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September 15, 2021

The Honorable Pete Buttigieg
Secretary of Transportation
U.S Department of Transportation
1200 New Jersey Avenue SE
West Building, Ground Floor, Room W12-140
Washington, DC 20590-0001

RE: Refunding Fees for Delayed Checked Bags and Ancillary Services that Are Not Provided
Docket No. DOT-OST-2016-0208 / RIN 2105-AE53
Notice of Proposed Rulemaking (NPRM)

Dear Secretary Buttigieg:

On behalf of the American Society of Travel Advisors (ASTA) and the more than 160,000 Americans who work at travel agencies across the country, I am writing to express ASTA's viewpoint with respect to the various issues raised in the NPRM regarding implementation of the statutory requirement that airlines refund checked baggage and ancillary service fees when the bags are not delivered in a timely manner or the ancillary service in question is not provided.

By way of introduction, ASTA is a § 501(c)(6) trade association whose primary purpose is to facilitate the business of selling travel through effective representation, shared knowledge and the enhancement of professionalism. Established in 1931, ASTA is the world's leading association of travel advisors (more commonly referred to as travel agents), representing agencies of all sizes, from the smallest home-based independent advisors to storefront retail agencies to travel management companies such as CWT and BCD Travel, as well as the largest household-name online travel agencies such as Expedia. Our current membership, over 14,000 strong, also includes numerous travel suppliers, tour operators and others.

Travel agents – online, “brick and mortar” and many hybrid business models in between – play a critical role in the broader travel and tourism industry. Agents are responsible for the sale of the majority of airline tickets in the U.S., selling over 800,000 air tickets per day. As of 2019, they collectively accounted for an annual payroll output of \$7.3 billion and annual revenues of \$15.1 billion.

In addition to providing professional advice to and booking travel arrangements for travelers, agents routinely assist clients when, for any number of reasons, their travel plans are disrupted. As noted in the NPRM, *any* delay in the delivery of a checked bag represents an event of substantial inconvenience for the affected traveler for which he or she had no responsibility whatsoever in creating. That being the case, as a preliminary matter ASTA believes that the regulatory burden associated with compliance with the final rule should fall on the party having the greatest degree of control over the circumstances that result in a passenger's baggage being delayed or lost or the ancillary service not being provided – the airline – rather than the consumer, the travel advisor or other blameless third party.

ASTA's comments with respect to each of the Department's specific proposals with respect to delayed or lost baggage are set forth below. The reader will note that ASTA's viewpoints are largely the same substantively as those we expressed previously in our response to the October 2016 Advance Notice of Proposed Rulemaking (ANPRM). Insofar as our position with respect to these proposals as they may apply to ancillary fee refunds is substantially the same, we do not address those separately herein.

1. Length of Delay Triggering Refund Requirement

ASTA believes that the final rule adopted by the Department in this matter should, consistent with Congress' mandate to mitigate to the greatest possible extent consumer harm resulting from lost baggage, adopt the minimum lengths of delay authorized under the statute to trigger a fee refund to the affected passenger. Accordingly, our view, expressed in our comments to the ANPRM, was that the 12- and 15- hour delay thresholds after arrival, for domestic and international flights, respectively, should apply.

We note that the Department now proposes to permit carriers 12 hours to deliver a bag for domestic flights and 25 hours for international flights before a refund is due. ASTA concurs with the Department's view that the 12 hour standard is appropriate for domestic flights given the tracking systems already in use by the airlines to locate bags and the feasibility of then placing them on the next available flight, one of relatively short duration.

However, we respectfully disagree with the Department's assessment that a 25-hour delay is the appropriate standard for mishandled baggage on international flights. We acknowledge that a number of long-haul international flights are scheduled only once a day, which in many cases will render recovery and delivery of a mishandled bag in less than 25 hours a challenge. In our view, however, insufficient consideration was given to international flights on the other end of the spectrum, i.e., those common shorter-haul routes with multiple daily flights connecting a given city pair for which a shorter delivery timeframe can be easily met.

ASTA also disagrees with the Department's contention that consumers could be "negatively impacted by a 15-hour deadline because carriers may have less incentive to deliver the delayed bag on the next flight when flights are scheduled once a day" because the deadline would have already passed. We find this contention unpersuasive because it presumes, erroneously in our view, that avoiding the obligation to refund a bag fee is the air carrier's sole or primary incentive in seeking to expeditiously reunite a passenger with his or her baggage. To the contrary, consumer expectations, satisfaction, goodwill, and reputational considerations, among other things, will be – or at least should be – significant motivating factors for the carrier as well. And, as we noted previously, each additional hour baggage may be delayed without triggering the fee refund obligation represents an incrementally greater inconvenience to the consumer.

Finally, we agree with the Department's tentative determination that a tiered system, under which the permissible delay period would be based on flight frequency, length or other variables, creates unnecessary complexity and is therefore not advisable.

2. Domestic Segments of International Itineraries

The Department sought comment as to how the rule should deal with a passenger itinerary consisting of an international flight connecting to a domestic flight on a single ticket (either interline or one carrier). In this situation, ASTA is of the opinion that all consumers would benefit from a straightforward rule applying one standard or the other in all such cases.

As noted in our comments to the ANPRM, the benefit of this approach would be to avoid consumer confusion and uncertainty which would likely result if the governing timeframe could differ depending which carrier or flight segment was responsible for the delay. While travel advisors and other ticket agents likely would not be significantly impacted either way, having a single standard will make it easier for them to disseminate accurate information to their clients who seek advice or assistance concerning their refund rights with respect to delayed baggage.

With respect to the Department's proposed exception to the refund obligation where a passenger is traveling with two separate tickets and fails to collect the checked bag at the end of the first itinerary and check it with the carrier on the second itinerary, ASTA views this proposal as eminently reasonable. Indeed, as a matter of fundamental fairness, we believe that the final rule should include a broad general exception to encompass *any* situation where the carrier can establish by preponderance of the evidence that the delay or mishandling of the bag was attributable, either solely or primarily, to the passenger's negligent action or inaction.

3. Methodology for Measuring Length of the Delay

As to how the Department should determine when the clock stops running for purposes of determining whether a baggage fee refund must be issued to a passenger, ASTA's view is that in most circumstances the clock should continue to run until the bags are physically in the passenger's possession.

While a traveler might (and likely would) choose to remain at the destination airport for two or three hours to await a delayed bag that is arriving on a later flight, when facing a more substantial delay passengers will more often than not leave the airport to complete their travel within or outside of the destination city. Where the passenger has already departed the airport, the bag's arrival there is, by itself, cold comfort. Since the disruption to passengers' travel plans continues until they are actually reunited with their delayed baggage, as a general matter the carrier should remain "on the clock" until the bags are physically in the hands of their owners, wherever they may be, provided, of course, that the carrier has been informed of that location.

However, ASTA acknowledges that it would be inequitable from the carriers' perspective to allow the clock to continue to run in situations where the passenger for whatever reason is not present to take possession when the bag is delivered to an agreed-upon location or, where airport pickup is desired, unreasonably delays his/her return to the airport to claim the bag. In such cases, the clock should stop for fee refund purposes once the carrier delivers to the designated location *and* has notified the passenger of the delivery.

4. Multiple Carrier/Ticket Agent Involvement and Responsibility

With regard to responsibility for compliance, as stated in our comments to the ANPRM, ASTA strongly believes that the carrier, as the party responsible for carriage of the baggage and any resulting delays, should bear sole responsibility for refunding bag fees under the final rule. While ticket agents may facilitate purchase of the checked baggage fee or any other ancillary on behalf of the carrier, they should not be held responsible for any refund due that is attributable to a delay solely under the control of the carrier. In this we associate ourselves with the Department's tentative decision and the docket comments to the ANPRM submitted by Consumers Union, which stated that "in the case where the airline authorizes a travel agent to collect the fee on its behalf, the airline charging the fee should be responsible for refunding it; the travel agent had no part in causing the delay." The agent may, of course, be able to help facilitate the refund but cannot and should not be deemed the responsible party under the final rule.

We believe that this should also be the case even in those rare instances where the carrier authorizes a ticket agent, by contractual agreement, to collect baggage or ancillary fees from the ticket agent's customers on behalf of the carrier. From the passenger's perspective, this makes the best sense as the consumer should not be subjected to "being sent back and forth between two entities" to obtain the refund. Also, in many cases consumers may be unaware or not recall that the bag fees were collected by the agent and not the airline.

As we noted five years ago, a mechanism to process such refunds exists, albeit to a limited degree. Both the Airlines Reporting Corporation (ARC) and the International Air Transport Association (IATA) make use of the Electronic Miscellaneous Document (EMD) system, an IATA standard for electronically collecting and settling non-flight ancillary transactions, including, among other things, baggage fees. For those airlines that have implemented EMD functionality through ARC and/or IATA, the agent is able to facilitate a refund when due without incurring significant financial risk.

Where implemented for bag or ancillary fees, both the purchase and refund of the fee can be processed by the agent and settled electronically through either ARC or IATA airline settlement processing. That said, it is important to note that EMDs are administratively controlled by the individual airlines, meaning that each has the ability to control functionality for a particular service, in this case, whether the EMD for a bag fee is refundable or not. Further, while it is an IATA industry standard, not all carriers have implemented EMD functionality through ARC and IATA at this time.

With respect to which carrier should be held responsible to issue the refund when a multiple-carrier itinerary is booked, ASTA strongly agrees with the Department that the responsibility should not be determined based on which carrier caused the delay. Rather, in every case, and to avoid shifting the burden of determining responsibility onto the innocent passenger, the refund should issue from the carrier that collected the fee - the ticket-issuing carrier. As noted in the NPRM, carriers would of course be free to allocate the cost of the refunds as appropriate contractually or otherwise.

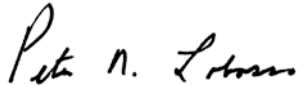
5. Refund Mechanism and Passengers Notifying Carriers about Delayed Bags to Receive Baggage Fee Refunds

In connection with an air carrier's obligation to "promptly provide an automated refund" to affected passengers whose bags are delayed beyond the permissible timeframe, ASTA agrees with the Department's proposed procedure that the airline which collected the fee (the ticket-issuing carrier) is the entity obligated to issue the refund within the seven- or 20-day time frame, as applicable, measured from the time the delivery deadline is missed and after the passenger has notified the airline of the delay.

Separately, however, we wish to express our view that passengers should not be obligated to notify the fee collecting entity of the delay if they have already filed a mishandled baggage report with another carrier which provided service on the same multiple-carrier itinerary. Indeed, in such cases, the affected passenger would be reasonable in his or her belief that an effective notification to the responsible party had already been made. The need to make a second notification concerning the same event would likely be confusing to the typical passenger and in many cases would be unduly burdensome. Moreover, the carrier should not be relieved of the obligation to promptly issue the refund under circumstances where the affected passenger justifiably relied upon the filing of the report as constituting effective notice to the carrier.

Thank you for considering ASTA's views on these important issues. Should you or your staff have any questions regarding our position or the travel industry generally, please do not hesitate to contact me at (703) 739-6854 or plobasso@asta.org.

Sincerely,



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