



**Aviation Consumer Protection Advisory Committee  
(ACPAC)**

**August 22, 2022, Meeting Minutes**

**Washington, D.C.**

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# INTRODUCTION

The Aviation Consumer Protection Advisory Committee (“ACPAC” or “Committee”) met on August 22, 2022, using Zoom virtual platform.

The topic discussed at the meeting was the Department of Transportation’s Notice of Proposed Rulemaking (NPRM) on Airline Ticket Refunds and Related Consumer Protections. The meeting consisted of a morning and an afternoon session, which included presentations and opportunity for discussion. The webcast of the meeting is available at:

<https://www.transportation.gov/airconsumer/ACPAC/August2022Meeting/webcast>.

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the meeting was open to the public. Information about the meeting, including the agenda, is available at <https://www.transportation.gov/airconsumer/ACPAC/August2022Meeting>.

Appendix A identifies the Committee members, agency representatives, and others who attended the meeting. All presentation materials that were provided at the meeting are available for public review and comment at [www.regulations.gov](http://www.regulations.gov), docket number DOT-OST-2018-0190.

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## Welcome and Introductory Remarks

The ACPAC meeting began at 10:00 a.m. ET, with Blane Workie, Assistant General Counsel for the Office of Aviation Consumer Protection (“OACP”) at the U.S. Department of Transportation (“Department” or “DOT”) and the ACPAC Designated Federal Officer (“DFO”), calling the meeting to order and introducing the Committee members: (1) Dana Nessel, Attorney General of Michigan, as the state or local government representative and chair of the Committee; (2) John Breyault, Vice President for Public Policy, Telecommunications, and Fraud at National Consumers League, as the consumer representative; (3) Patricia Vercelli, General Counsel, Airlines for America, as the airline representative; and (4) Mario Rodriguez, Executive Director of the Indianapolis Airport Authority, as the airport operator representative.

Ms. Workie reminded the meeting participants that the ACPAC first examined the issue of airline ticket refunds in a December 2021 meeting, during which, representatives of the airline industry, consumer rights advocates, and ticket agents presented their perspectives on this issue. Ms. Workie pointed out that DOT fully considered all perspectives presented at the December 2021 meeting when drafting the NPRM on airline ticket refunds. Ms. Workie explained that the August 22, 2022, meeting was intended to provide the ACPAC members an opportunity to discuss the proposals in the NPRM. Ms. Workie further described the agenda of the meeting, which would proceed in the order of DOT providing an overview of the content of the NPRM on airline ticket refunds, followed by comments or questions from the ACPAC members; and then comments from members of the public. Ms. Workie also mentioned that at the next ACPAC meeting, which would occur later in 2022, the Committee members would consider everything

they've heard at the August 22, 2022, meeting and then publicly deliberate and make recommendations to the DOT on this rulemaking.

Ms. Workie also pointed out that the comment period for the NPRM is scheduled to close on November 21, 2022, and after the comment period closes, the Department will review the comments received, consider any recommendations by the Committee, and decide how to proceed with the proposed rulemaking.

Ms. Workie reviewed a few housekeeping and logistical matters to ensure that the Zoom meeting ran smoothly. She also informed the participants that individuals may submit written comments to the ACPAC's docket at any time; and that copies of all the presentations from this meeting will be posted in the docket after the meeting. Ms. Workie also informed the participants that the meeting agenda is available on the DOT's website at [www.transportation.gov/airconsumer/ACPAC](http://www.transportation.gov/airconsumer/ACPAC).

Ms. Workie then turned the meeting over to the Committee members so they could introduce themselves.

### **Discussion of DOT's NPRM on Airline Ticket Refunds and Consumer Protections**

Following the welcome and introductory remarks, the morning session of the meeting began. The Committee first heard from the DOT senior attorney Clereece Kroha, who provided an overview of the DOT's NPRM.

Ms. Kroha stated that the NPRM on airline ticket refunds and consumer protections was issued on August 3, 2022 and published in the Federal Register on August 22, 2022. Ms. Kroha further stated that the comment period was 90 days and that comments can be filed on regulations.gov in the docket (DOT-OST-2022-0089) before November 21, 2022.

Ms. Kroha explained that her summary of the NPRM is divided into three parts by subject. The first area deals with the requirement for airlines and ticket agents to provide refunds for flights canceled or significantly changed by airlines. The second area deals with protections for consumers who are unable to fly as scheduled for reasons related to a serious communicable disease. The third area addresses additional protections for consumers who cannot fly for reasons related to a serious communicable disease during a public health emergency when airlines or ticket agents receive significant government financial assistance. Ms. Kroha stated that for each part, she would first describe the main proposals in the NPRM, and then there will be a question & answer session for the Committee members, along with any comments they may have. Afterward, the public attendees will have an opportunity to provide their comments.

## **I. Refunds Due to Airline Cancellation or Significant Change**

### **1.1 DOT Presentation**

*Presentation by Clereece Kroha, Senior Attorney, DOT, Office of Aviation Consumer Protection (OACP)*

Ms. Kroha introduced the first subject addressed by the NPRM, which proposes to require airlines and ticket agents to issue refunds for flights canceled or changed by carriers. She explained DOT's longstanding interpretation that it is an unfair business practice in violation of 49 USC 41712 for a U.S. or foreign air carrier or a ticket agent to refuse to provide requested refunds to consumers when a carrier has canceled or made a significant change to a scheduled flight to, from, or within the United States, and consumers found the alternative transportation offered by the carrier or the ticket agent to be unacceptable. Ms. Kroha further explained that this interpretation applies to all airline-initiated cancellations and significant changes, regardless of whether the reason for the cancellation or change is within or outside of the airlines' control. She stated that over several decades, the DOT's OACP has issued various policy statements confirming this interpretation, and most recently, at the beginning of the COVID-19 pandemic, the OACP issued enforcement notices reminding airlines and ticket agents of their obligations to provide a refund when they cancel or make significant changes to passengers' flights.

Ms. Kroha stated that the NPRM proposes to codify the DOT's longstanding interpretation and explicitly require that airlines and ticket agents provide prompt refunds when carriers cancel flights or make significant changes to flight itineraries and consumers do not accept the alternative transportation offered by carriers or ticket agents. Ms. Kroha stated that the NPRM also proposes to defining a "prompt refund" and specifically require that, when a refund is due, airlines and ticket agents must provide the refunds within 7 days for credit card purchases after the airline or the ticket agent receives a request for a refund and within 20 days for cash, check, or another form of purchase.

Ms. Kroha discussed the proposed definitions for "cancellations" and "significant change of flight itinerary." She explained that the DOT has not previously defined these terms and as a result, airlines and tickets have defined these terms differently, which further leads to consumer confusion. She stated that to eliminate confusion, the NPRM proposes to define a canceled flight as a flight published in a carrier's computer reservation system at the time when the affected passenger purchased the ticket, even if later the carrier removed the flight from its system.

She further explained that the proposed definition for "significant change of flight itinerary" involves a set of standards that would trigger the refund obligation, including early departure or late arrival of more than 3 hours for domestic itineraries and 6 hours for international itineraries, a change to the origination or designation airport, an increase in the number of stops, such as from non-stop itinerary to a one-stop itinerary, a downgrade to the class of service even if the consumer is able to take the same flight and a change of aircraft that leads to significant downgrade of the travel experience or the available amenities onboard. With respect to aircraft downgrade, Ms. Kroha stated that the Department recognizes that aircraft substitutions occur from time to time, and the NPRM does not propose that all aircraft substitutions be considered significant changes. Instead, the proposal would look at the effect of the aircraft change on a consumer's travel experience and expectations. Ms. Kroha provided an example of a "significant

change” due to aircraft substitution, in which a consumer traveling with a personal wheelchair that would fit in the cargo compartment of the original flight, but after an aircraft substitution occurred, is no longer able to fit in the cargo compartment.

Next, Ms. Kroha explained that the NPRM also proposes to clarify how refunds should be provided to consumers. Specifically, she stated that under the proposal, airlines and ticket agents can choose to return consumers' money in the original form of payment. Further, she stated that the proposal would also allow airlines and ticket agents to refund consumers in the form of payment that may not be the original form of payment, as long as that form of payment is considered "cash equivalent." She explained that cash equivalent is defined in the proposal to mean a form of payment that can be used like cash, including but not limited to a check, a prepaid card, direct bank account transfer, funds provided through digital payment methods (e.g., PayPal, Venmo, Zelle), or a gift card such as a Visa card that is widely accepted in commerce. She emphasized the Department's view that an airline or ticket agent-issued credit or a store gift card would not be considered "cash equivalent." Ms. Kroha added that the proposal allows the offering of these non-cash equivalent options to consumers, but airlines and ticket agents would first have to make clear to consumers that they are entitled to a refund when communicating with them.

Ms. Kroha stated that the DOT addresses the role and responsibilities of ticket agents in issuing refunds when an airline cancels or makes significant changes to a flight. She explained that the NPRM focuses on avoiding unnecessary costs, delays, and confusion to consumers when they request refunds and multiple entities are involved in issuing the original ticket. She stated that to simplify the process for consumers to obtain refunds, the NPRM proposes that the entity that "sold" the ticket would be responsible for refunds. She elaborated that to determine which entity sold the ticket, the consumer would look at which entity appears on their financial statement for ticket purchase.

Next, Ms. Kroha explained that the NPRM addresses the issue of ticket agent-imposed service fees, such as a service charge for issuing the original ticket and a service fee for issuing a refund. She stated that the proposal would allow ticket agents to deduct these two types of service charges from the total refund amount only if consumers are notified of these fees before they purchase their tickets, and the notification must specify the fees' existence, amount, and nature.

## **1.2 Committee Members Questions and Comments**

After Ms. Kroha concluded the first part of her presentation, the Committee was invited to ask questions and provide comment.

Mr. Rodriguez asked for clarifications regarding the issue of aircraft substitution.

- Ms. Workie stated that the proposal does not go into details and that the example about a passenger traveling with personal wheelchair given by Ms. Kroha was to illustrate a significant change. Ms. Workie further explained that DOT's proposal is written to allow a case-by-case determination.

Mr. Rodrigues asked who would make the determination on whether an aircraft substitution would be considered as a “significant change.”

- Ms. Workie stated that the way the proposal is written – the airline would make the determination. She further stated that if the consumer does not agree with the airline, the consumer would be able to file a complaint with OACP. Mr. Workie further invited people with thoughts on the proposal to provide their comments.

Mr. Breyault asked whether it is correct that when a cash equivalent or credit is offered by the airline in the event of a cancellation or a significant delay, the airline must also notify the consumer of the availability of a refund.

- Ms. Kroha acknowledged that was correct. She explained that, under the proposal, airlines are free to offer non-cash equivalent options such as credits, vouchers, or miles to anyone entitled to a refund. However, they must inform consumers entitled to a refund that they indeed can get a refund in the original form of payment or in the form of a cash equivalent option.
- Ms. Workie pointed out that, during the COVID-19 pandemic, some consumers complained that they did not know that they were entitled to a refund when offered travel vouchers or credits.

Mr. Breyault asked whether the proposed rule specifies how the notification should be provided. Mr. Breyault further explained that he would like to avoid situations where consumers are not aware that they have the right to a cash refund while an airline or a ticket agent could claim that the notice was provided in the contract of carriage or some sort of fine print during the purchase process.

- Ms. Workie stated that the NPRM does state that the notification should be provided when the airline offers flight credit, indicating that putting it in the contract of carriage would not be sufficient. Ms. Workie further encouraged everyone who have suggestions on how that notification should be provided to provide their comments for DOT's consideration.

Mr. Breyault stated that he heard Ms. Kroha define cash equivalent as a check, prepaid card, bank account transfer, gift card that can be used in general commerce, or a peer-to-peer option like Venmo or Zelle. Mr. Breyault pointed out that the peer-to-peer option assumes the consumer has either one of the peer-to-peer services they can take advantage of or a Zelle-enabled bank account. Mr. Breyault also pointed out that peer-to-peer transactions may not be subject to the same consumer protections that a credit or debit card transaction would under the Federal Reserve's regulation. Mr. Breyault further pointed out that open loop gift cards such as Visa prepaid cards tend to come with usage fees. Thus, Mr. Breyault asked whether DOT has considered all issues above when it included the peer-to-peer and open-loop gift cards as cash equivalent refund options in the NPRM.

- Ms. Kroha stated that regarding gift cards, the NPRM does mention that any maintenance or usage-related fees should be covered by the airline, which means, in addition to the

full refund amount, if the refund is provided by one of those cards that have a fee, the fee should be added to that amount.

- Ms. Workie stated that the NPRM does not address the specific issues mentioned by Mr. Breyault regarding the peer-to-peer options. However, the idea in the proposal is to provide greater flexibility for all the parties, airlines, and consumers and get the money to the consumer as fast as possible. Ms. Workie stated that if there are things that the DOT has not considered, she again encourages people to file their comments.

Mr. Breyault asked which entity (the airline/the ticket agents, or the consumer) would choose what form of cash equivalent would be offered to the consumer.

- Ms. Workie stated that according to the way the proposal is written, it would be the entity that is providing the refund who would choose the form of payment. Ms. Workie further explained that cash equivalent payments were added to the proposal to provide greater options to both the consumer and the airline. Ms. Workie further clarified that the payment would have to be either in the original form of payment or cash equivalent.

Ms. Vercelli asked for clarifications regarding the definition of a canceled flight and how the definition would play into situations in which another flight is offered under a different flight number.

- Ms. Workie stated that the definition of a canceled flight in the proposal is a flight published in a carrier's Computer Reservation System (CRS) at the time of ticket sale but was not operated. Ms. Workie further gave the example of a situation where Flight 100 was in the CRS, and the consumer purchased a ticket for that flight, but the flight did not operate. Instead, Flight 105 operated. Ms. Workie noted that under the proposal, Flight 100 would be deemed a canceled flight. Ms. Workie further encouraged airlines to submit comments.
- Ms. Kroha stated that she agreed with Ms. Workie's interpretation and noted that the second element when a passenger is entitled to a refund is when the passenger does not accept alternative transportation. Ms. Kroha pointed out that if the new flight departs 30 minutes later and everything else is the same as the canceled flight, chances are the consumer would likely choose to take the new flight instead of requesting a refund.
- Ms. Workie further noted that the whole idea of significant change or canceled flight and the entitlement of a refund is premised on the consumer no longer being interested in that flight.

Ms. Vercelli further asked whether there is a reason that the definition for canceled flights does not include an element that the flight was cancelled within seven calendar days of the scheduled departure.

- Ms. Workie stated that one of the challenges the Department faced was that there was no definition of a canceled flight in the refund regulation. She acknowledged that in 14 CFR 234.2, for reporting purposes, the Department has a different definition for canceled



flights and a different definition for discontinued flights. She clarified that the Department made the determination in the proposal that it would not be fair to consumers to limit their eligibility for a refund only in those situations where the flight is canceled seven days out. She explained that for consumers who planned their vacations or business trips and bought their tickets in advance, it is not going to be less of inconvenience whether the flight is canceled more than two weeks in advance or a week in advance.

Ms. Vercelli stated that when changes happen, like 200 days out or 100 days out, the consumer is notified and given the option to either accept a different flight or a different itinerary. Ms. Vercelli further noted that one of the concerns with the proposed rule would be the potential for fraud. Ms. Vercelli asked whether the proposal suggests that when a schedule change occurs, an individual would be entitled to a refund when the individual refuses to accept a new itinerary up to two days before the flight, even though the individual knew 200 days in advance of the flight itinerary change.

- Ms. Workie stated the NPRM proposes a definition for a canceled flight. However, it does not address how much time the consumer has to seek a refund after a flight itinerary change occurred. Ms. Workie noted again that one of the benefits of it being an NPRM is that interested parties who want the DOT to consider certain situations can provide their comments.

Ms. Vercelli further stated that there are undefined terms within the proposed definition for significant change of flight itinerary such as “class of service.” Ms. Vercelli then asked how the DOT would define “comparable amenities.”

- Ms. Workie stated that the NPRM proposes for these terms to be a case-by-case determination based on the needs of the consumer because for one passenger, the change of aircraft may not be a downgrade, but it may be a significant downgrade for another passenger when the substituted aircraft would not meet this passenger's needs.

Ms. Vercelli stated that, in her opinion, when two different passengers apply their subjectivity to the meaning of a downgrade, it removes transparency. Ms. Vercelli further asked what for the Department’s interpretation is for the term “comparable amenities.”

- Ms. Workie stated that when discussing significant changes, the DOT would look at a few things: whether the flight is scheduled to depart or arrive within 3 hours for domestic or 6 hours for international from the original schedule; whether there are additional connections; whether the passenger is downgraded to lower class of service; whether the passengers are scheduled to travel on a different type of aircraft, whether all changes are significant for the passenger. Ms. Workie noted that the Department tried to balance between changes that may be significant for one person but not necessarily for another. Ms. Workie further stated that if the airlines believe that the Department should define significant change in a certain way, they should submit their comments.

Mr. Breyault stated that Alaska Airlines became the first carrier to launch a flight subscription program, charging \$49 to \$550 with a year-long commitment. According to Mr. Breyault, subscribers can take up to 45 round trips and the flights need to be booked at the required intervals. Mr. Breyault asked whether the rule would decide how much the amount of refund would be in cases where a consumer is paying \$550 for a subscription plan for up to 24 flights. Mr. Breyault further asked whether the DOT considered this scenario when drafting the proposed rule.

- Ms. Kroha stated that the NPRM does not consider this type of situation. Ms. Kroha further noted that the Department has considered the checked bag subscription programs offered by some carriers in another NPRM on refunding bag fees and asked questions on how to determine the amount of baggage fee refunds. She stated that like the baggage fee refund NPRM, the Department would welcome comments on how to determine the amount of ticket refunds in the scenarios described by Mr. Breyault.
- Ms. Workie noted that there is no specific proposal on this subject.

Mr. Breyault pointed out that he didn't see the question in the rulemaking asking for comments on refund subscription plans.

- Ms. Workie responded by stating that the NPRM is generally on refunds, so that the subscription issue would fall under the general subject of refunds. Ms. Workie noted that the DOT would like to hear from all the stakeholders on how the subscription process generally works, how they currently provide refunds, and how they think it should be provided.

Ms. Vercelli asked that if a flight that was canceled due to severe weather and the FAA has issued a ground stop, whether, under the DOT's proposal, the airline would be responsible for providing refunds for the canceled flight even though it's entirely out of the airline's control.

- Ms. Kroha stated that the proposal on refunds does not consider the reason for the cancellation as a relevant factor.
- Ms. Workie stated that the NPRM is looking to codify the requirement that when a consumer purchases a flight from the airline, and the airline can't provide that service, for whatever reason it may be, the consumer is entitled to their money back when the consumer chooses not to take the alternative flight provided or offered by the airline.

### **1.3 Public Participants Questions and Comments**

Next, Ms. Workie invited comments from the public attendees.

Mr. Joseph Burley shared with the Committee his experience as a consumer. Mr. Burley explained that he is a retired, disabled veteran who tries to minimize driving at night. Mr. Burley stated that he purchased a ticket for a flight leaving at 8 p.m. so he could drive to the airport during daylight. Mr. Burley stated that ten days after he bought his ticket, he was informed by

the airline that his flight would be delayed by 2 hours and 57 minutes, which would require him to drive to the airport at night. Mr. Burley further explained that the airline's website stated that he could apply for a refund or a credit voucher but when he applied for a refund, the airline denied it and provided only a credit voucher valid for 30 days. Mr. Burley further stated that he supports ACPAC considering a 3-hour delay as triggering a refund obligation. However, in his situation, the delay of 2 hours and 57 minutes resulted in the service he purchased no longer meeting his needs. Mr. Burley asked the Committee to comment on his situation.

- Ms. Workie stated that under the current regulation, to determine Mr. Burley's entitlement to a refund, the DOT would have to look at how the airline defines significant change. Ms. Workie noted that there is no uniform answer because the airline's definitions currently vary. Ms. Workie stated that the DOT is proposing a baseline under the NPRM and according to the proposed baseline, if a person will be departing 3 hours later or will be arriving more than 3 hours later for a domestic flight, regardless of which airline they fly, then that person will be able to determine whether they are going to accept the alternate flight offered by the airline or whether they are going to ask for a refund. Ms. Workie stated that because the DOT is trying to have a bright line rule, under the NPRM, Mr. Burley would not be entitled to a refund because his delay was 2 hours 57 minutes. However, if his delay would have been 3 hours and 1 minute and assuming that the proposal would have been final, he would have been entitled to a refund.

Mr. Alejandro Ulloa provided his comment for the Committee's consideration. Mr. Ulloa stated that regarding the definition of significant change of flight itinerary, he would ask that the definition includes a requirement for all airlines to inform their passengers about the causes for the delay or cancellations by making an official announcement so that customers can make better-informed decisions as to what they are entitled to. Mr. Ulloa shared his experience when he was informed by an airline that his flight from Los Angeles to Chicago was cancelled due to inclement weather and his only available option was to be rebooked on a different flight. Mr. Ulloa stated that he took the time to research and see if any other flights were canceled, as well as check the weather reports for Los Angeles and Chicago. Mr. Ulloa stated that he did not find any reports about inclement weather which leads him to believe that the justification for said cancellation was used to avoid any cost for which the airline may have been responsible. Mr. Ulloa stated that the airlines should also be required to make arrangements for or cover the cost of ground transportation in cases where the destination or departure airport was changed. To illustrate this point, Mr. Ulloa further shared his experience when an airline canceled his flight and he had to pay \$120 for ground transportation to catch the rebooked flight at another airport that was 87 miles away from the original airport. Mr. Ulloa noted that after complaining to the airline about the cost of ground transportation, he was awarded 7,500 miles to his frequent flyer account; however, that was not proportionate with the money spent on his credit card. Mr. Ulloa noted that when travelers purchase a ticket, they enter into an agreement with the airline. However, based on his personal experience, the airlines are falling short of upholding their end of the bargain. Mr. Ulloa stated that the government is responsible for protecting its citizens, and in this case, protecting travelers from the airline industry. In addition, Mr. Ulloa asked the Committee to make a recommendation requiring airports to provide signage or announcements informing consumers on their rights to file a complaint with the DOT.

- Ms. Workie noted that Mr. Ulloa is speaking to the proper Committee on these issues as the Committee is also looking into ensuring that good information is being provided to consumers about the reasons for delays and cancellations. Ms. Workie also mentioned that Secretary Buttigieg asked airlines to provide meal vouchers for delays of 3 hours or longer and provide lodging if there is a delay or a cancellation that is overnight if the delay or cancellation was due to reasons under the airlines' control.

Mr. Paul Hudson with Flyer's Rights stated that he supports the Department's defining "significant changes" because without such a definition, there will be no consistency or transparency to the passenger, and airlines will have a financial incentive to make their policies vague or entirely in favor of the airlines. Mr. Hudson stated that relying on the airlines to establish refund policies has miserably failed, as the airlines compete not for better services for the consumers but for what policy can produce the most revenue with the least cost to the airlines. Mr. Hudson stated that the 1700% increase in refund complaints is evidence. Mr. Hudson noted that good service is generally more expensive for airlines, and bad service is paradoxically more profitable. Mr. Hudson further stated that the standards for significant change should be based on a set number of hours of itinerary change, except that a lower number of hours should be applied to any trip requiring a connection time of less than 90 minutes. Mr. Hudson stated that Flyers Rights believes that the domestic standard should be 2 hours, not 3, and the standard for international flights should be no more than 4 hours, not 6. Mr. Hudson further stated that the change of destination airport and the number of connections should trigger the right to refunds. Mr. Hudson stated that a premium over the ticket price should be applied to refunds due to significant changes made by the airline less than 30 days before departure, because rebooking will likely cause an additional expense. Mr. Hudson pointed out that no other product or service, except perhaps a cruise line, allows the provider to keep passengers' money by not providing the service paid for. Mr. Hudson further stated that the Airline Deregulation Act of 1978 made the DOT the sole regulator of air travel, removing all state and local consumer protection regulations as well as most other federal agency consumer protection regulations. He added that only airlines can remove a small claims court case to the U.S. District Court where the cost to consumers exceeds recovery. He also noted that only airlines can and do profit more from bad service and unfair practices than from good and fair service.

- Ms. Workie encouraged Mr. Hudson to file his comments on the NPRM with the DOT, particularly his suggestions for redefining the significant change.
- Mr. Breyault stated he was intrigued by Mr. Hudson's comment that airlines can make extra money by canceling flights because the consumer will have to pay a higher rate. He asked Mr. Hudson to elaborate on this subject.
- Mr. Hudson stated that the point is that airfares generally go way up when purchased closer to the departure time. He described that if a consumer makes a reservation four months in advance and the consumer was informed a week or two before departure that there has been a significant flight change, the consumer will very likely pay a much higher price when rebooking with the same airline or another airline.

- Mr. Breyault noted that, generally, airlines would rebook free of charge.
- Ms. Workie confirmed that the Department understands rebooking at no additional charge to be a standard practice. She mentioned that if anyone is aware of a different practice, she encouraged them to inform the DOT.

Mr. Stewart Verdery spoke on behalf of the Travel Management Coalition (TMC), which represents the largest travel management companies in the U.S. which collectively count for an average of 26% of U.S. travel bookings for U.S. customers annually. Mr. Verdery noted that due to the size of the businesses, its members received little to no government financial assistance during the pandemic. Mr. Verdery stated that TMC members are still recovering from a suppressed demand for international travel. Mr. Verdery further stated that TMC is concerned that the requirements as proposed can present three problems: One, the proposal on ticket agents would create a cash flow burden if ticket agents are held responsible for issuing refunds before they receive payments back from the airlines; two, adding uncertainty to TMC members' operations as the members have no control over various factors such as airline delays in issuing refunds, and decisions by travelers, carriers, or governments to postpone travel for health-related reasons; and lastly, the proposal would require more time spent by sales agents of TMS members to facilitate refunds, particularly at a time when it's already difficult for customers to receive assistance from airlines directly.

Mr. Verdery also shared his thoughts on whether a refund should be provided in the original form of payment or another form of payment. Mr. Verdery stated that TMCs believe that refunds should be provided in the original form of payment to make it clear that it's apples-to-apples regarding how a customer is compensated. Concerning the question on whether the Department should impose the 7-day/20-day timelines on issuing refunds, Mr. Verdery stated that TMC believes that an alternative form of refund payment should create a longer deadline than 20 days due to the complicating issues of the differing types of payments. Mr. Verdery further stated that regarding the question of whether a ticket agent or an airline should be responsible for the refund of an itinerary purchase through a ticket agent, TMCs believe that the airlines should be responsible because under the current practice, a ticket agent acts as a broker facilitating the sale of a ticket for the consumer. Mr. Verdery asserted that the consumer sees the name of the airline on the financial statement and therefore ticket agents such as TMC members should not be liable for reimbursement of the consumer, and there must be a clear authorization provided to the ticket agents by the airlines for a refund. Mr. Verdery commented that TMC members should only be required to reimburse the consumer for a refund once they receive the cash after the authorization for refund by airlines. Mr. Verdery stated that there are circumstances where TMC members would purchase directly from the airlines and then bill customers for the purchases, but these circumstances are rare.

Mr. Verdery addressed the question on how the refund timeline would be affected if a ticket agent must rely on an airline to confirm that the consumer is eligible for a refund. Mr. Verdery stated that TMC believes the refund timeline should start when the airline confirms refund eligibility. Lastly, Mr. Verdery commented that it is reasonable to allow ticket agents to retain service charges for issuing original tickets when providing refunds because it is in line with the current practice. Mr. Verdery closed his comment by stating that TMC members work very

closely with the airlines and, generally, have a good relationship, but this rulemaking does raise particular aspects on transactions where TMC wants to have its input heard by the DOT.

- Ms. Workie commented that the primary reason that the NPRM focuses on which entity sold the ticket is to avoid situations where consumers are bounced back and forth between the airline and the ticket agent. Ms. Workie stated that the Department has seen situations with COVID-19 and refund requests, where the airline told the consumer that since the ticket was purchased through a ticket agent, the consumer should request a refund from the ticket agent. Ms. Workie further described that the ticket agent would tell the consumer that the airline is holding the money, so the consumer should ask the airline for a refund. Ms. Workie stated that the Department wants to get the consumer out of the middle. Ms. Workie then asked Mr. Verdery that, assuming the consumer looking at the financial statement (credit card statement) is not the right approach, how he would suggest taking the consumer out of the middle and avoiding the situation that the consumer is being bounced between the ticket agent and the airline.
- Mr. Verdery stated that the entity showing up on the consumer's financial statement should be responsible for the refund.
- Ms. Workie noted that Mr. Verdery previously stated that the ticket agent would appear on the financial statement in some situations, and asked Mr. Verdery to clarify whether he still believes the airline should be responsible for refunds when the ticket agent appears on the consumer's financial statement.
- Mr. Verdery stated that he does not know exactly how often that occurs. Mr. Verdery further clarified that in the case where a TMC member is actually buying the ticket, the member should be required to provide the refund, but only after the member in turn received reimbursement from the carrier.
- Ms. Workie noted that under the proposal, regardless of whether the ticket agent has received the money from the airline, the entity whose name appears on the consumer's financial statement would be required to provide the refund within 7 or 20 days, depending on the form of payment.
- Mr. Verdery stated TMC plans to provide more comments on the rulemaking.

John K. Hawks with the Destination Wedding & Honeymoon Specialists Association provided his comments for the Committee's consideration. Mr. Hawks stated that his organization represents more than 800 U.S. business owners who sell romance travel, destination weddings, and vow renewal trips, and almost all of those trips involve domestic or international air travel. Mr. Hawks stated that his organization is concerned that the NPRM may be unwittingly ending a decade of policy regarding who is responsible and liable for remitting refunds when things go wrong with airline tickets. Mr. Hawks noted that about two years ago, the DOT made a statement that indicated that airlines have the long-standing obligation to provide a refund to ticketed passengers when the airlines cancel or significantly change their flights; and that ticket agents are only required to make those refunds if they possess the passenger's funds. Mr. Hawks stated that



the key criteria should be who possesses the passenger's funds and not necessarily which entity is on the bank statement. Mr. Hawks noted that his organization would like to suggest language in the rule specifically exempting the ticket agents from being on the hook for the refunds if they never touched the money. Mr. Hawks explained that most airline tickets sold in the U.S. for leisure travel are typically not processed through the travel agents' bank accounts. Instead, they're processed through the merchant accounts that the airlines own and control. Mr. Hawks stated that ticket agents never touch the money, and the ticket agent's name typically does not appear on the consumer's financial statements. Mr. Hawks noted that his organization members would work with the DOT on setting up an information refunds webpage for their customers to educate consumers about the proper procedures to request a refund from the airlines.

- Ms. Workie stated that it is her understanding that the consumer's financial statement would have the airline's name most of the time, and under the proposal, it would be the airline's responsibility to provide the refund within specified periods in those circumstances. Ms. Workie asked Mr. Hawks to comment on in situations where the ticket agent's name appears on the consumer's financial statement, why it should fall on the consumer to figure out who has the money and whether the ticket agent received it. Ms. Workie further inquired that, if it was the ticket agent who sold the ticket and the ticket agent's name appears on the consumer's financial statement, why it should not be the financial responsibility of the ticket agent to figure out how to work with the airline when it has a business relationship with that airline.
- Mr. Hawks confirmed that it is infrequent that the travel agent's name would appear on the consumer's financial statements and that 99% of the time, it would be the airline's name.
- Mr. Rodriguez asked whether when charging service fees, ticket agents specify what services are provided for those fees.
- Mr. Hawks responded that his organization trains ticket agents to disclose to consumers, whether in paper form or on their websites, what services are provided under the fees that are charged.
- Mr. Rodriguez asked for a confirmation that the service fee currently charged would not cover the service of speaking to the airline to request a refund on behalf of the consumer.
- Mr. Hawks indicated that if the Department moves toward requiring the airline to take more responsibility for prompt refunds, then adding that disclosure would be the next change that ticket agents would make.
- Mr. Breyault asked Mr. Hawks to explain when a ticket agent sold a travel package to a consumer, and subsequently an airline cancels or makes a significant change to the flight, how the consumer is notified of the change and being led back to ask ticket agents for a refund. In that regard, Mr. Breyault stated that he understands that consumer's inclination is to ask for the money back from the entity they paid money to.

- Mr. Hawks stated that his organization would provide further comments on the NPRM and stated that if the travel agent's name appears on the consumer's bank or card statement, then it's common sense for that consumer to come back to the ticket agent first. However, Mr. Hawks emphasized that in 99.9% of cases of leisure travel, the card statement will indicate the airline's name as the merchant account. Mr. Hawks asked the DOT to consider including a provision protecting the ticket agent by stating that the ticket agent should not have to pay out the refund until the carrier has transferred the funds to the ticket agent.
- Mr. Breyault asked Mr. Hawks whether, in his experience, it may take more than 7 days to get the funds from the airline in situations where there is a refund request.
- Mr. Hawks confirmed that it might take more than 7 days to get the funds from the airlines. Mr. Hawks further suggested that the DOT require the airlines to interact with travel agents within a certain timeframe so that, in turn, the travel agents would be able to provide a prompt refund within the DOT's proposed timeframe.

Ms. Vercelli asked whether the DOT considered the practice of other regulating agencies regarding refunds. She specifically asked whether the DOT looked over the FTC policies and regulations when the NPRM was drafted.

- Ms. Workie stated that in general, DOT does look at FTC's regulations, but she does not recall whether, in this case, an informal copy of the NPRM was provided to the FTC. Ms. Workie noted that the FTC reviewed the NPRM when it was submitted to the Office of Management and Budget (OMB). Ms. Workie added that when rulemakings are sent to the OMB, it is coordinated with other federal agencies.

Mr. Zane Kerby, the President and CEO of the American Society of Travel Advisers (ASTA) provided his comments, on behalf of ASTA's 17,000 member companies, for the Committee's consideration. Mr. Kerby stated that the DOT's proposal to require travel agencies to provide consumer refunds when an airline changes a flight is the real sticking point for his organization because it puts the burden on the travel agencies to provide refunds when they are no longer in possession of the funds. Mr. Kerby pointed out that the travel agencies are not in the practice of withholding customer refunds, and according to the DOT's website, no enforcement has been taken against a travel agent since 2003. Mr. Kerby further stated that the prospect of being on the hook for refunds, regardless of whether the travel agency has access to funds, can disrupt the airline distribution system in unknowable and unpleasant ways as many agents may select to no longer sell tickets, depriving consumers of available options. Mr. Kerby noted that ASTA members were responsible for selling over 640,000 airline tickets per day in July 2022 alone.

Mr. Kerby further noted that from the DOT's presentation, it appears that the DOT intends to require small businesses pay out of pocket when the refunds are delayed or unobtainable from the airlines holding the fund. Mr. Kerby stated that ASTA is reviewing the entire NPRM and will be filing comments and for now, ASTA is urging the DOT to clarify that the holder of the funds shall be responsible for the refunds. Mr. Kerby further noted that the money transmitted either directly from the consumer's credit card or, in very rare instances, from the agency to the airline



is made within a matter of minutes or 7 days. Mr. Kerby explained that because the money withheld for any transaction automatically goes to the airline within a short time period, requiring a small business travel agency to front the consumer the refund before receiving it from the airline produces an asymmetry of power between the third-party distribution channel and the airlines themselves.

- Mr. Breyault asked Mr. Kerby whether, in the of ASTA members' experience, when a consumer asks for a refund due to a canceled or significantly delayed flight, travel agents can obtain the funds to provide that refund within 7 day or less.
- Mr. Kerby stated that ASTA's members have described to him in advance of his testimony is that there is a wide variety of policies and practices among airlines regarding submitting refunds.
- Ms. Workie noted that the DOT received many complaints from the consumers about being bounced back and forth between travel agents and airlines and how difficult it is for them to obtain a refund.
- Mr. Breyault encouraged ASTA to provide their comments on the NPRM and include information and examples about how long it takes to obtain a refund from airlines when ticket agents submit a refund request on behalf of the consumers.
- Mr. Kerby stated that ASTA would get the necessary information from its members and file the comments on the NPRM with the DOT. Mr. Kerby further reiterated that if travel agencies do not have the funds, it will put an enormous financial burden on them as small businesses to require them to come up with funds they don't have anymore. Mr. Kerby further reiterated his view that not the agent of record but the party possessing the funds should be responsible for the refund within a specific timeframe.
- Ms. Workie asked Mr. Kerby how a consumer would know who has the funds.
- Mr. Kerby stated that if the purchase is made with a credit card, the consumer can see where the money went on the statement. Mr. Kerby further said that ASTA would address this issue in its comments to explain ASTA's perspective on why the rule language needs to be tightened up around who has the funds and when and how the funds should be remitted back to the consumers.

Mr. Breyault asked Ms. Workie whether, when drafting the NPRM to require refunds be provided within the 7-day/20-day timeframes, the DOT considered the situations where the consumer purchased the ticket through a travel agent, taking into account that the travel agent has to request a refund on behalf of the consumer within these timeframes.

- Ms. Workie stated that there was much discussion within the DOT on the best way to ensure that consumers get their money quickly. Ms. Workie stated that the 7-day timeframe comes from another regulation called Regulation Z, which is quite common

and is not unique to airline ticket refunds. Ms. Workie again encouraged the ticket agents to comment on this issue.

- Mr. Breyault stated he would be wary about rules requiring the DOT inserting itself into figuring out whether the money lies with an agent, whether it lies with a holding entity such as the Airline Reporting Corporation (ARC), or whether it lies with the airline.

Ms. Andrea Allen provided her comments for the Committee's consideration. Ms. Allen stated that on August 2, 2022, she and her children reported timely for a flight to Seattle, connecting in Chicago for the purpose of catching a cruise leaving Seattle to Alaska and Canada. Ms. Allen stated that due to staff shortage, no pilot reported for duty and her family missed their connecting flight in Chicago and their cruise vacation. Ms. Allen further stated that travel insurance does not cover instances where a vacation is canceled due to a flight delay of less than 3 hours. She said that she lost nearly \$7,000 for the flight and the cruise vacation. Ms. Allen stated that American Airlines did not offer her any reimbursement despite being a loyal Advantage member and credit card holder. Ms. Allen described that the American Airlines gate agent advised her that she should have flown a day earlier. Ms. Allen further stated that American Airlines should provide the service the consumers paid for or fully refund them for their tickets. Ms. Allen further stated that to date, she still did not know where her luggage was, and American Airlines was not helpful with locating it.

- Ms. Workie advised Ms. Allen that this was a public meeting and cautioned her about referencing any personal information in her comment.
- Ms. Workie further stated it is better to discuss offline what the airline may owe Ms. Allen rather than in a public meeting. She advised Ms. Allen that OACP staff would reach out to her and work with the airline to locate her luggage or get reimbursed for lost luggage. Ms. Workie further stated that outside of this rulemaking, the DOT is looking into additional protections for passengers when delays and cancellations were caused by the airline. Ms. Workie also advised Ms. Allen about the complaint form on the DOT's website, which would allow her to file a complaint with the OACP.
- Mr. Breyault inquired about how Ms. Allen obtained the travel insurance, whether that was something that Ms. Allen sought on her own after she booked her transportation, or whether this was something offered to her during the purchase process of her flight or cruise.
- Ms. Allen stated that she has the American Airlines advantage credit card, and the insurance is provided automatically for credit card holders.

Ms. Jasmine Young provided her comments for the Committee's consideration. Ms. Young stated that she had a significant delay on a connecting flight while traveling with three children. Ms. Young stated that she could not change her flight because that would have required her to leave the sterile area and go to the ticketing counter, and she could not do that while having three children with her. Ms. Young further stated that she agrees with Mr. Hudson that the DOT should lower the amount of time that would be considered a significant delay, because for many parents traveling with their children it is very inconvenient to be stuck in the airport for many

hours at a time. Ms. Young further stated that airlines should better explain the terms of use for the vouchers. Ms. Young explained that she was compensated for the delay with a voucher, and she was unaware that she would not be able to use the entire voucher when booking her next trip. Ms. Young stated that she was allowed to use only 30% of the value of the voucher on her new booking and this restriction was not explained to her when the voucher was issued. Ms. Young also stated that she works at a bank, and the issue of the refunds within 7 days has a lot to do with the merchant. Ms. Young stated that for travel agents, 7 days may not be enough as the refund must go through the merchant first.

- Ms. Workie stated that the proposal does not focus on the delay of connecting flights. Instead, it focuses on the delay of the departure and the delay at the destination. Ms. Workie further stated that regarding vouchers, under the DOT's proposal, the airlines would be required to provide a non-expiring voucher or credit when the consumer cannot travel or is advised not to travel under certain circumstances.

Mr. Breyault inquired about the DOT's justification for proposing 3 and 6 hours in the definition of a significant delay, as opposed to 2 and 4 hours, as Mr. Hudson and Ms. Young suggested. Mr. Breyault pointed out that 2 and 4 hours are shorter windows for the definition of significant delay and are more in line with European rules.

- Ms. Workie responded by stating that the DOT looked at various airlines' customer service commitments and how airlines currently define significant change. Ms. Workie stated that the DOT also considered at what point the delay may be particularly significant for the consumer and the 3-hour tarmac delay rule. Ms. Workie further noted that the proposed 3- and 6-hours thresholds are supposed to be a baseline.
- Mr. Breyault asked whether the Department has considered the distinction between domestic and international flights versus the length of flights as a distinction.
- Ms. Workie stated that the DOT is considering in the rulemaking whether it is beneficial for consumers to have a bright line rule (such as drawing distinction between domestic and international flights) or whether "significant delay" should be determined based on, for example, flight destination. Ms. Workie acknowledged that the proposed standard based on domestic and international flights does not consider the distinction between close-range (*e.g.*, Canada and Mexico) and long-haul international flights (*e.g.*, Europe). Ms. Workie pointed out that the NPRM asks questions about alternative ways to define "significant delays" and included a chart illustrating one alternative way based on flight duration.

Ms. Nancy Newlin asked whether the provisions of the NPRM, if adopted in a final rule, will be retroactive.

- Ms. Workie replied that the DOT does not have the authority to apply the rule retroactively and that the rulemaking is forward-looking. She further explained that the NPRM did propose that the rule take effect 90 days after a final rule is adopted.
- Ms. Newlin asked whether the DOT's proposal would require that when one airline cancels a flight, it books the affected consumer on a comparable flight by another airline, provided that the consumer agrees to the arrangement. Ms. Workie stated that this

rulemaking does not address the specific scenario Ms. Newlin provided. She further commented that under a different rule of the Department, airlines are required to have customer service commitments, which include providing information on how airlines would mitigate considerable harm and inconvenience to the consumers when there are flight disruptions. Ms. Workie stated that the DOT generally encourages airlines to do all they can to accommodate consumers, and noted that separate from this rulemaking, the DOT is planning to have a comparison dashboard available on its website before Labor Day on the different types of amenities that airlines provide consumers when there are flight disruptions.

- Mr. Breyault noted that even though the DOT has not yet codified the proposed refund rules, the DOT is still operating under the existing regulations, which may apply to unresolved issues regarding refunds or credits. Mr. Breyault followed up by asking for confirmation that the Department has ongoing investigations of airlines based on the current rule.
- Ms. Workie clarified that airlines today, outside of the proposed rule, have an obligation to provide refunds for significant changes and cancellations. Ms. Workie further explained that outside of rulemaking, the DOT's authority today is based on a statutory authority prohibiting unfair practices, and that as a long-standing position for decades, the DOT interprets that statutory provision to say it is unfair not to provide a refund to a consumer after an airline cancels a flight or significantly changes the flight. Ms. Workie further stated that if a consumer was not provided a refund in situations where the airline canceled the flight or if there was a significant change, the consumer should reach out to the OACP. Ms. Workie reminded the audience that there is a complaint form online that consumers can use to file a complaint with the DOT.

Mr. Breyault asked Ms. Workie to confirm whether the DOT has active investigations against ten carriers and whether the DOT is looking into ten more carriers.

- Ms. Workie confirmed that ten of the DOT's investigations have concluded, for which DOT has decided to pursue enforcement action. Ms. Workie stated that in addition to these ten cases, there are additional carriers that are under investigation. However, Ms. Workie noted that the fact that a carrier is under investigation does not mean that there is a violation, as the DOT did not make any conclusion on the ongoing investigations.

Ms. Meredith Mauer provided comments for the Committee's considerations. Ms. Mauer stated that she is an independent, home-based travel agent with Magic Moments Vacations. Ms. Mauer said that her business is not a ticketing agency as it makes all bookings through suppliers. Ms. Mauer stated that occasionally, her business would book an air-only reservation for a customer and in those situations, it would charge a booking fee because it is non-commissionable otherwise. Ms. Mauer stated that her concern is that as "the little guy" in the supply chain booking air-inclusive packages, her business is going to become liable for something it really has no control over.

- Ms. Workie asked whether Ms. Mauer's company name appears on the customer's bank statement or financial statement.

- Ms. Mauer stated that the company name generally does not appear on the statements. Ms. Mauer explained that the name might appear if the company charges the planning fee, which is separate from the fare charge.

Mr. Breyault asked whether the DOT thought of other places, besides the financial statement, where the consumer could look to find the party responsible for their refund (*e.g.*, email confirmation)

- Ms. Workie stated that the proposal talks about the party that sold the ticket, as reflected on the financial statement where consumers can look to see who sold them the ticket. Ms. Workie explained that the proposal would consider that the airline sold the ticket to the consumer instead of the ticket agent if the bank statement has the airline's name.
- Mr. Breyault stated that Ms. Mauer's comment reminded him of a concern he has, which is about designating the financial statement as the primary document that the consumers can check to figure out who sold the ticket to them. Mr. Breyault elaborated that when consumers purchase travel packages from ticket agents, they are usually provided with email confirmation with contact information. Mr. Breyault stated that naturally when seeking a refund, the email confirmation would be the first place consumers turn to, not the financial statement. Mr. Breyault asked whether the Department has considered other places for consumers to look in order to determine which entity sold them the tickets.
- Ms. Workie stated that the DOT took the same approach concerning mistaken fares. When there is an issue of mistaken fare, the DOT asks consumer to look at their credit card statements to see who sold them the fare. Ms. Workie asked Mr. Breyault the reason that it would be difficult for the consumer to look at the credit card statements.
- Mr. Breyault stated that consumers would have a long list of entities that have charged their credit cards, and it may be difficult to locate a specific charge. Mr. Breyault stated that it would be easier to look at the email receipt than the credit card statement.
- Ms. Workie encouraged Mr. Breyault to provide further comment on this issue and pointed out that if the responsibility to provide a refund was based on the email confirmation, then more ticket agents could be considered as having sold the ticket. Mr. Workie encouraged the audience to comment on the issue and provide a solution to get the consumers out of the middle.

Mr. Bill McGee with the American Economic Liberties provided his comments for the Committee's consideration. Mr. McGee stated that his organization supports mandatory interline agreements and urges the DOT to investigate this issue further. Mr. McGee further noted that his organization supports what ASTA, and other agencies have been commenting about the third-party issue from fairness and a consumer perspective. Mr. McGee stated that having smaller travel agencies (mom-and-pop agencies) in the middle or on the hook for refund payments that they have not received from the airlines could be detrimental to consumers. Mr. McGee pointed out that having travel agencies in the middle may lead to bankruptcy and force many travel

agencies to stop booking airline tickets altogether. Mr. McGee further stated that airlines often proactively offer a credit to the consumer when they cancel a flight. However, many consumers are unaware of the DOT's rules and do not know that they can go back to the airlines and request a refund. Mr. McGee stated that the DOT has to address this issue.

- Ms. Workie stated that under the proposal, the DOT explicitly requires airlines to provide information to the consumers and to let them know that they are entitled to refunds before they offer information about flight credits and vouchers. Ms. Workie acknowledged that some consumers might not know the OACP exists or may not know their rights. Ms. Workie further welcomed the audience to provide ideas on how to make consumers more aware of their rights and how to make them more mindful of the existence of OACP. Ms. Workie noted that the level of complaints that the DOT continues to receive is at least some evidence that consumers do have increased awareness of OACP and its functions. Ms. Workie then thanked the attendees and the speakers and announced the lunch break.

The meeting adjourned for lunch.

## **[LUNCH BREAK]**

## **II. Travel Credits/Vouchers for Consumers Affected by a Serious Communicable Disease**

### **2.1 DOT Presentation**

*Presentation by Clereece Kroha, Senior Attorney, DOT, Office of Aviation Consumer Protection (OACP)*

When the meeting resumes after lunch break, Ms. Kroha presented the second subject addressed by the NPRM, which is Travel Credits/Vouchers for Consumers Affected by a Serious Communicable Disease. Ms. Kroha described the existing regulation on this subject, stating that DOT regulations do not require airlines to provide credits or vouchers, or refunds to consumers holding non-refundable tickets when the flights are operated as scheduled, but the consumers choose not to travel, although many airlines do provide credits on a case-by-case basis. Ms. Kroha stated that the NPRM would mandate that three categories of consumers receive non-expiring travel credits or vouchers when a serious communicable disease impacts their travel.

Ms. Kroha explained the summary chart on the three categories included in her presentation as follows:

- a. The first category of consumers includes those who are restricted or prohibited from traveling by a government-issued order (*e.g.*, a border closure order that would prohibit non-citizens or non-residents from entry) in relation to a serious communicable disease, regardless of whether there's a declaration of a public health emergency. In addition to the consumers who are physically or logistically prohibited from traveling, this proposal would also protect consumers subject to certain restrictions that would render their travel meaningless.

An example of this situation mentioned in the NPRM is a consumer who booked a 7-day vacation. The consumer would have no reason to travel if the government of that destination requires 7-day quarantine for arriving visitors. Under the proposal, consumers are expected to



exercise due diligence to comply with certain travel restrictions so they can travel as planned (e.g., providing negative test results as a condition to travel). As evidentiary proof, airlines and ticket agents may require consumers to provide the relevant government order and demonstrate how it affects their travel.

b. The second category of consumers includes those with specific health concerns that make them more vulnerable to a serious communicable disease. The protection proposed in the NPRM to this category of consumers would only apply when there is a public health emergency. As a condition for receiving credits or vouchers, airlines and ticket agents may require a statement from the consumer's health care provider stating that because of the consumer's health condition, they are advised not to travel by air during a public health emergency. Similarly, applicable public health guidance issued by these various agencies could be required as proof. The NPRM mentioned that a general "fear" of traveling during a public health emergency would not be sufficient. Outside of the proposal, the NPRM asks specific questions about whether the proposed protection should be expanded broadly to cover more than consumers who have a health condition themselves. For example, the NPRM asks whether a traveler who does not have a health condition but is the primary caregiver of someone with a health condition should be covered. The NPRM also asks whether a minor should be covered if the minor is scheduled to travel with a parent and the parent has a health condition and would like to postpone travel.

c. The third category of consumers protected by this proposal are consumers who have or are likely to have contracted a serious communicable disease. The DOT believes this proposal serves the public interest because it incentivizes these consumers to postpone travel while they are contagious to avoid putting others at risk of catching the disease. This proposal would apply regardless of whether there is a public health emergency, but the DOT expects that outside of a public health emergency, this type of incident would be very isolated. Airlines and ticket agents would be allowed to require proof from consumers in the form of a medical diagnosis and/or applicable guidance from the CDC, WHO, or comparable agencies of another country.

Next, Ms. Kroha highlighted a few definitions proposed in the NPRM in relation to this subject. She stated that the proposed definition for "serious communicable disease" contains three components – it has to be a "communicable disease" as defined in CDC regulation; it has to be easily transmitted by casual contact in the aircraft cabin environment, and it has to have serious health consequences. She then provided examples of the common cold (easily transmissible but usually with no serious health consequences), AIDS (not easily transmissible but with serious health consequences), and COVID-19 in its current form (both easily transmissible and with serious health consequences).

Ms. Kroha then discussed the proposed definition of "public health emergency." She stated that the term is also defined in CDC regulation (with a reference to the CDC regulation's citation). She emphasized the definition's public declaration element, stating that the DOT's intention in proposing this definition is to ensure public awareness when a public health emergency occurs.

Ms. Kroha continued to introduce the requirements the NPRM proposes to impose on the travel credits or vouchers. Ms. Kroha stated that the NPRM proposes to require that the credit or

voucher would not have an expiration date. With respect to the value of the credit or voucher, she stated that the proposal would require that it must be equal to or greater than the original fare, including all the airline-imposed fees and government-imposed taxes and fees, and all the fees paid for ancillary services that were not used, such as prepaid baggage fees. She further described that under very limited circumstances, airlines and ticket agents would be permitted to retain a service fee for issuing the credits or vouchers, but this fee must be on a per-passenger basis, and the amount and existence of the fee must be clearly and prominently disclosed to consumers before they purchase their tickets. Ms. Kroha further provided examples of questions the DOT asks in the NPRM regarding the credits or vouchers, including the question on whether the rule should require that the credit or voucher be transferrable and the question on whether it is necessary to require that the credits or vouchers be non-expiring if the rule requires that they be transferrable.

On the proposal of issuing travel credits or vouchers, the last issue discussed in the DOT presentation was regarding the redemption of the credits or vouchers. Ms. Kroha highlighted that the NPRM proposes prohibiting airlines and ticket agents from imposing unreasonable conditions, restrictions, and limitations on the credits and vouchers. Ms. Kroha noted that under the proposal, airlines and ticket agents may not require that the entire value of the credit or voucher be redeemed in one booking. According to the example she provided, under the proposal, if an eligible consumer received a \$500 credit and then booked a new ticket costing \$350, the consumer should be able to apply the remaining \$150 for another booking. Another example of an unreasonable condition provided by Ms. Kroha is to require that the value of credit or voucher can only apply to the base fare of a new booking, meaning consumers would have to pay out of their pockets for the taxes and fees portion of the new ticket. In addition, Ms. Kroha stated that under the NPRM, although carriers and ticket agents may impose advance purchase requirements, capacity restrictions, or blackout dates, any restriction that "severely limits" the booking date, time, or route may be considered unreasonable. Finally, Ms. Kroha stated that because the NPRM does not propose to prohibit all restrictions, permissible restrictions that are not deemed unreasonable must be clearly disclosed to consumers.

## **2.2 Committee Members Questions and Comments**

Following the DOT presentation, ACPAC members provided comments and asked questions, to which Ms. Workie and Ms. Kroha answered.

Mr. Breyault asked whether the DOT has considered defining "medical professional" and "licensed medical professional," as both terms are mentioned in the NPRM. Mr. Breyault further expressed his concern that without definitions, the terms could include a wide variety of healthcare professionals and others, including online businesses that profit from selling the proposed written statements to consumers.

- Ms. Workie acknowledged that the NPRM does not propose to define these terms and that the DOT could benefit from hearing from the public and the stakeholders on this issue. Ms. Workie mentioned that the DOT had dealt with a similar issue in the context of service animals and emphasized that the DOT is focusing on minimizing the burden for



the consumers and also preventing fraud and abuse. Ms. Workie asked the public and stakeholders to consider whether the term "licensed medical professionals" should only include medical doctors; or whether it should also include nurse practitioners or others. Ms. Workie asked if there are other healthcare professionals that could provide this kind of information; and whether consumers should be required to see a medical professional in person, or would virtual visits be acceptable.

- Ms. Vercelli expressed similar concerns regarding this issue, stating that potentially dentists or dermatologists would be qualified to issue the written statements.
- Ms. Workie responded by reiterating the importance of receiving public input to balance the burdens and costs to consumers in receiving certain documents and fraud prevention.

Ms. Vercelli asked for clarification on "comparable agencies" of foreign countries that are qualified to issue guidance documents based on which consumers may become eligible for the protections proposed in the NPRM. Ms. Vercelli further asked whether state and local governments would be included in this term.

- Ms. Workie stated that two areas of government-issued guidance are relevant in the NPRM. One is the situation in which the guidance advises consumers that if they have a serious communicable disease, they will impose a direct threat to others. The other is when the guidance advises consumers that they may be at heightened risk because of their health condition when there is an outbreak. Ms. Workie clarified that the NPRM intends to refer to governments comparable to CDC in other countries because the proposed requirements would apply to more than just U.S. carriers. Ms. Workie pointed out that similar language with respect to "CDC, comparable agencies in other countries, and WHO" already exists in the DOT's disability regulation.
- Ms. Kroha added that in another area with respect to protecting consumers who are restricted or prohibited from travel by a government order or restriction, the proposed rule text specifically states "a U.S. (Federal, State or local) or foreign government" so in that area, state and local governments are included.

Mr. Breyault asked about the definition of "serious communicable disease" proposed in the NPRM. Mr. Breyault stated that the proposed definition requires that a "serious communicable disease" must have a "serious health consequence." Mr. Breyault asked whether DOT would rely on another CDC regulation to determine whether a communicable disease carries a "serious health consequence" or whether it would be subjective to the consumer who is seeking to take advantage of the proposed protection.

- Ms. Workie responded that the NPRM provides examples of the common cold (easily transmissible but not considered to be serious health consequence), AIDS (not easily transmissible but with serious health consequences), and COVID-19/H1N1 (easily transmissible and with serious health consequence). In addition, Ms. Workie stated that there are diseases not mentioned in the preamble and rule text that could fit under this definition because they are easily transmissible and carry serious health consequences,

such as measles.

- Mr. Breyault followed up by stating that the test of whether a disease carries a serious health consequence is fairly subjective because, for example, a common cold would be an annoyance for most people but for a person with a compromised immune system, a cold could bring a serious health consequence.
- Ms. Workie stated that the NPRM did provide bright lines by stating in the preamble that a cold is not a serious communicable disease, while COVID-19 and H1N1 are. Ms. Workie stated that these bright lines are not new to the DOT's regulations as the same tests and examples have existed in the disability regulation for decades.

Ms. Vercelli asked how DOT would account for changes and progressions of a disease (*e.g.*, the development of vaccines, immunity, treatments, etc.) that was initially defined as a serious communicable disease.

- Ms. Workie stated that some commenters may prefer that the regulation provides a list of serious communicable diseases, perhaps a non-exclusive list that "includes but is not limited to..." Ms. Workie further stated that Ms. Vercelli makes an excellent point, and that it is the DOT's concern as well, that a serious communicable disease today may not be a serious communicable disease five years from now. Ms. Workie stated that DOT is not a health expert, and the DOT would rely on CDC and WHO. Ms. Workie stated that an option is to put in the regulation a provision, similar to the disability regulation, that states in determining whether a disease is a serious communicable disease, the DOT would look at guidance provided by CDC and WHO. Ms. Workies concluded by inviting public comments on this issue.

Mr. Rodriguez asked whether the DOT has considered how to deal with potential conflicts between a domestic and an international health organization regarding different levels and types of guidance.

- Mr. Breyault stated that he had a similar question regarding potential conflicts between CDC and WHO guidance.
- Ms. Workie noted that the DOT focuses on the impact on consumers, and the situations under which a passenger is entitled to a refund or voucher are the situations for which consumers have no control. With respect to potential conflicts between CDC and WHO guidance, Ms. Workie stated that her understanding is that CDC and WHO do try to coordinate, and because the DOT is not a health expert, the proposal is drafted to seek guidance issued by "CDC, comparable agency..., and WHO." Ms. Workies stated that the NPRM does not contemplate conflicts among health authorities, and commenters who believe there may be conflicts should file comments.

Mr. Breyault commented that if the proposed rule was finalized, he was trying to envision how the protections work. He used an example of his own family's experience to illustrate his point. He stated that currently, the CDC recommendation is that if a person is tested positive for

COVID-19, the person should not travel for ten days from the date of being tested positive. He further stated that his family tested positive for COVID-19 on the planned travel day. He asked whether the proposed rule would allow them to call the airline and receive a credit.

- Ms. Workie stated that she was making a few assumptions in answering this question. For example, one assumption by Ms. Workie was that at the time the consumer had tested positive for COVID-19, it was considered a "serious communicable disease" under the proposed definition (*i.e.*, easily transmissible and with a serious health consequence). Ms. Workie noted an analysis on whether a person who was positive for COVID-19 would be a direct threat on others on the flight would be needed. Ms. Workie stated that the consumer should be looking at the CDC guidance on what someone with COVID-19 should not be doing. According to Ms. Workie, the next step would be to look at what medical documentation airlines may require. Ms. Workie provided examples of questions that the DOT would like to hear comments on, including whether it is sufficient for the letter from a medical professional to simply state that the person has tested positive for COVID-19; how to provide medical documentation if the person used a home-testing kit; and whether the rule should allow airlines to condition the issuance of travel credit on a test result from professionals (as opposed to home-testing).
- Mr. Breyault commented that his question was whether it is sufficient for him to take a photo of his home-testing result on the day of travel and e-mail it to the airline or whether he would have to get another test from a professional to receive a travel credit.
- Ms. Workie stated that the proposed rule text allows airlines to require health authorities' guidance "and/or" a written statement from a medical professional. Ms. Workie recommended that commenters consider whether it should be both or whether one would be sufficient. Ms. Workie further stated that commenters should keep in mind that the rule is intended to cover all types of serious communicable diseases, not just COVID-19.

Ms. Vercelli stated that she noticed the NPRM uses "seriously communicable disease" and "serious contagious disease" and asked whether these terms are interchangeable.

- Ms. Workie responded by stating that DOT tries to be consistent with the term "serious communicable disease" because it is based on a defined term by HHS. She stated that the intention is not to use two different terms.

Ms. Vercelli raised concerns about airlines' collection of medical information and the implication of privacy laws. Ms. Vercelli provided examples of privacy laws, such as HIPPA in the United States and GDPR in the European Union. Ms. Vercelli further voiced her concerns about how broad this proposal could be and the potential for fraud. According to Ms. Vercelli, airlines would be required to evaluate third-party medical information and determine, on a case-by-case basis, whether a passenger imposes a direct threat. Ms. Vercelli commented that, similar to emotional support animals, airlines would have to deal with certificates consumers obtained from a variety of medical professionals, domestic and foreign, including online sources. Ms. Vercelli asked whether airlines or DOT would make a determination on who is a qualified medical professional and how DOT envisions this would play out.

- Ms. Workie stated that she would like to use the disability regulation as an example because airlines are familiar with it. Ms. Workie stated that, under the DOT disability regulation, airlines require medical statements from consumers for specific purposes, such as for using portable oxygen concentrators onboard. Ms. Workie noted that, while magnitude of the information collected under the proposal may be different, airlines are already collecting medical information under the Department's current disability regulation and complying with privacy laws
- Ms. Vercelli commented that the magnitude is the key because the proposal could potentially affect half of the passengers on a flight; either the passengers themselves or one person in a family of four could fit into the category. Ms. Vercelli opined that handling the task and dealing with potential fraud could be unmanageable because of the magnitude.
- Mr. Workie stated that NPRM, as written, only proposes to protect consumers directly affected by a serious communicable disease. However, Ms. Workie pointed out that the NPRM does ask questions about whether the protection should extend to a child whose parent fits under the category, and as a result, the child cannot travel alone. Ms. Workie explained that the NPRM asks these questions because the DOT is contemplating these further protections.
- Ms. Vercelli pointed out that unlike the disability regulation, which provides a means for passengers to travel, the proposal here is to provide passengers an incentive to not travel. Ms. Vercelli cautioned that the rule should not provide opportunities for widespread fraud to the detriment of consumers who need the protection.
- Ms. Workie acknowledged that unfortunately there may be a few unscrupulous consumers who want to take advantage of getting non-expiring credits, and the DOT's goal is to balance fraud prevention and avoiding putting unnecessary burdens on consumers who have a public health concern and are advised not to travel or could impose a direct threat on others.

## **2.3 Public Participants Questions and Comments**

Next, Ms. Workie invited comments from the public attendees.

Mr. Andrew Applebaum from Flyers Rights provided his comments for the Committee's consideration. Mr. Applebaum stated that his organization is encouraged by the proposed rule and the DOT's attempt to reference fairness when passengers are doing the right thing by choosing not to travel because it would be unsafe for themselves or others. Mr. Applebaum further commented that the rule should, at a minimum, require non-expiring credits to consumers when their travel is frustrated by government restrictions and require refunds when it is out of consumers' control. Mr. Applebaum asserted that the airline industry is very familiar with the situations that impact travel and make travel impossible, illegal, economically impractical, or

inconvenient, and has inserted lengthy contractual clauses to excuse airlines' performance. Mr. Applebaum provided examples of some airlines' contractual clauses, opining that these clauses build a lot of discretion for airlines and are very one-sided. Mr. Applebaum stated that during the height of the COVID-19 pandemic, airlines received bailout funds but refused to provide refunds or excessively delayed providing refunds to passengers whose flights were canceled. Mr. Applebaum stated that the rule should apply to all government restrictions related to communicable diseases, not only during a public health emergency.

Regarding the credits or vouchers, Mr. Applebaum stated that whether credits should be transferrable - should be a separate question from passengers' rights to refunds or non-expiring credits and should not be considered as an alternative (to non-expiring). Mr. Applebaum stated that the credits or vouchers should not have blackout dates and should be transferrable to others. Mr. Applebaum opined that the vast majority of consumers would prefer a general travel credit instead of a credit for the identical itinerary of the original ticket because the former provides more flexibility. Mr. Applebaum concluded his comment by stating that any fee for issuing travel credit or voucher must be reasonable and not frustrate the purpose of the rule and must be disclosed before the ticket purchase.

- Ms. Workie stated that a number of Mr. Applebaum's comments are addressed in the NPRM. Regarding Mr. Applebaum's comments on government restrictions frustrating the purpose of travel, Ms. Workie stated that the NPRM discusses government restrictions that essentially make the purpose of travel moot (the example was also provided in the DOT presentation). On transferability of travel credits, Ms. Workie commented that the NPRM does not propose to require transferability for the travel credit or voucher but does solicit comments on that. Finally, with respect to Mr. Applebaum's comment that the proposals should apply regardless of whether there is a declaration of a public health emergency. Ms. Workie pointed out that the DOT presentation includes a chart describing three different categories of passengers that are protected, and the chart may be helpful to understand better what protection applies regardless of a public health emergency. Ms. Workie stated that according to the chart, if a consumer has a communicable disease or believes that he or she has a communicable disease, irrespective of whether there is a public health emergency, the proposal will require airlines to provide non-expiring credit or voucher.

Mr. Breyault asked whether the DOT has considered the application of state escheat laws on the proposed non-expiring travel credits or vouchers. According to Mr. Breyault, these laws vary from state to state, and he is aware that some state laws have been applied to airline-issued e-gift cards. Mr. Breyault asked if the state laws apply and whether the DOT has considered requiring notifications to consumers when the credits or vouchers have not been used after a certain period of time.

- Ms. Workie stated that the DOT has not considered this and is willing to hear from states and other interested parties.

Ms. Kimberly Ellis spoke on behalf of Travel Management Coalition (TMC). Ms. Ellis stated that TMC makes up the 6 largest travel management companies in the United States, which books an average of 58% of travel for airline consumers annually. Regarding question about evidentiary documents, Ms. Ellis stated that it should be up to the airlines, not ticket agents, to decide what evidentiary documentation to require and whether the documents meet the DOT guidelines when issuing travel credits or vouchers. Ms. Ellis further stated that the airlines, not ticket agents, should decide whether a consumer meets the eligibility requirement for credits or vouchers. According to Ms. Ellis, once that determination has been made, airlines should communicate with ticket agents and consumers and transmit the credits or vouchers directly to consumers. Concerning service fees, Ms. Ellis stated that if the TMC members act as ticket brokers and help facilitate transactions between consumers and airlines, then it is reasonable to allow ticket agents to charge a service fee if the fee is disclosed to the consumer when it is billed. Ms. Ellis further stated that she has concerns about the number of parties involved in each transaction that would have access to health-related cancellations. Ms. Ellis closed her comment by stating that TMC shares the airlines' concern about the scope of the proposals, which may create uncertainty for businesses that have to deal with potential fraud.

Mr. Charlie Leocha spoke next on behalf of Travelers United. Mr. Leocha stated that he believes it is crucial to set up a "sick passenger rule." Mr. Leocha first commented that when airlines issue travel credits, such decisions should be communicated directly to consumers. Mr. Leocha stated that simply providing the issuance of travel credits in the contract of carriage is not adequate. Next, Mr. Leocha described his travel experience in which his flight to Europe was delayed for 121 minutes. He stated that because the airline at issue had the policy to provide refunds for delays over 120 minutes, he received a refund. Mr. Leocha argued that under the proposed rule, he would not be entitled to a refund. Using this example, Mr. Leocha argued that the proposed rule needs to be re-examined, so it is more of a "punishment" for airlines for changing their schedules than a "reward." Regarding financial compensation, and when talking about the comparison between the U.S. and the European Union Rules, Mr. Leocha asked whether there is any categorization in the NPRM which would make it clear to the consumer which rule applies to which flight, and whether the proposal sets a common floor between the different airlines. Next, Mr. Leocha stated that it is important to have consistent rules across airlines. Mr. Leocha pointed out there are ten major U.S. airlines which have different refund rules, making it difficult for consumers to know what they are receiving. Mr. Leocha closed his comments by stating that although he believes much more work to be done on the rulemaking, he views starting the discussion a positive step.

- Ms. Workie responded to Mr. Leocha's comments. Ms. Workie first clarified that the rulemaking is about serious communicable diseases and not about any passenger who is ill from other types of health reasons. Ms. Workie then addressed Mr. Leocha's example in which the airlines involved currently have a more consumer-friendly refund policy than what was proposed in the NPRM. Ms. Workie clarified that the NPRM is intended to set up a baseline under which airlines currently considering delays of more than a day or more than 6 hours to be significant would be required to change their policies. Ms.

Workie emphasized that the NPRM's proposal does not prevent airlines from providing refunds for delays that are shorter than the proposed standards. Ms. Workie also addressed Mr. Leocha's comments on EU regulations that require compensations in relation to flight delays. Ms. Workie states that this rulemaking focuses on refunds and does not address other compensations, including monetary compensations, hotels, and meals. Ms. Workies noted that although the rulemaking does not address these issues, the DOT is looking at these issues generally. Finally, Ms. Workie addressed Mr. Leocha's comment on consistency and stated that consistency would be the DOT's goal if the proposal on credits and vouchers were adopted. Ms. Workie closed her remarks by stating that these are proposals, and the DOT welcomes comments on any aspect it may have overlooked.

Mr. Paul Ruden provided his comments for the Committee's consideration. Mr. Ruden stated that he was puzzled by the DOT's approach of issuing an NPRM instead of ANPRM because there are many fundamental questions on which the DOT should collect information before proposing rules. Mr. Ruden stated that these questions are related to how airlines operate, how tickets function, and how the flow of funds occurs. In addition, Mr. Ruden noted that the consequence of such a mistake could adversely impact travel agents, airlines, and many other stakeholders.

- Ms. Workie stated that the answer to Mr. Ruden's question is quite simple, and it is because the DOT wants to make sure that consumers' rights are protected as soon as possible. Ms. Workie further added that the DOT did its due diligence before proposing the rule by talking to different entities. Ms. Workie pointed out that in the December 2021 ACPAC meeting, which focused specifically on ticket refunds, the DOT heard from stakeholders, including airlines, ticket agents, and consumer groups. Ms. Workie stated that even before December 2021, the DOT had been dealing with refund issues as a priority since 2020. Ms. Workie described that the DOT heard from consumers about the obstacles they face in receiving refunds, health concerns related to serious communicable diseases that caused them to be unable to travel, and how they suffered from financial loss because of these concerns. Ms. Workie concluded that DOT believes, through all these efforts, it had received sufficient feedback from the stakeholders to put the proposals forward. Ms. Workie added that, after ACPAC meetings and after receiving all the comments on the NPRM, it will be ready to decide on how to move forward.

Ms. Kayla Payeur provided her comments for the Committee's consideration. Ms. Payeur stated that as an American with a disability who suffered from a brain injury three and a half years ago, there is not a single airport in the United States that she has traveled to that can accommodate individuals with brain injury disability. Ms. Payeur described her challenges when traveling back home with a layover in Miami. Ms. Payeur stated that her flight from Miami, scheduled to depart at 9 p.m., was delayed multiple times before it was canceled. Ms. Payeur stated that she had to stand in line for two and a half hours to attempt to rebook. Ms. Payeur noted that she had to pay an additional \$350 to buy a ticket from another airline so she could be home in time to attend a pre-paid certification course. Ms. Payeur stated that she traveled with the new ticket from Miami

to Jacksonville at 2 a.m. and finally got home at 7 a.m. Ms. Payeur described that she has already filed a complaint with DOT and is still trying to get a refund for the ticket she did not use. Ms. Payeur concluded her comments by questioning how to hold airlines accountable to the existing rules.

Ms. Workies expressed her sympathy toward Ms. Payeur's experience and promised to look up her name in the complaint database and have a staff reach out to Ms. Payeur. Ms. Workie confirmed that some of the issues Ms. Payeur described regarding flight disruptions and their impact on consumers are things the DOT is looking into to see how it can best address. Ms. Workie further stated that there are regulations about accommodating passengers with disabilities, and she will make sure Ms. Payeur is made aware of her rights under these regulations.

Ms. Jasmine Young provided her comments for the Committee's consideration. Ms. Young described that she received a voucher from an airline, and she was not informed of the restrictions on the voucher. Ms. Young stated that when she attempted to book a ticket using the voucher, she found out that she could only use a portion of the voucher because of the destination and the amount of the new ticket. Ms. Young opined that the airlines should communicate with consumers about the specific restrictions on vouchers.

- Ms. Workie explained that under the existing DOT rule, airlines are not required to provide vouchers to consumers if the flights are operated. Ms. Workie stated that a lot of airlines do provide vouchers to consumers when they cannot travel as a courtesy. However, because providing vouchers is not required by the regulations, airlines are able today to put different kinds of restrictions on the vouchers. Ms. Workie stated that the DOT hears Ms. Young's concern and is trying to address this concern through rulemaking.

Mr. Leonard Norwich representing the Travel Company provided his comments for the Committee's consideration. Mr. Norwich stated that his company is an independent travel agency being in business for 26 years. Mr. Norwich stated that historically travel agencies used to get a 10 % commission plus a dollar amount for each airline ticket booking but nowadays, they get nothing. Mr. Norwich explained the process his agency adopts when booking airline tickets for customers, in which the agency suggests the flight according to the customer's needs, and when a booking decision is confirmed, the agency takes the customer's credit card information and charges the credit card. Mr. Norwich stated that the agency then uses its credit card to book the flight, and the airline obtains the funds instantaneously. Mr. Norwich described his concern about the proposal that if the travel agency appears on the consumer's bank statement, the agency would be responsible for the refund when the airline cancels the flight. Mr. Norwich further described another scenario that also raised concern about the proposal. Mr. Norwich stated that his agency uses intermediary entities such as Vacation Express to book air-inclusive packages for customers. He stated that his agency pays Vacation Express the package price with its company credit card, which does not break down the airfare and land portion of the



price. Mr. Norwich stated that if the proposal becomes the rule, his agency would not be able to book individual tickets for customers anymore because of the refund liability.

- Ms. Workie confirmed that Mr. Norwich's understanding of the proposal is correct. Ms. Workie stated that the NPRM also asks questions about whether the proposal is appropriate with respect to ticket agents and encouraged Mr. Norwich and others to file comments.
- Mr. Breyault stated that the NPRM proposes that airlines and ticket agents provide prompt refunds in case of a cancellation or significant delay, which means providing refunds within 7 days for credit card payments. Mr. Breyault asked Mr. Norwich to state whether his company is able to obtain the money back from either the airline or Vacation Express within 7 days and to state the typical timeframe for the return of money.
- Ms. Teresa stated that she works as the office manager for Mr. Norwich's agency. Ms. Teresa said she would typically contact the airline directly and request a cancellation. She stated that if the ticket is non-refundable, the customer will not get a refund, and in those situations, she would recommend customers purchase travel insurance.
- Mr. Breyault clarified that his question was regarding airline cancellation or significant change, not passenger-initiated cancellation or change.
- Mr. Norwich and Ms. Teresa stated that most customers would still want to go on vacations despite the changes and they would assist the customers in rebooking travel.
- In light of this response, Mr. Breyault expressed his confusion about the statements Mr. Norwich made earlier regarding the unfairness of holding ticket agents responsible for refunds, as Mr. Norwich stated that most customers do not want a refund.
- Mr. Norwich further clarified that customers who booked vacation packages are more likely to request rebooking, but customers who only booked flights would request a refund. Mr. Norwich stated that his concern about ticket agents' exposure to refund liability is more in dealing with bookings consisting of airline tickets only, but it may also include bookings of vacations that, because of the change, customers no longer wish to go.

Ms. Martha Keith, who works as the director of airline operations of a tour operator, provided her comments for the Committee's consideration. Ms. Keith stated that as a consumer who purchases tickets directly from airlines, she was happy that the consumer protection measures in the NPRM came forward. Ms. Keith explained that from the tour operator's perspective, tour packages were sold at a bundled price with the airline portion being small, and the customer does not know the cost of the airline ticket because the airline ticket cost is factored in the total package price as a weighted average. Ms. Keith stated that, for example, for a package sold nine

months in advance, the tour operator may be able to purchase the airline ticket for \$5 but for a package sold 30 days in advance, the airline ticket may cost \$1,300. Ms. Keith stated that airlines have gone through financial difficulties during the COVID-19 pandemic, and some have suspended the ticket agents' ability to process refunds through the ARC/GDS systems. Ms. Keith stated that her agency went ahead and refunded its customers with its own money. Ms. Keith closed her comments by cautioning the DOT not to jump into a rule without looking into all the intricacies involved in the process, affecting airlines, tour operators, travel agents, and DOT.

- Ms. Workie assured the audience that the DOT certainly would not want to issue a final rule without taking into account the views of all stakeholders. Ms. Workie stated that, as she explained earlier, the DOT was ready to move forward with a proposed rule, and the DOT also asks various questions in the NPRM, holds public meetings like this one, and provided a comment period of 90 days, which is longer than the usual 60-day comment period. Ms. Workie expressed her confidence that the DOT will have the information it needs to determine the appropriate next step.

Ms. Vercelli asked about the proposal that the medical documentation must be dated within 30-day of the initial departure date. Ms. Vercelli stated that the DOT's disability regulation allows airlines to require medical documentation dated within ten days of departure and asked for the DOT's rationale in proposing a 30-day timeframe here.

- Ms. Workie pointed out that depending on the medical requirements, the DOT's disability regulation allows carriers to require medical documentation dated within a year of travel in some cases and dated within ten days of travel in other cases, which include accommodations related to communicable diseases. Ms. Workie stated that the NPRM is trying to balance the burden on consumers to obtain the documentation versus the need for the documentation. Ms. Workie pointed out that the NPRM asks questions on whether the 30-day requirement is appropriate, considering, for example, there is usually a 72-hour testing timeframe for COVID-19. Ms. Workie stated that the DOT's concern is that either the 30-day or the 10-day timeframe may not be sufficient for certain communicable diseases. Ms. Workie further stated that the DOT is unable to predict what future communicable diseases it has to deal with. Ms. Workie stated that the DOT is interested to know from public comments whether it should draw a bright line on the timeframe of the medical documentation, whether there should even be a timeframe, and whether it should use different parameters of standards so the timeframe would be specific to the situation at hand.
- Ms. Vercelli commented that from Ms. Workie's statement, she drew the conclusion that the DOT has not obtained data supporting the 30-day proposal and is open to receiving comments, particularly comments with supporting dates on this issue.

Ms. Vercelli asked a question regarding the proposed rule's scope on public health emergencies. Ms. Vercelli raised a hypothetical in which a person travels from the United States to Spain, and a government equivalent to CDC declares a communicable disease outbreak in the Philippines.

Ms. Vercelli wanted a confirmation that the proposed rule would require that there must be a nexus between the protected passenger and the declaration of the public health emergency, *i.e.*, the protected passenger must have an itinerary traveling to or from the affected area.

- Ms. Workie confirmed this is the DOT's general intent. She stated that she believes the preamble and rule text does not go into that kind of detail, and if any stakeholders believe more clarity is needed, they should file comments. She further stated that using Ms. Vercelli's example and concerning an earlier question on conflict, if a consumer is traveling from the United States to the Philippines, and CDC and the Philippines' government comparable to CDC have different policies that may represent a conflict, the DOT would like to hear comments on how to address the conflict.

Mr. Phil Syers provided his comments for the Committee's consideration. Mr. Syers addressed Mr. Breyault's earlier question regarding how the proposal on refund responsibility would affect ticket agents if most of their customers would prefer rebooking the travel over receiving refunds. Mr. Syers stated that the proposed rule would apply in events where no one can travel, such as the COVID-19 pandemic, and as a result, the customers would no longer have the preference or choice of continuing to travel. Mr. Syers concluded that these events would result in ticket agents bearing the weight of issuing refunds under the proposed rule.

### **III. Refunds in lieu of Travel Credits/Vouchers if Airlines or Ticket Agents receive Significant Government Financial Assistance**

#### **3.1 DOT Presentation**

*Presentation by Clereece Kroha, Senior Attorney, DOT, Office of Aviation Consumer Protection (OACP)*

Ms. Kroha stated that the third component of the NPRM proposal is a proposal for airlines and ticket agents to issue refunds, in place of non-expiring travel credits or vouchers, to consumers who are unable or are restricted from traveling during a public health emergency, if the airline or ticket agent received significant government financial assistance concerning that public health emergency.

Ms. Kroha presented the chart consisting of the three categories of consumers that are protected under the proposal for issuing vouchers and travel credits discussed earlier— those who are prohibited or restricted from traveling by government restrictions related to a serious communicable disease, those who have health concerns about traveling during a public health emergency, and those who have contracted or are suspected of having contracted a serious communicable disease. Ms. Kroha introduced the DOT proposal that for these three categories of consumers, if airlines or ticket agents have received significant government financial assistance during a public health emergency, airlines and ticket agents would be required to provide refunds in place of non-expiring travel credits or vouchers. Ms. Kroha further stated that the proposal would allow airlines and ticket agents to request documentation from consumers to prove their eligibility, similar to those proposed for receiving non-expiring credits or vouchers.

Next, Ms. Kroha presented a flow chart illustrating how the “significant government financial assistance” would be determined under the proposal. The first step in the flow chart demonstrates a public health emergency is declared, followed by governments stepping in to provide financial assistance to industries that are severely impacted by the public health emergency. Ms. Kroha explained that the amount of government assistance accepted by an entity is expected to be public information. The NPRM defines government financial assistance to include the government receiving shares of ownership in exchange for money but does not include government loans or non-cash contributions. For the next step in the flow chart, Ms. Kroha explained that following airlines and ticket agents receiving government financial assistance, the DOT would publish a tentative determination on whether the financial assistance received by a particular airline or ticket agent is “significant,” applying the factors listed in the NPRM to each regulated entity that received assistance, including the amount of assistance received, enplanements, employee numbers, and revenues. Ms. Kroha further explained that the next step would involve the DOT asking for public comment on this tentative determination and publishing its final determination after reviewing the public comments. As a final point, Ms. Kroha stated that the proposal would allow eligible consumers 12 months from the date such a final determination is made to contact the airline or ticket agent and request a refund.

### **3.2 Committee Members Questions and Comments**

Mr. Breyault first thanked Ms. Kroha for her hard work putting together the meeting presentations. Mr. Breyault then asked whether his understanding of the proposal was correct - that there has to be a future public health emergency, during which Congress has to provide another bailout to the airlines and ticket agents.

- Ms. Workie responded that it doesn’t necessarily have to be a new pandemic. She further explained that it could be under the current pandemic if it continues, but there has to be new financial assistance that is being provided. She stated that the DOT does not have the legal authority to apply this requirement retroactively because of a Supreme Court decision [*Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988)] and the application of the Administrative Procedure Act on regulations unless Congress specifically authorizes the DOT to apply the requirement retroactively.

Mr. Breyault then asked whether there are existing programs under which airlines are receiving government subsidies that would trigger this requirement.

- Ms. Workie first clarified that under the proposal, government assistance would be in the form of cash contribution, and government loans would not be considered “government financial assistance” to require refunds. She continued to explain that the financial assistance has to be related to a public health emergency and cannot be any assistance the government provides. For qualified government assistance, she stated that there is a process to determine whether the assistance is significant. She referred to Ms. Kroha’s presentation on the process, emphasizing the public notice published by the DOT before making a final determination. She concluded her comment by confirming Mr. Breyault’s

statement that the proposal, if finalized, would apply when new government assistance is provided.

Ms. Vercelli asked whether the proposal would consider a government cash contribution to airlines for the specific purpose of “government financial assistance.” Ms. Vercelli used the example of the CARES Act funds that were only and exclusively for airline employee salaries. She asked whether it would trigger the proposed requirement if the money went not to the operations of airlines but just to the employees of airlines.

- Ms. Workie stated that the DOT considered this question when drafting the proposal and consulted with the experts on appropriation laws. Ms. Workie explained that the proposal does not require airlines to use the money received from the government to issue refunds, and it simply provides that receiving the money would trigger the refund requirement. She referred back to the CARES Act example and stated that if the proposal had been finalized before the CARES Act, the DOT would not have required airlines to use the CARES funds for refunds; instead, since the funds received under the CARES Act would be deemed to be “government financial assistance,” it would trigger the refund obligation.

### **3.3 Public Participants Questions and Comments**

Mr. Paul Hudson from Flyers Rights was the first speaker from the public participants. Mr. Hudson commented that this proposal is a welcome provision, and it hopefully would prevent the reoccurrence of the government providing \$58 bailout money to airlines with no strings attached. Mr. Hudson stated that in March 2020, Flyers Rights wrote to the Secretary of Treasury, with a copy to DOT staff, urging the imposition of reasonable airline restrictions for accepting government assistance to protect consumers. Mr. Hudson stated that this request was declined. Mr. Hudson commented that airlines also failed to comply with CDC guidelines by offering super low fares to attract travelers, despite CDC advising the public to avoid non-essential travel. Mr. Hudson complained about airlines canceling flights to keep planes full, failing to maintain social distancing, and refusing to provide consumer refunds. Mr. Hudson stated that although he hopes there will be no need for government assistance again, he is glad this proposal is moving forward.

Next, Mr. Hudson commented on the timing of the rulemaking. He stated that he believes it would take at least 6 months for the rule to become effective and is concerned that this timeframe is too long because he has observed the previous 6 months with 550,000 flight delays and 88,000 cancellations. He urged the DOT and the Committee to consider ways to speed things up. He suggested that the Secretary has emergency regulation authority under which he could issue regulations temporarily while the regular regulatory process is moving forward. He further indicated that the DOT could fund other organizations, such as State Attorney Generals, to assist with enforcing refund rules, dealing with complaint backlogs, and staffing hotlines to help consumers. Finally, Mr. Hudson suggested that Congress can make the proposed requirement retroactive by including it in the 2023 FAA Reauthorization legislation.

- Ms. Workie stated that the problems Mr. Hudson observed concerning airlines' conduct primarily occurred in 2020 and 2021. Ms. Workie noted that lessons learned from these problems, in conjunction with talking to stakeholders and dealing with consumer complaints, have ultimately led to the issuance of this NPRM. Ms. Workie commented that she found it interesting that Mr. Hudson urged the DOT to move faster with this rulemaking while some other commenters believed that the DOT was moving too fast. Ms. Workie stated that the DOT is trying to move as fast as possible while ensuring everyone has a fair opportunity to comment. Ms. Workie affirmed that the DOT wants to decide on the next step as soon as the comment period closes, and the DOT has reviewed the comments. Finally, Ms. Workie addressed Mr. Hudson's statement on the Secretary's emergency regulatory authority and stated that she and Mr. Hudson had discussed this issue, and they disagreed on whether the authority exists in the fashion Mr. Hudson described. Ms. Workie indicated that she believes that it is necessary for this regulation to be done through notice and comment. With respect to enforcement backlog, Ms. Workie stated that her office has received and continues to receive a high volume of consumer complaints. She confirmed that her office is actively looking at enforcement actions in situations where airlines have had extreme delays in providing refunds when they are due. She stated that ten airlines had been notified that the DOT intends to take enforcement actions against them, and there are additional airlines that the DOT is investigating.

Mr. Breyault asked what happens to consumer complaints filed with the DOT against a particular airline after the DOT takes enforcement action against that airline and settles with an issuance of a consent order. Mr. Breyault asked whether these complaints would be closed by notations stating that they were closed by a settlement and the consumers receive refunds and some compensation based on the settlement.

- Ms. Workie stated that under the statutory provision regarding civil penalties, the DOT does not have the authority to award money to individual consumers aside from mandating airlines provide required refunds. Mr. Workie further stated that to the extent the DOT was able to negotiate a settlement order without going to an Administrative Law Judge, her office would try to craft into the settlement provisions that affected consumers may receive money, which in turn would be credited to the airline from the total civil penalty amount. Ms. Workie further addressed Mr. Breyault's questions on what happens to the complaints filed with DOT. She stated that for both enforcement cases and cases in which the DOT did not take enforcement actions (because the airlines take corrective actions immediately after receiving notice from the DOT), one of the priorities is to ensure that consumers who filed complaints with DOT receive refunds if they are due. She further stated that consumers who did not file complaints with DOT are also being notified of their rights to refunds.

Mr. Breyault then asked whether the DOT intends to resolve the complaint backlog by resolving the ten pending enforcement cases.

- Ms. Workies stated that resolving the ten cases would not fix everything in the backlog, but certainly, before the DOT enters settlements with each of the ten airlines, it would make sure that the affected consumers are made whole.

Ms. Teresa with the Travel Company provided an analogy to explain further her point regarding the role of ticket agents made earlier. She described the role of ticket agents as a local car dealership. She described a scenario in which a consumer ordered a custom-made car with the dealership, which took the consumer's money and sent the money to the car manufacturer, and the consumer received a defective car. She stated that when the consumer asked for a refund, the factory sent the money back to the dealership, and the dealership returns the money to the consumer. Mr. Leonard Norwich further elaborated that the problem is the airline has the money. Therefore, if the airline does not return the money to the ticket agent within 7 days, it would be unfair to require the ticket agent to return it to consumers.

Following Ms. Teresa and Mr. Norwich's comments, Ms. Workie made closing remarks. Ms. Workie thanked the Committee, her staff, and the DOT OCIO. Ms. Workie stated that the discussions had provided materials for the Committee and the DOT to consider. She noted that later this year, there would be another meeting during which the Committee will deliberate on these issues. Ms. Workie concluded the meeting by informing the public that the video of the meeting would be made available on the Office of Aviation Consumer Protection's website ACPAC page, and the presentations will be made available in the ACPAC docket.

## Appendix A – The List of Attendees

First Name	Last Name	Email	Organization
Mario	Rodriguez	mrodriguez@ind.com	Committee Member
Patricia	Vercelli	pvercelli@airlines.org	Committee Member
Dana	Nessel	NesselD34@michigan.gov	Committee Member
John	Breyault	johnb@nclnet.org	Committee Member
Blane	Workie	Blane.Workie@dot.gov	DOT
Kimberly	Graber	kimberly.graber@dot.gov	DOT
Clereece	Kroha	Clereece.Kroha@dot.gov	DOT
Cristina	Draguta	Cristina.Draguta@dot.gov	DOT
Nobuyo	Reinsch	reinsch@raa.org	Regional Airline Association
Saad	Luka	sl07saad@gmail.com	Member of the Public
Kim	Redd	kim.redd@mail.house.gov	Congressman Joe Neguse's Office
Doug	Mullen	dmullen@airlines.org	A4A
Phil	Zager	pzager@yklaw.com	Kirstein & Young PLLC
Abdeljalil	Mekkaoui	mekkaoui1111@gmail.com	DHS CBP
Susana	Mantilla	susana.mantilla@vivaair.com	Viva Air
Eric	Felland	efelland@eckertseamans.com	Eckert Seamans Cherin & Mellott, LLC
Charlie	Leocha	charles.leocha@travelersunited.org	Travelers United
Amber	Doe	amberdoe@gmail.com	Consumer
Danny	Durst	danny.j.durst@gmail.com	Member of the Public
Odete	Costeira	ocosteira@us.qatarairways.com	Qatar Airways
Aaron	Goerlich	agoerlich@ggh-airlaw.com	Garofalo Goerlich Hainbach PC
Jessica	Ilich	jessica.ilich@dot.gov	DOT
Nicole	Gurdoglanyan	nicole.gurdoglanyan@jetblue.com	JetBlue Airways
Tatiana	Parker	tati424@hotmail.com	NYC Senate
Tiffany	Lloyd	tlloyd@allynfoundation.org	Member of the Public



Joanne	Young	jyoung@yklaw.com	Kirstein & Young, PLLC
Katharine	Kormanik	katie.kormanik@gmail.com	Member of the Public
Shevanie	Clark	shevanie@live.com	Member of the Public
Jasmin	Robillard	jmr2891@gmail.com	Vacay Travels
Amanda	Kling	amanda.kling@dot.gov	DOT
Lori	Barringer	lori.barringer@dot.gov	DOT
Kimberly	Hargett	kimberly.hargett@dot.gov	DOT
Tracy	Feinstein	tracy.feinstein@wnco.com	Southwest Airlines
James	Stevens	james-robert.stevens@dlh.de	Lufthansa
Lauren	Brown	isawlauren@gmail.com	Cooper Family Farms
James	Cherico	boatline2015@yahoo.com	Member of the Public
David	Koenig	dkenig@ap.org	The Associated Press
Maren	Matal	maren.matal@wnco.com	Southwest Airlines Co.
Laura	Rodgers	laura.rodgers@jetblue.com	JetBlue Airways Corp.
Arnold	Manheimer	arnoldmanheimer@gmail.com	Member of the Public
Jennifer	Powell	jrusz2014@gmail.com	Sterling Rose Consulting Corp
Andrea	Allen	bettsandrea@yahoo.com	Member of the Public
Christine	Cuin	ccuin@naggl.org	Member of the Public
Janet	Tran	jkt99@yahoo.com	Member of the Public
Stephanie	Thomas	tech30yrs@gmail.com	Member of the Public
Adriana	Gardella	adrianaxgardella@gmail.com	Member of the Public
Stephen	Brumbaugh	stephen.brumbaugh@dot.gov	DOT
Lydia	Abebe	lydiashawel@gmail.com	Member of the Public
Raul	Luna	raull.yb@gmail.com	Member of the Public
Abbey	Li	abbeyli12311@gmail.com	Member of the Public
Emily	Chavez	emily.chavez@finnpartners.com	Member of the Public
David	Bensman	davidbensman@comcast.net	Member of the Public
Heather	Mcintyre	heather@travelxperts.com	Travel Experts Inc
Linda	Bailey	linda@royaltytravelgroup.com	Royalty Travel Group

Meghan	Grove	meghan.grove@aa.com	American Airlines
Allison	Gormly	allison.gormly@wthr.com	WTHR
James	Cook	usna2000@hotmail.com	Member of the Public
Michele	Sullivan	sulliva1@aol.com	Member of the Public
Mark	Pestronk	mark@pestronk.com	Law Offices of Mark Pestronk, P.C.
Henry	Raulerson	hhraulerson@gmail.com	Member of the Public
David	Morrison	dave.patrick.morrison@gmail.com	Member of the Public
Matthew	Whitenack	matthew@gotham-guru.com	Member of the Public
Colleen	Seelen	colleen.seelen@gmail.com	Member of the Public
Fred	Taylor	fred.taylor@wnco.com	Southwest Airlines
Roy	Goldberg	roy.goldberg@stinson.com	Stinson LLP
Emily	Turner	eturner@actionnewsjax.com	Action News Jax
Dana	Laquidara	arcane-tilde0c@icloud.com	Member of the Public
Louis	Scala	louis.scala@farmingdale.edu	Farmingdale State College Aviation DOT
Logan	Bartholomew	logan.bartholomew@myflfamilies.com	Member of the Public
Deborah	Mccammon	nandimccammon@gmail.com	Member of the Public
Denise	D'Amato	neesyd767@yahoo.com	Member of the Public
Mary	Grivas	mary@ntdvacations.com	NTD Vacations
Brian	Lucas	bdlucas@att.net	Member of the Public
Lisa	Cheung	lisa.cheung.0@gmail.com	Member of the Public
Heather	Wills	heatherswills@yahoo.com	Member of the Public
Team	Travel	teamtravel02@gmail.com	Member of the Public
Marie	Harper	mfh19120@gmail.com	Member of the Public
Stephen	Di Stefano	s-d@stark-stark.com	Member of the Public
Wendy	Todd	wendypricetodd@gmail.com	Member of the Public
Anupriya	Krishnamoorthy	anupriyakrishnamoorthy92@gmail.com	Member of the Public
Meng	Yang	mengyang1992@hotmail.com	Member of the Public

Anngellic	Dinkins	aboutre@aol.com	About Real Estate LLC
Carol	Splaine	csplaine9@gmail.com	Member of the Public
Mai-Anh	Nguyen	mai_anita_06@yahoo.com	Member of the Public
John	Stewart	jkstewart1128@gmail.com	Member of the Public
Kathy	Mills	kathy97nyc@gmail.com	Member of the Public
Jennifer	Schmidt	eastcoastjen@outlook.com	Member of the Public
Rachel	Mccarthy	elite.eccentric@gmail.com	LGBT Community Center
Adrienne	Dawkins	adriennedawkins@gmail.com	Member of the Public
Melissa	Fleming	melissafleming33@gmail.com	Member of the Public
Avianne	Waithe	aewaithe@gmail.com	Member of the Public
Jenjen	Francis	jenjen@tieredworldstudios.com	Member of the Public
Tonya	Hall	hallsweets@gmail.com	Member of the Public
Jurtreau	Villegas	jurtreauvillegas@yahoo.com	Member of the Public
Daryl L	Johnson	brownwalker@gmail.com	Member of the Public
Alex	Eaton	aeaton@worldtv.com	World Travel Services, LLC
Grace	Baek	gracejbaek@gmail.com	Member of the Public
Danica	Gonzalves	danicag@pva.org	Paralyzed Veterans of America
Lynanne	Gelinas	lynannegelinas@yahoo.com	Member of the Public
Ivory	Alexander	ivoryalex@yahoo.com	Member of the Public
Steve	Hargin	shargin@gate1travel.com	Gate 1 Travel
Katie	Colle	kbcjunk123@gmail.com	Member of the Public
Edward	Campbell	ekcat@comcast.net	Member of the Public
Markeeta	Wilkerson	markeetawilkerson@gmail.com	Member of the Public
Jill	Power	powerjill@outlook.com	Member of the Public
Michael	Winecoff	mkwinecoff@gmail.com	Member of the Public
Elizabeth	Mitteer	elizabeth@agatevacations.com	Agate Vacations, LLC,
Martha G	Breedlove	malone5655@yahoo.com	Member of the Public
Annie	Cappuccino	annielauriecappuccino@gmail.com	Member of the Public
Timothy	Wallace	tim.wallace@boomi.com	Boomi Federal Sales

Faith	Bibbs	faithbibbs@yahoo.com	CDC
Jerry	Desmond	jerry@desmondlobbyfirm.com	California Coalition of Travel Organizations [CCTO]
Betsy	Geiser	bgeiser@uniglobetravel.com	Uniglobe Travel Center
Joseph	Burley	burleyjcb@hotmail.com	Member of the Public
Chawaine	Reid	chawaine.reid@ukg.com	UKG.com
Francis	Dimola	fdimola@tfac-jfk.org	JFK Airport - Terminal 4 Airlines Consortium
Meg	Martin	megmartinmail@gmail.com	Member of the Public
Sareesh	Rawat	srawat@tillitlawfirm.com	Tillit Law PLLC
Sandy	Keel	sandy.keel@inspiringjourneysbysandy.com	Cruise Planners
Alejandro	Ulloa	lexulloa@yahoo.com	Member of the Public
Sarah	Guernelli	sguernelli@nexstar.tv	Nexstar WPRI-TV
Michelle	Minor	michelle.minor@alaskaair.com	Alaska Airlines
Kade	Ross	rosskade@gmail.com	Member of the Public
Jennifer	Lippoldt	jennifer.lippoldt@computershare.com	Member of the Public
Rebecca	Capes	rebeccacapes@att.net	Rebecca E Capes, Attorney at Law
Campbell	Johnson	70elmore@gmail.com	Member of the Public
Susan	Sheats	sue@worldexposures.com	World Exposures
Joana	Machado	joana.machado@sata.pt	Sata Azores Airlines
Khadyne	Augustine	khadyne.augustine@gmail.com	Member of the Public
Gaelle	Kelly	queen-o-hearts@msn.com	Member of the Public
Fanuel	Zekiros	fanuel13@gmail.com	Member of the Public
Alice	Wiesner	awiesner@parkhotelmadison.com	Park Hotel
Christine	Rodriguez	cespo14@hotmail.com	Member of the Public
Reuben	Dawkins	reuben.dawkins@cbselectre.com	Coldwell Banker Select
Jasmine	Young	jasminesabrinayoung@gmail.com	Member of the Public
Kayla	Payeur	kpayeur@hotmail.com	Member of the Public
Anthony J.	Coronado	anthonycoronado1@outlook.com	Member of the Public

Marina	Banfi	marina.banfi@gmail.com	Member of the Public
Blair	Parry	blairaldenparry@gmail.com	Member of the Public
Cassell	Hudson	oeco@aol.com	Member of the Public
Mikalah	Henyard	mikalah.henyard@cadencecare.org	Member of the Public
Megan	Foster	mfooster@national.aaa.com	AAA
Aleah	Noonan	aleahnoonan@gmail.com	United Airlines
Kamilah	Williams	kamilahmariemd@gmail.com	Member of the Public
Zane	Kerby	zkerby@asta.org	ASTA
Eben	Peck	epeck@asta.org	ASTA
Martha	Keith	mkeith@odysseys-unlimited.com	Odysseys Unlimited
Lorayne	Fiorillo	llorayne.fiorillo@raymondjames.com	Raymond James
Lisa	Furtado	lfurtado@odysseys-unlimited.com	Odysseys Unlimited
Ralph	Winnie	ralphwinnie@gmail.com	Eurasia Center
Crystal	De Los Santos	livelifetravelllt@yahoo.com	Member of the Public
Mary Ellen	Connor	meconnor55@hotmail.com	Member of the Public
Joseph	Bryant	tutu6@earthlink.net	Member of the Public
William	Underwood	billual@yahoo.com	Member of the Public
Georg	Baker	georgsbaker@yahoo.com	Member of the Public
Kathleen	Bangs	kathleenbangs@gmail.com	FlightAware
Mary	Ciuk	maryciuk@gmail.com	Member of the Public
Aleksandra	Palicka	a.palicka@lot.pl	Lot Polish Airlines
Joshua	Holcomb	jchristjr79@gmail.com	J&H Tree Services Co
David	Amarillo	david.amarillo@vivaair.com	Viva Air
Ajanaclair	Wise	ajanaclair@ajanaclairwisetravel.com	Ajanaclair Wise Travel LLC
Angela	Spencer-James	angela.spencerjames@gmail.com	Member of the Public
Phil	Syers	phil.syers@gmail.com	Member of the Public
Emily	Winters	emily.winters680@gmail.com	Member of the Public
Alison	Sider	alison.sider@wsj.com	Wall Street Journal
Yelena	Arcedo	yfadeyeva@gmail.com	Member of the Public

Roseline	Oyejide	ladyrose102001@yahoo.com	African Advisory Council, Bronx, NYC
Paul	Ruden	pmruden@icloud.com	Paul M. Ruden Consulting
Rayvonn	Lewis	rayvonn1416@gmail.com	Member of the Public
Samantha	Geng	homeinaz2021@gmail.com	Member of the Public
David	Lieberman	ki6nno@gmail.com	Member of the Public
Andre	Harkley	andre.harkley@gmail.com	Member of the Public
Christopher	Pile	justinpile16@gmail.com	Member of the Public
Troy	Griffin	troyg911@gmail.com	Member of the Public
Adam	Kuhns	adamkuhns@hotmail.com	Member of the Public
Anne	Kuhns	annejisham@gmail.com	Member of the Public
Olga	I	olya01@yahoo.com	Member of the Public
Jessica	SepulvedaViola	destinationknowntravel@gmail.com	Member of the Public
Bailey	Leopard	bleopard@sbgdc.com	Silverberg Goldman PLLC
John	Fabian	jfabian111@gmail.com	Member of the Public
Pamela	Ward	njokinetfa@comcast.net	Member of the Public
Charmain	Wilson	homeworldrealtypm@gmail.com	Member of the Public
David	Acosta Giraldo	david.acosta@vivaair.com.co	Vivaair
Don	Hainbach	dhainbach@ggh-airlaw.com	Garofalo Goerlich Hainbach PC
Rex	Shafer	dragondad5@yahoo.com	Member of the Public
Fangzhong	Guo	fangzhong.guo@airlinegeeks.com	Airlinegeeks.Com
Rayvn	Williams	rayvnwilliams@gmail.com	Member of the Public
Erin	Witte	ewitte@consumerfed.org	Consumer Federation of America
Angela	Mayeux	angela.mayeux@wnco.com	Southwest Airlines Co.
Meredith	Mauer	mmauer@magicalmomentvacations.com	Magical Moments Vacations
Trav	Walkowski	trav.walkowski@gmail.com	Member of the Public
Rachel	Youdelman	ryoudelman@gmail.com	Member of the Public
James	Thumpston	jthumpston@kmazuckert.com	KMA Zuckert LLC

Kelly	Huddleston	kelly@khuddlestonlaw.com	Huddleston Law LLC
Stewart	Alvarez	stewartalvarez305@gmail.com	Member of the Public
Rachel	Tang	rtang@crs.loc.gov	CRS
Caroline	Nyce	caroline@theatlantic.com	The Atlantic
Douglas	Kelley	dkelley@steinbrecherspan.com	Steinbrecher & Span, LLP
Keith	Yoder	keith@innoventcapital.com	Innovent Capital
Kahla	Elliston	kahla.elliston@spirit.com	Spirit Airlines
Marina	O'Brien	marina.obrien@hklaw.com	Holland & Knight LLP
Benjamin	Slocum	benjamin.slocum@hklaw.com	Holland & Knight LLP
Anita	Mosner	anita.mosner@hklaw.com	Holland & Knight LLP
Brenda Daniela	Canchola Alvarez	brenda.canchola@volaris.com	Volaris
Lynn	Dressler	travelc@aol.com	Member of the Public
Stephen	Fairchild	stephen.fairchild@alaskaair.com	Alaska Airlines
Graham	Keithley	gkeithley@airlines.org	A4A
Melissa	Greenaway	greenawaym@gao.gov	GAO
Jonathan	Carver	carverj@gao.gov	GAO
Alexandria	Shum	alexandria.shum@dot.gov	DOT
John	Kloosterman	john.kloosterman@united.com	United Airlines
Débora	Vera	lourdes.vera@volaris.com	Volaris
Jana	Lozano	jana.lozano@flydenver.com	Denver International Airport
Amy	Suntoke	suntokea@gao.gov	GAO
Nicola	Graham	nicola.graham@groupeDubreuil.com	Groupe Dubreuil
Evelyn	Sahr	esahr@eckertseamans.com	Eckert Seamans
María	Mendizábal	maria.mendizabal@volaris.com	Volaris
Jesus	Marines	jesus.marines@volaris.com	Volaris
Itzelt Monserrat	Tovar Escalera	itzelt.tovar@volaris.com	Volaris
Media	Center	mediacenter2@dot.gov	DOT

Media	Center	mediacenter@dot.gov	DOT
James	Richards	scott.richards@wnco.com	Southwest Airlines Co.
Leonard	Norwich	thetravelcompany@verizon.net	Member of the Public
Ines	Bojorquez	ines.bojorquez@onelinkbpo.com	Member of the Public
Nathalie	Sagastume	nathalie.sagastume@onelinkbpo.com	Member of the Public
Drew	Derco	dderco@eckertseamans.com	Eckert Seamans
Crysti	Olinger	crystiol@outlook.com	Member of the Public
Kristi	Benedict	kbennie11@gmail.com	Member of the Public
Jonathon	Foglia	jfoglia@cozen.com	Cozen O'connor
Kathleen	Oshea	kathleen.oshea@dot.gov	DOT
Julie	Moser	jmoser@rjet.com	Republic Airways
Raymond	Howells	raymond.howells@yahoo.com	Liberty Travel
Michael	Carbone	michael.carbone@jetblue.com	JetBlue
Sarah	Beaujour	sb@pmjpllc.com	PMJ PLLC
Catherine	Gantt	catherine.gantt@wnco.com	Southwest Airlines
Marli	Collier	mcollier@airlines.org	A4A
Cheryl	Read	cheryl.read@wnco.com	Southwest Airlines
Whitney	Zimmerman	whitney.zimmerman@rjet.com	Republic Airways
Lucille	Lobritto	lobrittolucille@gmail.com	Member of the Public
Wtkr	Desk	desk@wtkr.com	WTKR News 3
Caleb	Govoruhk	caleb.govoruhk@stantec.com	Stantec
Nancy	Newlin	nnewlin0815@gmail.com	ABS
Julie	Devine	julie.devine@mail.house.gov	U.S. House Of Representatives Committee on Transportation and Infrastructure
Steven	Seiden	steven.seiden@delta.com	Delta Air Lines
Kimberly	Ellis	trey@monumentadvocacy.com	Monument Advocacy
NBC	News	kim.sneed@nbcuni.com	NBC News
Paul	Hudson	paul@flyersrights.org	Flyersrights.Org



Andrew	Appelbaum	andrew@flyersrights.org	Flyersrights.Org
Maketa	Colbert	goodluvv@twc.com	Member of the Public
Roxanne	Seth-Malone	roxiestraveladventures@gmail.com	Member of the Public
C	Martin	marcan1@msn.com	Member of the Public
Chad	Heflin	heflinc@iata.org	IATA
Mary	Mcguire	maryzachar419@gmail.com	Member of the Public
Mary	Riley	mfrzuma@aol.com	Member of the Public
Dawn	Gilbertson	dawn.gilbertson@wsj.com	Wall Street Journal
Jennifer	Kenneally	jkenneally@airlines.org	A4A
Lisa	Bierman	lbierman@ind.com	Indianapolis Airport Authority
David	Matras	fox13tips@fox.com	Fox 13 Seattle
Emmett	O'Keefe	emmett.okeefe@booking.com	Booking.com