

United States Senate
WASHINGTON, DC 20510

November 23, 2022

The Honorable Pete Buttigieg
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Buttigieg,

We write in response to the Department of Transportation's (DOT) proposed rule on ticket refunds for airline passengers.¹ This rulemaking is a critical response to the increase in flight cancellations and delays during the coronavirus pandemic, resulting in a record number of consumer complaints about the refund process. While we commend the agency for taking this step, DOT can strengthen the proposed rule by protecting consumers from other costs that are beyond their control — including ticket service fees on cancelled flights and secondary expenses resulting from a flight cancellation or delay. We urge the Department to bolster and expeditiously finalize the proposed rule, incorporating the improvements set forth below.

Although flight delays and cancellations have long frustrated passengers, the number of flight disruptions since the start of the pandemic had a particularly acute effect on a weary flying public. According to data from the Bureau of Transportation Statistics (BTS), domestic airlines cancelled nearly 3% of flights during the first eight months of this year — a 63% increase over pre-pandemic figures — and delayed 21% of flights.² Air carriers have blamed weather and air traffic control staffing shortages for these disruptions, but nearly 40% of delays were due to factors *within* the carrier's control.³ Consumer complaints have similarly taken off. In the first half of 2022, DOT received 15,955 complaints about U.S. airlines, compared to 4,492 complaints during the same period in 2019 — a 255% increase.⁴ Passengers are rightfully displeased with airline performance.

Consumers have been most frustrated with the airline refunds policies. Federal law requires airlines to provide timely refunds when airlines cancel or significantly delay a flight and

¹ Airline Ticket Refunds and Consumer Protections, 87 Fed. Reg. 51550 (proposed Aug. 22, 2022).

² These figures were calculated using data from BTS's website that the agency collects through its Airline Service Quality Performance System. To download the raw data, see *Airline On-Time Statistics and Delay Causes*, BUREAU OF TRANSPORTATION STATISTICS, https://www.transtats.bts.gov/OT_Delay/OT_DelayCause1.asp

³ See *id.*

⁴ Compare U.S. DEP'T OF TRANSPORTATION, OFFICE OF AVIATION CONSUMER PROTECTION, AIR TRAVEL CONSUMER REPORT 64 (Aug. 2022), <https://www.transportation.gov/sites/dot.gov/files/2022-08/August%202022%20ATCR.pdf> [hereinafter 2022 AIR TRAVEL CONSUMER REPORT] with U.S. DEP'T OF TRANSPORTATION, OFFICE OF AVIATION ENFORCEMENT & PROCEEDINGS, AIR TRAVEL CONSUMER REPORT 59 (Aug. 2022), <https://www.transportation.gov/sites/dot.gov/files/2020-02/AUGUST%202019%20ATCR%20revised%2020-2020.pdf> [hereinafter 2019 AIR TRAVEL CONSUMER REPORT].

the passenger elects not to re-book.⁵ Yet, airlines appear to violate this rule frequently. According to a DOT investigation, airlines were “initially reluctant to provide the required refunds,” and DOT accordingly took enforcement actions against select airlines.⁶ Even with increased regulatory scrutiny, however, consumers still struggle to receive refunds they’re owed. Of the nearly 16,000 complaints to DOT in the first half of 2022, nearly two-thirds — 10,089 — were about airline refunds, compared to just 742 refunds complaints in 2019, an increase of 1,260%.⁷ Altogether, these numbers tell a clear story: Airlines are delaying and cancelling historic numbers of flights and failing to provide consumers with the refunds to which they are entitled.

These concerning trends call for additional DOT action. In May, we asked the Department to use its regulatory authority to “make the process for obtaining refunds more transparent and efficient.”⁸ In particular, we requested that DOT issue a standard definition for “significant delay” and “significant change”; identify consumer rights for those who are unable to travel due to a public health emergency; require airlines to conspicuously disclose passengers’ right to a refund and set up friendly and easy-to-find portals for requesting a refund; and mandate that airlines report to BTS the value of the refunds and vouchers issued to consumers each month.⁹ We are pleased that DOT agreed with many of our recommendations, including establishing standard definitions of “significant change” and creating a new right to a refund for passengers who cancel their ticket due to issues related to a serious communicable disease.¹⁰ These changes, if adopted, will help ensure airlines properly compensate travelers for air travel disruptions and will prevent airlines from continuing to circumvent the existing refund requirement.

DOT, however, should strengthen its proposed rule to ensure travelers are not forced to shoulder significant expenses for flight cancellations and delays. We urge the Department to consider enhancing consumer protections in the following ways:

- **Secondary Costs**: The refunds rule should require airlines to cover secondary costs — such as hotel rooms, food and drink, and transportation to-and-from the airport — when an airline, due to a problem within its control, cancels or significantly delays a flight. European Union regulations require airlines to cover those costs when an airline cancels or delays a flight and the new or delayed flight is not scheduled to depart until the following day, unless the disruption is due to extraordinary

⁵ 76 Fed. Reg. 23110, 23129 (Apr. 11, 2011).

⁶ See U.S. DEP’T. OF TRANSPORTATION, REPORT TO THE WHITE HOUSE COMPETITION COUNCIL: U.S. DEPARTMENT OF TRANSPORTATION’S INVESTIGATORY, ENFORCEMENT AND OTHER ACTIVITIES ADDRESSING LACK OF TIMELY AIRLINE TICKET REFUNDS ASSOCIATED WITH THE COVID-19 PANDEMIC (Sept. 9, 2021), <https://www.transportation.gov/sites/dot.gov/files/2021-09/DOT%20Report%20on%20Airline%20Ticket%20Refunds.pdf>.

⁷ Compare 2022 AIR TRAVEL CONSUMER REPORT, *supra* note 4, at 65 with 2019 AIR TRAVEL CONSUMER REPORT, *supra* note 4, at 60.

⁸ Letter from Sen. Edward Markey, Sen. Richard Blumenthal & Sen. Maria Cantwell to Sec. Pete Buttigieg, U.S. Dep’t of Transportation (May 2, 2022), https://www.markey.senate.gov/imo/media/doc/letter_dot_refunds_rulemaking_letter_-_5-2-22.pdf.

⁹ *Id.*

¹⁰ Airline Ticket Refunds and Consumer Protections, 87 Fed. Reg. at 51550.

circumstances (such as severe weather).¹¹ Moreover, some U.S. airlines already make similar promises to their passengers.¹² DOT should impose consistent requirements across all airlines.

- **Service Fees**: The refunds rule should not force passengers to cover ticket agents' service fees when airlines cancel flights. Under the proposed rule, a ticket agent — but not an airline — can retain a service fee for purchasing the ticket or processing the refund provided the fee is on a per-passenger basis and is clearly and prominently disclosed to consumers at the time of purchase.¹³ DOT argues that such fees are a “service apart from airfare,”¹⁴ but for consumers, they are simply another expense raising the cost of air travel. When an airline cancels a flight, the traveler should not be forced to cover the ticket agent's service fee.
- **Refunds Data**: As we explained in our previous letter, the Department should require airlines to report to BTS the value of the refunds and vouchers issued to consumers each month.¹⁵ This data is critical to understanding whether airlines are complying with the refunds rule and the overall impact of flight cancellations and delays on the traveling public.

There may be additional ways to compensate passengers for significant flight delays or cancellations within the airline's control. For example, in the European Union, when an airline cancels a flight or delays a flight by at least three hours, it must compensate the passenger, unless the delay or cancellation was due to extraordinary circumstances or, in the event of a cancellation, the airline provides adequate notice to the passenger and offers a replacement flight that departs and arrives close in time to the originally scheduled flight.¹⁶ DOT should consider best practices and take the necessary steps to provide robust consumer protections for the traveling public in the United States.

For too long, airlines have skirted federal rules requiring them to provide refunds to passengers. While we commend DOT's proposal to strengthen this refund requirement, consumers deserve even stronger protections. As a busy holiday travel season approaches, we urge the Department to move expeditiously to bolster and finalize this rule and ensure that travelers receive their rightful compensation for flight cancellations and delays.

¹¹ Commission Regulation 261/2004, arts. 5-6, 2004 O.J. (L 46) 1 (EC).

¹² See, e.g., American Airlines, *Conditions of Carriage* (Feb. 22, 2022), <https://www.aa.com/i18n/customer-service/support/conditions-of-carriage.jsp> (“If the disruption is our fault or you're diverted to another city, and we don't board before 11:59 p.m. local time on your scheduled arrival day, we'll arrange an overnight stay or cover the cost of an approved hotel, if available.”).

¹³ Airline Ticket Refunds and Consumer Protections, 87 Fed Reg. at 51563.

¹⁴ *Id.*

¹⁵ Letter, *supra* note 8, at 2.

¹⁶ Commission Notice — Interpretative Guidelines on Regulation (EC) No 261/2004, art. 4.4.6, 2016 O.J. (C 214) 5 (EC) (“[P]assengers reaching their destination with a delay of three hours or more are entitled to the same compensation (Article 7) as passengers whose flight is cancelled.”).

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Sincerely,



Edward J. Markey
United States Senator



Maria Cantwell
United States Senator



Richard Blumenthal
United States Senator