

December 16, 2022

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Ave., S.E.
Washington, D.C. 20590-0001

SUBMITTED VIA FEDERAL eRULEMAKING PORTAL

**RE: Public Comment— Airline Ticket Refunds and Consumer
Protections (Docket No. DOT-OST-2022-0089)**

Dear Secretary Buttigieg:

We write on behalf of the undersigned Attorneys General to offer our comments regarding the notice of proposed rulemaking, “Airline Ticket Refunds and Consumer Protections” published on August 2, 2022 (“NPRM”), by the U.S. Department of Transportation (“USDOT” or the “Department”). We appreciate the Department’s work to address the problem of flight cancellations and significant delays. While the NPRM proposal contains some positive measures, we believe it should be strengthened. Accordingly, we offer recommendations to reduce the rate of airline cancellations, provide meaningful relief to airline consumers whose flights have been cancelled, and better serve consumers overall.

As the Attorneys General of our respective states, we are committed to ensuring that airline customers are provided with robust consumer protections that are reliably enforced by USDOT. This is a bipartisan effort. We are aware of the frustrations experienced by countless consumers whose flights have been cancelled or delayed and the inadequate remedies that have been offered to them. In fact, our offices have repeatedly brought to the USDOT’s attention complaints from airline passengers impacted by the airlines’ cancellation or significant delay of their flights.

For example, Colorado Attorney General Phil Weiser, wrote to then-Secretary Elaine Chao in September 2020 and to you in February 2021 to bring to the Department’s attention the complaints of consumers concerning Frontier Airlines’ practice of cancelling flights and then failing to issue consumers proper refunds, delaying responses in refund delivery, and making it unduly difficult to contact customer service.¹ Similarly, Attorney General Brnovich has been a leading voice

¹ See e.g., Letter from Colorado Attorney General Phil Weiser to U.S. Secretary of Transportation Elaine L. Chao (Sept. 1, 2020), available at <https://coag.gov/app/uploads/2020/09/Colorado-AG-letter->

for airline accountability. He led an October 2020 bi-partisan letter to Congress calling on it to strengthen existing laws requiring full refunds for flight cancellations and delays. He also has called on Congress to authorize state attorneys general to enforce airline consumer protection laws—expanding consumer violation enforcement beyond a single federal agency. In August 2022, New York Attorney General Letitia James wrote to Secretary Buttigieg expressing concern for the deeply troubling and escalating pattern of airline delays and cancellations during 2022, suggesting several regulatory steps the Department should consider in order to provide airline passengers with adequate protection.²

In our experience, the USDOT has yet to develop the ability to respond quickly enough to or coordinate effectively with our offices. That is why a bipartisan coalition of 37 attorneys general have twice urged Congress to take meaningful action and pass legislation that would authorize state attorneys general to enforce state and federal consumer protection laws governing the airline industry.³ To be sure, the recent action against six airlines who violated consumer protection requirements is a promising step forward.⁴ In our view, however, the delays in taking action and the lack of any collaboration or communication with our offices during the process demonstrate important room for improvement.

Without effective and timely enforcement, consumer protection requirements will fail to protect consumers in practice. USDOT's past failures to enforce existing protections and respond to valid concerns from consumers and state attorneys general in a timely manner must be addressed to ensure that any new rules will actually benefit consumers. To that end, USDOT should, in parallel with this rulemaking and recent enforcement efforts, institute a new framework that ensures that it responds to and addresses concerns brought to the agency by state attorneys general promptly, recognizing that we are necessary and important partners in this work. Developing clearer protocols to ensure timely and effective enforcement is an area in which we are keen to work with you.

[to-USDOT-re-Frontier-9.1.2020-final.pdf](#); Letter from Colorado Attorney General Phil Weiser to U.S. Secretary of Transportation Pete Buttigieg (Feb. 4, 2021).

² Letter from New York Attorney General Letitia James to U.S. Secretary of Transportation Pete Buttigieg (Aug. 2, 2022), *available at* https://ag.ny.gov/sites/default/files/letter_from_ny_ag_letitia_james_to_secretary_pete_buttigieg_8.2.2022.pdf.

³ See Letter from Attorneys General to U.S. Congressional Leaders (Aug. 31, 2022), *available at* <https://coag.gov/app/uploads/2022/08/NAAG-Policy-Letter-Airline-Accountability-and-Increased-Consumer-Protection.pdf>; Letter from Attorneys General to U.S. Congressional Leaders (Oct. 1, 2020), *available at* <https://coag.gov/app/uploads/2020/10/Final-Airline-Consumer-Protection-NAAG-Letter.pdf>.

⁴ See U.S. Department of Transportation, *More Than \$600 Million in Refunds Returned to Airline Passengers Under DOT Rules Backed by New Enforcement Actions Issued Today* (Nov. 14, 2022), *available at* <https://www.transportation.gov/briefing-room/more-600-million-refunds-returned-airline-passengers-under-dot-rules-backed-new>.

Consumers already turn to state attorneys general to report their experiences with and concerns about airlines. Our connection to consumers, access to complaints related to the conduct of airlines, and consumer protection expertise positions our offices as trusted intermediaries that can and should be relied on to elevate concerns to USDOT. To leverage a partnership with state attorneys general, USDOT should develop a structure that provides heightened consideration and quicker resolution of the carefully considered issues and complaints attorneys general offices bring to the USDOT. Doing so would benefit consumers and would address consumer protection failings in this industry. In addition to stepping up its own enforcement, USDOT should require airlines to improve how they respond to consumer complaints, including working with and responding to attorneys general so that we can better monitor these important consumer issues.

USDOT should also implement further measures to reduce the rate of flight cancellations and to provide meaningful compensation to consumers whose flights have been canceled or significantly delayed. To improve consumers' actual experiences, the USDOT should consider the following points as it approaches this NPRM and future rulemakings:

- The NPRM provides for refunds when there is a “significant change in flight itinerary,” including when a delay exceeds 3 hours. This floor will result in benefit for consumers on airlines with unclear or lengthier delay parameters for refunds. Because some currently published airline refund policies are more protective of consumers – providing refunds after a 120-minute delay, for example – USDOT should take steps to ensure that setting a floor does not cause some airlines to loosen their standards to the detriment of consumers.⁵
- USDOT should require airlines to advertise and sell only flights that they have adequate personnel to fly and support, and perform regular audits of airlines to ensure compliance and impose fines on airlines that do not comply. Airlines have frequently cited inadequate staffing as the cause of cancellations during 2022, but staffing levels appear to be well within airlines' ability to reasonably predict and plan flight schedules.⁶ As written,

⁵ For example, Delta publishes that a customer is entitled to request a refund if the flight is delayed 120 minutes or more. *E.g.*, Delta Airlines, *Schedule Change Rebooking for Travel Agency Partners* (last visited Oct. 31, 2022), available at <https://pro.delta.com/content/agency/us/en/policy-library/schedule-change-and-irregular-operations/schedule-change-rebooking-policy-for-travel-agency-partners-.html>; <https://news.delta.com/rebooking-refunds-and-compensation-what-customers-need-know>.

⁶ *See also* Letter from New York Attorney General Letitia James, *supra*, at 3-4 (discussing reports indicating that airlines during 2022 sold tickets that were subject to an unacceptably high risk of cancellation due to inadequate staffing). Airlines have attributed cancellations to staffing shortages even though such shortages appear to be, to some extent, the airlines' own doing. *See, e.g.*, Michael Laris, *Taxpayers Spent Billions Bailing Out Airlines. Did the Industry Hold Up Its End of the Deal?* Washington Post (Dec. 14, 2021), <https://www.washingtonpost.com/transportation/2021/12/14/airline->

the NPRM includes no provision that would correct this practice and that would prevent airlines from advertising and selling tickets for flights that they cannot reasonably provide.

- USDOT should make clear that it will impose significant fines for cancellations and extended delays that are not weather-related or otherwise unavoidable. The NPRM imposes no such provision that would provide airlines with an incentive to improve their scheduling and cancellation practices.
- USDOT should require airlines to provide partial refunds to passengers for any cancellation that results in a rescheduled flight which the passenger accepts but that is later, longer, or otherwise less valuable than the originally purchased flight. We appreciate the NPRM's inclusion of a rule that would require airlines to provide a full refund for "non-refundable" tickets in the event of a significant change of flight itinerary after a set number of hours at the passenger's request, a provision that one of the undersigned has previously requested.⁷ This refund provision alone is incomplete, however, as it would apply only when consumers choose not to accept alternative or delayed itineraries offered by the airlines. Such circumstances are rare; at the time that flights are changed or canceled, consumers often have no real hope of finding alternative flights on their own and must accept the itineraries offered by the airlines, even though they may be far less desirable than the flights the consumers paid for.⁸ USDOT should require airlines to provide partial refunds to make consumers whole in such instances.
- USDOT should prohibit airlines from canceling flights while upselling consumers more expensive alternative flights to the same destinations. For example, an airline could cancel a consumer's \$200 flight from City A to City B, then explain to the consumer that he or she could either accept a full refund, as required by FAA rules, or purchase an alternative ticket for \$300. Such a circumstance forces consumers to either cancel their travel plans or pay an upcharge—while the airline would receive a windfall profit from any such sale as the result of its cancellation. The NPRM should be amended to prohibit airlines from disadvantaging consumers and benefiting from its flight cancellations.

[bailout-covid-flights/](#) (despite receiving more than \$50 billion in taxpayer support, airline workforces shrank by tens of thousands).

⁷ *Id.* at 4.

⁸ *See id.* at 2-3 (summarizing experiences of consumers who accepted inferior alternative itineraries offered by airlines and were subjected to significant delay inconvenience, delays, and expenses as a result).

- USDOT should require that credits and vouchers for future travel that are provided by airlines in the event of cancellation can be used easily without inappropriate limitations. In our experience, airlines have sometimes imposed restrictions that made it complicated and difficult for consumers to use such credits and vouchers, say, requiring the full credit to be used at one time or within an unreasonably short period of time. Without preventing unreasonable limitations, the airlines will be able to significantly decrease the value of credits and values, thereby weakening the protections provided to consumers.
- USDOT should consider requiring airlines to provide additional compensation to consumers who, as the result of delays or cancellations, are forced to assume additional costs because they must pay for meals, hotel stays, flights on other airlines, rental car reservations, or gas in order to eventually make it to their destinations. Consumers regularly are forced to bear such expenses, a problem that has been brought to the USDOT's attention,⁹ but the NPRM provides for no relief for these costs.

We appreciate USDOT's efforts to implement rules to help remedy the problem of airline cancellations and to improve the experiences of airline consumers. To advance this effort, we urge USDOT to further consider each aspect of this NPRM as it applies to actual consumer impact and the need to mandate effective compliance by airlines in order to ensure that the final regulation addresses actual harms experienced by consumers and provides actual remedies.

Thank you for your consideration of these comments.


Sincerely,



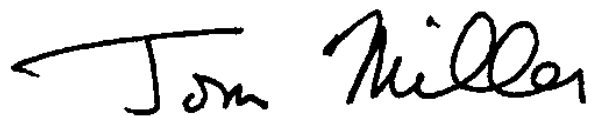
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Phil Weiser
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William Tong
Connecticut Attorney General



Tom Miller
Iowa Attorney General

⁹ See *id.*



Letitia James
Attorney General



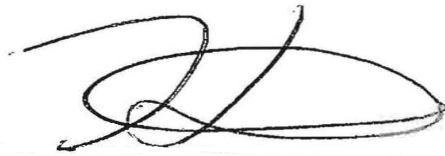
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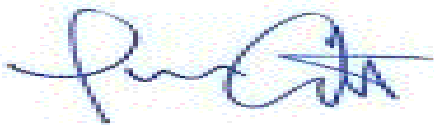
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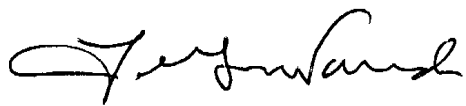
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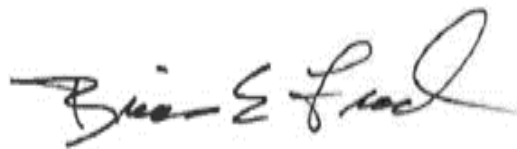
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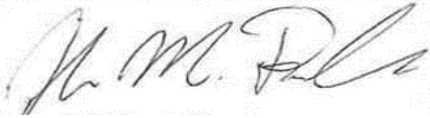
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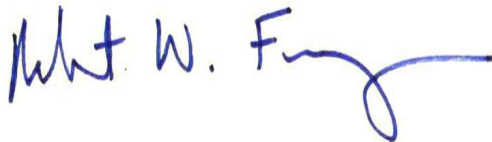
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