

DOT Issues New Guidance Regarding Airlines' Obligation to Provide Passenger Refunds

As the airline industry grapples with the fallout from COVID-19, one issue is keeping airlines, regulators, legislators, and courts busy: passenger refunds.

Passengers who no longer wish to travel due to concerns over COVID-19 or who have had their flights cancelled are demanding refunds from airlines. Numerous U.S. and non-U.S. airlines have become the target of putative class action lawsuits in U.S. courts. Airlines, on the other hand, are grappling with a difficult truth: as Nick Calio — CEO of the leading airline trade association Airlines for America (A4A) — bluntly stated during a recent hearing before the U.S. Senate Committee on Commerce, Science and Transportation: “if air carriers refund all tickets, including those purchased under the condition of being non-refundable or those cancelled by a passenger instead of the carrier, this will result in negative cash balances that *will* lead to bankruptcy.”

The U.S. Department of Transportation (DOT) states that it received 25,000 complaints and inquiries from passengers in March and April 2020 alone (compared to 1,500 in a typical month). In response, on May 12, 2020, DOT issued a [Frequently Asked Questions \(FAQ\)](#) document to “help consumers understand their rights and to ensure airlines and ticket agents are complying with aviation consumer protection requirements” overseen by DOT. Importantly, the document constitutes “guidance” and therefore does not have the force and effect of law nor is it binding on airlines. The guidance, however, is essentially a statement of DOT’s enforcement policy and intent. Specifically, the FAQ state the following:

Significant Schedule Changes or Cancellations

Airlines must provide a refund to a ticketed passenger when the carrier cancels or significantly changes the passenger’s flight, and the passenger chooses not to accept an alternative offered by the carrier. DOT has never defined “significant change” or “cancellation” in a regulation or statute. As a result, airlines may “develop reasonable interpretations of those terms” and must honor those interpretations. DOT, however, would consider any airline’s attempt to retroactively apply a new definition of cancellation or significant change that disadvantages passengers who purchased tickets under a more generous definition to be unfair and deceptive. Additionally, DOT will pursue enforcement action “where a carrier has disregarded the requirement to offer refunds, failed to honor its refund policies, or where it is determined that the carrier’s refund policies or practices are otherwise ‘unfair or deceptive’ within the meaning of 49 U.S.C. § 41712.”

Passengers Who Choose Not to Travel Due to Health Concerns

Passengers who purchased a non-refundable ticket on a flight to, within, or from the United States that is still being operated without a significant change are **not** entitled to a refund or travel voucher. However, DOT stated it will review any passenger complaints to determine whether an airline misled a passenger to avoid the need to offer a refund.

Online Travel Agency Tickets

Ticket agents are required to make “proper” refunds when service cannot be performed as contracted-for on a flight to, within, or from the United States. Specifically, DOT requires “prompt refunds” when: “(i) an airline cancels or significantly changes a flight, (ii) an airline acknowledges that a consumer is entitled to a refund, *and* (iii) passenger funds are possessed by a ticket agent.”

Retroactive Application of Refund Policies

DOT requires that airlines and ticket agents apply the refund policy in place at the time the



Rachel Welford

Member

rwelford@cozen.com
Phone: (202) 912-4825
Fax: (202) 304-1451

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passenger purchased the ticket and would consider it an unfair practice if airlines and ticket agents apply changes retroactively to their refund policies that affect consumers negatively.

Credits and Vouchers In Lieu of Refunds

DOT allows airlines and ticket agents to offer consumers alternatives to a refund, such as credits or vouchers, as long as (1) the option of a refund is also offered and clearly disclosed if the passenger is entitled to a refund, and (2) any restrictions that apply to the credits and vouchers, such as the period in which credits must be used or any fees charged for using the credit, are clearly disclosed. If an airline, by representation or omission, engages in conduct that is likely to mislead consumers about their right to a refund, or the value of a voucher or credit that is offered, DOT would deem such conduct to be a deceptive practice.

Timing of Refunds

Airlines and ticket agents must “promptly” refund passengers. For airlines, “prompt” is defined as being within seven business days if a passenger paid by credit card, and within 20 days if a passenger paid by cash or check. For ticket agents, prompt is not defined. Recognizing that processing refunds may take longer than normal due to COVID-19-related service disruptions, DOT will consider the “totality of the circumstances” when assessing the timeliness of refunds. For ticket agents, DOT may look to the volume of incoming refund requests and steps taken to address the increased volume. For airlines, it may assess whether airlines are making good faith efforts to provide refunds in a timely manner.

Enforcement Discretion

DOT reiterated that given the “unprecedented impact of the COVID-19 public health emergency on the aviation industry,” it will exercise discretion by first providing ticket agents and airlines the opportunity to become compliant before taking action. Nevertheless, DOT will continue to monitor airline policies and practices and vows to take action as needed.
