

Expect Turbulence Ahead as State AGs and DOT Join Forces to Investigate Airlines and Travel Agencies

Last week, the U.S. Department of Transportation (DOT) announced an Airline Passenger Protection Partnership with state AGs (Partnership), which is the latest example of how AGs continue to expand their regulatory reach through collaboration with their federal counterparts. The announcement comes in response to growing frustration among certain AGs regarding their inability to investigate passenger complaints and enforce state consumer protection laws against airlines after efforts to urge Congress to pass legislation that would vest AGs with enforcement authority over airlines had limited success. With the Partnership's announcement, the participating AGs will not only be empowered to investigate complaints they receive against airlines but also will have access to complaints filed directly by consumers with DOT against airlines and travel agencies. Airlines and other sellers of air transportation should brace themselves for an influx of consumer complaints and proceed with caution in responding to those complaints.

AGs Have New Authority To Investigate Complaints Against Airlines

Federal preemption has generally protected the airline industry from AG regulatory scrutiny. Such preemption prevents state and local governments, as well as private parties, from bringing claims under state consumer protection statutes or other state laws "related to a price, route, or service of an air carrier."¹ This prohibition, in turn, has historically been interpreted as a limitation on the AGs' ability to investigate consumer complaints against airlines (but not travel agencies). As of this writing, 18 AGs have signed a Memorandum of Understanding with DOT, with seven additional AGs expressing similar interest in joining the MOU. Significantly, the MOU not only encourages AGs to investigate consumer complaints about airlines and travel agencies, but it also effectively deputizes the AGs to make a preliminary determination as to whether the complaints indicate a potential violation of federal aviation consumer protection laws enforced by DOT. If such a preliminary AG determination is made and forwarded to DOT, or if the airline or travel agency is not responsive to the AG's inquiries, DOT will prioritize its review. Where that DOT review indicates an apparent violation, DOT will issue a letter of inquiry to the airline or travel agency, provided the AG referral includes more than five similar consumer complaints or DOT determines it is in the public interest to do so. DOT will include AG staff on the letter of inquiry, and if DOT determines a violation has occurred, consult with AG staff before determining what steps to take next.

DOT has also agreed to grant the AGs access to DOT's new complaint database, thereby assisting the AGs in their assessment of whether a violation has occurred and providing the AGs with additional insight into national complaint trends. If the past is prologue, those airlines and travel agencies with the greatest complaint volume will be most at risk for multistate investigations and coordinated enforcement activity. Under federal law, most airlines are already required to respond to written consumer complaints in a timely manner.

Nevertheless, every airline or travel agency regulated by DOT (e.g., U.S. airlines, foreign airlines that provide flights to or from the United States, and travel agencies that market flights to, from, or within the United States to U.S. consumers) should expect an increase in investigation letters from AGs that have entered into the MOU with DOT. Pennsylvania AG Michelle Henry's press release lauding the Partnership contemplates a spike in complaint volume: "At a time when passenger concerns about air travel are climbing and just as we are about to enter the busy summer travel season, airlines must be attentive to consumer comfort and inform the Department of Transportation about major issues." Connecticut AG William Tong called the MOU "a powerful breakthrough" that "explicitly authorizes attorneys general to participate in the enforcement of federal airline consumer protection laws." The AGs are, in all likelihood, actively informing their



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constituents about this recently announced Partnership and inviting consumers to file complaints with their offices. DOT-regulated entities must be prepared to respond—not only in form but also in substance.

How Can Airlines and Travel Agencies Prepare?

Complaints are the canary in the coal mine of regulatory enforcement. Timely resolutions will undoubtedly help mitigate regulatory scrutiny, as explained in our Expert Analysis for Law360: "How Consumer Complaints Can Help Companies" (subscription required). We find that businesses that have systems in place to efficiently track the resolution of complaints are best equipped to handle AG inquiries. Airlines and travel agencies should ensure that there is an efficient and clear workflow to evaluate, escalate, and respond to complaints, as well as periodically update and audit compliance with their policies and procedures. It is important that such entities also understand [How State AGs Process and Prioritize Consumer Complaints](#) to appreciate the differences in how AGs evaluate and escalate complaints. In addition to evaluating their own complaint trends, businesses should also stay current on consumer complaint trends as reported by DOT.

Customer relations teams should pay heed to the warnings above and ensure they are appropriately resourced to handle the expected influx of complaints. In addition to understanding and addressing the top causes of consumer complaints, businesses should closely follow DOT's rulemaking activities, including two recently-released final rules addressing:

- i. refunds for flight irregularities, significantly delayed bags, and ancillary services when not provided, as well as travel credits for certain consumers affected by a serious communicable disease; and
- ii. enhanced transparency of airline ancillary service fees displayed in response to online flight searches. These final rules are in addition to ongoing DOT initiatives to eliminate so-called family seating fees and to specify amenities that must be provided by airlines during flight irregularities within their control.

The expansion of state AG collaboration with federal co-enforcers is not new. As we have previously reported, AGs frequently partner with the FTC, CFPB, and DOJ, leveraging the force-magnifying effect of co-enforcement power to investigate and bring enforcement actions against businesses for a variety of consumer protection, antitrust, and data privacy violations. With AGs now having their hands on DOT's regulatory steering wheel, airlines and travel agencies should expect increased regulatory scrutiny as AGs and DOT join forces on consumer protection issues in the aviation sector.

¹ 49 U.S.C. § 41713(b).
