

April 29, 2024

The Honorable Pete Buttigieg
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Ave, SE
District of Columbia, 20590

Dear Secretary Buttigieg,

On March 21, 2024, Transportation Secretary Pete Buttigieg announced a review of the largest airlines' collection, handling, maintenance, and use of passengers' personal information. The American Economic Liberties Project, Consumer Action, Consumer Federation of America, Ed Perkins on Travel, FlyersRights, the U.S. Public Interest Research Group, and the National Consumers League welcome and support the U.S. Department of Transportation's (DOT) review of air carriers' data collection practices.

We urge DOT to especially examine airlines' consumer data practices in relation to their mileage and rewards programs as well as their software products, such as mobile apps. To the fullest extent possible, we request that the Department makes its findings publicly available. Additionally, we advocate for DOT to explore implementing permanent mechanisms for consumers to protect themselves against unfair or deceptive practices that violate their privacy rights. These safeguards should include transparency requirements, data minimization mandates, and tools for passengers to exclude themselves from commercial surveillance.

With just a handful of U.S. companies operating more than ten million passenger flights each year, allowing a small number of air carriers to collect hundreds of millions of travelers' personal information, DOT has a critical role in the oversight of these companies' handling of consumer data. The federal preemption clause in the Airline Deregulation Act

of 1978 further compounds DOT's importance by granting the Department sole jurisdiction over the industry, and significantly curtailing the ability of other entities (such as the Federal Trade Commission [FTC], the U.S. Department of Justice, and state attorneys general) to enforce the law. We hope that this review is just the first step in a larger role DOT is going to fill in protecting consumer privacy from abuse by airlines and ticket agents.

There is compelling evidence that ticket prices—whether booked directly via airlines or by third-party ticket sellers—can vary based on shoppers' browsing and buying habits.¹ This raises concerns about not only traditional unfair and deceptive practices, but of privacy violations as well. Additionally, through the advent of rewards programs, partnerships with banks, and the issuance of essentially their own currencies for frequent flyers, many airlines are beginning to resemble financial services providers. The industry estimates that one out of every four U.S. households has an airline credit card, generating billions of dollars in revenue for air carriers each year.² In 2019 alone, United Airlines and Delta Air Lines generated \$5.3 billion and \$4 billion, respectively, from the sale of their miles.³

These mileage programs can be much more valuable than the air carriers themselves. In 2020, United's MileagePlus program was valued at \$22 billion, more than double United's market capitalization at the time of \$10.6 billion.⁴ What's more, a study released this month reveals the price of rewards has "increased significantly" and "reward payback" fell by more than half since 2017 among the six largest domestic carriers.⁵ The global airline

¹ "How to Get the Cheapest Airfares When Booking Flights for Several People," *Consumer Reports*, June 28, 2017. <https://www.consumerreports.org/air-travel/get-cheapest-airfares-when-booking-flights-for-several-people/>

² "New Airline Industry Analysis Reveals Popularity of Airline Credit Cards & Loyalty Programs, Impact to Local Economies," *Airlines for America*, September 21, 2023. <https://www.airlines.org/news-update/new-airline-industry-analysis-reveals-popularity-of-airline-credit-cards-loyalty-programs-impact-to-local-economies/>

³ "How Airlines Boost Revenue With Co-Branded Credit Cards," *Forbes*, October 24, 2023. <https://www.forbes.com/sites/greatspeculations/2023/10/24/how-airlines-boost-revenue-with-co-branded-credit-cards/>

⁴ "Airlines Are Just Banks Now," *The Atlantic*, September 21, 2023.

<https://www.theatlantic.com/ideas/archive/2023/09/airlines-banks-mileage-programs/675374/>

⁵ "Frequent Flyer Programs Deliver Lower Reward Value in the Era of Basic Economy Fares and Co-Branded Cards," *IdeaWorksCompany*, April 2, 2024. <https://ideaworkscompany.com/wp-content/uploads/2024/04/Press-Release-183-Reward-Seat-Availability-2024-1.pdf>

industry's New Distribution Capability initiative also raises issues about pricing and frequent flyer benefits being tailored to individual consumers, based in part on potential privacy violations.⁶

Airlines have also created mobile apps and host online webpages. By using these software products, consumers (often unknowingly) can create pathways for these corporations to access the troves of information that computers and smartphones collect, from precise location data to internet browsing activity.⁷ The Department should examine carriers' acquisition and use of this data, especially when it occurs without the awareness and informed consent of the user. Additionally, DOT should audit airlines' sale of passenger data to third parties, given some data brokers' history of selling individuals' personal data to fraudsters.⁸

Consumers have few options for air travel and cannot easily avoid using airlines that violate their privacy rights. Unlike other sectors, air carriers' and their privacy practices have not received oversight from multiple different governmental agencies (e.g. FTC and state attorneys general). Instead, aviation law enforcement is largely restricted to DOT. These factors, combined with the expansion of airlines' offerings to include financial services and software products, necessitate a thorough DOT review to ensure that consumers' personal data is protected from abuse by airlines and travel agents.

⁶ "ASTA's Latest Efforts to Fight Back Against American Airlines' NDC Rollout," *TravelPulse*, March 18, 2024. <https://www.travelpulse.com/news/agents/astas-latest-efforts-to-fight-back-against-american-airlines-ndc-rollout>

⁷ "If an app asks to track your activity," *Apple*, February 27, 2024. <https://support.apple.com/en-us/102420>; "Mobile privacy: over 7 out of 10 apps collect more data than needed," *TechRadar*, September 27, 2023. <https://www.techradar.com/computing/cyber-security/mobile-privacy-over-7-out-of-10-apps-collect-more-data-than-needed>

⁸ "Marketing Company Agrees to Pay \$150 Million for Facilitating Elder Fraud Schemes," *U.S. Department of Justice*, January 27, 2021. <https://www.justice.gov/opa/pr/marketing-company-agrees-pay-150-million-facilitating-elder-fraud-schemes>; "Justice Department Recognizes World Elder Abuse Awareness Day; Files Cases Against Marketing Company and Executives Who Knowingly Facilitated Elder Fraud," *U.S. Department of Justice*, June 15, 2021. <https://www.justice.gov/opa/pr/justice-department-recognizes-world-elder-abuse-awareness-day-files-cases-against-marketing>

Consumer advocates strongly support such an examination and appreciate DOT's efforts to protect consumers as they utilize air transportation. We respectfully urge the Department to make its findings public to the fullest extent possible and consider implementing permanent mechanisms to improve transparency and consumer control over commercial surveillance practices.

Sincerely,

American Economic Liberties Project

Consumer Action

Consumer Federation of America

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National Consumers League