

September 12, 2018

The Honorable John Thune
Chairman, Committee on Commerce,
Science & Transportation
United States Senate
517 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Bill Shuster
Chairman, Transportation and
Infrastructure Committee
United States House of Representatives
2079 Rayburn House Office Building
Washington, DC 20515

The Honorable Bill Nelson
Ranking Member, Committee on Commerce
Science & Transportation
United States Senate
716 Hart Senate Office Building
Washington, DC 20510

The Honorable Peter DeFazio
Ranking Member, Transportation and
Infrastructure Committee
United States House of Representatives
2134 Rayburn House Office Building
Washington, DC 20515

Re: Consumer groups' support for inclusion of the FAIR Fees Act and other consumer protection provisions in the FAA Reauthorization Act conference agreement

Dear Chairman Thune, Ranking Member Nelson, Chairman Shuster, and Ranking Member DeFazio:

The undersigned eight consumer advocacy organizations urge you to support the bipartisan FAIR Fees Act amendment that was included in S.1405, the Federal Aviation Administration Reauthorization Act of 2017,¹ as well as additional consumer protection language in any FAA Reauthorization Act conference agreement.

¹ § 3129. "Regulations prohibiting the imposition of fees that are not reasonable and proportional to the costs incurred. This section" Online: <https://www.congress.gov/115/crpt/srpt243/CRPT-115srpt243.pdf>

The FAIR Fees Act language in the bill is a compromise provision that would require change and cancellation fees to be reasonable and bear a relation to the actual cost to provide the service. The Department of Transportation (DOT) would also be charged with developing fair standards for assessing the reasonableness of other ancillary fees.

Both the House and Senate FAA reauthorization bills include a number of pro-consumer protections that we strongly support. We are writing this separate letter to bring special attention to our strong support for the inclusion of the FAIR Fees Act compromise as a key part of our support for the FAA reauthorization bill.

For years, consumers have had to endure the airlines' imposition of fee after fee for services like seat reservations, checked bags, and ticket changes that used to be included in the basic cost of flying. Airlines often claim that the unbundling of fees for these services has reduced the cost of flying. However, it does not take an economist to spot that airlines' rapidly increasing fees far outpace both the rate of inflation and the cost to provide the service.

Last week, for example, both JetBlue and United raised their checked baggage fees yet again.² And based on experience, it is likely that other airlines will soon match this increase. Even before the recent fee hikes, statistical analysis had determined that the cost of flying is increasing. The Associated Press has found that base fares, adjusted for inflation, have increased by 5% since 2010.³ Likewise, the Government Accountability Office has found that the cost of flying has increased, once fees for checked baggage are included.⁴ Instead of

² Martin, Grant. "United Airlines Increases Baggage Fees In Step With JetBlue, Air Canada And WestJet." Forbes Magazine. September 1, 2018. Online: <https://www.forbes.com/sites/grantmartin/2018/09/01/united-airlines-increases-baggage-fees-in-step-with-jetblue-air-canada-and-westjet/#411a10f950ed>

³ Mayerowitz, Scott and Koenig, David. "U.S. airports increasingly dominated by 1 or 2 carriers." USA Today. July 15, 2015. Online: <https://www.usatoday.com/story/todayinthesky/2015/07/15/us-airports-increasingly-dominated-by-1-or-2-carriers/30152927/>

⁴ Government Accountability Office. "Commercial aviation: Information on airline fees for optional services" September 2017. Online: <https://www.gao.gov/assets/690/687258.pdf>

reducing the cost of flying as the airline industry frequently claims, the proliferation of confusing and punitive fees has forced consumers to become travel experts in order to successfully navigate the modern aviation marketplace without being penalized.

Flight change and cancellation fees, in particular, can be very punitive in nature since consumers cannot plan for unexpected events that force them to change their travel plans. In spite of the often-unavoidable nature of needing to change travel plans, the three major legacy airlines – but not Southwest – charge a per-ticket fee from \$200 to as much as \$750 for an international flight to change a reservation, even if they are then able to resell the ticket for a higher price than that for which it was originally purchased.⁵ While testifying before a US Senate Commerce, Science, and Transportation subcommittee, United Airlines CEO Scott Kirby admitted that the \$2.9 billion annual income from change fees is “not a direct cost when somebody changes,” but rather that those fees are simply another revenue generator.⁶ Contrary to industry claims that the FAIR Fees Act amounts to re-regulation of the airlines, requiring that fees bear a reasonable relation to the cost to provide the service will prevent price gouging by the airlines, which is entirely in keeping with the DOT's legal mandate to “protect consumers from unfair or deceptive practices or unfair methods of competition” in commercial aviation.⁷

In addition to the FAIR Fees Act language, both the House and Senate FAA reauthorization bills include many pro-consumer protections that we believe should also be included in a conference agreement. In the House bill,⁸ these are among the provisions our organizations support:

⁵ American Airlines. “Optional service fees.” July 17, 2018. Online. <https://www.aa.com/i18n/customer-service/support/optional-service-fees.jsp>

⁶ Senate Commerce Science and Transportation Subcommittee on Aviation, Operations, Safety and Security. “Questions, answers and perspectives in the current state of airline travel. May 4, 2017. 01:28:55-01:33:48. Online: <https://www.commerce.senate.gov/public/index.cfm/hearings?ID=C3586801-EFA9-493C-B3FB-74779C0AC3D2>

⁷ 49 U.S. Code § 41712

⁸ FAA Reauthorization Act of 2018. H.R. 4. 115th Cong. (2018).

- **Sec. 412 & Sec. 413** – Improving transparency and oversight for air ambulance charges
- **Sec. 541** – Ensuring safe minimum seat dimensions

Unfortunately, the House bill also includes the Transparent Airfares Act (Sec. 405), which would weaken much-needed fare and fee transparency requirements. Our groups strongly oppose the inclusion of this language in the final conference agreement.

In the Senate bill,⁹ these are among the provisions our organizations support:

- **Sec. 3108** – Improving fee transparency
- **Sec. 3127 (as revised in S. 3183)**¹⁰ – Ensuring transparency and other protection for consumers wherever they purchase tickets

We do not support Sec. 3121 of the Senate bill, which would direct the DOT to study minimum seat pitch, and is significantly weaker than Sec. 541 of the House bill.

For these reasons, the undersigned consumer advocacy organizations strongly urge you to keep the bipartisan FAIR Fees Act amendment and the above-mentioned consumer protection provisions in the conference agreement to the FAA Reauthorization Act.

Sincerely,

National Consumers League
Business Travel Coalition
Consumer Action
Consumer Federation of America
Consumers Union

⁹ Federal Aviation Administration Reauthorization Act of 2017. S. 1405. 115th Cong. (2017).

¹⁰ Air Travel Ticketing Transparency and Protection Act, S. 3183, 115th Cong. (2018).

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Travelers United

U.S. PIRG

CC: Members of the U.S. Senate and the U.S. House of Representatives