

**BEFORE THE DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC**

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Notice of Proposed Rulemaking) DOT-OST-2022-0109
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**COMMENTS OF AMERICAN ECONOMIC LIBERTIES PROJECT, BUSINESS TRAVEL
COALITION, CONSUMER ACTION, CONSUMER FEDERATION OF AMERICA, NATIONAL
CONSUMERS LEAGUE, AND PUBLIC INTEREST RESEARCH GROUP**

REGARDING

ENHANCING TRANSPARENCY OF AIRLINE ANCILLARY SERVICE FEES

JANUARY 23, 2022

I. Introduction

The above-captioned consumer and passenger rights organizations strongly support the Department of Transportation's ("DOT" or "Department") Notice of Proposed Rulemaking ("NPRM") to promote transparency in airline ancillary fees. Consumers cannot make informed purchasing decisions without the ability to accurately and easily compare prices between competitors. While the NPRM includes several key provisions that will better protect consumers, advocate commenters suggest a few changes to ensure the proposed rule's effectiveness.

DOT should require ticket-sellers to allow consumers to select their desired ancillary services when inputting their search terms, enabling shoppers to view a single total per fare that is inclusive of selected ancillary services. Additionally, the Department should require the disclosure of any seat reservation fee, even if the consumer is not accompanying a young child.

DOT should automatically subject fees that become a major source of revenue for air carriers to the proposed transparency requirements. Concurrently, the Department should implement a regular review schedule to ensure that covered fee categories are still relevant.

II. The Inclusion of Selected Ancillary Services Within the Displayed Price Should Be Required

The Department proposed regulations that would require the disclosure of critical ancillary fees (baggage fees, change fees, cancellation fees, and fees for adjacent seating when traveling with young children) alongside the search results.¹ Although this is an

¹ Ancillary fees have continued to increase as a share of airline revenue. One report found that such revenue increased by 56% in 2022, to \$102.8 billion worldwide. This translated to an average of \$17.68 per passenger on each one-way flight; "Airline Ancillary Revenue Nears Pre-Pandemic Level with a 56% Increase to \$102.8

improvement from the status quo and would allow travelers to make better informed decisions, DOT should also require the displayed ticket prices to include the costs of ancillary services that a consumer selects when initiating their search.

By allowing consumers to select their desired ancillary services alongside their other travel details (such as the date and destination), they will be able to compare search results more immediately and accurately. If the Department implements the rule as proposed, without requiring ticket fares to include selected ancillary services within the total price, consumers may have to compare up to six different fees alongside the base fare.²

Such a scenario unnecessarily complicates the purchasing process and can overwhelm travelers with information. Requiring ticket prices to include a consumer's desired ancillary services in one total number alleviates these issues.

III. Covered Fee Categories Should Be Expanded, Regularly Reviewed and Automatically Include Pervasive Charges

DOT proposes to include fees for carry-on baggage, a first checked bag, a second checked bag, adjacent seating with young children, a reservation change, and a reservation cancellation as covered fees under the proposed rule.

Consumer advocates have urged DOT for years to ensure that seat reservation fees are not charged to travelers accompanying minor children, as per a Congressional mandate in 2016.³ In July 2022, DOT's Office of Aviation Consumer Protection posted a notice encouraging airlines not to charge such fees, but the effectiveness of the non-compulsory

Billion in 2022," *IdeaWorksCompany*, November 15, 2022. <http://ideaworkscompany.com/wp-content/uploads/2022/11/Press-Release-169-Global-Estimate-2022.pdf>

² Separate fees for carry-on baggage, a first checked bag, a second checked bag, adjacent seating with young children, a reservation change, and a reservation cancellation may all be compared by a single consumer, in addition to the base fare.

³ "Public Law 114-190—July 15, 2016," *Congress.gov*. July 15, 2016. "Sec. 2309. Family Seating." <https://www.congress.gov/114/statute/STATUTE-130/STATUTE-130-Pg615.pdf>

action is still unclear.⁴ However, if such fees are allowed to be imposed, then greater transparency is certainly needed.

In addition to the list of proposed fees, the Department should also require the disclosure of any seat reservation fees, regardless of whether the traveler is accompanying a young child or not. While ensuring transparency around the cost of family seating is critical to consumer welfare, individuals should not face surprise charges when traveling alone either.

To ensure the relevance of the fee categories subject to transparency regulations, DOT should conduct a periodic review of the list of covered ancillary services. This periodic review should include the input of consumer advocates and should occur no less than every four years.

In addition, the Department should automatically subject a fee category to the proposed transparency rules once its share of a covered entity's combined annual revenue exceeds 2%, as reported to the Bureau of Transportation Statistics. This would protect consumers from unfair and deceptive practices in the time between DOT's periodic review.

IV. Proposed Transparency Rules Should Apply to Mobile Apps as Well

The NPRM states that the proposed regulations would not apply to mobile applications. Such an exemption would potentially result in the exclusion of millions of consumers who book flights via mobile apps from the Department's safeguards.

⁴ "Notice Encouraging U.S. Airlines to Have Policies that Enable Children To Be Seated Adjacent to Accompanying Adult to the Maximum Extent Practicable and at No Additional Cost," *U.S. Department of Transportation*. July 8, 2022. <https://www.transportation.gov/individuals/aviation-consumer-protection/family-seating/June-2022-notice>

The top five free apps in the iOS App Store’s “Travel” category that sell airplane tickets to consumers have a combined 13.6 million user ratings.⁵ With not every consumer who downloaded one of the apps leaving a rating, these apps have reached at least tens of millions of individuals on the iPhone alone. And like a website on a traditional web browser, mobile apps are just as capable of disseminating airlines’ unfair and deceptive commercial practices. In fact, mobile apps have expanded the reach of business practices via push notifications that follow consumers anywhere they bring their smartphone.

It is important for the Department to consider that many consumers rely on smartphones as their primary internet connection, notably younger and lower-income individuals.⁶ A portion of these consumers are likely to purchase their tickets via an airline’s mobile app. To ensure that DOT’s proposed consumer protections do not disproportionately exclude these populations, Department regulations should apply anywhere that air carriers conduct business, including mobile apps.

V. “Base Fare” Should Include All Mandatory Charges

The Department highlighted in the NPRM that by excluding mandatory fees such as fuel surcharges, advertised discounts and fares may be less valuable to consumers than one might otherwise expect. To this end, DOT should define “base fare” to include all mandatory charges imposed upon the consumer.

VI. Airlines Should Share Data with GDS and Metasearch Engines

DOT’s proposed rules do not require air carriers to share fee information with global distribution systems (“GDS”). To best promote the transparency and availability of airline fee data, DOT should require air carriers to share the covered fee categories with

⁵ As of December 5, 2022, the ratings were as follows (ordered by descending “Travel” category ranking): “Booking.com: Hotels & Travel,” 820k; “Expedia: Hotels, Flights & Car,” 2.7M; “American Airlines,” 302k; “United Airlines,” 5M; “Fly Delta,” 4.8M

⁶ “Mobile Fact Sheet,” *Pew Research Center*. April 7, 2021. <https://www.pewresearch.org/internet/fact-sheet/mobile/>

GDS and metasearch websites in an open and machine-readable format. Without such information sharing, legitimate third-party ticket sellers (such as online or brick-and-mortar travel agencies) would be hampered in providing accurate fee data to consumers.

Air carriers already publicly share fee data. Such data is necessary to evaluate the full cost of flying. Failure to require airlines to share the necessary data with GDS and metasearch websites would likely complicate the implementation of the proposed rule.

VII. Links and Rollovers Should Only Be Complementary

Consumer group commenters agree with the NPRM's prohibition on using links and rollovers as primary compliance with the rule. However, should the Department require the inclusion of selected ancillary services within the displayed ticket fare, the use of links and rollovers should only be permitted to display the incorporated costs.

VIII. Change and Cancellation Fee Disclosures Should Be Implemented as Proposed

The Department proposed a requirement for ticket sellers to disclose change and cancellation fees as brief summaries at the beginning of the purchasing process. Consumer group commenters support this proposal and believe that these disclosures should not be moved to the end of the purchase.

In 2019, air carriers collected nearly \$3 billion in revenue from such punitive charges.⁷ While some airlines modified their change or cancellation policies due to COVID-19, such changes were limited, with many airlines still subjecting the lowest-tier fares to these fees.⁸ Standardized disclosure of such charges would benefit consumers, particularly because many travelers may not budget for such fees when booking flights.

⁷ "Reservation Cancellation/Change Fees by Airline 2021," *Bureau of Transportation Statistics*. May 2, 2022. <https://www.bts.gov/newsroom/reservation-cancellationchange-fees-airline-2021>

⁸ Kunesh, Andrew. "How to avoid airline change and cancellation fees," *The Points Guy*. July 17, 2021. <https://thepointsguy.com/guide/airline-change-and-cancellation-fees-how-to-avoid-them/>

IX. Anonymous and Passenger-Specific Itinerary Search Distinctions Should Be Implemented as Proposed

DOT's distinction between anonymous and passenger-specific itinerary searches as proposed will be beneficial to consumers, allowing them to customize their purchasing process. Consumers should be able to provide passenger-specific information (such as frequent flyer, senior, child, or military status) to receive relevant results. They should also be able to receive itinerary-specific results without having to input passenger-specific information. However, the implementation of this distinction should not be used to delay compliance with the general transparency requirements, which are the primary focus of the NPRM.

X. Family Seating Fees Should Be Transactable

While the proposed rule should cover seat choice fees generally (whether the traveler is accompanying a minor or not), DOT should require covered entities to allow consumers to indicate if they are traveling with a child 13 years old and younger at the beginning of their search. Additionally, consumer group commenters agree that the fees shown at the beginning of the purchasing process should be transactable as initially disclosed.

DOT should not assume that air carriers will stop charging seat reservation fees for family seating following the enactment of the proposed ancillary fee transparency regulations. To end this practice, the undersigned consumer and traveler rights organizations continue⁹ to urge the Department to utilize its existing authorities to require

⁹ "Ten consumer advocacy organizations call for action on aviation consumer protection priorities in letter to DOT," *National Consumers League*. August 27, 2021. https://nclnet.org/aviation_priorities_letter_to_dot/

airlines to seat children 13 years old and younger with accompanying adults at no additional charge.¹⁰

XI. Conclusion

Consumer group commenters appreciate the opportunity to provide their views to the Department on the need for a strong ancillary fee transparency rule.

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¹⁰ “Public Law 114–190—July 15, 2016,” *Congress.gov*. July 15, 2016. “Sec. 2309. Family Seating.” <https://www.congress.gov/114/statute/STATUTE-130/STATUTE-130-Pg615.pdf>