

DOT Issues Proposed Rule on Airline Ticket Refunds

The U.S. Department of Transportation (DOT) recently issued a Notice of Proposed Rulemaking (NPRM), titled *Airline Ticket Refunds and Consumer Protections*. The NPRM, which applies to U.S. and foreign airlines and ticket agents, proposes to primarily (i) require refunds for cancelled or significantly changed flights and (ii) require travel vouchers/credits (or, if the airline receives significant U.S. or foreign government financial assistance, refunds) to passengers who are unable or choose not to travel due to concerns related to a serious communicable disease. Below is a summary of the NPRM.

Refunds for Cancelled or Significantly Changed Flights

The NPRM formally codifies the DOT's longstanding enforcement policy that airlines and ticket agents must provide prompt ticket refunds for airline-initiated flight cancellations or significant changes of flight itineraries if the passenger does not accept alternate transportation, a travel credit or voucher, or other compensation offered by the airline or ticket agent. Specifically, the NPRM:

1. Defines a **cancelled flight** as: “[A] covered flight that was published in the carrier’s Computer Reservation System at the time of the ticket sale but not operated by the carrier.” Under the DOT’s proposed definition, “the reason that the flight was not operated (e.g., mechanical, weather, air traffic control) would not matter.” Covered flight means a scheduled passenger flight operated or marketed by a U.S. or foreign air carrier to, from, or within the United States.
2. Defines a **significant change** of a flight itinerary that triggers a refund requirement to include the following circumstances:
 - a. The new departure time is three or more hours (for domestic itineraries) or six or more hours (for international itineraries) earlier than the original scheduled departure time;
 - b. The new arrival time is three or more hours (for domestic itineraries) or six or more hours (for international itineraries) later than the original scheduled arrival time;
 - c. The scheduled departure airport or the scheduled arrival airport changes;
 - d. The changed itinerary involves more connection points than the original itinerary;
 - e. The passenger is downgraded to a lower class of service; or
 - f. The change involves a different aircraft type with a “significant downgrade of the available amenities and travel experiences.”
3. Requires that refunds, when due, be made within seven business days of receiving a completed request (for credit card purchases) or within 20 business days (for all other purchases). (Existing DOT regulations already impose such refund timeframes on many, but not all, U.S. airlines and foreign airlines serving the United States.)
 - a. The refund obligation in the NPRM would reside with the entity that sold the airfare from the perspective of the consumer and would apply regardless of whether the entity is in possession of the consumer funds when the refund request is made.
 - b. For codeshare itineraries, the marketing carrier would be responsible for providing the refund.
 - c. For interline itineraries, the carrier that sold the ticket and collected the money from the consumer would be responsible for providing the refund.
 - d. In lieu of the original form of payment, refunds would be permitted in another form that is cash equivalent, to include a check, prepaid card, electronic bank account transfer, funds paid via a digital payment method (e.g., PayPal or Venmo), or a gift card widely accepted in commerce.
 - e. Consistent with the DOT’s enforcement policy, if a prepaid card is issued, any monthly



Jonathon H. Foglia

Member

jfoglia@cozen.com
Phone: (202) 912-4871
Fax: (202) 861-1905



Rachel Welford

Member

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



Michael Deutsch

Associate

mdeutsch@cozen.com
Phone: (202) 280-6499
Fax: (202) 861-1905

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or usage fees would have to be prepaid into the card in addition to the full amount of the refund due.

4. Allows airlines and ticket agents to issue travel credits or vouchers or other compensation in lieu of the required refunds, provided the consumer is first advised that they are entitled to a refund. Any material conditions or limitations applicable to alternate compensation would have to be clearly disclosed before the consumer accepts alternate compensation in lieu of an otherwise required refund.
5. An airline or ticket agent is not required to issue a refund, voucher, or travel credit if the consumer accepts alternative transportation that the airline or ticket agent offers in the event of a flight cancellation or significant change.

Passengers Who Are Unable or Choose Not to Travel Due to Concerns Related to a Serious Communicable Disease

In the event a passenger is unable or chooses not to travel due to concerns related to a serious communicable disease, DOT proposes new rules to govern airline and ticket agent credits/refunds. Specifically, the NPRM:

1. Requires that non-expiring travel credits or vouchers be provided to consumers holding non-refundable tickets in cases where the flight is still scheduled to be operated without a significant change, under the following circumstances:
 - a. The consumer is unable to travel because of a government restriction (e.g., stay at home order, entry restriction, or border closure) in relation to a communicable disease that was enacted after the ticket purchase, regardless of whether a public health emergency as defined by Department of Health and Human Services (HHS)/Centers for Disease Control and Prevention (CDC) regulations (i.e., PHE) has been declared;
 - b. The consumer is advised by a medical professional or determines consistent with guidance issued by government public health agencies not to travel by air, provided (i) a PHE has been declared, (ii) the consumer purchased the ticket before the PHE declaration, and (iii) the consumer is scheduled to travel during the PHE; or
 - c. The consumer is advised by a medical professional or determines consistent with guidance issued by government public health agencies not to travel by air because the consumer has or may have contracted a serious communicable disease (i.e., a communicable disease as defined by HHS/CDC regulations that has serious consequences and can be easily transmitted by casual contact in an aircraft cabin environment).
2. Requires that refunds, in lieu of non-expiring travel credits or vouchers, be provided to non-refundable ticket holders falling within subparagraphs (a) through (c) above, in cases where the DOT determines – pursuant to a public rulemaking – that the airline or ticket agent received significant U.S. or foreign government financial assistance (defined as cash contributions and excluding government loans) in relation to a PHE.
 - a. In making this determination, the DOT would consider, among other factors, the size of the airline or ticket agent and the amount of financial assistance accepted relative to the entity’s annual revenue.
 - b. The determination applies to significant government financial assistance received in the future (i.e., after the NPRM process and the issuance of a final rule) and would not apply retroactively to government financial assistance already received during the COVID-19 pandemic.
 - c. To be eligible for such refunds, consumers must make their request within 12 months of the DOT’s determination.
 - d. Consumers who received travel credits or vouchers prior to the DOT determination would be eligible to receive refunds if the consumer has not yet redeemed the credit or voucher and requests a refund within 12 months of the DOT determination.
 - e. The proposal would cover both financial assistance from the U.S. government as well as financial assistance provided by a “foreign central government to a foreign airline ... selling air transportation to U.S. consumers.”

3. Requires any non-expiring travel credits or vouchers issued under Paragraph 1 above to be issued promptly and with a value equal to or greater than the airfare (including any government-imposed taxes/fees and carrier-imposed charges).
 - a. The imposition of “unreasonable” conditions or restrictions that impact the value of non-expiring travel credits or vouchers would be prohibited.
 - b. The DOT would consider the following to be unreasonable conditions or restrictions: conditions severely restricting eligible travel dates, times, or routes; limitations restricting redemption to one booking and rendering any residual value void; or limitations that restrict the value to the base fare.
 - c. Any material conditions or restrictions on the use of the travel credit or voucher would have to be clearly disclosed, including but not limited to redemption service fees; advance purchase or capacity/inventory restrictions; and booking/travel blackout dates.
4. Allows airlines and ticket agents to require the following documentation from consumers falling within Paragraphs 1 and 2, above, and dated within 30 days of the scheduled initial departure, as a condition of providing the requested travel credit or voucher or (in the case of entities receiving significant government financial assistance) refund, as appropriate:
 - a. the applicable government order or other document demonstrating how the requirement restricts travel; or
 - b. the government public health agency-issued guidance or medical professional’s written statement advising against air travel to protect the passenger’s health or the health of others.
5. Allows airlines and ticket agents, in the case of consumers falling within Paragraphs 1 and 2 above, to retain service fees applicable to processing travel credits or vouchers (or, in the event of such entities receiving significant government financial assistance, refunds) provided the fee is on a per-passenger basis, and its existence and amount were clearly and prominently disclosed to consumers at the time the airfare was purchased.

Airlines will have to revise their Contracts of Carriage to conform to these requirements.

DOT proposes that all requirements in this rulemaking would become effective 90 days after the publication of a final rule in the Federal Register.

Given that DOT is issuing the NPRM under its general statutory authority to prohibit unfair and deceptive practices in air transportation and the NPRM is thus a discretionary agency action – that is to say, the NPRM is not required by Congress – special DOT procedures apply that allow interested parties to petition DOT to (i) conduct a public hearing on the NPRM's subject matter and (ii) thereafter make factual findings on the administrative record. Such a petition, if filed, must be granted where the petitioner has made a “clear and convincing showing” that a hearing is in the public interest. Additionally, DOT will be devoting an upcoming meeting of the Aviation Consumer Protection Advisory Committee (ACPAC) to the NPRM.

The public comment period for the NPRM is 90 days following its publication in the Federal Register (expected in the coming days).
