asta American Society of Travel Advisors

March 11, 2020

Stephen Pinkos
Deputy Assistant to the President *and*
Domestic Policy Director to the Vice President
Eisenhower Executive Office Building
1650 Pennsylvania Ave NW
Washington, DC 20502

Dear Mr. Pinkos:

Per your request, I write today on behalf of the American Society of Travel Advisors (ASTA) and the more than 140,000 Americans working in the travel agency industry today to share data on how the crisis is impacting our members and our suggestions for administrative and legislative relief to help them get through it.

ASTA is the national trade association for travel agencies of all shapes, sizes and business models, the vast majority whom (98 percent) meet the Small Business Administration's (SBA) definition of a small business, and over 2/3 of which are owned and operated by women. Travel advisors – online, "brick and mortar" and many hybrid business models in between – play a critical role in the broader travel and tourism industry. Travel agencies are responsible for the sale of the majority of airline tickets in the U.S., selling close to 830,000 air tickets *per day* in 2019[1] and are the primary distributors of cruises (66 percent of the market) and tour packages (68 percent).[2]

Impact Data

Our industry is strong and thriving, and I can assure you the myth of the travel agent/advisor as a dying breed is just that – a myth. But we are facing significant challenges right now, as are many companies in the broader travel industry and beyond. The past few weeks have been among the most difficult our members have faced since the terrorist attacks of September 11, 2001 (9/11) and the near-total shutdown of travel that followed. Corporate and leisure travel activity has slowed dramatically since mid-February, and many members have reported cruise sales shutting down altogether since the Administration advised Americans against cruising on March 8.[3] Relying solely on anecdotes from members over the past few days, we can say that layoffs have begun in earnest, as have agency closures.

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[1] Airlines Reporting Corporation (ARC): 2020 Sales Statistics.
[2] Phocuswright: U.S. Travel Agency Distribution Landscape: 2016-2021.
[3] Weiland, Noah and Haberman, Maggie. "State Dept. Tells Americans to Avoid Cruise Ships, Despite Trump's Misgivings." *New York Times*. March 8, 2020.

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In preparation for a March 10 hearing of the U.S. House Committee on Small Business on "The Impact of Coronavirus on America's Small Businesses," at which one of our members testified, ASTA surveyed its membership about the impact this crisis is having on their businesses. Judging from the results, agency owners across the country are seeing dramatic sales declines, expecting huge hits to revenue and starting painful internal conversations about staff structure and size. Note that this survey was fielded between March 5 and 6, before the crisis escalated further and before the Administration's advisory against cruising. Here are the results, summarized:

- Respondents report that, in general, 92 percent of clients are either very (56 percent) or somewhat (36 percent) concerned about international travel right now, while 72 percent are very (16 percent) or somewhat (56 percent) concerned about domestic travel;
- 97 percent of respondents expect the crisis to have a heavy negative (52 percent) or moderately negative (45 percent) impact on their businesses this year;
- 98 percent also expect a negative impact on business revenues, with 29 percent expecting a reduction of 50 percent or more, 40 percent expecting a 25-50 percent decrease and 29 percent expecting a decrease of 25 percent or lower; and
- Assuming a sustained downturn in client travel and given current cash reserves, 21 percent of respondents report a risk of going out of business within three months and 30 percent within six months.

All told, if the trends that ASTA members are reporting continue, we project the lost revenues for our industry could exceed $7.7 billion this year alone, a contraction of over 50 percent as compared to total industry revenue in 2018.[4]

Suggestions for Relief

To reiterate, the vast majority of U.S. travel agencies (98 percent) meet the Small Business Administration's (SBA) definition of a small business, and over 2/3 of which are owned and operated by women. At last count, there were close to 15,000 retail locations in the U.S., employing over 108,000 people. There are also approximately 40,000 "self-employed" travel advisors working, mostly as independent contractors to larger "host" travel agencies. As a general rule, the smaller the company the smaller the amount of cash reserves available to weather this storm.

Financial Relief

- **Equal Treatment for Travel Agencies in any Travel Industry Relief –** As we understand it, discussions about targeted financial relief for the travel sector are fast-

[4] Op Cit: Phocuswright.

moving and items discussed have ranged from cash assistance along the lines of the $5 billion provided to airlines after 9/11 to tax deferrals and other tax relief. [5] As a general matter, we feel strongly that any targeted relief for the travel industry should be open to travel agencies and not simply limited to the largest companies in the industry like airlines and cruise lines. Whatever relief is considered for other travel businesses – grants, low- or no-interest loans, tax or regulatory relief – must also be open to travel agencies, without exception. A scenario where the largest travel companies survive and quickly recover from this crisis while the thousands of overwhelmingly small businesses that distribute their products are allowed to fail is an unacceptable outcome. It is difficult as of this writing to know how travel agencies would take advantage of this relief, since so many proposals are on the table at once, but we will respectfully insist on this principle going forward.

- **SBA Loans** – We were pleased to see that the recently-enacted Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020 (P.L. 116-123) included funding to enable the SBA to provide an estimated $7 billion in loans to help small businesses impacted by financial losses as a result of the coronavirus outbreak. After 9/11, small business travel agencies across the country received at least $20 million in loans of this kind, and judging from current trends there will likely be heavy demand for them this time as well. This demand will only increase as the crisis drags on, and travel agencies will need help to weather this storm and be in a position to serve clients once the economy rebounds. While this loan funding is welcome, more will be needed – even if this $7 billion were allocated solely to U.S. travel agencies, they would not be made whole for their projected 2020 losses. In addition to more loan funding, we ask that the SBA consider relaxing or waiving altogether the stringent collateral requirements for these loans, as travel agencies are service businesses and don't have as many physical assets as, say, manufacturers. We have heard stories of travel advisors being forced to pledge their homes as collateral in order to qualify for the post-9/11 round of loans. We don't want that to happen here, and hope to work with the Administration to make sure these loans flow, quickly and smoothly, to the small business agencies across the country that will need help in the coming weeks and months.

Regulatory Relief

- **REAL ID** – On October 1, 2020, the REAL ID Act of 2005 (P.L. 109–13), which requires enhanced identification to board domestic flights, will come into full implementation. On this date, travelers must either use a REAL ID-compliant state-issued driver's license or an acceptable alternative such as a passport or a U.S. military ID at airport checkpoints or face being denied boarding. There are clear signs that the

[5] Stein, Jeff et al. "Airlines, travel and cruise industries hurt by coronavirus could get a tax relief from the White House." *Washington Post*. March 6, 2020.

traveling public is not prepared for this deadline, with only 34 percent of Americans having REAL ID-compliant identification as of today, according to the Department of Homeland Security.[6]

We are hopeful that the coronavirus crisis will have passed come October, in which case we will be facing a different problem, one that threatens chaos at airport checkpoints just as we expect the travel industry to be rebounding. While we acknowledge that this issue is not directly related to the coronavirus crisis, we urge you to call on Congress to pass the Trusted Traveler REAL ID Relief Act (H.R. 5827) and otherwise take steps to provide the Transportation Security Administration with the tools to manage this looming deadline.

- **Independent Contractor Regulations**: Like many other industries, travel agencies rely heavily on the services of independent contractors (ICs), a business practice our members tell us provides substantial benefits for both workers and agencies in situations where a traditional employment relationship is impractical. The use of independent advisors in our industry is prevalent and growing – in our latest Labor and Compensation member survey, 75 percent of ASTA member agencies reported engaging at least one IC, and of those who do, the average agency engaged 12 ICs.

However, businesses engaging ICs currently face substantial uncertainty over whether these relationships will be respected under federal law, due to the existence of different statutory tests used to determine a worker's status. Therefore, we urge you to direct the Secretary of Labor to open a new rulemaking to update the definition of "employee" for purposes of the Fair Labor Standards Act (FLSA) by adopting a definition consistent with recent U.S. Supreme Court decisions and/or the Department of Labor's (DOL) April 29, 2019, opinion letter[7] concerning virtual marketplace companies and establish a clear, unified standard for worker classification matters under your purview. This would have the same effect as passage of the Modern Worker Empowerment Act (H.R. 4069/S. 2973), currently pending in Congress.

Give Travel Agencies Access to the FLSA's Retail or Service Establishment Exemption – Since 1970, travel agencies have been arbitrarily blocked from a long-standing exemption in current law related to overtime pay – Section 7(i) of the FLSA's Retail or Service Establishment (RSE) exemption. In the only reported decision that directly addresses the propriety of including travel agencies on this regulatory "blacklist" (*Reich v. Cruises Only, Inc.*, 1997), a federal court found in favor of the travel agency, holding that DOL's regulations "excluding a travel agency from those

[6] Department of Homeland Security: "DHS Announces Streamlining Measures to Help States in Issuing REAL IDs." February 19, 2020.
[7] See https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2019_04_29_06_FLSA.pdf.

establishments possessing a retail concept appear to be arbitrary and without any rational basis." We urge you to direct the Secretary of Labor initiate a rulemaking to strike travel agencies from this blacklist, thereby allowing them to claim the RSE exemption if they meet the appropriate statutory criteria. This would have the same effect as the pending bipartisan Travel Advisor Retail Fairness Act (H.R. 2506).

From 9/11 to SARS to the Great Recession, our industry has weathered similar crises in the past and has emerged stronger at the end of the day. We are confident that, working together as an industry and with the support of the Administration, we will do so again.

Thank you for considering our views at this critical time. We appreciate having a line of communication into the White House as you craft your response, and stand ready to assist you in any way possible. If you or your staff have any questions, please do not hesitate to contact me at (703) 739-6842 or epeck@asta.org.

Yours Sincerely,

Eben Peck
Executive Vice President, Advocacy