

**BEFORE  
UNITED STATES CUSTOMS AND BORDER PROTECTION  
DEPARTMENT OF HOMELAND SECURITY  
WASHINGTON, DC**

**In the matter of**

**PROPOSED COLLECTION;  
COMMENT REQUEST;  
ARRIVAL AND DEPARTURE RECORD  
(FORMS I-94 AND I-94W)  
NOTICE**

**Docket No. E7-21968**

**COMMENTS OF UNITED AIRLINES, INC.**

United Air Lines (“United”) hereby submits the following comments in response to the Department of Homeland Security (“DHS”) Bureau of Customs and Border Protection (“CBP”) proposal to extend the use and collection of the Forms I-94/I-94W (“the Forms”). (OMB Control Number 1651-0111) 72 Fed. Reg. at 63622 (November 9, 2007).<sup>1</sup> United is a member of the Air Transport Association (“ATA”) the International Air Transportation Association (“IATA”) and endorses the views of those organizations in this matter. United performs substantial international operations serving individuals subject to the I-94/I-94W requirement and carries out responsibilities related to this information collection, giving it a direct interest in this issue.

The company supports the efforts of the CBP and other Directorates within the DHS to protect national and border security and has worked closely with the DHS to realize these goals. As further detailed below, however, United believes that DHS/CBP should eliminate the I-94/I-94W data collection request entirely. If DHS/CBP determines not to eliminate the Forms, at a minimum it should not expand them to include the two proposed additional data fields of email address and telephone number. DHS/CBP must also clarify the number of individuals subject to this information collection to ensure that its burden estimates are correct.

**CBP Must Justify Proposed New Data Collection**

Nowhere in the Notice does DHS/CBP justify the need for or the intended use of the proposed new data fields of email address and telephone number that it seeks to add to the Forms. In fact, it is not clear whether DHS/CBP intends to make these fields mandatory, or even if it could do so as not every passenger has an email address and/or a telephone number. Does DHS/CBP propose to refuse entry to or exit from the United States to individuals who fail to provide this data? In any event, it would be impossible for DHS or any other party to verify the data that individuals would provide in these proposed new data fields, which leads United to question the value of this information collection, even setting other concerns aside. This additional information collection request should not move forward until DHS/CBP states the rationale for its proposal. In addition, interested parties should be afforded an opportunity to

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<sup>1</sup> United previously submitted comments to the Department urging the discontinuation of Form I-94 in view of its implementation of the United States Visitor and Immigrant Status Indicator Technology Program. See Implementation of the United States Visitor and Immigrant Status Indicator Technology Program—Interim Final Rule (“US-VISIT”), 69 Fed. Reg. 468 (January 5, 2004).

comment on this proposed supplementary information once DHS/CBP has provided the reason for this additional information collection burden.

### **CBP Must Confirm the Number of Respondents**

United also asks for clarification about the number of individuals subject to this information collection request prior to further consideration of this proposal. While the Notice states that the estimated number of respondents is 17,924,380, publicly available DHS data notes that I-94 admissions in fiscal year 2006 was almost double that figure, 33.7 million.<sup>2</sup> The number of international arrivals to the United States has increased over the past year. If the number of respondents upon which DHS/CBP based its estimate of annual burden hours and cost to the public of the proposed collection is understated, its estimates of burden and costs would need to be revised, perhaps as much as doubled, merely to account for the number of I-94 arrivals. Given what seem to be discrepancies between the data in the notice and other DHS/CBP sources, United asks that DHS clarify the number of individuals subject to this request and to provide an opportunity for additional comment should that data be meaningfully different from the figure in the Notice.

### **Request Understates Costs by Ignoring the Full Burden of Data Collection**

In estimating the burden of this information collection, DHS/CBP fails to even mention, much less attempt to quantify, the burden on airlines to stock, distribute, explain to passengers, collect at the point of departure and ultimately transmit to DHS tens of millions of Forms I-94/I-94W annually. United estimates that six percent of its customer service representatives' time is spent on these tasks, driving personnel costs in the millions of dollars annually for United alone. The burden of explaining the data required will increase should CBP expand the Forms to require additional data. Clearly, this data collection also imposes burdens on the Federal Government, particularly at space- and personnel-constrained Federal Inspections Services facilities at air ports of entry. While DHS/CBP need not include those estimates in this Notice, those costs are relevant in considering the overall costs of perpetuating the I-94/I-94W requirement, especially in view of its redundancy as explained below.

### **As a Paper Form in an Electronic World, the I-94/I-94W is Obsolete**

The development of newer, largely electronic passenger information collection requirements discussed below has made the I-94/I-94W not just redundant, but obsolete. The I-94/I-94W's paper format makes it a less reliable, more costly and, in all likelihood, practically unsearchable source of data; in short, the I-94/I-94W is likely the data source of last resort. The frequency with which completed Forms I-94 change hands underscores their vulnerability to loss and human error: the passenger completes the form by hand, retains a receipt, and, if he has not lost the Form, returns it to the airline Customer Service Representative upon departure from the United States. The airline employee annotates the Forms, manually counts and bundles them and submits them to the DHS. Publicly available information indicates that a contractor receives the information which is meant to be matched to identify visa overstay; United has no direct knowledge of any steps which may be taken by the contractor or government officials to effect

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<sup>2</sup> DHS Office of Immigration Statistics, Policy Directorate, "Temporary Admission of Nonimmigrants to the United States; 2006." [http://www.dhs.gov/xlibrary/assets/statistics/publications/Ni\\_FR\\_2006\\_508\\_final.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/Ni_FR_2006_508_final.pdf)

such matching. We do know that the Government Accountability Office has criticized data quality obtained through this program on a number of occasions.<sup>3</sup>

### **CBP Should Eliminate the I-94/I-94W**

Finally, and most importantly, United uses this opportunity to reiterate a request that it has made on several occasions to DHS/CBP and the Office of Management and the Budget (“OMB”), namely to discontinue the Forms I-94/I-94W data collection entirely. United has three reasons for this request. First, at least five existing information collection procedures already provide DHS/CBP and other U.S. agencies with the same information collected by the present Forms. Second, as noted above, the fact that the Forms collect data manually means that the data is vulnerable to delays and human error and difficult to search, likely making them the data source of last resort. Third, and as a result, this information collection imposes hundreds of millions of dollars of unnecessary costs on the traveling public and on air carriers.

As DHS/CBP is aware, a double-digit share of non-U.S. citizen visitors to the United States must complete either Form I-94 or Form I-94W upon arrival to the United States and must return the Forms upon departure from the country. Among other data, the Forms solicit full name, country of citizenship, date of birth, passport number, airline flight number, address and country of residence. Due to new types of U.S. government electronic information collection, the data collected in the Forms is now redundant to information collected from air passengers in at least five existing U.S. government information collection procedures: Advance Passenger Information System (“APIS”)<sup>4</sup>; U.S. Customs Form 6059b; the U.S. VISIT program; CBP passenger name record (“PNR”) access; and U.S. non-immigrant visa applications (Form DS-156).

Since 2002, airlines have electronically transmitted APIS information to the CBP within 15 minutes of every international flight’s departure, including data on all passengers subject to the I-94/I-94W requirement. APIS contains the same fundamental information required in the current Form I-94/I-94W: full name, country of citizenship, date of birth, passport number, and airline flight number. APIS also includes country of residence and U.S. address for passengers on flights inbound to the United States. Additionally, DHS/Transportation Security Agency (TSA) has also published a proposed rule regarding another automated air passenger information collection system, Secure Flight, which will also capture a number of biographic and flight-related data regarding each air passenger, likely including a number of elements on the Forms.

While CBP’s access to APIS data alone should be sufficient argument for eliminating the Forms, at least for air passengers, all visitors who complete the Forms also provide much of the

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<sup>3</sup> In Congressional testimony on October 16, 2003, Nancy Kingsbury, Managing Director, Applied Research and Methods, GAO stated regarding the I-94: “Over the years, our work has shown that there are significant weaknesses in the system that make it difficult, if not impossible, to actually confirm departure or to identify or track foreign visitors who overstay...once here, a visitor may have his or her period of admission extended or immigration status changed and these changes are not updated or integrated with the data on arrivals and departures. Third, even when forms are filled out, the information provided on arrival, such as destination address, is often not accurate at the outset or not reliable because it changes and is not updated. And fourth, collection of departure forms is incomplete, so confirmation of departure is unreliable.”

<sup>4</sup> The electronic submission of APIS stems from the President signing into law the Aviation and Transportation Security Act (“ATSA”), Public Law 107-71, 115 Stat. 597, Section 115 of the ATSA, amending 49 U.S.C. Section 44909 (November 29, 2001), implemented in 19 C.F.R. Section 122.49a

same data when they complete U.S. Customs Form 6059b. Additionally, the CBP's U.S. VISIT program collects biographic data from arriving international visitors, including those subject to the I-94/I-94W requirement.<sup>5</sup> CBP also enjoys access to air passenger name records, which almost uniformly contain readily accessible electronic data that includes and goes beyond that required in the Forms. Finally, a large share of visitors subject to the I-94 requirement also complete U.S. non-immigrant visa applications (Form DS-156) which collects home address, email address and multiple telephone numbers. A possible future data collection for all visitors who do not require non-immigrant visas, known as the Electronic Travel Authorization, is also envisioned to collect biographic data and might well pose admissibility questions redundant with the I-94W.

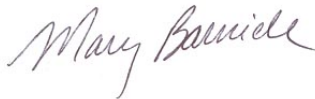
While the I-94 program's benefits are unknown, the costs are clearer. By CBP's own assessment in this Notice, the I-94/I-94W requirement carries a data collection burden on individuals of over two million hours and in excess of \$120 million, United believes that these figures are substantially understated, possibly by undercounting affected passengers and certainly by excluding costs to air carriers.

Comment [MMB1]:

For the foregoing reasons, United respectfully urges the CBP to withdraw its request to revise the existing information collection request 1651-0111 (Forms I-94 and I-94W). We further urge CBP to eliminate the I-94/I-94W data collection requirement altogether and would be pleased to cooperate with CBP to find a workable approach to any passenger data needs it might have that are not addressed through other data collection. Additionally, we ask that OMB deny any future CBP information collection renewal request regarding the Forms as United has urged over several years at every available opportunity.

The perpetuation of the I-94/I-94W is an example of the tyranny of the *status quo*. United believes that today the I-94 does not meet the cost-benefits test. It should be eliminated, not expanded or perpetuated in an attempt to revive its relevance.

Respectfully submitted,



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<sup>5</sup> US-VISIT stores a passenger's arrival and departure records in the Arrival/Departure Information System (ADIS), which allows DHS to confirm whether an individual has complied with the admission terms of his or her visa. ADIS data is constantly updated and allows for comparison of arrival and departure biographical manifest data provided by airlines.

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