don't hesitate to contact me or Eben Peck, ASTA's Executive Vice President of Advocacy, at (703) 739-6842 or [epeck@asta.org](mailto:epeck@asta.org).

Yours Sincerely,



Zane Kerby  
President and Chief Executive Officer

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<sup>7</sup> Airlines Reporting Corporation (ARC). [Airline Sales Statistics](#).