



U.S. Department of Transportation

Report to the White House Competition Council:
U.S. Department of Transportation's Investigatory,
Enforcement and Other Activities Addressing Lack of
Timely Airline Ticket Refunds Associated With the
COVID-19 Pandemic

September 9, 2021

Table of Contents

- 1. Introduction..... 1
 - a. U.S. Law..... 2
 - b. Overview of the Office of Aviation Consumer Protection 3
- 2. Air Travel Complaints Received During COVID-19 Pandemic 4
- 3. The Department’s Efforts to Ensure Airlines’ Compliance with the Refund Obligation..... 7
- 4. Pending Investigations and Enforcement Actions 9
 - a. DOT’s Investigation of United Airlines..... 9
 - b. DOT’s Prosecution of Air Canada..... 10
 - c. Ongoing Enforcement Efforts 10
- 5. Future Actions..... 11
 - a. Additional Resources to Handle Consumer Complaints..... 11
 - b. Rulemaking Actions to Address Consumer Concerns..... 11
- 6. Conclusion 12

1. Introduction

The U.S. Department of Transportation (DOT or Department) is committed to ensuring that airline passengers are treated fairly. Airlines and ticket agents have a legal obligation to refund consumers if the airline cancels or significantly changes a consumer's flight. This obligation to refund passengers for flights cancelled or significantly changed by airlines remained unchanged notwithstanding the COVID-19 pandemic. In the early months of the COVID-19 pandemic, airlines had difficulty processing, in a timely manner, the significant volume of refund requests that they received. Many airlines were also initially reluctant to provide the required refunds. Further, even when flights were not cancelled or substantially changed, many passengers no longer wished to travel due to COVID-19. This resulted in the Department receiving a flood of complaints about carriers' failures to provide refunds, an increase of 4,552 % relative to the same period pre-pandemic.¹ The Department has devoted considerable time, energy, and effort to securing relief for consumers and holding airlines accountable. This has included:

- Issuing two enforcement notices emphasizing airlines' obligation to provide prompt refunds when an airline cancels a flight or makes a significant change;
- Inducing at least 9 airlines that initially provided vouchers or credits instead of refunds for non-refundable tickets when the carrier cancelled a flight or made a significant schedule change to amend their policies to make clear that passengers are entitled to a refund under such circumstances and provide refunds as required;
- Initiating investigations against 20 airlines for failing to timely provide required refunds with investigations still pending of 18 airlines involving approximately 30,100 complaints;
- Concluding investigation of Air Canada with a formal complaint seeking substantial penalties for extreme delays in providing required refunds to passengers—a fine based on 5,110 violations where passengers waited until April 2021 (anywhere from 5 months to 13 months) to obtain required refunds;
- Concluding investigation of United Airlines (United) after United took prompt corrective actions, resulting in thousands of passengers who had initially been denied refunds receiving the required refunds in or around June 2020;
- Examining options on how passengers who did not receive refunds from four foreign carriers that filed for bankruptcy may be compensated;
- Taking steps to increase the number of DOT staff handling consumer complaints by 38%; and
- Initiating a rulemaking that would enhance passengers' rights when a flight is operating but the passenger decides not to fly because of government restrictions. Current regulations do not address this situation.

The Department is committed to making a difference in protecting travelers from unfair treatment in the midst of a public health crisis.

¹ From January 1, 2020 to June 30, 2021, the Department received a total of 105,327 complaints concerning refunds. From July 1, 2018 to December 31, 2019, the Department received a total of 2,264 complaints concerning refunds.

This report responds to the requirement in section 5, paragraph(m)(i)(C) of Executive Order 14036 on Promoting Competition in the American Economy to describe the Department’s progress in its investigatory and enforcement activities to address the failure of airlines to provide timely refunds for flights cancelled as a result of the COVID-19 pandemic.² The Department’s efforts are an essential tool to ensure that airlines do not abuse vulnerable travelers during a pandemic. The report provides information regarding the airline ticket refund complaints that the Department received during the COVID-19 pandemic, the Department’s authority to investigate such complaints and take enforcement action, the Department’s efforts to ensure airlines comply with their refund obligations, the Department’s pending refund investigations and enforcement actions, and other activities undertaken by the Department to address difficulties passengers encountered in obtaining airline ticket refunds.

a. U.S. Law

I. Executive Order 14036

On July 9, 2021, President Biden issued Executive Order 14036 on Promoting Competition in the American Economy. The Executive Order launched a whole-of-government approach to strengthen competition. It includes 72 initiatives by more than a dozen federal agencies to promptly tackle some of the most pressing competition problems across our economy. The Executive Order requires the Department to take a number of actions to promote the interests of American workers, businesses, and consumers, including submitting a report to the Chair of the White House Competition Council on the progress of DOT’s investigatory and enforcement activities to address the failure of airlines to provide timely refunds for flights cancelled as a result of the COVID-19 pandemic, among other things. Specifically, sec. 5, paragraph(m)(i)(C) of Executive Order 14036 states:

The Secretary of Transportation shall not later than 45 days after the date of this order, submit a report to the Chair of the White House Competition Council, on the progress of the Department of Transportation’s investigatory and enforcement activities to address the failure of airlines to provide timely refunds for flights cancelled as a result of the COVID-19 pandemic.

II. Statutory Framework

Under 49 U.S.C. § 41712, the Department has the authority to prohibit unfair or deceptive practices by airlines and ticket agents in air transportation or the sale of air transportation. An airline’s practice is “unfair” to consumers within the meaning of section 41712 if it causes substantial harm to consumers, the harm is not reasonably avoidable, and the harm is not outweighed by benefits to consumers or competition. An airline’s practice is “deceptive” to consumers if it is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter.³ The Department’s civil penalty authority, 49 U.S.C. § 46301, vests the Department with the authority to impose civil penalties for violations of section 41712 or any regulation implemented under the authority of section 41712.

² Exec. Order No. 14,036, 86 Fed. Reg. 36987 (Jul. 9, 2021).

³ 14 CFR 399.79(b).

The Department considers a carrier's or ticket agent's refusal to offer a passenger the option of a refund in circumstances where the carrier has cancelled or made a significant change in the flight, and the passenger does not wish to accept the alternative offered by the airline, to be an unfair business practice in violation of section 41712, whether or not the passenger has purchased a non-refundable ticket. For example, in a rulemaking notice published in 2011, the Department stated:

We reject some carriers' and carrier associations' assertions that carriers are not required to refund a passenger's fare when a flight is cancelled if the carrier can accommodate the passenger with other transportation options after the cancellation. We find it to be manifestly unfair for a carrier to fail to provide the transportation contracted for and then to refuse to provide a refund if the passenger finds the offered rerouting unacceptable (e.g., greatly delayed or otherwise inconvenient) and he or she no longer wishes to travel. Since at least the time of an Industry Letter of July 15, 1996 (see <http://airconsumer.dot.gov/rules/guidance>), the Department's Aviation Enforcement Office has advised carriers that refusing to refund a non-refundable fare when a flight is canceled and the passenger wishes to cancel is a violation of 49 U.S.C. 41712 (unfair or deceptive practices) and would subject a carrier to enforcement action.⁴

The Department also stated that it "continue[s] to believe that there are circumstances in which passengers would be due a refund, including a refund of non-refundable tickets and optional fees associated with those tickets, due to a significant flight delay."⁵

III. Regulatory Framework

In addition to section 41712, the specific requirements of the Department's Customer Service Plan regulation, 14 CFR § 259.5, apply to airlines. Among other things, section 259.5(a) requires "covered carriers" to adopt a Customer Service Plan and to adhere to the Plan's terms.⁶ Customer Service Plans represent a baseline, uniform, minimum level of service to which all covered carriers must comply. The Customer Service Plan must include certain commitments relating to the payment of refunds to passengers when required by section 41712. Section 259.5(a)(5) states that a plan must: "Where ticket refunds are due, provid[e] prompt refunds, as required by 14 CFR § 374.3 and 12 CFR Part 226 for credit card purchases, and within 20 days after receiving a complete refund request for cash and check purchases, including refunding fees charged to a passenger for optional services that the passenger was unable to use due to an oversale situation or flight cancellation."

b. Overview of the Office of Aviation Consumer Protection

⁴ 76 Fed. Reg. 23110, 23129 (Apr. 11, 2011).

⁵ *Id.*

⁶ This obligation is separate from the requirements in section 259.6 relating to posting the Customer Service Plan on the covered carrier's website. Under section 259.6(b), "each U.S. air carrier that has a website and each foreign air carrier that has a website marketed to U.S. consumers, and that is required to adopt a customer service plan, shall post its current customer service plan on its website in easily accessible form."

The Department's Office of Aviation Consumer Protection (OACP), a unit within the Office of the General Counsel, assists, educates, and protects aviation consumers. Among other things, OACP reviews and responds to consumer complaints about air travel, publishes the Department's monthly Air Travel Consumer Report, and ensures the Department's website contains clear, useful information about the rights of air travelers including passengers' right to obtain refunds. For example, during the past 18 months, OACP has processed an unprecedented number of refund complaints and inquiries from ticketed passengers, added information on its website to educate consumers on how airline bankruptcies may impact their ability to obtain refunds, and provided airline operational data (including flight cancellation data and refund complaint data) in its ATCR.

OACP also monitors compliance, conducts investigations, and enforces as appropriate for violations of aviation consumer protection, civil rights, and licensing requirements against airlines and ticket agents. In this regard, OACP has been monitoring airlines' and ticket agent's compliance with their obligation to provide refunds when a carrier cancels a flight or makes a significant schedule change, investigating those entities that appear not to comply with the law, and taking enforcement action as appropriate. In addition, it assesses the need for and drafts aviation consumer protection and civil rights regulations. This has included recognizing the need for a rulemaking on airline ticket refunds.

2. Air Travel Complaints Received During COVID-19 Pandemic

The COVID-19 pandemic has resulted in significant changes to airline schedules and operations. Initially, many airlines cancelled flights or significantly changed their flight schedules without providing refunds to passengers. These airlines informed passengers that they would receive only vouchers or credits for future travel. Beginning in March 2020, the Department began receiving an unprecedented number of complaints and inquiries from ticketed passengers, including many with non-refundable tickets, who describe having been denied refunds for flights that were cancelled or significantly delayed. The number of complaints is likely even larger than that received by the Department, as airlines receive significantly more complaints and inquiries directly from consumers.⁷

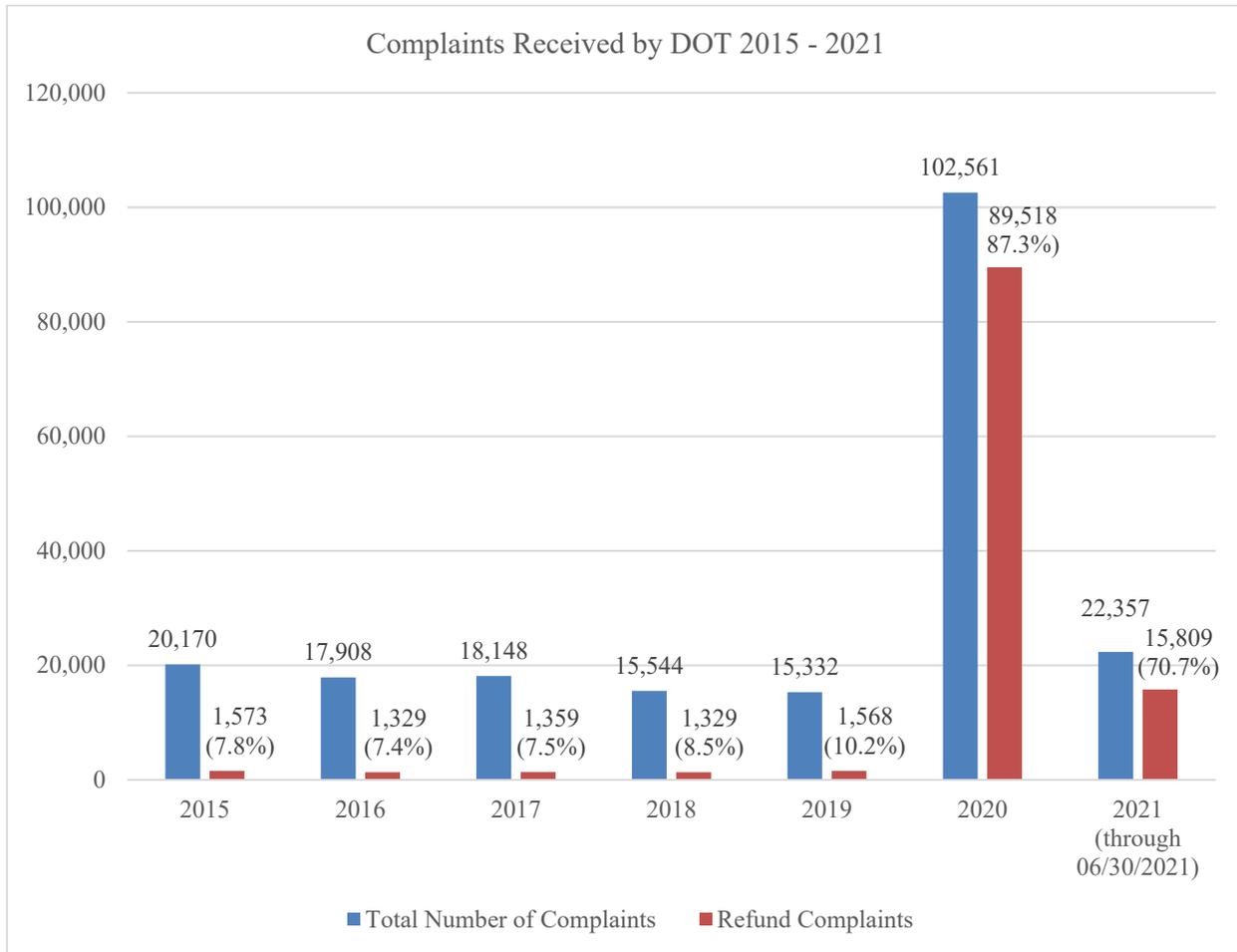
In the five years before the COVID-19 pandemic, the Department received an average of 17,420 aviation consumer complaints per year. During this five-year period, consumer complaints regarding refunds accounted for approximately 8.25% of all aviation consumer complaints. Specifically, the Department received 15,332 aviation consumer complaints in 2019, 15,544 complaints in 2018, 18,148 complaints in 2017, 17,908 complaints in 2016, and 20,170 complaints in 2015.⁸ More specifically, the Department received 1,568 refund-related complaints in 2019,

⁷ The Department does not require airlines to report the number of consumer complaints, including refund complaints, that they have received directly from consumers. However, the Department requires U.S. and foreign airlines to submit annual reports summarizing the disability-related complaints that they received for the previous year. The disability-related complaint data in the years prior to the COVID-pandemic show that for every one consumer complaint the Department received against a particular airline, that airline received approximately 40 to 47 complaints directly from consumers. Based on this data, we conclude that airlines also receive significantly more complaints and inquires directly from consumers on other consumer-related issues. Information on disability-related complaints that airlines receive each year is available at <https://www.transportation.gov/airconsumer/annual-report-disability-related-air-travel-complaints>.

⁸ The Department provides information about the number of aviation consumer complaints that it receives through its monthly Air Travel Consumer Report (ATCR), which is available at <https://www.transportation.gov/individuals/aviation-consumer-protection/air-travel-consumer-reports>.

1,329 complaints in 2018, 1,359 complaints in 2017, 1,361 complaints in 2016, and 1,573 complaints in 2015.

In contrast, in calendar year 2020, the Department received a total of 102,561 consumer complaints—the highest number on record and an increase of 568.4% from the prior year—and in the first half of 2021, the Department received a total of 22,357 consumer complaints. This means that, from January 1, 2020 to June 30, 2021, the Department received a total of 124,918 consumer complaints related to air travel. Of these 124,918 consumer complaints, 105,327 (84.3%) complaints concerned refunds.⁹

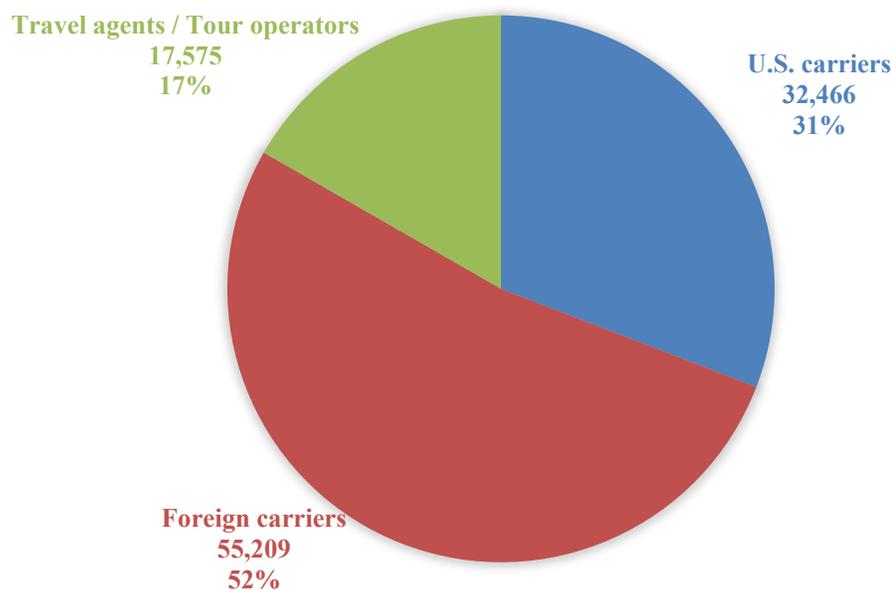


Of the 105,327 refund complaints, 30.8% (32,466 complaints) were against U.S. carriers, (52.4%) 55,209 complaints were against foreign carriers, and 16.7% (17,575 complaints) were against travel agents and tour operators.¹⁰

⁹ In calendar year 2020, 89,518 consumer complaints concerned refunds, and in the first half of 2021, 15,809 consumer complaints concerned refunds.

¹⁰ We note that 77 refund-related complaints were against other entities, such as helicopter operators and travel insurance companies.

**All Refund Complaints, 01/01/2020 - 06/30/2021:
U.S. Carriers v. Foreign Carriers v. Ticket Agents/Tour Operators**

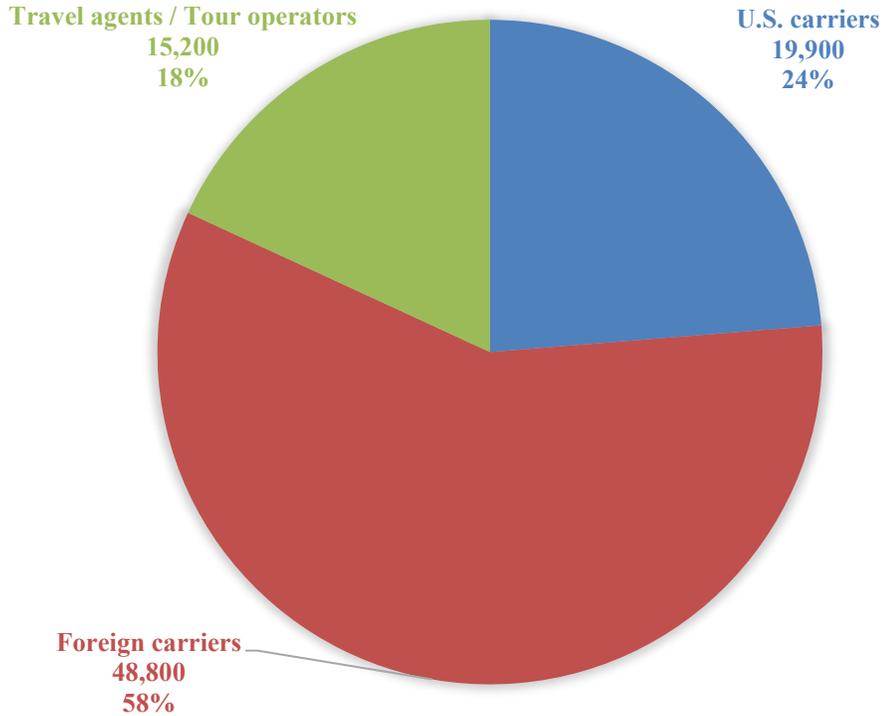


Furthermore, the vast majority of refund-related complaints involved airlines' cancellations or significant changes. Of the 105,327 refund-related complaints, 80% (approximately 83,900 complaints)¹¹ involved instances in which the passenger alleged that the carrier cancelled or significantly changed his or her flight(s) or the passenger did not indicate whether the carrier cancelled the flight or the passenger elected not to fly due COVID-19 or other concerns.¹² Of these types of complaints, 24% (approximately 19,900 complaints) were against U.S. carriers, 58% (about 48,800 complaints) were against foreign carriers, and 18% (around 15,200 complaints) were against travel agents and tour operators.

¹¹ For the refund complaints involving instances in which the passenger alleged that the carrier cancelled or significantly changed his or her flight(s) or the passenger did not indicate whether the carrier cancelled the flight or the passenger elected not fly due COVID-19 or other concerns, the Department received 71,004 in calendar year 2020 and 12,888 in the first half of 2021.

¹² The Department's aviation consumer complaint database does not have a category to account for complaints in which the passenger did not indicate whether the carrier cancelled the flight or the passenger elected not fly due COVID-19 or other concerns. To properly account for all refund complaints and to ensure that these cases were also investigated, DOT analysts were instructed to group these types of complaints with the complaints in which the passenger alleged that the carrier cancelled or significantly changed his or her flight(s).

**Refund Complaints Alleging Carrier Cancelled or Significantly
Changed Flights or Complaint Did Not Indicate,
01/01/2020 - 06/30/2021:
U.S. Carriers v. Foreign Carriers v. Ticket Agents/Tour Operators**



3. The Department’s Efforts to Ensure Airlines’ Compliance with the Refund Obligation

At the outset of the COVID-19 pandemic, OACP reviewed the refund, change, and cancellation policies of the largest U.S. and foreign airlines, which collectively account for 95% of domestic scheduled passenger air traffic and nearly 70% of the enplanements to and from the United States. OACP also reminded airlines orally and in writing of their obligation to provide refunds when a carrier cancels a flight or makes a significant schedule change. In March 2020, OACP contacted the largest U.S. and foreign airlines carriers and other airlines that received a large number of refund complaints to request information about the airline’s policies and practices regarding passengers holding nonrefundable tickets where the carrier cancels a flight or makes a significant schedule change, including how the airline determines whether the schedule change amounts to a significant change or delay for the consumer requesting the refund.¹³

¹³ In March 2020, DOT contacted 10 U.S. carriers (Alaska Airlines, Allegiant Air, American Airlines, Delta Air Lines, Frontier Airlines, Hawaiian Airlines, JetBlue Airways, Southwest Airlines, Spirit Airlines, and United Airlines) and 15 foreign carriers (Deutsche Lufthansa, Aerovías de México (Aeromexico), Air Canada, British Airway, Emirates, Icelandair EHF, Korean Air Lines, LATAM Airlines, Norwegian Air Shuttle, Philippine Airlines, Societe Air France, TAP Air Portugal, Virgin Atlantic Airways, Volaris, and WestJet).

Subsequently, on April 3, 2020, OACP issued an Enforcement Notice regarding the obligation of U.S. and foreign airlines to provide prompt refunds when an airline cancels a flight or makes a significant schedule change.¹⁴ The April 3, 2020 Enforcement Notice explained that airlines have long provided such refunds, including during periods when air travel had been disrupted on a large scale, such as in the aftermath of the September 11, 2001 attacks and Hurricane Katrina. It stated that, although the COVID-19 pandemic has had an unprecedented impact on air travel, airlines' obligation to refund passengers for cancelled or significantly delayed flights remains unchanged. The April 3, 2020 Enforcement Notice also recognized that the COVID-19 pandemic has had major impacts on the airline industry and stated that OACP will exercise its enforcement discretion and provide carriers an opportunity to become compliant before taking further action.

On April 8, 2020, OACP again contacted 25 airlines, which included the largest U.S. and foreign airlines and other airlines that received a large number of refund complaints, to inform them of the refund complaints that the Department has received against them, request information about their refund practices and policies, and reiterate the Department's expectation that airlines refund passengers when airlines cancel flights or make significant schedule changes.¹⁵ The U.S. airlines contacted by the Department account for approximately 95% of domestic passenger air traffic. Together with the foreign airlines contacted by the Department, they account for nearly 70% of the enplanements to and from the United States and accounted for 57.7% (60,725) of the 105,237 refund complaints that the Department received from January 1, 2020 to June 30, 2021.

On May 12, 2020, OACP issued a second Enforcement Notice on refunds.¹⁶ The May 12, 2020 Enforcement Notice reminded airlines again of their obligation to offer refunds when the carrier cancels or significantly changes the passenger's flight, and the passenger chooses not to accept an alternative offered by the carrier. The May 12, 2020 Enforcement Notice also provided answers to some of common questions about refunds to help consumers understand their rights and to ensure airlines and ticket agents are complying with aviation consumer protection requirements.

In response to the Department's Enforcement Notices, by late spring 2020, some airlines resumed offering refunds to passengers whose flights had been cancelled or significantly changed by the carrier. The number of airlines that resumed offering refunds to passengers continued to increase through the summer and fall of 2020.

The Department's efforts induced at least 9 airlines that initially provided vouchers or credits instead of refunds for non-refundable tickets when the carrier cancelled a flight or made a significant schedule change to amend their policies to make clear that passengers are entitled to a refund under such circumstances and provide refunds as required. As a result, thousands of

¹⁴ "Enforcement Notice Regarding Refunds by Carriers Given the Unprecedented Impact of the Covid-19 Public Health Emergency on Air Travel" (April 3, 2020) ("April 3, 2020 Enforcement Notice"), available at https://www.transportation.gov/airconsumer/enforcement_notice_refunds_apr_3_2020.

¹⁵ Of the 25 airlines contacted by OACP on April 8, 2020, 10 were U.S. airlines and 15 were foreign airlines.

¹⁶ "Frequently Asked Questions Regarding Airline Ticket Refunds Given the Unprecedented Impact of the Covid-19 Public Health Emergency on Air Travel" (May 12, 2020) ("May 12, 2020 Enforcement Notice"), available at https://www.transportation.gov/airconsumer/FAQ_refunds_may_12_2020.

passengers who had initially been denied refunds have received or are receiving the required refunds.

4. Pending Investigations and Enforcement Actions

The Department is continuing to work to ensure passengers' rights are protected. Of the approximately 83,900 consumer refund complaints received between January 1, 2020 and June 30, 2021 that involved instances in which the passenger alleged that the carrier cancelled or significantly changed his or her flight(s) or the passenger did not indicate whether the carrier cancelled the flight or the passenger elected not fly due COVID-19 or other concerns, approximately 53.2% (about 44,600 complaints) have been referred to OACP attorneys for further action¹⁷ and approximately 4.6% (about 3,900 complaints) have been closed with no additional action either because the refunds were not legally due or because the violation was de minimis.¹⁸ OACP analysts continue to process approximately 42.2% (about 35,400 outstanding complaints) as expeditiously as possible.

From the complaints referred to OACP attorneys for further action, OACP attorneys identified potential violations in five categories. They are:

1. Failure to provide required refunds or extreme delays in providing required refunds;
2. Retroactive changes to the definition of significant schedule change to the detriment of consumers;
3. Failure to clearly disclose material terms applicable to credits or vouchers;
4. Lack of reliable customer support to obtain refunds or use credits prior to expiration; and
5. Failure to respond to consumer complaints regarding refunds.

OACP attorneys have initiated investigations against 20 U.S. and foreign airlines relating to one or more of these issues. Two of the airlines are domestic carriers, and 18 are foreign carriers.

a. DOT's Investigation of United Airlines

OACP has concluded its investigation into one of the domestic carriers, United, and issued an Order of Dismissal on January 19, 2021 following United's corrective action taken in response to the investigation.¹⁹ OACP found that United violated 49 U.S.C. § 41712, the statutory prohibition against unfair and deceptive practices, by retroactively applying a new refund policy that disadvantaged passengers who purchased tickets under United's previous, more generous policy. In response to the investigation, in June 2020 United changed its policy and took other corrective action, after OACP advised United that by changing its refund policy and applying it retroactively,

¹⁷ Of the 44,600 complaints that were referred to OACP attorneys for further action, approximately 32% (about 14,500) of the complaints concerned United or Air Canada. For this reason, OACP focused its efforts initially on these two airlines.

¹⁸ "For example, refunds were not due where a flight was between two foreign points and violations were considered de minimis where there was merely a short delay in providing refunds given the significant volume of refund requests resulting from the COVID-19 pandemic.

¹⁹ DOT Order 2021-1-6 (issued January 19, 2021), available at <https://www.transportation.gov/sites/dot.gov/files/2021-01/Order%202021-1-6%20Order%20of%20Dismissal.pdf>.

it considered United to be engaging in an unfair and deceptive practice and violating the Department's rule requiring carriers to provide prompt refunds when due. The corrective actions included United agreeing to contact thousands of DOT complainants who were eligible for refunds, including those who had already accepted vouchers or credits,²⁰ for flights that the carrier cancelled or significantly changed to notify them that they have the option of a refund, amending its policies to make clear that the carrier will offer refunds to passengers who purchased non-refundable flights that the carrier cancelled or significantly changed, and revising its contract of carriage to make clear that it provides refunds to passengers if the carrier cancels or makes a significant schedule to a flight.

b. DOT's Prosecution of Air Canada

OACP determined that enforcement action was necessary and appropriate as it relates to Air Canada due to the carrier's extreme delays in providing required refunds to passengers. On June 15, 2021, in response to over 6,000 informal complaints and 85 formal docketed complaints, OACP initiated a formal enforcement proceeding against Air Canada by filing a complaint with a DOT Administrative Law Judge (ALJ).²¹ The complaint challenged Air Canada's failure to provide timely refunds to thousands of passengers for flights to or from the United States when the carrier cancelled or significantly changed the flight. OACP is seeking substantial civil penalties for Air Canada's extreme delays in providing the required refunds.²² Settlement negotiations with the carrier are continuing. If the settlement discussions are not successful, then the ALJ will rule on Air Canada's Motion to Dismiss and OACP's Opposition to the Motion to Dismiss. OACP's Notice of Enforcement Proceedings and other related materials can be found at www.regulations.gov, docket DOT-OST-2021-0073.

c. Ongoing Enforcement Efforts

OACP attorneys are continuing to obtain and examine pertinent information in the remaining 18 cases, which concern approximately 30,100 complaints. At times, the information provided by airlines has led to multiple follow-up questions and requests for additional documentation. Once OACP has obtained all the relevant information and analyzed the facts and circumstances of each case, a determination will be made on whether U.S. law has been violated and if so, the appropriate next steps. Generally, enforcement action consists of: directing the airline to cease and desist from further violations; directing the airline to change its policy or procedure to comply with federal aviation statutes and regulations; warning the airline about penalties if similar violations are discovered; and/or issuing an order against the airline that assesses civil penalties for violations. If a carrier refuses to change its policy or procedure and cease and desist from further violations, or

²⁰ United refers to vouchers and credits as Future Flight Credits (FFC) and Electronic Travel Certificates (ETC).

²¹ Air Canada received more complaints directly from consumers. In November 2020, in response to an inquiry from OACP, Air Canada informed the Department that, in the period March 13 to November 13, 2020, it received approximately 15,428 comments or complaints about refunds involving flights to or from the United States. Air Canada also informed the Department that it received approximately 5,110 refund requests involving flights to or from the United States that were cancelled by Air Canada due to the COVID-19 pandemic in the period March 13 to November 13, 2020. Air Canada did not amend its no-refund policy until on or about April 13, 2021.

²² OACP is seeking a fine against Air Canada based on the 5,110 violations where passengers waited anywhere from 5 months to 13 months to obtain required refunds.

does not agree to enter into an order assessing a reasonable compromise civil penalty that OACP believes would be appropriate, OACP will file a formal complaint with a DOT ALJ seeking a significant fine against the airline.

In addition to the 20 investigations discussed above, OACP is examining four other foreign carriers that have filed for bankruptcy protection. OACP is exploring options on how passengers who did not receive refunds when the carriers cancelled their flights may be compensated.

5. Future Actions

a. Additional Resources to Handle Consumer Complaints

The Department is taking action to expand its capacity to process consumer complaints expeditiously. The Department hired and recently extended terms for several part-time reemployed annuitants to handle complaints. In addition, the Department plans to hire additional temporary employees this calendar year to work exclusively on reviewing consumer complaint files. This would increase the number of DOT staff handling consumer complaints by 38%. The Department is also exploring restarting overtime for staff processing complaints and reassigning Department employees from other offices to assist with complaint handling. As a result, the Department expects to reduce processing time for consumer complaints and to finish addressing backlogged complaints in the near future.

In addition, the Department is taking initial steps to upgrade and modernize its outdated consumer complaint system. A modern system with features to efficiently process consumer complaints would enable analysts to devote more time to substantive review and individualized attention to consumer complaints, resulting in more timely complaint review and more thorough investigations of potential violations by regulated entities of aviation consumer protection requirements. The Department would also like the new system to have more refined data processing and reporting capabilities. Such enhancements would result in more robust data analysis which would better assist OACP in identifying potential problems and trends that may indicate violations by regulated entities as well as tracking enforcement activities.

b. Rulemaking Actions to Address Consumer Concerns

In response to President Biden's Executive Order Promoting Competition in the American Economy, on July 21, 2021, the Department issued a Notice of Proposed Rulemaking (NPRM) that would require airlines to refund fees for checked bags that are significantly delayed and for ancillary services, such as advance seat selection and wi-fi, when consumers pay for them but they are not provided.²³

In addition, recognizing that approximately 20.3% of the refund complaints (21,400 of the 105,302) that the Department received from January 1, 2020 to June 30, 2021 involved instances in which passengers with non-refundable tickets chose not to travel given the COVID-19 pandemic, the Department plans to issue a rulemaking that would address protections for consumers who are

²³ 86 Fed. Reg. 38420 (July 21, 2021).

unable to travel due to government restrictions.²⁴ The Department’s existing regulations do not address refund eligibility under special circumstances, such as government-imposed travel restrictions.

Also, although 49 U.S.C. § 41712 prohibits unfair or deceptive practices by airlines and ticket agents in air transportation or the sale of air transportation, the Department will further clarify its regulatory structure on refunds. For example, the Department’s existing refund requirement provides that airlines have an obligation to provide prompt refunds when refunds are due, but the reference to refunding airfare due to cancellations and significant delays are not codified in rule text. Also, the terms “cancellation” and “significant schedule change” are not defined in regulation, which has resulted in inconsistency among carriers on when passengers are entitled to refunds. This rulemaking would codify the requirement that airlines and ticket agents provide prompt refunds when a carrier cancels or makes a significant change to a flight.

6. Conclusion

As described in this report, the Department has made significant progress to ensure that airlines are providing refunds to passengers for flights that have been cancelled or significantly changed as a result of the COVID-19 pandemic. As a result, thousands of passengers who had initially been denied refunds have received or are receiving the required refunds. However, we have more work to do in this area. The Department will continue its efforts to ensure that airlines are complying with the refund obligation and to develop policies and regulations to ensure that airline passengers are treated fairly.

²⁴ See <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=2105-AF04>.