

**KATIE PORTER**  
45TH DISTRICT, CALIFORNIA

FINANCIAL SERVICES COMMITTEE  
SUBCOMMITTEE ON  
INVESTOR PROTECTION, ENTREPRENEURSHIP,  
AND CAPITAL MARKETS

SUBCOMMITTEE ON  
CONSUMER PROTECTION AND  
FINANCIAL SERVICES



**Congress of the United States**  
House of Representatives  
Washington, DC 20515

WASHINGTON OFFICE  
1117 LONGWORTH HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-5611

DISTRICT OFFICE  
2151 MICHELSON DRIVE  
SUITE #195  
IRVINE, CA 92612  
(949) 668-6600

PORTER.HOUSE.GOV

July 6, 2020

The Honorable Steven Mnuchin  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue  
Washington, DC 20220

The Honorable Elaine Chao  
Secretary of Transportation  
U.S. Department of Transportation  
1200 New Jersey Ave, SE  
Washington, DC 20590

Dear Secretary Mnuchin and Secretary Chao:

I write in response to disturbing reports indicating that the major airlines, having recently benefited from the largest taxpayer-funded bailout in history, are now lobbying the Department of Transportation (DOT) to weaken existing passenger protections in the airline industry. Spending on an anti-consumer political campaign is an abuse of Coronavirus Aid, Relief, and Economic Security Act (CARES) Act funding. Given that the Department of the Treasury is tasked with monitoring the airlines' use of taxpayer aid, I ask that you sanction the airlines involved in this lobbying effort. I also request that the DOT end the rulemaking process that it began at the behest of the airline industry, as the proposed rule (Docket Number DOT-OST-2019-0182)<sup>1</sup> would weaken enforcement of airline passenger protections.

In March, Congress passed the CARES Act—the largest stimulus package in history. As you know, it was a bipartisan effort and signed into law by President Trump. CARES created a \$25 billion airline-specific grant program called the Payroll Support Program (PSP). To qualify for a grant under the PSP, an airline must commit to exclusively using the funds to pay airline employee wages, salaries, and benefits. The four largest carriers in the country—American Airlines Group Inc. (American), Delta Air Lines Inc. (Delta), United Airlines Holdings Inc. (United), and Southwest Airlines Co. (Southwest)—received the lion's share of PSP funding: \$19.2 billion.<sup>2</sup>

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<sup>1</sup> "Defining Unfair or Deceptive Practices," A Proposed Rule by the Transportation Department (February 2020) at: <https://www.federalregister.gov/documents/2020/02/28/2020-03836/defining-unfair-or-deceptive-practices>

<sup>2</sup> Jonathan Landay and David Shepardson, "U.S. airlines receive extra \$9.5 billion in payroll support: U.S. Treasury," *Reuters* (April 2020) at: <https://www.reuters.com/article/us-health-coronavirus-usa-airlines/us-airlines-receive-extra-95-billion-in-payroll-support-us-treasury-idUSKCN2270OG>

The amount that Congress allocated to the PSP is significantly lower than the \$58 billion that the airlines requested.<sup>3</sup> At the time of the CARES Act's passage, the airlines justified their exorbitant appeal by referencing their rapidly declining profit margins. To be sure, passenger traffic is down 94 percent compared to last year.<sup>4</sup>

Given the unquestionably bleak financial outlook for the airline industry, I was stunned by news that these airlines are spending their limited—and taxpayer-subsidized—cash flow to petition the DOT to categorically weaken consumer protection standards by adopting the Federal Trade Commission (FTC)'s unfairness approach. According to FTC Commissioner Chopra, after the FTC adopted its current unfairness standard in 1980, “the number of enforcement actions and rulemakings plummeted, leaving a vacuum that hobbled development of the law.”<sup>5</sup> The DOT appears to agree, as in documents describing the proposed rule, it acknowledged that the proposal “could translate into the department performing fewer enforcement and rule-making actions” against airlines and could “lengthen the time needed to complete the actions.”<sup>6</sup>

Now is not the time to reduce oversight of the airline industry. The airlines have time and again flouted the limited consumer protections that the DOT currently enforces. As you attested, Secretary Chao, the DOT received an “unprecedented volume of complaints” in March and April: 25,000, a startling number particularly when compared to the typical monthly average of 1,500.<sup>7</sup> Twice in as many months, the DOT issued warnings to airlines participating in the PSP that have refused to comply with the DOT's Enforcement Notice issued on April 3, 2020. In that Notice, the DOT clearly articulated that the airlines “have an obligation to provide a refund to a ticketed passenger when the carrier cancels or significantly changes the passenger's flight.”<sup>8</sup> Yet still, airlines continue to deny passengers—many of them my constituents—the refunds that they are owed.<sup>9</sup>

In addition to disregarding the DOT's Enforcement Notice, the airlines have also blatantly violated the explicit terms of the PSP. I joined my colleague Congresswoman Jan Schakowsky in writing to you, Secretary Mnuchin, on May 26 to ask that you sanction the airlines that have recently cut their employees' hours, pay, and benefits. United, Delta, and JetBlue Airways have all unilaterally cut workers hours, in some cases significantly decreasing these employees' pay and benefits. The airlines have defended the cuts by drawing a dishonest distinction between hours and “compensation,” as the latter must be preserved per the terms of the CARES Act.

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<sup>3</sup> Mina Kaji, “Airline execs seeking \$58 billion warn Congress 'time is running out',” *ABC News* (March 2020) at:

<https://abcnews.go.com/Business/airline-execs-seeking-58-billion-warn-congress-time/story?id=69727960>

<sup>4</sup> Niraj Chokshi, “The Airline Business Is Terrible. It Will Probably Get Even Worse,” *New York Times* (May 2020) at:

<https://www.nytimes.com/2020/05/10/business/airlines-coronavirus-bleak-future.html>

<sup>5</sup> Comment of Federal Trade Commissioner Rohit Chopra, Docket No. DOT-OST-2019-0182 at:

[https://www.ftc.gov/system/files/documents/public\\_statements/1576174/chopra\\_comment\\_to\\_us\\_department\\_of\\_transportations\\_dot-ost-2019-0182.pdf](https://www.ftc.gov/system/files/documents/public_statements/1576174/chopra_comment_to_us_department_of_transportations_dot-ost-2019-0182.pdf)

<sup>6</sup> Hugo Martin, “Critics say airlines' proposed rule on unfair practices would make regulation harder,” *LA Times* (February 2020)

at: <https://www.latimes.com/business/story/2020-02-27/airlines-unfair-practices-rule>

<sup>7</sup> Dawn Gilbertson, “DOT warns airlines – again – to issue refunds for canceled flights after receiving 25,000 complaints,” *USA Today* (May 2020) at:

<https://www.usatoday.com/story/travel/airline-news/2020/05/12/coronavirus-travel-airlines-warned-complying-refund-rule/3114697001/>

<sup>8</sup> Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the COVID-19 Public Health Emergency on Air Travel,” *Department of Transportation: Office of the Secretary* (April 2020) at:

<https://www.transportation.gov/sites/dot.gov/files/2020-05/Refunds-%20Second%20Enforcement%20Notice%20FINAL%20%28May%2012%202020%29.pdf>

<sup>9</sup> Christopher Muther, “Despite an infusion of billions from the government, some airlines are still delaying and denying refunds,” *Boston Globe* (June 2020) at: <https://www.bostonglobe.com/2020/06/18/lifestyle/despite-an-infusion-billions-government-some-airlines-are-still-delaying-denying-refunds/>

Given their brazen abuse of taxpayer dollars and repeated violations of agency-imposed consumer protection rules and statutory obligations alike, I ask that the Department of the Treasury direct the airlines to immediately cease their lobbying efforts aimed at watering down passenger protection standards. Additionally, I request that the Department of Transportation end the rulemaking process associated with the Proposed Rule “Defining Unfair or Deceptive Practices” (Docket Number DOT-OST-2019-0182). I hope to receive your response no later than July 15.

Very Truly Yours,

A handwritten signature in blue ink that reads "Katie Porter". The signature is written in a cursive, flowing style.

Katie Porter  
Member of Congress