

One Minute Memo[®]



Potential I-94 Elimination? - The Departure of the Departure Record

For many years, the Form I-94, Arrival/Departure Record (or, as many refer to it, the I-94 "card") has been used as the gold standard for tracking nonimmigrant status and documenting work authorization for temporary nonimmigrant aliens in the U.S. Recently, the United States Customs and Border Protection (CBP) has announced their intention to eliminate the I-94 card in favor of an admission stamp that will be placed in a nonimmigrant alien's passport and will contain a handwritten notation stating the alien's status and period of authorized stay in the U.S. CBP's reason for making this change is two-fold: 1) the agency already has access to I-94 data through other sources including the Advance Passenger Information System (a web-based system used by commercial carriers to provide admission and departure data on all travelers) as well as the information provided through the nonimmigrant visa application process at the various U.S. Embassies and Consulates around the world; and 2) CBP officers and airline contractors will no longer have to input and process I-94 data which will purportedly save millions of dollars each year.

From a timing perspective, CBP plans on implementing the system-wide elimination of the I-94 card in place of the handwritten admission stamps immediately. However, based on CBP correspondence with the American Immigration Lawyers Association (AILA), it appears that CBP may continue to issue non-functional I-94 cards to arriving nonimmigrant aliens as a matter of practice. Remarkably, these "phantom" I-94 cards will not have any legal significance. The I-94 number that is at the top of the card, which is used on most United States Citizenship and Immigration Services (USCIS) forms to secure immigration benefits, as well as on Form I-9 to document work authorization, would be invalid and disconnected from any actual individual record. The impact to USCIS is particularly interesting as the agency is also an issuer of I-94 cards that are attached to nonimmigrant approval notices and document a nonimmigrant alien's change of status and extension of stay.

CBP's action will have repercussions for other government agencies, including the Social Security Administration which uses the I-94 card to document employment authorization, and the various state motor vehicle bureaus which use the I-94 to issue drivers licenses. Another affected program includes CBP's own Automatic Visa Revalidation which enables a nonimmigrant alien in possession of an expired visa stamp to reenter the U.S. within 30 days from a contiguous territory or adjacent island provided that the nonimmigrant alien presents a valid passport and I-94 card.

According to AILA, CBP has agreed to consider the creation of a web portal that will allow nonimmigrant aliens to verify their status electronically and potentially print an admission record receipt. Until such a mechanism is implemented, nonimmigrant aliens should always review any stamp or annotation placed in their passport by a CBP officer and alert their employer or immigration representative if they believe they were admitted in the wrong status or if they were admitted for the incorrect duration of stay. Remedies for correcting admission errors will continue to include CBP's Deferred Inspection offices. As we get more information from CBP and see how other agencies react to this development, we will send out additional updates.

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