

United States Senate

WASHINGTON, DC 20510

October 30, 2023

Honorable Pete Buttigieg
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, D.C. 20590

Honorable Rohit Chopra
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Dear Secretary Buttigieg and Director Chopra:

We write to ask what the Department of Transportation (DOT) and the Consumer Financial Protection Bureau (CFPB) are doing to protect consumers against unfair and deceptive practices in airlines' frequent flyer and loyalty programs.

As you know, millions of Americans participate in frequent flyer programs. While these programs may have originated to incentivize and reward true "frequent flyers," they have evolved to include co-branded credit cards and now often significantly or exclusively focus on dollars spent using these co-branded credit cards.

At the same time, there are troubling reports that airlines are engaged in unfair, abusive, and deceptive practices with respect to these loyalty programs. For example, reports have suggested that airlines are changing point systems in ways that are unfair to consumers, including by devaluing points, meaning it takes more points than initially marketed to achieve the promised rewards.

These alleged behaviors are a function of frequent flyer programs' unilateral contracts, which, per DOT rules, are only restricted by the guarantees that programs make in their terms of service. In practical terms, this means airlines can make changes to their points programs without notice to consumers, as long as the programs' terms of service reserve the right to do so. As a result, these programs incentivize consumers to purchase goods and services, obtain credit cards, and spend on those credit cards in exchange for promised rewards—all while retaining the power to strip consumers of those rewards at any moment.

Further, airlines allow consumers to directly purchase points from the airlines' websites. But the cost of directly purchasing points can sometimes be three times the value of the points at redemption. This means that consumers can spend three cents to purchase a point worth roughly one cent. This disparity between the value of points at purchase and at redemption can be even more extreme, depending on when, how many, and even where on the website the points are purchased. For example, points cost more on American Airlines' "Mileage Multiplier" page than on its "Buy, Sell, or Trade" page, despite the fact that the former is marketed as a deal.

Airlines also charge individuals for transferring points. United Airlines, for example, states on its website that it charges a \$30 transfer fee plus \$7.50 per 500 miles transferred. Online points-observers value United's points at 1.45 cents per point. In other words,

individuals lose the value of the points simply in the transfer (\$7.50 per 500 miles is a 1.5 cent per-mile valuation)—and that’s before adding the \$30 transaction fee. This is hardly a “reward.”

Pursuant to the authority granted to DOT in 49 U.S.C. § 41712 to address unfair or deceptive practices, and to the CFPB in 12 U.S.C. § 5531 to address unfair, deceptive, or abusive acts or practices, we ask that you provide answers to the following questions by November 20, 2023:

- Are DOT and the CFPB aware of these alleged practices by the airlines regarding frequent flyer and loyalty programs?
 - If so, please detail how DOT and the CFPB are planning to address these practices.
- Do DOT and the CFPB have the regulatory authority needed to adequately protect consumers from these unfair and deceptive practices?
 - If not, please explain if additional authority from Congress would enable DOT and the CFPB to effectively regulate airlines’ frequent flyer and loyalty programs.

We appreciate your attention to this matter and look forward to your response. Your recommendations may be critical as Congress works to reauthorize the Federal Aviation Administration this year.

Sincerely,



Richard J. Durbin
United States Senator



Roger Marshall, M.D.
United States Senator