

DOT Revises Its “Mistaken Fares” Enforcement Policy

DOT’s Office of Aviation Enforcement and Proceedings issued a notice temporarily amending its enforcement policy regarding airlines’ obligation to honor “mistaken fares.” Until now, DOT’s Enforcement Office has generally required airlines and sellers of air transportation to honor such fares once a consumer purchased the fare and received confirmation of the purchase, even if such fares were inadvertently offered for sale at a price substantially lower than the intended ticket price for the class of service being sold.

Now, as a matter of “prosecutorial discretion,” DOT’s Enforcement Office will not enforce the prohibition against airlines and sellers of air transportation increasing fares post-purchase when such fares are mistakenly offered for purchase. However, to avoid enforcement action under such circumstances, airlines and sellers of air transportation must: (1) demonstrate that a fare was a mistaken fare; and (2) make consumers “whole” by reimbursing them for any “reasonable, actual, and verifiable out-of-pocket expenses” made in reliance upon the mistaken fare purchase, in addition to refunding the purchase price of the ticket. This includes reimbursing consumers who purchased mistaken fares for such things as non-refundable hotel reservations, destination tour packages or activities, cancellation fees for non-refundable connecting air travel and visa or other international travel fees. The burden of proof that an advertised fare and resulting ticket sales constitute a mistaken fare situation rests with the airline or seller of air transportation. DOT cautioned that if a sale does not qualify as a “mistaken fare situation,” the carrier or seller of air transportation will be obligated to honor the fare as advertised or be subject to enforcement action. DOT reminded airlines and other sellers of air transportation that in all other situations, they are still prohibited from increasing ticket prices after a purchase has occurred.

As part of its currently pending passenger protection rulemaking published on May 23, 2014, DOT is reviewing its approach to mistaken fares. DOT’s review was prompted by numerous instances where mistaken fares are rapidly shared through postings on aviation and travel websites, forums, and blogs and purchased in “bad faith” by consumers with full knowledge that the low fares were mistakenly advertised. DOT stated that the changes to its enforcement policy covering mistaken fares is “temporary” and will remain in effect only until DOT issues a final rule that specifically addresses mistaken fares. DOT cautioned that if, based on rulemaking comments, it determines that its post-purchase price increase prohibitions should continue to include mistaken fares, airlines and other sellers of air transportation would be expected to comply and the Enforcement Office would enforce the requirement.

Please contact David Heffernan or Mark Atwood, members of the Cozen O’Connor Aviation Regulatory Practice Group, for more information regarding DOT enforcement policies or other aviation regulatory issues.



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