




**Homeland  
Security**

February 8, 2016

TO: Howard Shelanski, Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget

FROM: Luke J. McCormack   
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Department of Homeland Security

SUBJECT: Emergency Approval Request for Revision of the Electronic System for  
Travel Authorization Application under the Paperwork Reduction Act

This memorandum requests an emergency approval to revise the collection of information under the Paperwork Reduction Act (PRA) for U.S. Customs and Border Protection's Electronic System for Travel Authorization (ESTA) and for Form I-94W. ESTA is a web-based application and screening system used to determine whether certain aliens are eligible to travel to the United States under the Visa Waiver Program (VWP) and under a new law, whether a waiver is appropriate. Form I-94W, the paper equivalent to the ESTA portion related to travel authorization, is used primarily at the land border by VWP travelers. This request does not recommend changes to the I-94 paper form (different from the I-94W) that also is part of this collection. This information collection is approved under Office of Management and Budget (OMB) control number 1651-0111.

On December 18, 2015, the President signed into law the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 as part of the Consolidated Appropriations Act of 2016. To meet the requirements of this new law, the Department of Homeland Security (DHS or the Department) is strengthening the security of the VWP through enhancements to the ESTA application and to Form I-94W. Many of the provisions of the new law became effective on the date of enactment of the Act. The Act requires immediate action to implement the provisions that generally make nationals of VWP countries ineligible (with some exceptions) from traveling to the United States under the VWP if the applicant is a dual national of, or has at any time on or after March 1, 2011 been present in, Iraq, Syria, a designated state sponsor of terrorism (currently

Iran, Sudan, and Syria),<sup>1</sup> or any other country or area of concern designated by the Secretary of Homeland Security.<sup>2</sup> Under the new law, the Secretary of Homeland Security may waive these new VWP travel restrictions with respect to an alien if the Secretary determines that such a waiver is in the law enforcement or national security interests of the United States. Whether ESTA applicants will receive this waiver will be determined on a case-by-case basis in accordance with policy and operations guidance.

A significant number of foreign fighters have traveled to Syria over the past four years, including citizens from VWP countries. These fighters are among the cadre of Westerners that ISIL or other terrorist groups could use to conduct operations outside the Iraq/Syria conflict zone. These individuals could also be inspired to conduct attacks without direction from terrorist groups. Over the last year, numerous attacks have been attempted or successfully perpetrated by holders of passports from VWP countries, highlighting the ongoing threat that both former foreign fighters and lone actors inspired by the conflicts in Iraq and Syria pose to Western targets. In particular, the November 2015 Paris attacks were the most lethal to date perpetrated by returned foreign fighters.

DHS requests an emergency approval to amend the ESTA application and Form I-94W to include additional questions that will be used to determine if an applicant from a VWP country is a dual national of, or has at any time on or after March 1, 2011, been present in, Iraq, Syria, a designated state sponsor of terrorism (currently Iran, Sudan, and Syria), or any other country or area of concern as designated by the Secretary of Homeland Security. ESTA applicants will be asked to indicate when after March 1, 2011 they were present in or traveled to each country and to provide additional specifics such as the primary reason for their presence (e.g., business, personal, tourism).

These revisions help DHS remain compliant with legal requirements and adapt to the heightened threat environment as well as the continued increase in the number of foreign fighters from VWP countries participating in the Syria and Iraq conflicts. The combined totality of existing and newly proposed ESTA data elements will help the U.S. Government meet the requirements of the Act, mitigate the foreign fighter threat, and facilitate lawful travel under the VWP. DHS is requesting an emergency information collection approval with the intention of carrying out all the regular requirements for publication and review no later than six months after implementation.

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<sup>1</sup> Countries determined by the Secretary of State to have repeatedly provided support for acts of international terrorism are generally designated pursuant to three laws: section 6(j) of the Export Administration Act of 1979 (50 U.S.C. 2405); section 40 of the Arms Export Control Act (22 U.S.C. 2780); and section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

<sup>2</sup> The Act establishes exceptions to the bar for travel to Iraq, Syria, Iran and Sudan on or after March 1, 2011 for individuals determined by the Secretary of Homeland Security to have been present in these countries, “(i) in order to perform military service in the armed forces of a [VWP] program country; or (ii) in order to carry out official duties as a full time employee of the government of a [VWP] program country.” 8 U.S.C. 1187(a)(12)(B).

These modifications will assist in the identification of those who may be ineligible to travel to the United States under the VWP. The U.S. Government has always retained the authority to deny certain travelers the ability to travel under the VWP. The restrictions do not bar travel to the United States, but they do require a traveler covered by the restrictions in the law to obtain a visa from a U.S. Embassy or Consulate. Most U.S. Embassies and Consulates in VWP partner countries and worldwide have short wait times for visa interviews.

DHS is concerned that publishing the new changes to the ESTA data elements prior to implementation will allow persons who may be trying to cause harm to the United States to attempt to circumvent these new requirements.<sup>3</sup> These individuals may seek to obtain ESTA approval before the effective date of the new data elements in an effort to evade detection in order to gain unlawful entry to the United States under the VWP. DHS believes that individuals may try to take advantage of such a delay similar to the way individuals tried to avoid paying the ESTA fee by applying for an ESTA after the fee was announced but before it was implemented.

DHS requests OMB's approval of this emergency request to revise the ESTA application and Form I-94W, as we believe that taking immediate action to enhance the ESTA application is the best way to uphold Congress' intent and meet our legal requirements. After implementation of the new data elements, upon publication, the Department will stand ready to address comments and concerns, as necessary, under the PRA. Thank you for your consideration of this Emergency Request.

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<sup>3</sup> See OMB Directives Controlling Paperwork Burdens on the Public, 5 C.F.R. § 1320.13(i).