

United States Senate

March 20, 2020

The Honorable Elaine L. Chao
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Dear Secretary Chao:

We write to reiterate the need for the U.S. Department of Transportation (DOT) to immediately require that all airlines suspend their fees for ticket changes and cancellations during the coronavirus outbreak.

On March 4, 2020, we first wrote to you requesting action on change and cancellation fees. In your March 9, 2020 response, you declined to protect the flying public from these unfair fees, citing alleged prohibitions on regulating flight prices.¹ But we believe you have the authority, supported by legal precedent, to regulate ticket fees, including suspending change and cancellation fees. And as the only consumer protection agency in aviation, the DOT should not narrowly construe its legal authority to act.

First, there is the DOT's authority in this space, under the international Open Skies agreements. You claim that those agreements "require the United States to allow airlines to establish prices for air transportation."² But they are based on a model agreement expressly providing that "[n]othing . . . shall limit the rights of a Party to require airlines of both Parties to adhere to requirements relating to the protection of passenger funds and passenger cancellation and refund rights."³

Second, there is legal precedent that supports DOT action. In 2012, the DOT enacted a new rule requiring airlines to allow passengers to cancel non-refundable bookings within 24 hours of purchase without penalty so long as the booking was made at least seven days before flying.⁴ In a case challenging this "24-hour Reservation Requirement," the D.C. Circuit expressly held that "the rule has nothing to do with airfares" and instead "regulates cancellation policies on the basis

¹ Letter from Assistant Secretary Adam Sullivan to Senators Edward J. Markey and Elizabeth Warren (Mar. 9, 2020), <https://www.markey.senate.gov/imo/media/doc/DOT%20Coronavirus%20Fees%20Response.pdf>.

² *Id.*

³ U.S. Department of State, *Current Model Open Skies Agreement Text* (Jan. 12, 2012), <https://2009-2017.state.gov/e/eb/rls/othr/ata/114866.htm>. See e.g., U.S. Department of State, *Air Transport Agreement Between the Government of the United States of America and the Government of Canada*, <https://2009-2017.state.gov/e/eb/rls/othr/ata/c/ca/114781.htm>.

⁴ DOT 24-hour Reservation Requirement, 14 C.F.R. § 259.5(b)(4) (2019).

of a finding that existing practices were deceptive and unfair—a regulation plainly allowed under” the DOT’s consumer protection authority.⁵

The urgent need for DOT to act became even clearer after the Trump administration unexpectedly implemented a travel ban from areas in Europe affected by the coronavirus, which left many flyers scrambling to change their plans.⁶ Although most domestic airlines have temporarily waived change and cancellation fees to some extent because of the coronavirus, there are gaps in the policies that will leave many individuals with no choice but to either accept the risk of flying or pay excessive fees.

Furthermore, most airlines are permitting only a single waiver per ticket, which is unavailing when flyers are being forced to use refunded credits in as little as 90 days.⁷ Most airlines are also only offering flight credits instead of cash refunds for cancellations, which is particularly concerning at a time when many Americans are in direct need of cash. DOT needs to step up and protect *all* travelers from the airlines’ unfair fees for the duration of this pandemic.

DOT’s failure to even call for an industry-wide suspension of fees right now is particularly troubling given the crisis we face today. We once again urge you to act without delay to ensure that no travelers are exposed to a financial penalty for trying to protect themselves or their families from the coronavirus.

Thank you for your continued attention to this important matter.

Sincerely,

Edward J. Markey
United States Senator

Elizabeth Warren
United States Senator

⁵ *Spirit Airlines, Inc. v. U.S. Dep’t of Transp.*, 687 F.3d 403, 416 (D.C. Cir. 2012).

⁶ David Oliver et al., *‘We’ll get you out’: Travelers race to get home, prices soar after Europe coronavirus travel ban*, USA Today (Mar. 12, 2020), <https://www.usatoday.com/story/travel/news/2020/03/12/coronavirus-trump-travel-ban-people-scramble-us-prices-soar/5030075002/>.

⁷ Dia Adams and Caroline Lupini, *Master List of All Major International Airline Coronavirus Change and Cancellation Policies*, Forbes (last updated Mar. 19, 2020), <https://www.forbes.com/sites/advisor/2020/03/11/master-list-of-airline-coronavirus-policies/>.