



February 24, 2023

The Hon. Maria Cantwell
Chair
Senate Committee on Commerce,
Science and Transportation
254 Russell Senate Office Building
Washington, DC 20510

The Hon. Ted Cruz
Ranking Member
Senate Committee on Commerce,
Science and Transportation
512 Dirksen Senate Office Building
Washington, DC 20510

The Hon. Sam Graves
Chairman
House Committee on
Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

The Hon. Rick Larsen
Ranking Member
House Committee on
Transportation and Infrastructure
2164 Rayburn House Office Building
Washington, DC 20515

Dear Chairs Cantwell and Graves and Ranking Members Cruz and Larsen:

On behalf of the American Society of Travel Advisors (ASTA) and the more than 160,000 Americans who work in the travel agency sector across the country, I am writing to present our industry's views on key air travel distribution issues in the context of the upcoming Federal Aviation Administration (FAA) reauthorization process.

Responsible for the sale of roughly half of air travel in the U.S., travel advisors – whether online, brick-and-mortar or hybrid business models in between – serve an indispensable distribution role in our country's commercial aviation system and the broader travel and tourism industry. In 2019, travel agencies sold nearly 830,000 airline tickets *per day*, representing 48 percent of total sales and aggregate spending of more than \$97 billion.¹ We are proud to note that ASTA's current membership of nearly 7,500 travel agencies, independent travel advisors and related companies includes substantial numbers of member companies in Washington (185), Missouri (161) and Texas (943).

Because travel agencies, individual travel advisors and other similarly situated third-party intermediaries are considered "ticket agents" under federal statute,² our members are entities regulated by the Department of Transportation ("the Department" or "DOT") along with other industry stakeholders and as such have a significant interest in the details of the FAA reauthorization legislation. We appreciate the opportunity to share with you our views as the legislation is being

¹ Airlines Reporting Corporation (ARC). [Airline Sales Statistics](#).

² See [49 U.S.C. § 40102\(a\)\(45\)](#) (Definitions) ("a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation").

drafted. As you begin this process, ASTA respectfully urges the inclusion of the following policy priorities:

Affirm Existing DOT Policy on Ticket Agent Refunds

ASTA's main concern with regard to DOT's pending rulemaking on airline ticket refunds and consumer protections³ is that under certain circumstances travel agencies will 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.⁴ Our concern is based on the facts that: (i) in air transactions it is exceedingly rare for agencies to be in possession of client funds for any meaningful period of time 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 (which if accepted negates the refund obligation).

This proposal's 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.⁵ 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, as far back as easily accessible records go.⁶

While we share the Department's goal of ensuring consumers get the refunds they are entitled to when an airline cancels a flight, putting the burden on travel advisors to issue those refunds is the wrong way to do it. In fact, it will negatively affect consumers in the long run as the financial risk associated with this proposal may lead agencies to stop selling air tickets altogether, depriving consumers of the valuable consultative services and comparative shopping options advisors provide. As such, we urge your committees, through bill text or report language, to affirm longstanding DOT policy with regard to ticket agent refund obligations.

- ✓ *Request: Affirm the DOT's current policy regarding ticket agents refund obligations as it relates to its pending final rule on airline ticket refunds and consumer protections.*

Add Ticket Agent Seat to Consumer Advisory Committee

The FAA Reauthorization Act of 2018 reauthorized and renamed the Aviation Consumer Protection Advisory Committee (ACPAC), an advisory body at DOT responsible for evaluating existing aviation consumer protection programs and providing recommendations to the Secretary for improving existing and establishing additional aviation consumer protection programs. Pursuant to statute, ACPAC membership consists of one representative each of U.S. airlines, consumer groups, airports, and state or local governments.

³ [Airline Ticket Refunds and Consumer Protections](#), Notice of Proposed Rulemaking, Docket DOT-OST-2022-0089, 87 Fed. Reg. 51550 (August 22, 2022)

⁴ See ASTA's [comments](#) on the Airline Ticket Refunds and Consumer Protections NPRM.

⁵ 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).

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

ASTA has been an active participant in the committee’s work since its inception in 2012, which has covered a wide range of consumer topics, including ticket refunds, baggage issues, codeshare flights, transparency in airline ancillary fees and flight delays. The five most recent ACPAC meetings, starting in December 2021, have centered around two major DOT regulatory proposals – on ticket refunds and transparency in airline fees⁷ – that will have substantial impact on the business operations of travel agencies, whatever their final forms take.

Given the importance of travel advisors and other independent travel distributors to the marketplace and to consumers, we believe Congress should expand the universe of participants on the ACPAC to include a representative of the ticket agent sector. Such participation would bring valuable insights to the committee that are – it has become clear in recent years – missing today, especially in terms of the real-world impacts of complex proposals pending before DOT related to airline refunds and ancillary fee disclosure requirements. As such, we encourage Congress to add a seat for independent travel distribution to the ACPAC membership as part of the upcoming FAA reauthorization bill. We suggest language to that effect in Appendix I below.

- ✓ *Request: As part of the FAA reauthorization bill, add a ticket agent seat to the DOT’s Aviation Consumer Protection Advisory Committee.*

Rescind Insecticide Disclosure Requirement

49 U.S. Code § 42303 (“Use of insecticides in passenger aircraft”) requires DOT to maintain a website that contains a listing of countries that may require an air carrier to treat an aircraft passenger cabin with insecticides, either prior to the flight or when the cabin is occupied with passengers.⁸ It also requires airlines and ticket agents selling air travel to destinations appearing on that site to disclose “that the destination country may require the air carrier...to treat an aircraft passenger cabin with insecticides prior to the flight or to apply an aerosol insecticide in an aircraft cabin used for such a flight when the cabin is occupied with passengers,” and to refer prospective passengers to the DOT’s insecticide website when selling travel to said countries. The 2018 FAA bill slightly expanded this disclosure requirement as compared to what was included in the FAA Modernization and Reform Act of 2012 (P.L. 112-95, Section 42303), which simply required referral to the DOT website.

This requirement presents challenges to our industry in terms of regulatory burden and risk of DOT fines, especially when added to the multitude of disclosures travel advisors already must make when selling air travel, disclosures whose burden is magnified in the case of over-the-phone transactions (discussed above). While “disinsection” of aircraft is rare, advisors must make disclosures in the case of any flight from the U.S. to the countries listed on the DOT website, which includes the United Kingdom, Italy and France (ranked third, fourth and fifth, respectively, in volume of 2019 outbound travelers from the U.S.).⁹ Further, this requirement adds an element of uncertainty and delays to an advisor-assisted air transaction that could result in the loss of affordable fares, seat assignments or

⁷ See Airline Ticket Refunds and Consumer Protections NPRM and [Enhancing Transparency of Airline Ancillary Service Fees](#), Notice of Proposed Rulemaking, Docket DOT-OST-2022-0109, 87 Fed. Reg. 63718 (October 20, 2022).

⁸ See DOT website at <https://www.transportation.gov/airconsumer/spray> (Updated March 1, 2021).

⁹ U.S. National Travel and Tourism Office via Statista (December 10, 2020). *The Most Popular Destinations for U.S. Travelers Abroad*. <https://www.statista.com/chart/18742/most-popular-destinations-with-us-travelers/>.

the sale in its entirety. As we are aware of no compelling public interest for keeping this requirement (nor of any DOT enforcement thereof), we recommend that the disclosure section (subsection b) of 49 U.S. Code § 42303 be rescinded.

- ✓ *Request: As part of the FAA reauthorization bill, rescind subsection (b) of 49 U.S. Code § 42303.*

Unified Ticket Agent Disclosure Regime for Offline Transactions

Today, travel advisors are required by law and regulation to make up to seven consumer disclosures per transaction when selling air tickets. These include disclosures related to airline code sharing, insecticide spraying, price increases, baggage fees, hazardous materials and ticket expiration dates, among others.¹⁰ Some must be conveyed in every transaction regardless of whether it's online, over-the-phone or face-to-face, while others can be fulfilled via the Internet or the e-ticket receipt. Others are only triggered in specific transactions (e.g., if the buyer is considering a code share flight). In most cases, failure to make these disclosures is considered an “unfair and deceptive practice” by DOT and exposes travel agencies to fines of up to \$40,272 per infraction.¹¹ Applying the same calculation the Transportation Security Administration (TSA) used when developing its Secure Flight rules in 2008 – that 25 seconds of “talk time” costs ticket agents \$26.6 million per year¹² – we estimate the annual economic impact of *current* regulations on ticket agents at \$8.83 million per year.¹³

We have observed a pattern over the past few years, both at the Department and in Congress, of attempting to address airline service issues by adding new consumer disclosures to travel agencies' already-substantial regulatory burden, as opposed to addressing the airlines' actions directly. Look no further than the most recent FAA reauthorization cycle (concluding in 2018), which featured one provision of the House version of the bill (115th Congress: H.R. 2997) to slightly expand the insecticide disclosure requirement while the Senate bill (115th Congress: S. 1405) would have added *another seven* new disclosures for advisors to make during virtually all of the hundreds of millions of air travel transactions consummated through the travel agency channel in a given year.¹⁴ Significantly, none of the proposed disclosures would have exempted oral communications, nor were any existing disclosure requirements eliminated or consolidated with others, and all would have been added to those already required by law and regulation today. Again, using the TSA's Secure Flight parameters, this would have translated into an *additional* economic impact to our industry of \$29.8 million per year in talk time alone. While these proposals were eventually stripped from the final version of the

¹⁰ See for example 49 USC 41712(c), 49 USC 42303, 14 CFR §399.88 & 89, 49 CFR 175.25 and 49 USC 41712(b) and Appendix II below for a full accounting.

¹¹ [Revisions to Civil Penalty Amounts](#), Final Rule, Notice of Proposed Rulemaking, Docket DOT-2022-28580 88 Fed. Reg. 1114-1132 (January 6, 2023).

¹² Regulatory Evaluation Final Rule Secure Flight, 49 CFR 1560, October 17, 2008 at 84.

¹³ Not every air transaction triggers a disclosure obligation. Some required disclosures are in fact quite rare, such as a notification that the price of an airfare or government taxes and fees may increase after purchase. In calculating the costs of the *current* regulatory burden as it relates to travel advisors, we focus on code share and insecticide, the two most likely to be triggered and which must be conveyed in all transactions, including over-the-phone and face-to-face.

¹⁴ See Sections 3111 (Ancillary Fees), 3112 (Seat Assignments), 3113 (Families Flying Together) and 3114 (Consumer Complaints) of H.R. 636, FAA Extension, Safety, and Security Act of 2016 (Engrossed Senate Amendment; 114th Congress) and Sections 501 (Families Flying Together) and 505 (Insecticide Spraying) of H.R.4441, the Aviation Innovation, Reform, and Reauthorization Act of 2016 (As Introduced; 114th Congress).

bill (P.L. 115-254), we expect to see these and similar provisions in future aviation bills (and are already seeing them in proposed DOT regulations).¹⁵

We do not believe it is Congress' intent, nor is it in the public interest, that consumers be forced to listen to a litany of disclosures if they wish to purchase tickets over the phone instead of online. We suspect that this would be especially burdensome for frequent fliers who will have to listen to the same disclosures again and again and again. As such, we ask Congress to take the opportunity presented by the upcoming FAA reauthorization process to push DOT toward the creation of a unified ticket agent disclosure regime for "offline" transactions (i.e., over -the-phone and face-to-face). The goal of such a system would be to accommodate both existing and new disclosure requirements implemented by DOT or Congress without unduly affecting our members' business operations or undermining the Department's consumer protection mandate.

ASTA's proposed unified disclosure regime would encompass all mandatory consumer disclosures other than code share and full price advertising, and is based on the premise that almost every consumer of air travel has access to the Internet. During the phone call or in-person visit with the travel advisor, the advisor would be able to refer the consumer to a Department-sourced website with respect to disclosures applying broadly to all air consumers and to the airline website for disclosures related to the carrier's own optional fees and policies. This approach avoids the need to spend a large amount of time on the phone while the travel advisor reads and the consumer ponders the disclosures. Advisors would, however, still provide affirmative oral notice on the phone of code share flights and disclosure of the total all-in price of the travel being purchased.

We stand ready to work with Congress, the Department and all other relevant stakeholders to further refine this concept and are confident that a way forward can be found. This proposal will reduce frustration with the air ticket purchase process and lessen impacts on our members' business operations while keeping intact the Department's critical consumer protection mandate. As a starting point, we suggest legislative language on this concept in Appendix III below.

- ✓ *Request: Incorporate into the FAA reauthorization bill the language drafted by ASTA (or language having a similar effect) to prompt DOT to move toward the creation of a unified ticket agent disclosure regime for offline transactions.*

Mitigate Impact of New Disclosures

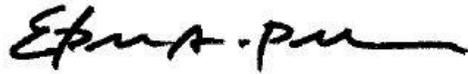
As discussed above, a major concern for our industry is that the reauthorization process will bring with it proposals to add to the list of mandated disclosures travel advisors are required to make to consumers when selling air travel – most of which relate to issues entirely outside of the agent's control. If a new, more flexible system for fulfilling ticket sellers' disclosure obligations in offline transactions is beyond reach, we urge your committees to take steps to mitigate the impact of new disclosures on travel agencies. Multiple templates for doing so exist in the current regulatory structure, including, for example, exempting ticket agents altogether, exempting phone call and face-to-face transactions or making required disclosures subject to the consumer's request or utilizing the Small Business Administration's size standards to "carve out" small business travel agencies. We will be happy to work with your staff to provide specific modifications if and when new disclosures are being crafted as legislative text.

¹⁵ American Society of Travel Advisors. [DOT Proposal Increases Transparency on Fees, Adds New Burdens for Advisors](#) [Press Release]. (September 27, 2022).

- ✓ *Request: If new consumer disclosures connected to the sale of air tickets are necessary, consider ways to mitigate the burden of these disclosures on the travel agency community.*

We thank you for the collaborative approach the committees are taking with regard to this critical legislation, and appreciate your consideration of our views on behalf of the more than 160,000 Americans who work in the travel agency sector across the country. If you or your staff have any questions on these or any issues related to the travel industry, please don't hesitate to contact me at (703) 739-6842 or epeck@asta.org.

Yours Sincerely,

A handwritten signature in black ink, appearing to read "Eben Peck". The signature is fluid and cursive, with a long horizontal stroke at the end.

Eben Peck
Executive Vice President, Advocacy
American Society of Travel Advisors (ASTA)

APPENDIX I

PROPOSED LEGISLATIVE TEXT TO ADD TICKET AGENT REPRESENTATION TO AVIATION CONSUMER PROTECTION ADVISORY COMMITTEE

The FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95, 126 Stat. 11 (2012), as amended, is further amended in the following fashion:

ESTABLISHMENT OF ADVISORY COMMITTEE FOR AVIATION CONSUMER PROTECTION

"(a) In General.—The Secretary of Transportation shall establish an advisory committee for aviation consumer protection to advise the Secretary in carrying out activities relating to airline customer service improvements.

"(b) Membership.—The Secretary shall appoint the members of the advisory committee, which shall be comprised of one representative each of—

"(1) air carriers;

"(2) ticket agents;

"(23) airport operators;

"(34) State or local governments with expertise in consumer protection matters; and

"(45) nonprofit public interest groups with expertise in consumer protection matters.

"(c) Vacancies.—A vacancy in the advisory committee shall be filled in the manner in which the original appointment was made.

"(d) Travel Expenses.—Members of the advisory committee shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

"(e) Chairperson.—The Secretary shall designate, from among the individuals appointed under subsection (b), an individual to serve as chairperson of the advisory committee.

"(f) Duties.—The duties of the advisory committee shall include—

"(1) evaluating existing aviation consumer protection programs and providing recommendations for the improvement of such programs, if needed; and

"(2) providing recommendations for establishing additional aviation consumer protection programs, if needed.

"(g) Report to Congress.—Not later than February 1 of each of the first 2 calendar years beginning after the date of enactment of this Act, the Secretary shall transmit to Congress a report containing—

"(1) the recommendations made by the advisory committee during the preceding calendar year; and

"(2) an explanation of how the Secretary has implemented each recommendation and, for each recommendation not implemented, the Secretary's reason for not implementing the recommendation.

"(h) Termination.—The advisory committee established under this section shall terminate on September 30, 2023 [insert new authorization end date]."

APPENDIX II

BACKGROUND ON TICKET AGENT DISCLOSURE BURDEN

All Transactions

Code Share: In all transactions, public or private, ticket agents must disclose code-share arrangements, including the marketing carrier's name, the operating carrier's corporate name and any other name under which the flight is held out to the public. This disclosure must be made at "first mention" of the flight in an oral transaction and on "the first display of the website following a search of a requested itinerary in a format that is easily visible to a viewer" in online transactions, even if the inquiry is informational and no request to book is made.

- Citation: Statutory authority at 49 USC 41712(c).

Insecticide Spraying: Ticket agents must refer ticket purchasers to the Department of Transportation's disinsection (insecticide) website when selling travel to countries that require aircraft to be treated with insecticides prior to flight or while occupied. This referral must be made prior to ticket purchase.

- Citation: Statutory authority at 49 USC 42303.

Hazardous Materials: Ticket agents must present to the consumer "information on the types of hazardous materials which a passenger is forbidden to transport aboard an aircraft" at some point prior to check in. In practice this obligation can be fulfilled by including the disclosure notice on the e-ticket receipt.

- Citation: Regulatory authority at 49 CFR 175.25.

Ticket Expiration: Ticket agents utilizing electronically transmitted tickets for air transportation must notify the purchaser of such a ticket of its expiration date, if any. In practice, this can be fulfilled by including an expiration notice on the e-ticket receipt.

- Citation: Statutory authority at 49 USC 41712(b).

Price Increase: If a ticket agent wishes to pass on a carrier-imposed price increase, it can only do so if the agent has disclosed the potential for the increase and obtained the consumer's written consent to the potential for the increase prior to accepting a deposit. Once full payment is made, only a *government-imposed* tax or fee increase can be passed on to the consumer and this can only occur if the agent disclosed and obtained the consumer's written consent to the increase prior to acceptance of any payment.

- Citation: Regulatory authority at 14 CFR §399.88 & 89.

Online Only

Hazardous Materials: Prior to online ticketing, information on hazardous materials restrictions must be provided and the passenger or a person acting on the passenger's behalf must give an indication of his understanding. A stand-alone message that displays the hazardous materials restrictions either through text or pictorial form may be used. Alternatively, the notification may be part of the general terms and conditions that are displayed before the ticket is purchased; however, information on hazardous materials restrictions should be prominently displayed and must enable the consumer to indicate his understanding.

- Citation: Regulatory authority at 49 CFR 175.25.

Baggage Fees: Ticket agents must inform the purchaser on the first screen where a fare quotation for a specific itinerary appears that additional fees for bags may apply and where the purchaser can go to see these fees. This disclosure must be "prominent," and cannot, for example, require the purchaser to scroll to the bottom of a web page. Additionally, on all e-ticket confirmations, travel agents must include one of the following: a) the standard free baggage allowances and/or fees for carry-on, first and second checked bags; b) a direct link to a page on the agent's website where the applicable airline's baggage allowance and fee information is maintained; or c) a direct link to the applicable airline's baggage allowance and fee information.

- Citation: Regulatory authority at 14 CFR 399.85(b) & (c).

Other Regulations

Full Price Advertising: In all airfare displays, advertisements and offers, travel advisors must state the full and final price more prominently than other elements of the total price that are also disclosed, such as government or travel agency fees. The rule applies to airfares alone and to tour and cruise packages that contain an air component. All government fees and taxes, as well as travel agency fees, must be included in the price most prominently presented to the consumer. While charges included within the single total price (e.g., government taxes/fees and agency fees) may be listed separately, such charges must be accurately labeled and the total price must be displayed more prominently than the separately-listed components.

- Citation: Regulatory authority at 14 CFR 399.84(a) & (b).

Display Bias: Ticket agents are generally prohibited from "biasing" flight displays without disclosing such bias to the consumer. The only allowable "undisclosed biasing" is that based on user selection or "corporate contract travel arrangement." To the extent that display bias is occurring, it must be clearly and conspicuously disclosed at the top of each search result display presented to the user in response to the user-selected search criteria. The notice must state that the flights are not displayed in neutral order and that certain airlines' fare, schedule or availability information is given preferential treatment in how it is displayed.

- Citation: Regulatory authority at 14 CFR 256.

Web-Only Fares/Disabled Passengers: When a "large" ticket agent (with \$22 million or more in annual revenue) offers web-only discounts/fares to prospective purchasers, it must also disclose and

offer those discounts/fares to consumers who contact them through other channels and indicate they are unable to use the agency's website due to a disability.

- Citation: Regulatory authority at 14 CFR 399.80(s).

Opt-Outs: Ticket agents may not automatically include optional products and services, such as travel insurance, in connection with air transportation or a tour/cruise package that contains an air component, forcing the buyer to opt-out or de-select the options if they don't want to buy them. It is acceptable to offer optional products and services in a way that requires the consumer to affirmatively select them by, for example, checking a box before becoming obligated to pay for them.

- Citation: Regulatory authority at 14 CFR 399.84(c).

Cooling-Off Rule (Federal Trade Commission): At the time of a sale made at any place other than a travel advisor's designated place of business, it must provide consumers with a fully completed receipt and notify him/her of his/her cancellation rights. At a minimum, the buyer must be given three days (until midnight of the third business day) after the sale to cancel a purchase of \$25 or more if the sale is made at the buyer's residence or a purchase price of \$130 or more if the sale is made at locations other than the buyer's residence. In the travel agency sector, this rule might be triggered in scenarios where the advisor is selling to consumers at an offsite "cruise night" or trade show.

- Citation: Regulatory authority at 16 CFR 429.

APPENDIX III

PROPOSED LEGISLATIVE TEXT TO EXPEDITE OFFLINE CONSUMER DISCLOSURES

SEC. __. ALTERNATE DISCLOSURE PROCESS FOR INFORMATION RELATED TO AIRCRAFT DISINSECTION, HAZARDOUS MATERIALS AND OTHER MATTERS

- (a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall complete such actions as may be necessary to implement an alternate process for ticket agents to fulfill consumer disclosure obligations in ticketing transactions consummated by means other than through an Internet Web site contained in 49 USC 42303, 49 CFR 175.25 and such other disclosure requirements the Secretary deems appropriate.
- (b) **REQUIREMENTS.** —The process implemented under subsection (a) herein shall—
- (1) include a means of referral to the applicable covered air carrier’s Internet Web site with respect to disclosures related to carrier optional fees and policies;
 - (2) include a means of referral to the Department’s Internet Web site with respect to disclosures applying broadly to all aviation consumers including, but not limited to, 49 USC 42303(b) and 49 CFR 175.25;
 - (3) make no changes to ticket agent obligations with respect to 49 USC 41712(c);
 - (4) make no changes to ticket agent obligations with respect to 14 CFR 399.84(a) & (b);
and
 - (5) require disclosures to be made in the manner existing prior to enactment of this Act upon consumer request.