

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION**

**AIRLINE TICKET REFUNDS AND
CONSUMER PROTECTIONS**

Docket OST-2022-0089

**COMMENTS OF
THE TRAVEL TECHNOLOGY ASSOCIATION**

Laura Chadwick
President & CEO
The Travel Technology Association
3033 Wilson Blvd., Suite 700
Arlington, VA 22201
202-550-8939

December 16, 2022

COMMENTS OF THE TRAVEL TECHNOLOGY ASSOCIATION

The Travel Technology Association (“TTA”) hereby submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued by the U.S. Department of Transportation (“DOT”) in this proceeding and published at 87 Federal Register 51550 (Aug. 22, 2022).

TTA represents the world’s leaders in independent travel distribution. TTA’s members include online travel agencies (“OTAs”), metasearch sites, travel management companies, and global distribution systems (“GDSs”) that enable consumers to search, compare, and book travel easily. These technology innovators have created the infrastructure and marketplace from which travelers, suppliers, and intermediaries benefit today. TTA members provide suppliers with access to the vast and diverse travel marketplace while offering consumers transparency, a wide range of options, and a superb customer experience when purchasing and managing their travel. Our members are on the frontlines of travel and tourism and recognize the great benefit affordable travel brings to consumers, suppliers, and the travel and tourism economy. TTA’s main mission is to emphasize the value of independent distributors to public officials, travel industry suppliers, and consumers, and TTA has consistently advocated for transparency and better disclosure of all aspects of airfares to consumers. More information about TTA, including the identity of its members, is at www.traveltech.org.

TTA limits its comments to issues that implicate the interests of our members that are ticket agents, i.e., third parties authorized by airlines to market air transportation services on behalf of, and provided by, those airlines, as well as meta search engines that would also be covered by the proposed rules. TTA does not address every issue in the NPRM. DOT should draw no conclusion as to whether TTA supports or opposes a position articulated in the NPRM on which it chooses not to comment.

INTRODUCTION/SUMMARY OF KEY POSITIONS

TTA strongly agrees with the NPRM's guiding principle that a consumer who pays for a service that is not provided, due to circumstances beyond the consumer's control, should receive a refund. For this reason, TTA supports the NPRM's primary proposal to require refunds to consumers if a flight is cancelled or if there is a significant change in flight itinerary and the passenger declines any offered transportation alternatives. TTA's ticket agent members today work with their customers to help them secure such refunds. This would not change were the proposed rules adopted; customers who rely on ticket agents for their travel arrangements would continue to rely on their agents when circumstances are such that a refund is required due to a cancelled or significantly changed flight.

DOT has correctly determined that a consumer protection rule is warranted to ensure that consumers receive refunds in the cancellation and significant change settings described in the proposed rule, as any failure to provide such refunds would constitute an unfair practice. In all such settings, airlines should be responsible for confirming the passenger's eligibility for a refund and for returning the funds received by the airline. The proposition that refunds should be required when flights are cancelled or significantly changed needs no caveats in the typical situation in which the airline is the merchant of record ("MOR"), including the common situations in which a consumer bought travel either directly from an airline or from an agent acting on behalf of the airline in the indirect sales channel. Where the airline is the MOR, as reflected on the receipt or credit card statement received by the passenger, the airline should be fully responsible under DOT's rules for providing the refund.

The airline's responsibility to provide the refund applies in all circumstances where the airline is the MOR, including in situations where the passenger seeks the assistance of the agent

with whom it transacted the original sale to obtain the refund from the airline. In this regard, it is important that DOT appreciate that a passenger may be expected to approach the agent with which it may have a relationship to seek a refund. The agent will of course assist the passenger in dealing with the airline to obtain the refund – but the legal responsibility for making that refund in the circumstances addressed by the rule must continue to rest entirely with the airline where the airline was the MOR.

The passenger's right to a refund is no different in the setting in which a ticket agent is itself the MOR. However, in that setting any final rule should provide that the agent's responsibility to refund the cost of travel to the consumer should be triggered only after the airline has returned to that ticket agent the funds the agent remitted to the airline for the cancelled or significantly changed air travel. This point is critical: a ticket agent should never be required to issue a refund where the agent has not received the funds from the airline. Thus, the refund obligation of an agent which is an MOR as to a particular transaction should not be triggered *until* the airline returns its portion of the funds to the ticket agent. *This is in fact DOT's current policy, which recognizes that agents have no refund obligation until they have received the funds to be refunded.*¹ That policy works fairly for all parties involved, including consumers. There is no reason articulated in the NPRM to change it or to limit this policy to only a class of smaller agents.

As discussed further below, DOT should codify in its rules a clear two-step refund requirement that would apply where the ticket agent is the MOR. First, the airline should be required to return to the ticket agent the full value of what the airline received from the agent at the time of the purchase transaction. This flow of funds back from the airline to the agent can

¹ See U.S. DEP'T OF TRANSP., OFF. OF THE SEC'Y., FREQUENTLY ASKED QUESTIONS REGARDING AIRLINE TICKET REFUNDS GIVEN THE UNPRECEDENTED IMPACT OF THE COVID-19 PUBLIC HEALTH EMERGENCY ON AIR TRAVEL (May 12, 2020), https://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020, discussed further below.

occur seamlessly through the same settlement process through which the agent remitted the funds received from the passenger to the airline at the time of the sale. Second, once made whole through the settlement process or otherwise, the agent will then have an obligation to promptly refund the consumer. This process should apply to cancelled flights and significant changes to flight itineraries of the sort defined in the final rule adopted in this proceeding, regardless of course of whether or not the ticket was a non-refundable ticket.

With respect to the proposed rules governing cancelled or foregone flights due to serious communicable diseases or public health emergencies, TTA submits, as explained below, that because credits and vouchers are fundamentally airline instruments usable on a particular airline subject to that airline's terms and conditions, the obligation to determine a passenger's eligibility for credits and vouchers and to issue such instruments must rest with the airlines. Again, the ticket agent may support the passenger in receiving and ultimately using a credit or voucher for a re-booked flight, as discussed below. Further, TTA opposes any credit or voucher requirement in a setting where a consumer chooses not to travel in the absence of a government restriction on travel or in the absence of the consumer actually being ill because in that setting the consumer can protect himself or herself by buying a refundable ticket and/or travel insurance. Also, under no circumstances should DOT impose a "non-expiring" restriction on credits or vouchers.

Below, TTA will provide more detail about its views on these and other specific elements of the DOT proposals.

I. THE PROPOSED RULES SHOULD ONLY APPLY TO SALES MADE IN THE UNITED STATES

DOT has asked whether the proposed rulemaking should cover ticket agents "regardless of whether the [ticket agent] has a location in the U.S. through which the transaction occurred." 87 Fed. Reg. at 51556. TTA suggests that, rather than focusing on whether a ticket agent is based in

the United States or whether a ticket transaction occurred through a U.S. location, DOT should use the point of sale (“POS”) designation to identify ticket transactions and ticket agents that will be covered by the proposed rulemaking. In particular, *any* ticket transaction with a POS within the United States and any ticket agent selling such a ticket should be covered by any final rules adopted in this proceeding.

There are several reasons DOT should use the POS designation. First, there is already a widely-used industry standard for determining the POS. Notably, GDSs denote the POS on all their ticket transactions. Second, the POS designation establishes a bright-line for determining which ticket transactions and ticket agents have a connection to the United States sufficient to warrant application of the refund rule. Third, given its already widespread use, the POS designation can make implementation of any final rules easier for the regulated entities. Therefore, DOT should use this ready-at-hand test for applicability.

II. THE PROPOSED REFUND RULES SHOULD BE REVISED TO RELIEVE TICKET AGENTS OF ANY REFUND OBLIGATION UNTIL FUNDS ARE RETURNED TO THEM BY AIRLINES

A. TTA supports DOT’s defining key terms in its rule, but DOT should also require airlines to determine whether a consumer is eligible for a refund under these definitions and to inform ticket agents of the same.

TTA supports DOT’s decision to define what constitutes a “cancelled flight” and “significant change to flight itinerary” under 14 C.F.R. Part 260. Provided these terms are defined carefully and as objectively as possible, the definitions will bring uniformity and clarity to the industry. This action will allow consumers to know when they are entitled to a refund and will eliminate the need for ticket agents to become familiar with each airline’s individual refund policy. Similar results were seen from DOT’s implementation of the tarmac delay rule, including the definitions adopted in connection with that rule. *See* 14 C.F.R. § 259.3. This will save both time

and money for consumers and ticket agents and will reduce the potential for disagreements regarding refund eligibility among the parties.

While TTA does not have a specific view on how “cancelled flights” or “significant changes to flight itinerary” should be defined (although the definitions in the proposed rules appear reasonable), TTA urges that airlines should be required to inform ticket agents involved in the sale of the travel service for which a refund is sought of whether the conditions for a refund as set forth in any final rule have been satisfied. In other words, in a setting where a flight has been cancelled or significantly changed as those terms are defined by DOT, and the passenger (which may be holding a non-refundable ticket) has opted for a refund as opposed to some alternative travel arrangement or form of compensation offered by the airline, agents who were involved in the initial sale of the airline services at issue need to be advised by the airline that a refund situation covered by the DOT rule has arisen. Such critical information is in the hands of the airline, but is not certain to be known to the ticket agent unless the airline provides the information.

In this regard, TTA is pleased that “[t]he Department acknowledges that for transactions in which a ticket agent would be responsible for issuing a refund if due, before issuing the refund, the ticket agent may need further information to verify whether a refund is due under the Department’s regulation.” *Id.* at 51563. To solve this problem, airlines must be required to make the eligibility determination – since they are responsible for cancelled flights and significant changes to flight itinerary, *see id.* at 51563, and have the information needed to determine if a refund is required – and to inform ticket agents of the same. Specifically, DOT should require that the information be provided by the airline to the ticket agent involved in the initial sale of the air travel as soon as practicable, and no later than 24 hours, after the situation giving rise to the refund requirement becomes known to the airline. Such a communication between the airline and the

relevant agent will allow the agent to better assist the consumer in seeking a refund from the airline, including in a setting where the airline is the MOR responsible to the consumer for the refund. Where the agent is the MOR, the information will allow the relevant ticket agent to seek a return of the relevant funds from the airline so that the agent can in turn make a timely refund to the passenger. In that setting, any obligation for ticket agents to issue refunds should not begin until the airline advises the ticket agent that refund obligations have been triggered and, as discussed further below, returns the funds in the full amount that the MOR agent remitted to the airline for the transportation.

B. TTA agrees that consumers should be refunded for cancelled flights and significant changes to flight itineraries, but this refund requirement should *not* require ticket agents to “return” funds that airlines actually hold.

As stated above, TTA agrees that a consumer should have the option to receive a refund for cancelled flights and significant changes to his or her flight itinerary. By purchasing an airline ticket, consumers pay airlines to provide a particular service at a particular time. If an airline fails to provide this contracted service and the passenger chooses not to accept alternative transportation services or vouchers or credits offered by the airline, there is no justification for an airline keeping the funds it has not earned. DOT is therefore correct to view an airline’s failure to refund consumers under these circumstances as an unfair business practice, and TTA supports codifying this principle in the Code of Federal Regulations.

However, TTA strongly disagrees with the proposal to require *ticket agents* to refund consumers for cancelled flights and significant changes to the flight itinerary “regardless of whether the ticket agent is in possession of the ticket purchase funds.” *Id.* at 51562. This proposal is fundamentally unfair to ticket agents of all sizes, who are *not* responsible for cancelled flights or significant changes to flight itineraries, *see id.* at 51563. For that fundamental reason alone

ticket agents should not be responsible for refunds in any circumstances where the agent is not the MOR.

But there is another critical reason why any refund obligation on agents must be limited even where the agent is the MOR: the flow of funds among consumers, ticket agents, and airlines is such that ticket agents *almost never* possess most of the airfare a consumer would seek to be refunded. Thus, TTA proposes an alternative refund requirement that better matches industry practice and places the initial refund obligation where it belongs – on airlines. This is discussed next.

C. DOT’s proposed refund requirement fails to match the actual flow of money among consumers, ticket agents, and airlines.

In the NPRM, DOT requested “information regarding common practices and timelines for ticket agents to settle accounts with airlines.” *Id.* at 51563. In this section, TTA responds to this request by providing a detailed explanation of the current general payment flow among consumers, ticket agents, and airlines. As the description clearly indicates, ticket agents rarely hold a consumer’s airfare funds when a refund request is made. Thus, DOT’s proposed requirement that a ticket agent refund monies it does not hold fails to match the industry’s actual money flow and would impose an undue financial burden and risk on ticket agents.

1. Payment Flow When an Airline is the MOR

When an airline is the MOR for a ticket transaction, the airline is listed on the consumer’s financial statement as the recipient of the consumer’s airfare payment. Assuming that a consumer used a ticket agent to purchase the airfare, the ticket agent would have forwarded the consumer’s payment information to the airline, which would have collected and retained the payment directly from the consumer’s payment method (e.g., the consumer’s credit card). In other words, in

virtually all cases in which the airline is the MOR, the agent never has any of the funds paid for the air travel, which are collected directly by the airline from the passenger's credit card company.

If a refund is requested, the airline is the entity holding the consumer's airfare payment, and it can send these funds directly back to the consumer by, e.g., placing the funds back on the consumer's credit card. The consumer might choose to approach the airline directly or, alternatively, might rationally choose to contact the ticket agent with which it dealt in obtaining the ticket to initiate the refund process. Ticket agents are of course equipped to serve their customers in such eventualities. The ticket agent can assist the consumer to obtain the refund from the airline, most likely by communicating with the airline through the applicable GDS used by the parties and otherwise facilitating any necessary communication with the airline on the consumer's behalf. Notwithstanding that the ticket agent may assist the consumer to obtain a refund, where the airline is the MOR, the legal obligation to provide a refund must rest at all times with the airline, as is appropriate since the airline processed the consumer's payment at the time of sale and the airline has possession of the relevant funds.

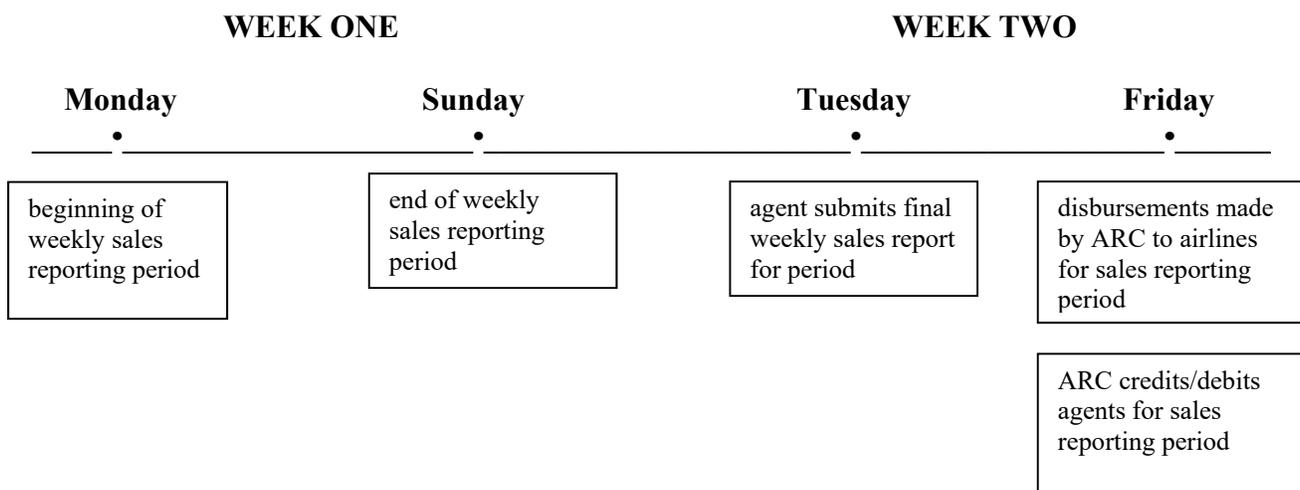
2. Payment Flow When a Ticket Agent is the MOR

When a ticket agent is the MOR for a ticket transaction, the ticket agent is listed on the consumer's financial statement as the recipient of the consumer's airfare payment. In this setting, the ticket agent first collects the consumer's payment directly from the consumer's payment method (most often, the consumer's credit card) and then forwards the airline's portion of the consumer's payment to the airline through the Airlines Reporting Corporation ("ARC").² The ARC settlement process occurs within relatively close proximity to the charge to the consumer's

² On occasion, some ticket agents may use an agency's virtual credit card or VCC to exchange funds with an airline. When using a VCC, the airline collects payment from the travel agent via a charge to the VCC in the same way that it would collect payment from a consumer credit card. These two charges, i.e., the charge to the consumer's form of payment and the VCC charge to the ticket agent, occur virtually concurrently.

credit card. Under that process, the airline will generally have received the funds within as few as five and no more than twelve days from the date of the initial sale. In that regard, as shown in the ARC settlement timeline below, the settlement process is generally relatively quick, spanning only a matter of several days with a two-week settlement period between the time of the transaction with the consumer and the receipt by the airline of the funds paid to the agent:

ARC SETTLEMENT TIMELINE³



Unlike where the airline is the MOR, in the setting where the ticket agent is the MOR, the airline does not receive the consumer’s payment method information from the ticket agent and does not know how much was charged by the ticket agent to the consumer for the sale. The airline knows only the amount that it has agreed to sell to the agent for re-sale, i.e., the amount remitted to the airline by the agent. That amount will typically be the bulk of the amount needed to satisfy the refund request, but not all of it.

³ A somewhat more detailed ARC settlement calendar may be found on the ARC website at the following link: <https://www2.arccorp.com/globalassets/private-myarc/settlement-calendar-v2.pdf>. The second calendar displayed at that link reflects the current settlement calendar in use as of July 18, 2021. A more elongated process displayed on the first calendar at the link had been in place for an earlier period as a result of COVID.

If a consumer requests a refund (which usually occurs beyond the post-purchase agent-airline settlement period), the ticket agent would *no longer* have the full amount of the funds on hand needed to make a refund since most of those funds typically would have been paid previously to the airline through the settlement process. Since only the ticket agent has the consumer's payment information (e.g., credit card information), the ticket agent would have to be involved in the refund process.

However, and this is critical, before refunding the passenger, the ticket agent would need to obtain the consumer's funds back from the airline. The agent cannot do so through any sort of one-on-one transaction with the airline. Rather, airlines and agents normally handle the flow of funds between them through the ARC settlement system. The ticket agent thus would initiate a refund from the airline through ARC, essentially seeking a reversal of the payment flow between the ticket agent and the airline. The ticket agent can refund the consumer only after the ticket agent actually receives from the airline the funds that were held by the airline, which, as the above settlement timeline shows, can take over one week.

It is important for DOT to understand that the airline must remain responsible for validating that the consumer is eligible for a refund according to the definitions established by DOT in this rulemaking and the applicable final rules governing refunds. Today, such validation occurs by comparing the consumer's reasons for the refund request with the airline's policy or, if the flight was cancelled or changed by the airline, confirming the flight irregularity with the airline. Ordinarily, the airline will provide the agent with a waiver code (permitting the refund even in the case of a non-refundable ticket) that the ticket agent can then use when it requests a return of funds from the airline.

If a consumer is indeed eligible for a refund, the airline will generally send the consumer's airfare funds to the ticket agent that is the MOR within the settlement period applicable to the funds at issue. Where ARC is used to facilitate the flow of funds, which is the most common scenario in the United States, this process usually occurs within a matter of days, as shown above, with the exact number of days varying based on when in the settlement cycle the refund is requested. Note that it can be as many as eleven days (Monday through the Friday of the following week) before the agent is credited with the amount of the refund if one assumes that the refund request is made on the first day (Monday of the first settlement week) of the settlement period. Once the funds have been returned to the ticket agent by the airline, the agent must then confirm that the funds received relate to the refund transaction at issue. This process also adds time to the refund transaction. Only after that confirmation process is completed can the agent then refund the consumer. The agent has every incentive to be careful in checking that a refund is appropriate: unless the airline approves the refund, the ticket agent risks being left liable for the consumer's airfare if the airline ultimately rejects the ticket agent's refund request.

3. Thus, even when the ticket agent is the MOR, the airline typically holds the bulk of the funds sought to be refunded

As this description has shown, an airline holds all of the consumer's funds when it is the MOR. When the ticket agent is the MOR, the airline still holds the bulk of the consumer's funds, which it will usually have received within about a week of the payment by the consumer. Thus, most of the funds a consumer would want refunded are ordinarily held by the airline.

D. Given the actual flow of funds among consumers, ticket agents, and airlines, DOT should maintain its current policy of not requiring a ticket agent to issue a refund until the airline returns the consumer's funds to the ticket agent, rather than adopt a rule requiring refunds within a fixed number of days.

Under the current DOT policies, ticket agents are required to refund consumers "promptly" whenever "service cannot be performed." 14 C.F.R. § 399.80(l). DOT has heretofore interpreted

this regulation to mean that ticket agents are required to issue refunds promptly “when the following conditions are met: (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.*” U.S. DEP’T OF TRANSP., OFF. OF THE SEC’Y., FREQUENTLY ASKED QUESTIONS REGARDING AIRLINE TICKET REFUNDS GIVEN THE UNPRECEDENTED IMPACT OF THE COVID-19 PUBLIC HEALTH EMERGENCY ON AIR TRAVEL (May 12, 2020) (emphasis added), https://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020. Thus, currently ticket agents are appropriately *not* required to return funds to a consumer until they have received from the airline the funds to return.

This current policy is fair because “unlike airlines, ticket agents do not initiate the cancellation or significant changes that result in a refund being due, nor do the ticket agents have any control over the cancellation or significant changes to a flight itinerary.” 87 Fed. Reg. at 51563. It is also fair to ticket agents because it promotes continued financial stability of ticket agents of all sizes. As the NPRM noted, during the COVID-19 pandemic, “ticket agents ... faced a drastic increase in refund requests from consumers. In addition to facing the similar cashflow difficulties [that airlines experienced] arising from the large numbers of refund requests, ticket agents’ cashflow situation may have been *more challenging* because *they were not the ultimate recipients of the consumer funds originally used to purchase the ticket.*” *Id.* at 51557 (emphasis added). Indeed, ticket agents, including TTA’s members, often operate low margin businesses and cannot issue a full refund to a consumer when the bulk of those funds are held by an airline rather than the ticket agent. To require ticket agents to make such “refunds” anyway would impose a *loss* on ticket agents that they may not be able to recoup from airlines.

TTA is aware that the Aviation Consumer Protection Advisory Committee (ACPAC) tentatively (subject to a further vote of its members) recommended at a December 9, 2022 meeting that airlines be required to return funds to “small” ticket agents (perhaps as defined by the Small Business Administration) for refunds of credit card purchases within seven days of a refund request and, once the refund has been received, to require the small ticket agents to refund the consumer within another seven days. Respectfully, while TTA appreciates the ACPAC’s recognition of the need for agents to receive funds back from airlines before refunding consumers, there are several flaws with this recommendation.

First, larger and medium sized agencies lack access to the funds needed for the refund no less than small agencies. The burden of making a refund with funds not in hand is no less on a larger agency than it is on one that qualifies as a small business. Both depend on the airlines to return those funds before the refund can be made, and both rely on the ARC settlement process to provide the funds before a refund can be made. As stated above, even larger ticket agents such as TTA’s agency members operate in a low margin environment. Requiring refunds to be issued to consumers before funds are returned by airlines would create potentially severe cash flow problems for agents of all sizes; larger agencies simply have more refunds to handle at any given time and the economic pressures are little different than they are for smaller agencies whose refund load may be lighter. In sum, in the refund context there is no sound basis on which to distinguish agencies based on size.

Second, setting up one set of refund rules for smaller agencies and another for larger ones is simply not practical or workable. Again, regardless of size, agencies are typically tied to the ARC settlement process and dependent on it to receive the funds needed for a refund. Neither airlines on one side of the transaction nor consumers on the other should have different

expectations or be subject to different requirements based on the size of the agency. Not only would consumers find more than one set of refund rules for ticket agents confusing, but the size of agencies may change over time as smaller agencies can grow into larger ones, and vice-versa. Having different sets of rules based on whether an agency satisfies some arbitrary revenue or other size threshold at a particular point in time is, quite simply, neither sound policy nor practical.

Further, a hard and fast seven day rule such as recommended by ACPAC is not workable for the reasons already explained: ARC does not always settle agency-spawned refund requests within seven days. For the reasons discussed in these Comments, agencies should remain subject to the refund time standard set forth in DOT current guidance, i.e., to provide refunds “promptly,” and likewise to the current DOT policy of not requiring a ticket agent to effectuate a refund until the agent has received the funds at issue back from the airline.

E. TTA supports codifying a clearer two-step refund requirement to ensure *both* that consumers are not sent back-and-forth between ticket agents and airlines *and* that ticket agents are not required to refund monies airlines actually hold.

In the NPRM, DOT states it “has considered placing the obligation of refund on the entity that is in possession of the consumer funds at the time the refund request is made, but does not propose this approach because which entity is in possession of the funds would not necessarily be clear to the consumer because multiple entities may be involved in the transaction process. Such uncertainty would result in additional costs, delay, and confusion to consumers.” *Id.* at 51562. Instead, DOT believes its proposal “draws a clearer line for consumers to determine who would be responsible for issuing refunds by looking at their financial transaction records.” *Id.* at 51563.

TTA strongly disagrees with the notion that it does not or should not matter which entity has the consumer’s funds in hand. First, even if DOT’s proposed refund requirement did establish a clearer indication of which entity should be contacted for a refund, the requirement would sacrifice fairness and the financial stability of ticket agents, as discussed above. Second, TTA

believes that if the rules clearly define when customers are eligible for a refund and require carriers to promptly return funds to ticket agents where the agent is the MOR, ticket agents can safely assure customers they will receive a refund in relatively short order. Such a system will eliminate any need for customers to also speak with the carrier, while not requiring ticket agents to refund monies they do not actually hold.

In particular, TTA proposes the following alternative refund requirement:

- When an airline is the MOR, only the airline should be required to issue the refund. Since only the airline will be listed on the consumer's financial statement, the consumer can either request and receive this refund directly from the airline or, if the consumer desires the ticket agent with which it has a relationship to assist in making this request, the ticket agent could of course work with the consumer and the airline to facilitate the refund from the airline.
- When a ticket agent is the MOR, the consumer can request a refund from the ticket agent, but a two-pronged refund requirement should apply:
 - First, the ticket agent will request a return of funds from the airline, triggering an obligation on the airline to determine whether the consumer is eligible for a refund and to so advise the agent and provide an appropriate waiver code or other form of confirmation that a refund is appropriate. If so, the airline must return to the ticket agent the airfare charged by the airline to the ticket agent, as soon as practicable under the settlement process.
 - Second, only after the ticket agent receives the airfare that has been refunded by the airline, through the settlement process or otherwise, will the ticket agent then be required to promptly refund the consumer.

The passenger could deal with either entity as it wishes where the airline is the MOR (with the agent acting as a facilitator should the passenger so choose) or with the agent where the agent is the MOR. The refund obligation, however, would rest with the airline where it is the MOR and it would rest with the agent where it is the MOR, provided that the airline has refunded the airfare held by the airline. By clearly defining where the refund obligation rests, TTA's proposed refund requirement should "ensure the consumer is not sent back and forth between the ticket agent and the airline trying to obtain airline ticket refunds." *Id.* at 51563. Further, unlike DOT's proposal, ticket agents would not be required to refund full airfare payment that they do not hold, but consumers would still receive their refunds within a relatively short timeframe consistent with the ticket agent refund obligation in place today. Thus, TTA's proposed refund requirement protects consumers and ticket agents and ensures that legal responsibility for issuing refunds matches the actual operational responsibility for money flow among consumers, ticket agents, and airlines.

Finally, concerning the timing of refunds, DOT's current policy with respect to ticket agent refunds provides that they must be made "promptly." *See* 14 C.F.R. § 399.80(l). However, the proposed rule would impose on airlines and ticket agents a 7-day (for credit cards) and 20-day (for other forms of payment) refund requirement. While TTA offers no view on whether those timelines are workable for refunds for which airlines are fully responsible, those timelines will not work in the setting in which an agent is the MOR for the reasons stated above. Specifically, those timelines will not work for that setting because effectuating a refund is a two-step process in which the airline must first advise the agent that a refund is due and return to the agent the funds at issue through the settlement process or otherwise. Only after those funds are returned would the agent be in a position to provide the refund to the consumer, but that process cannot be completed within seven days given the timing of the settlement processes. For those reasons, DOT should retain the

current “promptly” requirement for refunds for which ticket agents are responsible, but not define that term to mean the 7/20-day periods for the reasons stated here.

In sum, TTA urges DOT to adopt the alternative refund requirement described above and incorporate into its final rulemaking (i) the clarification in its May 2020 FAQ that any ticket agent’s refund obligation is contingent on possession by the ticket agent of the funds to be refunded and (ii) the “promptly” requirement for the timing of ticket agent refunds as opposed to a more prescriptive timeline such as the 7/20-day timeline in the current proposal.

III. THE PROPOSED RULES GOVERNING REIMBURSEMENT FOR FOREGONE FLIGHTS DUE TO SERIOUS COMMUNICABLE DISEASES OR PUBLIC HEALTH EMERGENCIES SHOULD EXCLUDE TICKET AGENTS

TTA appreciates DOT’s efforts to address in this proceeding a process for providing consumers an opportunity to receive vouchers or credits in a setting where planned travel with non-refundable tickets is affected by a public health emergency or communicable disease issue. Generally, TTA believes that it is a good idea to implement a set of rules to address this setting and to ensure that all stakeholders, including passengers, are treated fairly in such circumstances.

TTA will offer here some important proposals to improve the proposed rules and better tailor them to the reality of the way in which credits and vouchers are handled. Specifically, TTA proposes here as follows:

- the responsibility for the issuance of credits and vouchers in the circumstances described in the rule should apply to the airline, not the ticket agent, because such credits and vouchers are airline instruments designed to be used for future services of the airline on which the consumer was originally intending to travel and the value of credits and vouchers are maintained in the airline’s records in the name of the customer;

- since the value of the credit or voucher originates with the airlines, the role of the ticket agents is to assist passengers in procuring and using credits and vouchers, including rebooking travel, but agents cannot be financially responsible for the credit or voucher;
- under no circumstances should credits or vouchers be required to be issued for non-refundable tickets in the event that a passenger chooses not to travel for health-related reasons, even under the advice of a medical professional, because the passenger is able to protect himself or herself by buying a refundable ticket or flight insurance; and
- under no circumstances should DOT mandate that credits or vouchers bear no expiration date because non-expiring credits or vouchers would create unreasonable administrative and financial reporting burdens.

TTA will address each of these points and others in more detail below.

A. Credits/vouchers are airline instruments, the use of which is constrained by airline rules; ticket agents have only a limited role concerning credits and vouchers.

Before turning to its specific suggestions, TTA here offers the following views on the threshold question of what the terms “credits” and “vouchers” mean in the specific context of the NPRM and the manner in which such credits and vouchers are typically handled in the air travel setting.

TTA understands the terms “credit” and “voucher” to refer to an electronic or paper document that in circumstances where the consumer’s original flight is cancelled, or foregone by the consumer for some public health or communicable disease related reason (as described in the proposed rules), is issued by the affected airline. The credit or voucher entitles the consumer to

an equivalent dollar value worth of travel for a future flight (between points served by the affected airline). A credit or voucher generally takes the form of an e-ticket issued by the specific airline to the consumer who was originally scheduled to travel, such credit or voucher reflecting the specific value of the foregone or cancelled travel on that airline. In all cases, the value of a credit or voucher is retained by the airline and is issued in the name of the customer. Ticket agents have no control over the credit or voucher nor any ownership rights to those instruments.⁴

As the above discussion underscores, credits and vouchers are issued to consumers by an airline for use on that airline, most often in a setting in which a refund is not provided due to circumstances making refunds impractical or where refunds would pose a threat to the financial viability of the entity issuing the refund. Such circumstances would exist in the public health/communicable disease setting addressed by the proposed rule in which a very large number of persons are unable to travel or choose not to do so. During the COVID-19 pandemic period, airlines frequently issued credits to passengers who chose to forego travel for personal health reasons or who were forced to do so due to cancelled flights.

Importantly, in the case of both credits and vouchers, the fare rules of the issuing airline determine the terms and conditions of their use, including issues such as transferability and expiration. It is the airline, in other words, that controls the scope and all of the associated terms and conditions of the credit or voucher. It is also the airline that makes the determination of whether a credit or voucher, versus a refund or some other form of compensation, will be offered to the passenger based on the particular circumstances at issue.

⁴ Some airlines distinguish between credits and vouchers. *See, e.g.,* <https://www.aa.com/i18n/customer-service/payment-options/travel-credit.jsp>. However, for purposes of this rulemaking, TTA submits that any such distinctions are not material.

By contrast, the role, if any, of ticket agents in the credit/voucher setting is substantially more limited. In certain airline-prescribed circumstances, airlines will empower ticket agents to issue credits or vouchers for air travel that is not provided. For example, during the COVID-19 pandemic, some airlines provided certain agents with advance instructions of the circumstances under which the agent was able to issue a credit or voucher for future travel on behalf of that specific airline. However, in these circumstances it is the airline that is responsible for issuing the credit or voucher, with the agent merely acting in an administrative or ministerial capacity pursuant to the airline's instructions. As explained above, the credit or voucher is at all times subject to whatever terms and conditions are attached to it by the airline and issued only in the circumstances that are defined by the airline, not the agent. Airlines must in all cases be responsible for confirming the passenger's eligibility for a credit or voucher.

The role of ticket agents relative to credits or vouchers is to assist customers who request help with receiving a credit or voucher to which the passenger is entitled and, when the passenger is able or interested in traveling again, to assist in the re-booking of the travel with the credit or voucher. This is the case regardless of whether the agent is the MOR for the particular air travel at issue or not. Thus, even where the agent is the MOR for a ticket for which travel did not occur, the credit or voucher is issued by the airline and in the name of the customer for future use on that airline and subject to the terms and conditions defined in the rules of that airline. In other words, an agent might advise the passenger of the passenger's entitlement to a credit or voucher on the airline on which travel was booked (based on the airline's instruction regarding the passenger's eligibility), but the passenger does not receive a credit or voucher in the name of the agency for any flight that could be booked on that agency's website or otherwise; doing so would require agents to duplicate the airline credit and give customers value for the flight which the agent would

never recoup. Rather, even where the agent is the MOR, the passenger will receive a credit equal to the full amount paid for use on the airline at issue.

B. DOT's proposed rules should be revised to account for the fact that credits/vouchers are airline instruments and to relieve ticket agents of any regulatory responsibility to issue such credits/vouchers.

Turning to the specific DOT proposals at proposed section 399.80(o), TTA urges DOT to eliminate from that proposed rule the requirement that the ticket agent provide travel credits or vouchers in the circumstances described at section (o)(1)(A) through (C), i.e., where health-related travel restrictions have been imposed or where the passenger chooses not to travel due to health concerns or on advice of a medical professional as described in those subparagraphs. Because the decision as to whether to issue a credit or voucher for use on a particular airline is in all cases in the hands of the airline, DOT should not adopt any rule to require ticket agents to issue credits or vouchers or determine that the failure of a ticket agent to issue a credit or voucher in these circumstances is an unfair or deceptive practice.⁵

As described above, airlines rather than ticket agents are the entities that routinely issued such credits and vouchers during the COVID-19 pandemic. To impose this type of requirement on ticket agents in the case of some future pandemic or where a passenger chooses to forego travel for health-related reasons, as described in the proposed rule, would require a massive and entirely unnecessary change in the way in which credits and vouchers are handled by the industry. It would require, for example, that ticket agents: (1) assume responsibilities that are properly those of the airlines to issue a credit or voucher for airline travel, (2) define the terms and conditions of those credits consistent with airline instructions, and (3) fully administer a credit/voucher program, which could only be done in full coordination with each airline, with each such airline necessarily

⁵ TTA notes that the question of ticket agent responsibility in this area is explicitly raised in the NPRM at page 51569. TTA responds to the Department's concerns here.

remaining in control of the credit or voucher restrictions and limitations. This is not only a recipe for wasteful administrative burden but also for confusion in a setting in which airlines would need to retain the ultimate decision-making authority relative to the issuance of credits and vouchers for travel on that airline.

In short, there is no need for DOT to impose credit/voucher issuance responsibilities on ticket agents (as it has done in proposed section 399.80(o)) parallel to those that would be imposed on airlines (in proposed section 260.7). As long as the airlines fulfill the obligations that DOT's final rules would impose on them to issue credits and vouchers to address public health and other settings described in the proposed rules, the traveling public will receive the protections that the rule seeks to provide to them. This result should apply even where the agent is the MOR. In those circumstances and others, the agent will of course assist its customer in obtaining the credit or voucher from the airline, but for all of the reasons stated it is the airline alone that should retain the responsibility for issuance.

Any other result can only breed confusion for the traveling public. Were agents required to issue credits or vouchers, a consumer might not be certain in any given circumstance whether its agent or the airline is responsible for issuance. Confusion would also arise if, for example, both airlines and agents were empowered by the DOT rules to assess medical documentation presented by a passenger as a basis for not traveling, as per the proposed rules at section 259.5(b)(6)((ii) for airlines and proposed 399.80(o)(2). Whatever risk exists of inconsistent administration of this rule as among airlines would be magnified many times over if each of thousands of ticket agents were required to assume the role of reviewing and judging the adequacy of the documentation provided. Moreover, lacking systems and expertise to assess whether a particular passenger's health condition is such that travel is properly foregone, a DOT rule such as that proposed for agents

would require each to set up its own processes and consult with medical professionals to assess the documentation provided. That is a burden that would be quite extensive and costly – and totally unnecessary if the responsibility for assessing passenger medical documentation remained with the airlines, where it properly belongs.

None of the above is to suggest that ticket agents have no role to play. The role of agents, as in any air travel transaction in which the consumer has turned to an agent for assistance, is to help the consumer understand his or her rights, to assist the consumer in procuring any credit or voucher to which they may be entitled from or on behalf of the airline, and to facilitate the ability of the consumer to eventually use the credit or voucher to rebook travel on the airline at issue (among other actions the agent may take to assist its customer). However, this assistance/facilitation role is not one that requires any regulatory intervention and should not be conflated by DOT with a regulatory role. DOT should not impose on ticket agents any responsibilities that properly rest with airlines for the reasons discussed above.

In sum, a rule making the airlines the responsible parties for issuance of credits or vouchers will avoid the above problems. And such a rule would not impede the ability of agents to play their proper role of assisting their customers to procure credits/vouchers where the customer is eligible under any final rule that may be adopted.

C. Under no circumstances should DOT require the issuance of credits or vouchers where the passenger with health concerns could purchase refundable travel and/or insure its travel; waiver of change fees should also be considered as an alternative.⁶

TTA generally agrees with DOT that where travel is precluded by a government order (e.g., a stay-at-home order or a quarantine or border closure) issued to protect passengers from a

⁶ TTA offers views on this issue and, in the next section of these comments, on the issue of whether credits or vouchers should be non-expiring, in the event that DOT were to proceed to impose a credit/voucher issuance obligation on ticket agents notwithstanding the views expressed above.

communicable disease the issuance of credits or vouchers by airlines for travel that cannot take place is reasonable. In these circumstances, the choice not to travel is imposed by a third party, i.e., a government, and the passenger is precluded from using the non-refundable ticket for reasons that are not within the control of the airline or the passenger. The proposed rules requiring the issuance of a credit or voucher in those circumstances are not objectionable, provided for the above-stated reasons that the responsibility of credit or voucher issuance rests exclusively with the airline.

However, the DOT proposals go much further and would require, as per the proposed rule at section 259.5(b)(6)(i)(B) for airlines, and at section 399.80(o)(1)(B) for ticket agents, the issuance of credits and vouchers where a passenger chooses not to travel based on the passenger's assessment of public health guidance or the guidance of the passenger's own medical professional during a public health emergency. In such circumstances, a rule requiring the airline (and ticket agent under the current proposal) to issue a credit or voucher is inappropriate. That is because the passenger concerned about health issues, before or after the declaration of a public health emergency, has the means available to financially protect himself or herself, namely by purchasing refundable air travel and/or travel insurance that would cover any losses associated with the non-use of a non-refundable ticket. Given that, imposing a credit/voucher burden on airlines, with all of the administrative and other burdens associated with such a requirement, is unwarranted. For similar reasons, and because no credit/voucher obligation should in any circumstances be imposed on agents, the proposed rules identified above should not be adopted.

DOT also proposes that credits/vouchers must be issued by airlines and agents where, regardless of whether there is a health emergency, a consumer is advised by a medical professional or determines consistent with certain public health guidance not to travel because the consumer

“has or may have contracted a serious communicable disease [as defined in DOT’s rules] and the consumer’s condition is such that traveling in commercial flights would pose a direct threat to the health of others.” *See* proposed rules at 259.5(b)(6)(i)(C) and 399.80(o)(1)(C). TTA submits that in these circumstances an airline should have the option to allow the passenger to change his or her flight without penalty to a later period when the passenger’s health situation has improved rather than be required to issue a credit or voucher. Waiver of change fees and rules imposes less of a burden, financial and otherwise, on the airline. Moreover, were DOT to impose any credit or voucher issuance obligation on ticket agents – which we oppose for all of the reasons stated – the need for any rules that might require agent-issued credits or vouchers would be obviated by an airline’s waiver of change fees. In fact, a DOT rule requiring a liberal suspension by airlines of change fees and rules would be administratively simpler than the issuance of credits and vouchers in any of the circumstances addressed by the proposed rules.

As DOT notes at page 51568 of its NPRM, airlines used exactly this change fee waiver approach during the COVID-19 pandemic. This simple mechanism for addressing the setting in which the consumer is unable to travel due to a government-imposed travel restriction or because the passenger is or may be ill seems to have well-served all of the stakeholders, including most importantly the consumers who were given the ability to reschedule their travel without fees.

D. DOT should not adopt a “non-expiring” requirement for credits and vouchers.

The proposed “non-expiring” requirement for credits or vouchers should not be adopted. Were any credit or voucher obligation imposed on airlines or ticket agents, a requirement that such credits or vouchers not carry an expiration date would create a substantial financial burden for ticket agents as a liability on their books. It would also create accounting and administrative

problems associated with carrying a debt obligation on their books for an unlimited and unknowable period of time.

Further, it would be very difficult, if not impossible, to track consumers during the unlimited period of time that such vouchers or credits would remain active. Needless to say, consumers move, change names, marry, etc. A ticket agent is unable to monitor such changes over a prolonged period and thus may be unable to effectively service the needs of customers during a period with no time limits. In addition, there are serious privacy concerns with maintaining passenger information for extended periods of time. For the protection of passengers, airlines and ticket agents typically have privacy policies that limit the amount of time that passenger information is retained. The proposal would contravene such consumer-friendly policies. It would also pose a substantial challenge to ticket agent security and recordkeeping processes and systems.

For these reasons, airlines or ticket agents issuing credits or vouchers under any final rules adopted by DOT should be able to impose a reasonable time limit of no less than one year and up to three years on such credits or vouchers. This will be fair to consumers, but also to ticket agents by relieving them of the burdens described above. Such time periods should provide sufficient time for the consumer to make use of the credit or voucher.

Finally, while the choice of whether or not to allow transferability of credits or vouchers is a matter for the airlines to address since they set the relevant terms and conditions, TTA does not oppose any rule DOT might impose allowing transferability.

E. Receipt of government financial assistance should not be a relevant factor in issuing refunds versus credits or vouchers.

Were a credit/voucher obligation imposed on ticket agents, TTA submits that any future government financial assistance program that might be established for the benefit of such agents should have no bearing on the credit/voucher obligation and specifically should not require that

refunds be issued instead. In contrast to the at least \$40 billion in aid provided to passenger airlines by the CARES Act and subsequent assistance laws, ticket agents did not receive anything close to the same level of financial assistance. While TTA members, like other businesses, were in some cases eligible only for some relatively modest level of payroll protection assistance, no specific relief was provided for the ticket agent sector.

It is thus unclear at best that any future pandemic relief program would be targeted at ticket agents. However, unless a financial aid program for ticket agents specifically provides that the funds may be used for passenger refunds or for refunds to replace previously-issued credits or vouchers – which is exceedingly unlikely given that airlines, not ticket agents, hold the passenger funds and would be responsible for returning them – DOT should not impose a refund requirement on ticket agents. Any future pandemic-related funding that Congress might supply is more appropriately used to allow the ticket agency sector to confront the likely existential threat to ticket agent viability that would be presented by the future pandemic, as it was during the COVID pandemic. Consumers will be adequately protected by the proposed credit/voucher and refund rules applicable to airlines. Burdening the ticket agency sector with a refund obligation in these circumstances is not necessary or appropriate even if some financial assistance were forthcoming.

IV. TICKET AGENTS SHOULD BE ALLOWED TO RETAIN SERVICE FEES

Ticket agents provide a valuable service but are not responsible for the refundable events covered in the NPRM. TTA therefore supports DOT’s proposal to continue to allow ticket agents to charge and retain service fees when consumers are refunded because of cancelled flights, significant changes to a flight itinerary, or foregone flights due to serious communicable diseases and certain public health emergencies. TTA is pleased that DOT “recogni[zes] that ticket agents are providing a service apart from airfare, such as specialized knowledge, access to limited

availability fares, or tools to comparison shop across various airlines to find the best value for the consumer” and “that regardless of whether the passenger ultimately travels, the fee for booking travel represents the cost of service already provided by ticket agents.” *Id.* at 51563. Further, as DOT also noted, “unlike airlines, ticket agents do not initiate the cancellation or significant changes that result in a refund being due, nor do the ticket agents have any control over the cancellation or significant changes to a flight itinerary.” *Id.* Thus, since ticket agents provide a valuable service and are not responsible for these refundable events, *see id.* at 51570, ticket agents should not go uncompensated.

Further, for essentially the same reasons, ticket agents should be allowed to impose fees for the issuance of refunds when refunds are required to be issued under the terms of any final rules. Specifically, TTA agrees with DOT’s tentative conclusion that “ticket agents may charge a fee [to consumers] for processing refunds or a non-expiring credit or voucher” provided that the fee is imposed on a per passenger basis and the existence and amount of the fee is clearly and prominently disclosed to consumers at the time they purchased the airfare. *Id.* at 51563.

CONCLUSION

For all of the reasons stated here, TTA urges DOT to modify its rules as described above.

Respectfully submitted,



Laura Chadwick
President & CEO
The Travel Technology Association
3033 Wilson Blvd., Suite 700
Arlington, VA 22201
202-550-8939

December 16, 2022