

## Submitted to the Canadian Transportation Agency (Form submission)

**Subject:** Consultation on proposed changes to strengthen the Air Passenger Protection Regulations

**Name:** GBTA (Global Business Travel Association)

**Organization:** Industry

**Date:** 2023-08-10

GBTA is pleased to participate in the consultations via our submission, which is attached.

### **Attachment:**

#### [Executive Summary](#)

GBTA is the world's premier business travel and meetings trade organization headquartered in the Washington, D.C. area serving stakeholders across six continents. GBTA and its 7,600+ members represent and advocate for the \$1.158 trillion global business travel and meetings industry. GBTA and the GBTA Foundation deliver world-class education, events, research, advocacy, and media to a growing global network of more than 28,000 travel professionals and 125,000 active contacts.

The following report contains GBTA's feedback on the consultations. GBTA urges, however, that the CTA to not make any final decisions on APPR regulations until a full cost analysis is complete.

The report acknowledges the issues contained in the July 2023 CTA discussion paper, and provides feedback and our member perspective on the following topics:

- Identifying the exemptional circumstances
- Airlines responsibilities regarding claims for compensation
- Rebooking and Refunds
- Standards of Care and Assistance
- Communications
- Chain Reactions (Knock-on effects)
- Government of Canada issued travel advisories

Additionally, GBTA acknowledges there are many stakeholders in the travel industry and that the CTA examines shared accountability within the air travel ecosystem.

GBTA made the following recommendations:

- **Recommendation 1:** GBTA recommends the CTA to not make any final decisions on APPR regulations, including the forthcoming consultation on the “cost recovery” levy, until such time as the full cost analysis is completed and made public.
- **Recommendation 2:** GBTA supports exempting airlines from the obligation to pay compensation as defined within the regulations that includes a clear, logical, and comprehensive list of safety related exemptions for unexpected situations.
- **Recommendation 3:** GBTA recommends a clear process to adjudicate passenger claims that does not put undue constraints or burdens on the airlines but also treats passengers fairly.
- **Recommendation 4:** GBTA recommends the CTA considers proposing measures that will enhance the display of standardized and relevant information at airports and on carriers’ online platforms as well as to create a Canada-wide standardized reimbursement form for flights departing from or arriving to the country where the delay was an airline’s fault.
- **Recommendation 5:** GBTA recommends the introduction of fully automated, electronic refunds, using the same payment method used at the time of booking.
- **Recommendation 6:** GBTA recommends preferred means of communication meets a test of reasonableness and be attainable, that third party travel booking organizations are required to collect and share with airlines the preferred means of communication, the establishment of specific time thresholds whereby communications would be required, and what that communication would need to contain, and finally, calls on the CTA to consider proposing measures that will enhance the display of standardized and relevant information at airports and on carriers’ online platforms.
- **Recommendation 7:** GBTA recommends that a 24-hour limit be placed on the provision of assistance in the event of an exceptional circumstance.
- **Recommendation 8:** GBTA supports CTA’s proposed changes requiring refunds for both level 3 (avoid non-essential travel) & level 4 (avoid all travel) advisors. However, we continue to advocate for a global standard for risk and advisory warnings.
- **Recommendation 9:** GBTA recommends that shared accountability be examined prior to the APPR amendments coming into force. Shared accountability would provide the tools for a better understanding of the cause of disruptions and a fairer process to allocate financial liability when a delay or disruption occurs that results in APPR related compensation.

## Introduction

The Global Business Travel Association (GBTA) welcomes the opportunity to contribute to the CTA’s Consultation Paper: Proposed changes to clarify, simplify and strengthen the Air Passenger Protection Regulations.

GBTA is the world’s premier business travel and meetings trade organization headquartered in the Washington, D.C. area serving stakeholders across six continents. GBTA and its 7,600+ members represent and advocate for the \$1.158 trillion global business travel and meetings industry. GBTA and the GBTA Foundation deliver world-class education, events, research, advocacy, and media to a growing global network of more than 28,000 travel professionals and 125,000 active contacts.

**GBTA Mission:** GBTA’s mission is to be the leading source of business travel knowledge worldwide. This knowledge is created through education, research, networking and advocacy.

GBTA's focus is to equip our members with the knowledge and resources necessary to navigate the rapidly changing business travel landscape resulting in improved managed travel programs, top line business growth, and exemplary careers.

GBTA Canada represents the interests of Canadians as it relates to business travel including Canadian businesses with a travelling workforce – business travellers – whereby employees travel to conduct business, foster relationships, expand opportunities, remain competitive, contribute towards economies, and generate tax revenues.

We also represent travel suppliers - companies who supply a product or service for travel or travel-related elements for business travellers such as: airlines, hotels, travel management companies, car rental companies, travel insurance providers, travel technology companies, and alike.

GBTA Canada works to deliver sector-specific education, events, and research. It is important to note that business travel itself (and those who support it) is a distinct activity within the 'travel and tourism' ecosystem, and while there are overlaps in policy goals there should be no confusion about the separate economic impact of this group to national and local economies.

In fact, in 2019 GBTA Canada members spent over \$35 billion CDN on business travel alone. Business travel and the presence of these individuals in Canada supported 600,000 jobs annually contributing another \$40 billion CDN into the Canadian economy and over \$10 billion in tax revenue (\$5 billion federal and \$5.8 to provinces and municipalities in 2020). While COVID-19 and associated travel restrictions led to business travel dropping by as much as 90%, GBTA anticipates business travel representing 2.5-3% to Canada's GDP once we return to pre-COVID business travel levels.

Business travel is not simply a cost companies must incur, but a strategic investment in revenue growth resulting from client acquisition and retention, deal making and relationship-building.

## Background

The Air Passenger Protection Regulations (APPR) came into force in 2019 with the objective of providing consistent air passenger rights by imposing minimum requirements on airlines in several key areas. These include: how passengers are treated when flight disruptions occur, when they should be compensated for inconveniences experienced and how and what airlines should communicate to them.

In implementing the APPR it has become increasingly apparent that some areas of the legislation and regulations have proven to be unclear, leading to significant room for differing interpretations - particularly regarding the characterization of flight disruptions. Other issues with the rebooking and refund protections, as well as with airlines' communications requirements, have arisen.

On June 22, 2023, the Budget Implementation Act, 2023 (BIA) received Royal Assent and came into force. It modifies the Canada Transportation Act (the Act) to clarify, simplify and strengthen the Canadian air passenger protection regime.

## Cost Analysis

On July 12, 2023, the CTA sent out a questionnaire to airlines requesting detailed data in relation to the implementation of the APPR and the controllability of flight disruptions. The note accompanying the questionnaire stated the purpose of the request:

*“The Treasury Board of Canada Secretariat requires agencies and departments to prepare a Cost-Benefit Analysis (CBA) on the potential impacts of all proposed regulations and regulatory amendments. The CBA monetizes, quantifies and qualitatively analyzes the costs and benefits to stakeholders of a regulatory proposal, by assessing the impacts in comparison to a baseline scenario.”*

Given the potential cost implications of the proposed amendments to the APPR and the consumer protection regime as a whole, GBTA strongly believes that the data collection and associated cost analysis should have been conducted prior to the launch of pre-consultations, rather than during the process. To provide feedback and comments on regulatory proposals in the absence of a comprehensive cost analysis as required by Treasury Board guidelines is to provide information “in the dark” particularly when the potential cost impact on airlines and passengers is likely to be significant.

GBTA would urge the CTA to not make any final decisions on APPR regulations, including the forthcoming consultation on the “cost recovery” levy, until such time as the full cost analysis is completed and made public. This fulsome analysis should include information on cost impacts on airfares paid by passengers.

## **Issues Contained in the July 2023 CTA Discussion Paper**

GBTA offers the following comments and recommendations on the proposals set out in the CTA Consultation Paper released on July 11, 2023. We note that several of the proposals contained in the CTA consultation paper are vague, ambiguous, and lack necessary clarity. The proposed text, in particular for events deemed “inherent to normal exercise of the activities of an airline” is unclear, ambiguous and could be interpreted as not fully acknowledging the importance of safe airline operations and the unexpected nature of mechanicals defect.

### **1. Identifying the exceptional circumstances**

Safety is the top priority of business travellers in Canada and around the world. We believe our national airline partners are global leaders in aviation safety. Significant resources are allocated by airlines to ensure adherence to strict safety regulations and maintenance requirements. As a result, air travel in Canada continues to be the safest mode of transportation. Carriers’ operations are carefully planned to take into account all applicable safety rules and regulations. However, given the unique nature of aviation, some situations, like a mechanical failure discovered during the pre-flight inspection, are simply not foreseeable and force airlines to delay or cancel flights. Airlines should not be penalized for this, and compensation should not be payable in situations when airlines have not committed any fault but are instead following mandatory safety regulations that prohibit the operation of the aircraft until the defect is rectified.

One of the significant changes that is proposed by the CTA is the elimination of the safety-related category that exempts carriers from paying compensation to passengers, and the adoption of a narrow list of

“exceptional circumstances” that will limit the situations for which airlines would not be required to pay this compensation. However, there is a sound reason for the safety exemption. It was clearly understood by the original drafters of the APPR that there needed to be a balance between passenger rights, and the associated compensation and maintaining the safety of aviation. Safety has always been and will always be the top priority for airlines and the entire aviation industry. Airlines can only operate as efficiently and as on time as safety regulations and requirements allow. Punitive consequences should not be tied to adhering to safety regulations.

Canada has always been a leader in aviation safety. The adoption of the Safety Management Systems (SMS), which is the global standard of identifying and mitigating safety risks, is a proactive method of improving safety rather than the reactive approach previously only sought following an incident or accident. Without a clear and comprehensive exceptional circumstances list that prioritizes safety, Canada would turn the clock back on the principles of adherence of the SMS. It is critical for the entire industry to establish a healthy, robust, and positive safety culture and continuously improve aviation safety, and this example must be reflected the Government of Canada itself and in its regulations. The APPR regulations should be consistent with existing (and planned) safety rules and practices that are applicable to airline regulated activities so that there are no overlaps and/or contradictions. Canada must not go backwards on safety, it needs to continue to move forward and to be an global leader in this regard.

As a result, GBTA supports the recommended list of circumstances proposed by the National Airlines Council of Canada, exempting airlines from the obligation to pay compensation as defined within the regulations that includes a clear, logical, and comprehensive list of safety related exemptions for unexpected situations. NACC is proposing the list which has been developed in consultation with input from safety, technical and operational experts of their member airlines, and a review of other regulatory regimes.

Additionally, GBTA has concerns with the two-pronged test proposed by the CTA in the consultation document. The first criteria requires that the event in question causing the flight disruption is “not inherent to the normal exercise of the activities of the airline “. This part of the test is too vague and can capture virtually all events that may result in a flight disruption despite the airline not having any control. It is this vagueness in the first prong of this test that greatly prompted the proposed revisions of European Union’s (the “EU”) passenger rights regime, also known as EU261 as courts, passengers and airlines had difficulty in consistently applying the requirement.

## 2. Airlines responsibilities regarding claims for compensation

GBTA welcomes these new amendments if certain recommendations for business travel is implemented.

Amending the evidentiary requirements in determining a passenger’s eligibility for compensation will require a significant expansion in resources required on the part of airlines to address the claims process, which in turn detracts from resources that could otherwise be available to improve passenger service and keep air travel more affordable. Airlines and the government will need to closely monitor this situation. Require reports on why claims were denied, thus also requiring additional services and bureaucracy to

ensure the system is working properly. As such, GBTA fully expects that as airlines incur additional costs that they will be passed down to business and leisure travellers.

GBTA recommends a clear process to adjudicate passenger claims that does not put undue constraints or burdens on the airlines but also treats passengers fairly.

### 3. Rebooking and Refunds

Business travellers differ significantly from leisure travellers. From travel habits to booking procedures, GBTA members – both travellers and suppliers are significantly impacted by current rebooking and refunds policy.

Protecting passenger rights in case of flight delays or cancellations should first and foremost start with more clarity for passengers and business travelers. Currently, travelers experiencing a delay or cancellation lack the necessary information to undertake the actions to obtain a compensation or refund. This is partly explained by the lack of information at airports, by a limited compliance from some carriers to provide compensation in case of cancellation but mostly by a patchwork of reimbursement forms which differ across carriers.

GBTA therefore calls on the CTA to consider proposing measures that will enhance the display of standardized and relevant information at airports and on carriers' online platforms as well as to create a Canada-wide standardized reimbursement form for flights departing from or arriving to the country where the delay was an airline's fault. Such system would consequently improve consumer awareness and ease the process of going through a refund.

Additionally, GBTA calls on these standardized measures to be similar across transport modes in order to properly boost multimodality of packaged travels.

With respect to refunds, the CTA appears to view travel through a leisure lens. Business travellers often do not book or pay for travel themselves, creating complications when a refund is due. It's common for the business traveller to receive the refund as the passenger, rather than the corporate entity that booked and purchased the airline ticket, causing an unintentional consequence that then requires businesses to obtain refunds from their employees.

When business travellers book an airline ticket an Airline Tour Code - a unique identifier, typically a 6-digit alpha numeric code - issued to a corporate client is attached to that booking identifying it as a corporate paid ticket.

Flight certificates, notices of rebooking, and flight reimbursements must be reported to the payee/form of payment, which in many cases is the corporate entity, not the individual.

In addition, GBTA advocates the introduction of fully automated, electronic refunds, using the same payment method used at the time of booking. Electronic and automated refunds would facilitate the passenger experience and remove any form of paperwork, making refunding as easy as booking a flight. If such an option is not possible, we call for the application of a mandatory automated notification of refund entitlements to be sent to the passengers concerned.

#### 4. Standards of Care and Assistance

The proposals in the CTA consultation paper would require airlines to provide passengers with assistance for all flight disruptions after a defined delay at departure, including in exceptional circumstances. In order to enhance the clarity of this provision and reflect operational realities, GBTA suggests:

- The regulations assume that every airport will always have access to relevant standards of care at any given time. This is not always the case. For instance, smaller airports may not have food and beverage options such as a restaurant available, and when they do, they may not be available at all hours of the day. Similarly, hotel capacity is limited and hotels are frequently at capacity in larger cities, especially during summer peak travel season, or in an instance when there is a significant exceptional circumstance such as a snowstorm. Additionally, access to communications may be limited in the event of a power outage or a telecommunications outage.

The regulations need to reflect that assistance be offered if the capacity is available to do so. Airlines cannot be expected to provide standards of treatment when the availability of this assistance does not exist or is not attainable due to circumstances not within their control.

- The CTA Consultation paper states, on page 12, that: *“When disruptions are caused by exceptional circumstances, an airline would be responsible to provide passengers with some assistance for a certain period of time.”* By its nature, it can be difficult to predict how long an exceptional circumstance may last. To strike an appropriate balance between passenger needs and the uncertainty around the duration of some events that may be classified as- an exceptional circumstance, GBTA is recommending a 24-hour limit be placed on the provision of assistance in the event of an exceptional circumstance. Of course, this would be subject to the condition that forms of assistance are available, as outlined above.

#### 5. Communications

The CTA consultation paper proposes new regulatory requirements with respect to communicating information about flight delays or disruptions. GBTA’s comments on the regulatory proposals are as follows:

**Confirmation of preferred means of communication at check-in:** GBTA supports the proposal submitted by NACC, including that the list of preferred means of communication must meet a test of reasonableness and be attainable. For instance, it is not reasonable for passengers to expect individual phone calls or one on one in-person communications. In order to be attainable, the list of preferred communications should be limited to electronic communication (e.g., email, SMS text). We would also expect these new requirements will result in additional costs passed down to travellers.

**Requirement for third party travel booking organizations to collect and share with airlines preferred means of communication:** Many passengers book flights with third party booking organizations. Not all third-party booking organizations collect information on the passengers’ preferred means of communication, which means that airlines do not have access to this information, which therefore must be collected manually at check-in, adding to the time required to process a passenger. GBTA is concerned with increased processing times for travellers.



***Airlines must tell passengers, via their preferred means of communication, about the specific entitlements they have at that moment, and how to claim them:*** Rather than the more vague regulatory requirement of informing passengers of entitlements they have “at that moment”, GBTA proposes establishing specific time thresholds whereby communications would be required, and what that communication would need to contain.

***Airlines would have to provide disruption information in a proactive and timely manner on their websites and other digital platforms, and to passengers using each passenger's preferred means of communication:*** GBTA therefore calls on the CTA to consider proposing measures that will enhance the display of standardized and relevant information at airports and on carriers’ online platforms.

## 6. Chain Reactions (Knock-on effects)

The current APPR regime does not put any limit on the number of flights that can claim the original disruption as the reason why they were delayed or cancelled – i.e., in the case of a safety related disruption or a situation outside the airlines’ control, there is recognition that one disrupted flight will likely lead to subsequent disrupted flights given the displacement of crew, planes, or other equipment. Allowance for this so-called “knock on effect” is logical and reasonable, as it reflects the realities of an interconnected air travel system.

The CTA has proposed that this so-called “knock on effect” in the case of an exceptional circumstance be limited to two flights, specifically, the originally impacted flight and one additional flight. However, this proposed restrictive measure of two flights doesn’t take into consideration the interconnectedness of the aviation system and in some cases will not permit for operational recovery, a reality that was recognized in the original iteration of the regulations. For example, an aircraft used on a long-haul flight may only be scheduled to operate two legs (i.e., a departure and a subsequent return) on a given day. However, aircraft used in short haul operations may be used on multiple legs in some cases exceeding 10 per day and would be severely impacted by any knock-on that originated from a “primary” event early in the schedule.

To reflect this operating reality, GBTA supports airlines claiming knock-on effects for a period of 48 hours after the original disruption. However, for corporate travel booking the inability to reasonably rebook to attain business outcomes must result in a full refund. GBTA advocates the introduction of fully automated, electronic refunds, using the same payment method used at the time of booking.

## 7. Government of Canada issued travel advisories

The last two years have been marked by a lack of coordination that was translated by national blanket lockdowns, quarantines, and travel bans which brought confusion throughout the international business travel industry and contributed to the temporary collapse of the air travel industry.

GBTA supports CTA’s proposed changes requiring refunds for both level 3 (avoid non-essential travel) & level 4 (avoid all travel) advisors. However, we continue to advocate for a global standard for risk and advisory warnings.



## Lack of a Shared Accountability Framework

In May 2023, NACC issued a report that recommended the creation of a shared accountability system containing the following four elements for all entities within the air travel ecosystem:

- Publicly reported data in real time.
- Establishment of measurable service standards
- A real time communications protocol
- Financial accountability provisions when service standards are not met

The proposed amendments do not include any of the above elements. Yet as we have already seen in the early summer of 2023, service performance shortcomings amongst other non-airline entities in the air travel ecosystem have been the cause of flight delays and disruptions, but the airline remains the sole entity financially liable.

GBTA recommends that shared accountability be examined prior to the APPR amendments coming into force. Shared accountability would provide the tools for a better understanding of the cause of disruptions and a fairer process to allocate financial liability when a delay or disruption occurs that results in APPR related compensation.

## Recommendations

- **Recommendation 1:** GBTA recommends the CTA to not make any final decisions on APPR regulations, including the forthcoming consultation on the “cost recovery” levy, until such time as the full cost analysis is completed and made public. This fulsome analysis should include information on cost impacts on airfares paid by passengers.
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- **Recommendation 6:** GBTA supports the proposal submitted by NACC, including that the list of preferred means of communication must meet a test of reasonableness and be attainable, that

third party travel booking organizations are required to collect and share with airlines the preferred means of communication, the establishment of specific time thresholds whereby communications would be required, and what that communication would need to contain, and finally, calls on the CTA to consider proposing measures that will enhance the display of standardized and relevant information at airports and on carriers' online platforms.

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## Conclusion

On behalf of business travellers from Canada and those who travel to Canada, the GBTA appreciates the opportunity to provide feedback on the CTA's consultation on proposed changes to strengthen the Air Passenger Protections Regulations. As the voice of business travellers, we understand that through these consultations the CTA gains a greater understanding of different perspectives. GBTA is pleased to share ours.