



March 1, 2021

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Chair and Chief Executive Officer
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Subject: CTA consultation on new airline refund requirements

Dear Mr. Streiner,

As you know, the Canadian Automobile Association (CAA) is a not-for-profit federation of eight clubs representing approximately 6.5 million Canadians, providing Members with emergency roadside services, a leading rewards program, and automotive, insurance and travel services.

CAA has also, since its founding in 1913, advocated on issues of concern to its Members. Today those issues include road safety, the environment, mobility, infrastructure and consumer protection. In 2020, CAA was recognized by the Gustavson School of Business at the University of Victoria as Canada's most trusted brand, for the second time in three years.

CAA is more than just the country's largest consumer advocacy organization. We also understand the air travel business from the consumer perspective. This allows us to take a strong, informed position in favour of air passenger rights, while at the same time recognizing a viable post-COVID industry is in the consumer interest.

Through our store network and online, CAA is one of Canada's largest leisure travel agencies, with approximately 100 retail outlets. Prior to the COVID-19 pandemic, our travel counsellors worked with air passengers every day assisting them through all stages of their travel - before, during and after. And, when Canada heightened its travel advisory to Level 4 in late March, our travel agents helped bring passengers home. The value and expertise gained by using a travel agent was never more evident to passengers who were stranded overseas by pandemic travel restrictions.

The establishment of Canada's Air Passenger Protection Regulations (APPR) in 2019 brought Canada, after ten years, close to a level playing field with other major jurisdictions. However, it is important to note that Phase II of the APPR, which implemented the elements of most interest to travellers (e.g. compensation for delays and cancellations), only launched on December 15, 2019, just three short months before COVID-19 caused mass travel restrictions and cancellations.

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In March, we quickly witnessed the enormous effects the COVID-19 travel restrictions brought about and soon afterward saw that the APPR regime was inadequate to protect consumers faced with large monetary losses. This is due to the fact that the regulations carve out all events 'outside carrier control' from any requirement to provide a refund. In retrospect this gap was a huge mistake.

In fact, the only protection a passenger has under this scenario is that the airline must complete their itinerary. That may well work when a hurricane hits and it takes a few days to get flights back up and running but, when the regulations were drafted, no one envisioned an extended global shutdown of air traffic. The fact that airlines can essentially indefinitely defer their requirement to complete the passenger's itinerary by issuing a credit voucher is not in the spirit of the APPR.

CAA is delighted to see that the CTA has been charged with closing the APPR loophole that currently leaves Canadians with no assurance they can access a refund for pandemic-related airline cancellations. We are further pleased to see the federal government's commitment to ensuring that consumers who have already suffered COVID-19 related travel cancellations will be able to get refunds as part of any federal airline pandemic financial support package. But the fact remains that thousands of Canadians to this day have yet to receive a penny in refunds.

Ensuring that passengers can get refunds for flights cancelled through no fault of their own is the right thing to do. Not doing so, as we have seen, puts passengers in the position of giving involuntary interest-free loans to the carriers. Getting Canadians back on planes in large numbers to help the travel and tourism sector bounce back depends on health measures, absolutely, but also on consumer confidence their money will not disappear on them in the event of another pandemic-related flight disruption.

To be clear, we believe that government actions that result in COVID-19 flight cancellations are reasonable and warranted for public health reasons. We also understand the airline industry is under immense financial pressure, but we equally believe that Canadians should not be hit with large financial penalties for decisions out of their hands, especially at a time when unexpected economic stress has become a fact of life for most Canadians.

We welcome this process and believe it must ensure that consumers with flights cancelled due to government health warnings or shutdowns will be able to get full refunds. In the remainder of our submission, we will address the specific questions set forth as part of the consultation. In all cases, where we refer to refunds, it is our expectation that refunds will be made available to all classes of tickets, including non-refundable fares.

- 1. CTA: The entitlement to a refund will apply if the airline cannot complete the passenger's itinerary within a reasonable time. In the context of an event outside of an airline's control - such as a border closure, security incident,**



or volcanic eruption - what should be considered a "reasonable time" for completing a passenger's itinerary?

CAA Response:

Currently, the APPR requires that large airlines rebook passengers on the next available flight operated by them or a partner airline, within 48 hours of the end of the event that caused the delay or cancellation. However, when the delay has no end in sight, such as with the pandemic, a problem arises for travellers.

While the pandemic has illustrated what we believe to be the worst-case scenario, it is also true that a volcanic eruption or earthquake could make air travel impossible for an indeterminate period of time. Passengers in these cases may wish to seek other, alternative forms of transport home. For example, a passenger may choose to rent a car or travel by cruise ship to complete their own itinerary.

In situations where a flight has been cancelled for reasons 'outside carrier control', CAA believes that passengers should be able to access a refund 48 hours after the flight cancellation/delay that was 'outside carrier control'. To be clear, if the carrier cannot schedule the passenger on another flight on its own or another carrier's network that departs within 48 hours of the 'outside carrier control' cancellation/delay, they would then have to offer a refund. Refunds should be available to any passenger, holding any class of ticket, including non-refundable fares.

This 48-hour window permits airlines and travellers time to monitor the situation in the early hours of a disruptive event and determine the best course forward based on available information. It also provides consumers with certainty that they can make other travel arrangements without the need to wait many days or weeks at additional expense, for example at a hotel or resort. CAA considers this a reasonable option when a carrier cannot complete its obligation under the regulations to complete a passenger's itinerary. The choice should be the passenger's and the airline does not have to automatically refund all passengers – only ensure a refund is available to those passengers wanting it after 48 hours from the 'outside carrier control' cancellation or delay. In all cases, the goal should be to assist the passenger in completing their itinerary with the least amount of disruption.

2. The entitlement to a refund could potentially apply not just in the context of a flight cancellation, but also a "lengthy delay." What should be considered a "lengthy delay"?

CAA Response:

Similar to our response above to #1, CAA believes that passengers should be entitled to a refund when a "lengthy delay" reaches 48 hours after the beginning of an event. We do not make a distinction in this case between a cancelled flight that cannot be fulfilled within 48 hours or a lengthy delay beyond 48 hours. In both cases, some passengers



may wish to seek other, alternative forms of transport home while others prefer to wait out the delay and wait for a rescheduled flight. In either case, passengers should have the choice of accessing a full refund after 48 hours from the 'outside carrier control' cancellation or delay.

3. What should a refund cover? For example:

- The unused portion of the passenger's ticket;
- Any additional services the passenger purchased, but did not use (for example, seat selection or extra baggage);
- The full cost of the passenger's ticket, if their trip no longer serves a purpose because of the flight disruption.

CAA Response:

A refund should cover the full cost of a passenger's unused ticket and any additional prepaid services (e.g., seat selection, baggage fee, meals, etc.). If the passenger is at their destination and the disruption affects their return trip home, the passenger should be refunded the unused portion of their ticket plus the value of any unused prepaid services. In cases where a traveller is at a connection point in their journey, they should be refunded the full cost of the ticket from origin to destination or vice versa.

Examples:

- A passenger faces an 'outside carrier control' disruption while connecting in Calgary, en route from Montréal to Vancouver to begin their vacation. If the passenger decides, after 48 hours, that they do not want to wait for the airline to complete their itinerary from Calgary and chooses a refund, they should receive a full refund for the cost of their entire roundtrip journey as they were not delivered to their destination.
- A passenger, departing for their return journey home from their destination, faces a disruption while connecting in Toronto, en route from Vancouver to Ottawa. If the passenger chooses to receive a refund while stuck in Toronto, they should receive a full refund for the return journey of their trip (both legs) as they were not delivered to their destination.
- If the passenger is stuck at their destination, the passenger should be able to access a full refund for the return portion of their flight (all legs).

All classes of tickets, including non-refundable fares, should be able to access refunds. In no case should airlines be permitted to charge or withhold a portion of the ticket cost for processing a refund.

In the US [regulations](#) and the EU [regulations](#), all additional prepaid services are also required to be reimbursed. As well, both jurisdictions require refunds for non-refundable



tickets when the airline cancels a flight regardless of the reason.

4. How should airlines be required to refund passengers? For example:

- Using the same method used to buy the ticket;
- In monetary form (for example cash, cheque, or a bank account deposit);
- Passenger's choice of money or other forms offered by the airline (such as vouchers or rebates).

CAA Response:

For expediency, passengers should be refunded via the method they used to purchase the ticket. With most airline tickets purchased via credit card or bank card, this method allows passengers access to their refunds quickly, potentially supporting their purchase of alternate travel home to complete their own itinerary.

While CAA believes that refunds must always be available in these situations, we also believe that airlines should have the opportunity to offer passengers other options. This could include enhanced refund value, bonus frequent flyer points, or other rebates. In the US, where cash refunds are required for pandemic-related flight cancellations, some airlines offer incentives to encourage passengers to willingly take credit vouchers instead. For example, American Airlines offered vouchers that are 120% the value of the refund and United Airlines offered bonus frequent flyer points in addition to a voucher. These enhanced offers encouraged some travellers to take the voucher. This option can be good for some consumers, but it must be their choice and a full cash (or equivalent) refund must always be clearly offered. Equivalent in this case is meant to encompass credit card refunds, bank card refunds, cash refunds, etc.

5. How much time should airlines have to provide refunds to passengers under the new requirements?

CAA Response:

Credit card or bank card transactions should be processed as soon as possible and no later than seven (7) days from the time when the passenger requests the refund. Any tickets purchased via a gift certificate or frequent flyer program should be refunded in the same form within fourteen (14) days. For any passenger that is using a travel voucher received due to COVID-19 flight cancellations, these vouchers should be refundable at the passenger's request, in the form originally paid, also within fourteen (14) days. Refunds for cash purchases, likely via cheque, should be issued and post-marked within twenty (20) days. These timelines should apply when the ticket sale is direct to the consumer and when there is an intermediary.



Supporting our recommendation, the US [regulations](#) set out that, “if a passenger is owed a refund, an airline, travel agent, or online travel agency must process it within seven business days if the passenger paid by credit card, and 20 business days if the passenger paid by cash or check”. Under the EU [regulations](#), the right to reimbursement must be completed within seven days.

Notably, Canadian airlines already operate under the US and EU regulatory regimes so implementing our recommended refund timelines should not be a concern.

6. a) Should there be greater flexibility in the requirements for certain types of airlines, or in certain situations? For example:

- Based on airline size (smaller airlines may be, for example, less able to recover quickly after an event outside their control);
- If an airline provides essential services (for example, to remote, regional or northern communities);
- If the event is large-scale (as opposed to an isolated event like a collision with wildlife);
- If the event could threaten an airline's financial viability (for example, one that results in operations being shut down for months).

CAA Response:

It is our understanding that, as the APPR currently defines “large carriers”, this category covers the vast majority of passengers and all mainstream airlines. “Large carriers” should not be offered any flexibility. When the cause of the flight disruption is ‘outside carrier control’, the specific reason should not matter. After 48 hours from the ‘outside carrier control’ cancellation/delay, passengers that have been delayed or that have not yet departed after having a cancelled flight, should be able to access a refund as detailed earlier in our submission. This protects passengers so we do not see another COVID-type situation where passengers are unwillingly left providing interest-free loans to airlines while being left to fend for themselves to complete their itinerary.

On the other hand, flexibility should be provided to “smaller airlines” and northern/remote airlines as the CTA determines is appropriate. The definition of “small airlines” in the APPR recognizes the unique operational conditions affecting many of these airlines and we agree that some flexibility is warranted. The definition of carrier size categories in the current APPR should not be altered.



6b) If so, in what areas should flexibility be given? For example, should there be a different:

- definition of "lengthy delay";
- deadline to provide a refund to passengers.

CAA Response:

As per our previous response, we do not believe “large airlines” should be given any additional flexibility.

With respect to “small airlines”, consideration should be given to longer delay and rescheduling periods and more time to pay out refunds. However, any flexibility offered to “small airlines” should in no way eliminate a passenger’s right to access a refund. CAA believes that the CTA and other affected stakeholders are best positioned to determine what flexibility is necessary given the unique operational conditions these airlines face.

7. Events since March have shown that some situations caused by a pandemic are outside of airlines' control, while others may be within airlines' control. An airline's business decision to consolidate flights during a pandemic could sometimes be considered within its control, while government travel restrictions, employee quarantine or self-isolation, and additional hygiene procedures are examples of pandemic-related situations [the CTA considers](#) outside airlines' control. Are there other, specific pandemic-related situations that you think should be considered either within or outside airlines' control?

CAA Response:

While we understand that air travel is not likely to return to pre-COVID times soon, carriers are still offering flights freely, regulations permit air travel and passengers who choose to travel are entitled to the consumer protections established under the APPR. All industries have had to adapt to operating under the ‘new normal’ and there must be differentiation between how a carrier operates its business during a pandemic (within control) versus a sudden, external pandemic travel restriction that influences a delay or cancellation (outside control).

It is within the carrier’s control to decide how many flights they plan to offer to a destination, which may later lead to a business decision to consolidate flights. COVID-19 should not and is not a free pass on APPR. We see no reason to give an indefinite regulatory holiday on consumer protections to carriers on matters that remain within their control and that were considered key to the regime just last year.

The APPR sets out protections for travellers to ensure they are given fair notice of itinerary changes, a minimum standard of treatment, and even compensation in limited circumstances. These measures are specifically designed to get all travellers, even those without airline frequent flyer status, to their destination with options that ensure the least delay possible.



CAA agrees with the [CTA assessment](#) that the following pandemic-related situations give rise to situations being 'outside carrier control':

- Medical emergencies and orders or instructions from government officials;
- Flight disruptions to locations that are covered by a government advisory against travel or unnecessary travel due to COVID-19;
- Employee quarantine or self-isolation due to COVID-19;
- Employee refusal to work under Part II of the Canada Labour Code, R.S.C, 1985, c. L-2, (or equivalent law) due to COVID-19; and
- Additional hygiene or passenger health screening processes put in place due to COVID-19.

However, we do not agree that air carrier “decisions that are influenced by the pandemic, including decisions to cancel and consolidate flights due to dropping passenger volumes” constitutes a situation 'outside carrier control'. Carriers have now had nearly a year to adapt to operating their businesses during a pandemic.

Currently, it appears carriers are scheduling many flight options at different times and on different dates to a destination, to give travellers the illusion of choice, fully expecting to cancel several and consolidate them. Passengers are being sold flight options that look good for the sake of marketing but have a very low probability of departing as scheduled. These passengers ultimately get consolidated to a flight of the airline's choosing and quite possibly at the passenger's inconvenience. The APPR rules on this issue must be clear so passengers understand when they are covered. CAA suggests that flight consolidation due to lack of tickets sold be clearly labelled as 'within carrier control'.

8. The CTA will consider the legal frameworks in the European Union (EU) and the United States (US) in developing the new regulation on refunds. What particular aspects of these frameworks should the CTA consider?

CAA Response:

In the US [regulations](#) and the EU [regulations](#), carriers are required to refund passengers, even those with non-refundable tickets, when the airline cancels a flight regardless of the reason.

Both jurisdictions also mandate that all additional prepaid services are reimbursed.

The US [regulations](#), set out that, “if a passenger is owed a refund, an airline, travel agent, or online travel agency must process it within seven business days if the passenger paid by credit card, and 20 business days if the passenger paid by cash or check”. Under the EU [regulations](#), the right to reimbursement must be completed within seven days.



Canadian airlines must already operate under the US and EU regulatory regimes so implementing our recommended refund timelines as per #5 above, should not be a significant obstacle for carriers.

9. The CTA welcomes input on the issues for discussion, as well as any comments on other air passenger protection issues brought to light by the COVID-19 pandemic.

CAA Response:

As mentioned earlier, CAA is also a travel agency and we note that travel agents should not lose out on commissions owed to them. Agents did their work and in many cases the carriers have been holding their money since spring 2020. Consumers should be made whole for pandemic-related flight cancellations, but we feel the government has a responsibility to agents too. This should be a consideration in any federal funding agreement with airlines.

CAA also submits the following in response to the CTA's request for additional comments.

a) Refusal to travel and COVID-19

- Due to the pandemic, the federal government has implemented procedures that have made it necessary for travellers to produce additional documentation regarding health/quarantine requirements in order to travel. While CAA understands why this is necessary, it is also true that our agent network reports many travellers are confused and do not understand what documentation is required and how to get it. We believe this will give rise to an increase in the number of passengers that carriers refuse to board. Passengers are only afforded protections under the APPR when they are checked-in on time and hold proper government documentation. The CTA should consider whether well-meaning passengers, turned away because they lack proper health documents, should be afforded a level of protection under the APPR. It would be fair to ensure carriers cannot charge a fee to reschedule these passengers and that airlines are required to honour the original ticket, even if non-refundable, once the passenger secures the proper documentation.

b) Denied boarding and “pre-planned schedule changes”

- In cases where an airline, for business/operational reasons, downsizes an aircraft at the last minute, there appears to be a lack of guidance that makes it clear this should be treated as a case of denied boarding. CAA has observed reported cases of airlines instead referring to last-minute downsizing as a “pre-planned schedule change” with the resulting



disruption being labelled a delay/cancellation. The impact on the traveller is that the airline is required to pay less than half as much compensation.

- A September 2019 [CBC news story](#) detailed the issue quite clearly. A Canadian newlywed couple was bumped from their flight at the last minute but rather than be compensated for denied boarding (at \$900 each), they were told the plane downsizing was a “pre-planned schedule change” and that instead, it would be treated as a delay when calculating compensation (at \$400 each).
- The regulations define “denied boarding” as too many people checked in for a flight. Given that airlines permit check-in 24 hours before departure, CAA believes it is reasonable that within 24 hours of departure and after check-in has commenced, carriers cannot label a delay or cancellation as a “pre-planned schedule change”. Updating the CTA guidance on *Types and Categories of Flight Disruption* as per our recommendation will clear up a grey area for carriers and will help ensure passengers know when compensation for denied boarding is due.
- *Note: In this story, it is claimed the airline did not request volunteers, which is compulsory under the APPR, before denying boarding to the newlywed couple.*

c) Knock-on effects

- The regulations use the term “directly attributable” to limit the “knock-on effect” being used too broadly across a carrier’s network that could limit compensation that might otherwise be owed to passengers. This term is not defined, nor is it even mentioned, in the [CTA Guidance on Types and Categories of Flight Disruptions](#).
- We recommend an amendment to bring the Guidance into line with the regulations. Including the term “directly attributable” will help to limit the extent to which a single flight disruption can be said to affect other aircraft in the network, thus protecting a passenger’s right to compensation.
- The Guidance should further consider using phrasing such as, “limiting the impact of the knock-on effect,” to indicate the purpose of this text is to provide guardrails limiting the use of the term.
- The Guidance should also clearly outline what knock-on effects are not acceptable. This should be done in a manner that identifies this area as a key loophole in the regulations.
- Lastly, in the CTA Guidance, *Types and Categories of Flight Disruption*, the [section titled “Knock-on Effects”](#) should close with a clear statement that only the affected aircraft, and other affected flights where circumstances are “directly attributable” to the original aircraft issue, be



considered as legitimate knock-on effects that allow the airline to avoid paying compensation to passengers.

- Example 1: A single aircraft has three legs scheduled. Leg A from Halifax to Montréal has a mechanical safety issue and gets cancelled. Leg B from Montréal to Toronto then must be cancelled/revised as will Leg C departing Toronto. In this example, all flight disruptions are legitimately part of the knock-on effect and no compensation would be owed to passengers.
- Example 2: Flight A is to depart Toronto for Vancouver. Flight B is to depart Toronto for Thunder Bay. Flight A has a mechanical/safety issue resulting in the aircraft being grounded.
 - i. Option A: the airline cancels Flight A and its passengers are not compensated. There is no effect on Flight B.
 - ii. Option B: the airline cancels Flight B and uses the aircraft to carry out the originally scheduled Flight A. Flight B's passengers are offered no compensation as the carrier says a mechanical issue led to the cancellation. In this case, under CAA's interpretation of the Guidance, Flight B was cancelled by a business decision of the carrier, possibly because Flight A is a higher profit and longer flight. Flight B should not be a "directly attributable" flight cancellation and the knock-on effect should not be applicable. Passengers on Flight B should be entitled to compensation.

d) Information to passengers (re flight disruptions)

- CAA notes that over the first months of the new regime, there have been numerous examples in the media, and anecdotally from our travel agent network, about the flexible messaging coming from airlines when they are disclosing the reason for a flight disruption. Often the messaging starts as an issue where compensation is applicable and ends with the reason changing such that no compensation is due.
- The [CTA Guidance on Communicating Key Information to Passengers](#) notes that, "Sometimes the pilot or airline crew, staff or agent may not immediately know the precise cause of a disruption," and goes on to say that, "Airlines should provide passengers with the most up-to-date information reasonably available at the time and then provide updates," leading to situations where passengers may not know their rights. Accurate information about the reason for a disruption is critical for passengers to determine whether and what rights they have under the regime. In these cases, the airlines hold all the details and it is difficult to know as a passenger whether you are receiving accurate information.



- CAA recommends that the Guidance should provide more detail about how carriers should communicate a change in the reason for a flight disruption, including an acknowledgement of the reason change, the provision of any available evidence to support the conclusion and an explanation of how the change affects the passenger's right to compensation. This would help provide passengers with the information necessary to challenge the change should they feel it is unwarranted.
- A separate issue under the provision of information is the information that some carriers and travel sellers lack on their websites. While many do not appear to be in violation of the regulations, they equally do not appear to be following the spirit of the regulations with hard-to-find information, details lacking and, in some cases, barely a mention of the APPR regime by name.
 - i. Example: Expedia.ca is still not disclosing protections afforded to travellers under the APPR using the required text when purchasing a flight. Verified February 25, 2021, more than one and a half years after implementation.

e) Delayed/Cancelled flights for mechanical/safety reasons

- CAA believes that this is still a grey area of the APPR. More guidance to help travellers better understand what is allowable under this carve-out would be helpful.
 - i. For example, is a system-wide reservation booking system technical issue considered within airline control?
 - ii. Is a flight attendant injury with no back-up staff on location considered a cancellation for safety or business reasons?

f) Codeshare airline partners

- CAA believes that additional guidance would be helpful in explaining, in simple terms, which airline partner is responsible for what element of APPR. As well, is there one airline who is tasked with assisting the traveller navigate which partner to contact?

g) APPR airline surcharges

- CAA has noted that at least one carrier began charging an APPR surcharge to passengers in order to recoup the APPR compensation it will pay out. The APPR should not become a new revenue stream for airlines and the regulations should make clear this is not permissible. Any carrier that has done this should be required to refund any surcharges collected.



Conclusion:

We are in the middle of an unprecedented crisis for everyone, including air carriers, but as things stand now many consumers are getting sideswiped in the process. Canada's treatment of affected air passengers is plainly worse than in the US or the EU, both of which have demonstrated understanding of the industry's position but not backed away from supporting their citizens either.

CAA welcomes efforts by CTA to close the APPR loophole that currently leaves Canadians with no assurance they can access a refund for pandemic-related airline cancellations. Ensuring that passengers can access a refund for pandemic-related flight cancellations that are no fault of their own is not only the right thing to do, it will also build consumer confidence in air travel moving forward to support the sector's recovery.

We would be happy to answer any questions you or your staff might have. Please do not hesitate to contact me by telephone at (613) 863-2590 or email at ijack@national.caa.ca, or Jason Kerr, Senior Director of Government Relations, at (343) 998-6679 or jkerr@national.caa.ca.

Sincerely,

A handwritten signature in blue ink, appearing to read 'IJ', is placed above the typed name of the sender.

Ian Jack
Vice President, Public Affairs
Canadian Automobile Association (CAA)