BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

Benjamin Edelman and Mike Borsetti, Third-Party Complainants,	)	
v.	)	Docket DOT-OST-2026-2377
American Airlines, Inc.	)	

ANSWER OF AMERICAN AIRLINES, INC.

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ANSWER OF AMERICAN AIRLINES, INC.

Pursuant to 14 CFR §§ 302.405(a) and 302.408(b), American Airlines, Inc. ("American") hereby answers the Complaint of Benjamin Edelman and Mike Borsetti ("Complainants") filed in the above-referenced docket. For the reasons stated below, American respectfully requests that the Department dismiss the Complaint pursuant to 14 CFR § 302.406(a)(2) without instituting an enforcement proceeding.

I. AN ENFORCEMENT PROCEEDING IS UNWARRANTED

Under 14 CFR part 260, a consumer who is downgraded to a lower class of service on a covered flight itinerary is entitled to a full and prompt refund where the consumer chooses not to fly on that flight, accept rebooking on an alternative flight, or accept an alternative form of compensation offered by the airline.

Where a consumer who is downgraded to a lower class of service instead chooses to fly on that flight, American provides a partial refund. No Departmental regulation prescribes a formula for calculating such a partial refund, however. Although the Complaint asserts that "[t]he plain language of 14 CFR § 260.6 requires a refund of the actual fare difference" between the classes of service when the downgraded consumer chooses to fly, Compl. ¶ 13, that regulation contains no such calculation requirement. Rather, in the denied boarding context under 14 CFR part 250, the Department identifies an exception to denied boarding compensation, providing instead that "an appropriate refund" is owed to "a passenger seated in a section for which a lower fare is charged." 14 CFR § 250.6(c).[1] The regulation prescribes no method of calculating that refund, nor does it elaborate on what refund is "appropriate."

To provide transparency about what American refunds when a downgraded consumer chooses to travel on the flight, American introduced language in its tariff and Conditions of Carriage specifying that refunds in this situation are issued at 40% of the ticketed fare on the affected segment.[2] This fixed percentage supports predictability, administrability, and consistency. A fare difference calculation can be difficult because fares are dynamic, cabin inventory is ever-changing, purchase dates vary, and lower cabin fares available at a different time may not be comparable in terms of fare rules, refundability, flexibility, or other conditions. American accordingly chose to use a standardized proxy for valuing the difference in class of service, rather than reconstructing a lower cabin fare for the downgraded consumer. A refund of 40% for the affected

[1] Part 250's treatment of this situation as an exception to denied boarding compensation demonstrates that there is no regulatory basis for the Complaint's request to import Part 250's boarding priority disclosure requirements into the downgrade context. *See* Compl. ¶ 15. Part 250's procedures apply in the oversales and denied boarding context; they do not apply wholesale when a consumer is accommodated in a lower cabin on the same flight. Rather, § 250.6(c) addresses that circumstance by providing for an "appropriate refund," not denied boarding compensation or denied boarding procedures.

[2] The tariff states that the 40% refund is due when the consumer is downgraded "for operational reasons or otherwise." The Complaint criticizes this language as an indefinite statement under 14 CFR § 221.40(a)(4). *See* Compl. ¶ 3, n.2. But the language is not indefinite in the relevant respect. It broadens, not narrows, American's refund commitment. The phrase "for operational reasons or otherwise" does not obscure the consumer's refund entitlement; rather, it makes clear that the refund applies regardless of the reason for the downgrade. The Complaint gives no basis to reject American's tariff language.

segment returns a substantial portion of the consumer's paid fare while recognizing that the consumer still received the principal air transportation service on the consumer's selected flight. The approach of refunding the downgraded consumer at 40% of the ticketed fare on the affected segment is transparent, predictable, easy to administer, and tied to the consumer's actual purchase.

The Complaint fails to establish that this approach is an unfair or deceptive practice under 49 U.S.C. § 41712. As a threshold matter, the Complaint's reliance on the Department's general standards for unfairness and deception is misplaced. *See* Compl. ¶¶ 9–10. "Where an existing regulation applies to the practice of an air carrier . . . the terms of that regulation apply rather than the general definitions" of "unfair" or "deceptive." 14 CFR § 399.79(d). Here, the relevant circumstance is specifically addressed by § 250.6(c), which provides that a passenger seated in a lower-fare section is entitled to an "appropriate refund." Accordingly, the Complaint cannot rely on the Department's general "unfair" or "deceptive" standards to impose a refund methodology that the Department has not adopted in the specific regulation that addresses the challenged practice.

Even if the Department were to apply its general definitions of "unfair" or "deceptive," the Complaint does not show deception because American disclosed the refund methodology; disagreement with the amount of a disclosed refund does not establish that American made a representation or omission likely to mislead a reasonable consumer about a material matter.[3] Nor does the Complaint's disagreement with the

[3] The Complaint's attack on the website format of American's Conditions of Carriage does not establish deception. *See* Compl. ¶ 10. The Conditions of Carriage are available to consumers, organized by subject matter. The downgrade refund provision appears in the refunds section. The fact that a browser search might not search collapsed text does not transform a disclosed contractual term into a deceptive practice.

refund methodology establish unfairness where the Department has not prescribed the Complaint's preferred calculation. A downgraded consumer may decline the downgraded transportation and obtain the full refund available under Part 260. If the consumer instead chooses to travel, the consumer still receives transportation on the flight the consumer chose to take, and American provides a partial refund in recognition of the difference in class of service. The Complaint's selected examples of fare differentials do not establish that the methodology causes substantial injury that consumers cannot reasonably avoid, or that any such injury outweighs the countervailing benefits of an approach that is predictable, administrable, consistent, and tied to the consumer's actual paid fare for the affected segment.

American recognizes, nevertheless, that the phrase "appropriate refund" may accommodate more than one calculation methodology. In guidance,[4] the Department states: "If the downgraded consumer continues to travel on the flight, the consumer is not entitled to a refund of the full airfare, but the airline must refund the difference between the original fare and the downgraded fare." The guidance does not identify regulatory text supporting the "must" in that sentence. In the preamble to the 2024 final rule that promulgated Part 260, the Department discussed an "obligation to refund the fare differences when passengers choose to travel in a lower class of service" as a "requirement regardless of whether the downgrade was due to an oversales situation or any other situation." 89 Fed. Reg. 32,760, 32,778 (Apr. 26, 2024). But the preamble itself is not a regulation, and it offers no citation to an authority establishing such an "obligation" or "requirement." By comparison, 49 CFR § 5.29 provides, in relevant part, that "DOT's

[4] See https://www.transportation.gov/individuals/aviation-consumer-protection/refunds.

review and clearance of guidance shall ensure that" a "guidance document avoids using mandatory language, such as 'shall,' 'must,' 'required,' or 'requirement,' unless the language is describing an established statutory or regulatory requirement."

Although the Department has not promulgated a regulatory requirement that an "appropriate refund" must be calculated as "the difference between the original fare and the downgraded fare,"[5] American is in the process of revising its policy to reflect the Department's guidance. American expects to implement this change, after completing significant systems changes necessary to operationalize the revised refund calculation, by the end of July 2026. Under American's forthcoming approach, for any affected flight segment, a downgraded consumer who chooses to travel on that segment will be refunded the difference between the fare that consumer paid and the average fare paid by consumers who purchased and traveled in the same cabin to which the consumer was downgraded, on the same operated flight, for that same segment. This approach calculates a refund based on the differential between the consumer's original fare and an administrable, segment-specific measure of the downgraded fare, while accounting for the operational need to apply a consistent methodology across affected flights.

Under these circumstances, there is no basis for opening an enforcement proceeding, ordering relief, or imposing civil penalties. The Complaint identifies no regulatory text prescribing the refund formula it seeks for downgraded consumers who choose to travel, and American's challenged 40% refund policy reflects a transparent,

[5] Because no regulation states a formula (let alone the Complaint's preferred formula) for calculating a partial refund when a downgraded consumer chooses to travel, the Complaint fails to show a violation of 14 CFR § 253.7 requiring "conspicuous written notice" when imposing "terms restricting refunds of the ticket price." *See* Compl. ¶ 11. That allegation depends on assuming the very conclusion that the Complaint has not established: that a greater refund was legally required and that American's disclosed methodology restricted that refund.

predictable, and administrable method for providing the “appropriate refund” referenced in § 250.6(c). The Complaint’s other theories likewise seek to impose downgrade-specific requirements that the Department has not adopted. Moreover, American is already revising its policy to reflect the Department’s guidance and expects to implement a revised differential refund methodology by the end of July 2026. For all these reasons, enforcement action is unwarranted and the Department should dismiss the Complaint.

II. AMERICAN’S RESPONSES TO ALLEGATIONS

American answers each paragraph of the Complaint in the order in which it appears in the Complaint, as follows:

1. Paragraph 1 is an introductory paragraph and is a characterization of the Complaint, which speaks for itself and requires no response. To the extent a response is deemed to be required, American refers to the Complaint for a complete and accurate statement of its contents and denies the allegations to the extent inconsistent with the Complaint.

2. Paragraph 2 is a characterization of American’s tariff, which speaks for itself and requires no response. To the extent a response is deemed to be required, American refers to the document for a complete and accurate statement of its contents and denies the allegations to the extent inconsistent with the document.

3. Paragraph 3 is a characterization of American’s tariff, which speaks for itself and requires no response. To the extent a response is deemed to be required, American refers to the document for a complete and accurate statement of its contents and denies the allegations to the extent inconsistent with the document.

4. Paragraph 4 is a characterization of American's Conditions of Carriage, which speaks for itself and requires no response. To the extent a response is deemed to be required, American refers to the document for a complete and accurate statement of its contents and denies the allegations to the extent inconsistent with the document.

5. American denies the allegations of the first sentence of Paragraph 5. Regarding the allegations of the second sentence of Paragraph 5, American admits that fare differentials between American's cabins can vary and may sometimes be greater than or less than 40 percent, and otherwise denies the allegations. American lacks knowledge or information sufficient to admit or deny the allegations of the third, fourth, and fifth sentences of Paragraph 5, and therefore denies the allegations. The sixth sentence of Paragraph 5 states a legal conclusion to which no response is required. To the extent a response is deemed to be required, American denies the allegations.

6. American lacks knowledge or information sufficient to admit or deny the allegations of the first sentence of Paragraph 6, and therefore denies the allegations. The second sentence of Paragraph 6 is a characterization of a Cirium 2024 analysis, which speaks for itself and requires no response. To the extent a response is deemed to be required, American refers to the document for a complete and accurate statement of its contents and denies the allegations to the extent inconsistent with the document. The third sentence of Paragraph 6 states a legal conclusion to which no response is required. To the extent a response is deemed to be required, American denies the allegations.

7. American lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 7, and therefore denies the allegations.

8. Paragraph 8 states legal conclusions to which no response is required. To the extent a response is deemed to be required, American denies the allegations.

9. Paragraph 9 states legal conclusions to which no response is required. To the extent a response is deemed to be required, American denies the allegations.

10. The first, second, third, fourth, fifth, and sixth sentences of Paragraph 10 state legal conclusions to which no response is required. To the extent a response is deemed to be required, American denies the allegations. The seventh sentence of Paragraph 10 is a characterization of Attachment 1 to the Complaint, which speaks for itself and requires no response. To the extent a response is deemed to be required, American refers to Attachment 1 for a complete and accurate statement of its contents and denies the allegations to the extent inconsistent with the document. American denies the allegations of the eighth sentence of Paragraph 10. American lacks knowledge or information sufficient to admit or deny the allegations of the ninth sentence of Paragraph 10, and therefore denies the allegations. The tenth sentence of Paragraph 10 states a legal conclusion to which no response is required. To the extent a response is deemed to be required, American denies the allegations.

11. Paragraph 11 states legal conclusions to which no response is required. To the extent a response is deemed to be required, American denies the allegations.

12. Paragraph 12 is a characterization of 14 CFR §§ 260.6 and 260.2, which speak for themselves and require no response. To the extent a response is deemed to be required, American refers to the regulations for a complete and accurate statement of their contents and denies the allegations to the extent inconsistent with the regulations.

13. Paragraph 13 states legal conclusions to which no response is required. To the extent a response is deemed to be required, American denies the allegations.

14. Paragraph 14 states legal conclusions to which no response is required. To the extent a response is deemed to be required, American denies the allegations.

15. The first and second sentences of Paragraph 15 state legal conclusions to which no response is required. To the extent a response is deemed to be required, American denies the allegations. American lacks knowledge or information sufficient to admit or deny the allegations of the third and fourth sentences of Paragraph 15, and therefore denies the allegations.

16. American denies the allegations of Paragraph 16.

17. American denies the allegations of Paragraph 17.

18. American denies the allegations of Paragraph 18.

19. American denies the allegations of the first sentence of Paragraph 19, and refers to the discussion in Section I above. American denies the allegations of the second sentence of Paragraph 19. American lacks knowledge or information sufficient to admit or deny the allegations of the third sentence of Paragraph 19, and therefore denies the allegations.

20. Paragraph 20 states a prayer for relief that requires no response. American respectfully requests that the Department deny all of Complainants' requested relief, not institute an enforcement proceeding, and instead dismiss the Complaint.

To the extent that the Complaint contains any allegation that has not been specifically admitted or denied herein, American denies any such allegation.

III. AFFIRMATIVE DEFENSES

American asserts the following affirmative defenses:

1. The Complaint fails to state a claim upon which relief may be granted.

2. Complainants lack a private right of action under 49 U.S.C. § 41712.

3. Complainants' requested relief is improper.

4. Complainants have not suffered any harm.

American reserves its right to supplement these affirmative defenses to the extent new information or evidence arises if this action proceeds.

WHEREFORE, American respectfully requests that the Department deny all of Complainants' requested relief, not institute an enforcement proceeding, and instead dismiss the Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer of American Airlines, Inc. has been served by email this July 13, 2026, upon each of the following persons:

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