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Frequently Asked Questions for February 2016 ESTA Enhancements
(For CBP's Website)

1. *What is the Visa Waiver Program (VWP)?*

The VWP permits citizens of 38 countries to travel to the United States for business or tourism for stays of up to 90 days without a visa. In return, those 38 countries must permit U.S. citizens and nationals to travel to their countries for a similar length of time without a visa for business or tourism purposes.

Since its inception in 1986, the VWP has evolved into a comprehensive security partnership with many of America's closest allies. The VWP, administered by the Department of Homeland Security (DHS) in consultation with the Department of State (DOS), utilizes a risk-based, multi-layered approach to detect and prevent terrorists, serious criminals, and other *mala fide* actors from traveling to the United States. This approach incorporates regular, national-level risk assessments concerning the impact of each program country's participation in the VWP on U.S. national security and law enforcement interests. It also includes comprehensive vetting of individual VWP travelers prior to their departure for the United States, upon arrival at U.S. ports of entry, and during any subsequent air travel within the United States, among other things.

2. *How does VWP travel work? What is the Electronic System for Travel Authorization (ESTA)?*

All prospective VWP travelers must obtain pre-travel authorization via U.S. Customs and Border Protection's (CBP) ESTA system prior to boarding a plane or ship bound for the United States.

ESTA applications are available on CBP's website: <https://esta.cbp.dhs.gov/esta/>. ESTA is used to determine eligibility to travel without a visa to the United States under the VWP. Travelers who do not receive an approved ESTA must apply for a visa at the nearest U.S. Embassy or Consulate prior to travel to the United States. Although an approved ESTA is generally valid for a period of two years, travelers should check their ESTA status on CBP's website prior to travel.

3. *What is the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015? Why is it necessary to once again expand the amount of ESTA information being collected from VWP travelers?*

DHS remains concerned about the risks posed by the situation in Syria and Iraq, where instability has attracted thousands of foreign fighters, including many from VWP countries. Such individuals could travel to the United States for operational purposes on their own or at the behest of violent extremist groups.

The U.S. Congress shares this concern, and on December 18, 2015, the President signed into law the Consolidated Appropriations Act 2016, which includes the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 (the Act). The Act, among other things, establishes new eligibility requirements for travel under the VWP. These new eligibility requirements do not bar travel to the United States. Instead, a traveler who does not meet the

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requirements must obtain a visa for travel to the United States, which generally includes an in-person interview at a U.S. Embassy or Consulate.

DHS has updated the ESTA application with additional questions to address the new eligibility requirements under the Act.

4. What are the new eligibility requirements for VWP travel?

Under the Act, travelers in the following categories are no longer eligible to travel or be admitted to the United States under the VWP:

- Nationals of VWP countries who have been present in Iraq, Syria, or countries listed under specified designation lists (currently including Iran and Sudan) at any time on or after March 1, 2011 (with limited government/military exceptions).
- Nationals of VWP countries who are also nationals of Iraq, Syria, Iran, or Sudan.

These restrictions do not apply to VWP travelers whose presence in Iraq, Syria, Iran, or Sudan was to perform military service in the armed forces of a program country, or in order to carry out official duties as a full-time employee of the government of a program country. These military and official government services exceptions, however, do not apply to the dual national restriction. We recommend those who have traveled to the four countries listed above for military/official purposes bring with them appropriate documentation when traveling through a U.S. port of entry.

The vast majority of VWP-eligible travelers will not be affected by the new Act. New countries may be added to this list at the discretion of the Secretary of Homeland Security.

5. Are there any exceptions to the new eligibility requirements?

Yes, the Act provides for limited exceptions to the restriction relating to prior travel to/physical presence in Iraq, Syria, Iran, or Sudan. If you have traveled to Iraq, Syria, Iran, or Sudan to represent your program country on official military orders or official government business, you may fall within an established exception to the new eligibility requirements. These military and official government services exceptions, however, do not apply to the dual national restriction. Refer to Question 10 for information on waivers associated with the new Act.

6. What do I do if I fall under one of the VWP travel restrictions under the new Act?

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. Please visit travel.state.gov for general visa information or usembassy.gov to find the website of the Embassy that has jurisdiction over your residence.

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If you are applying for a nonimmigrant visa after ESTA denial or revocation as a result of the new Act, and have imminent business, medical, or humanitarian travel to the United States you may request an expedited visa appointment.

Visas have some advantages over the ESTA, including validity for up to 10 years versus a general two years for ESTA, and the option to stay in the United States for up to six months at a time, as opposed to up to 90 days under the VWP. Visa travelers generally may also extend their stay beyond six months or seek to change to a different visa class while in the United States, neither of which is allowed under the VWP.

7. What are the additional questions being added to the ESTA application in February 2016?

The additional/modified questions are:

- Have you traveled to, or been present in, Iraq, Syria, Iran, or Sudan on or after March 1, 2011?
- Have you ever been issued a passport (or national identity card for travel) by any other country?
- Are you now a citizen or national of any other country?
- Have you ever been a citizen or national of any other country?

Based on responses to the above questions, ESTA applicants may be directed to answer additional questions concerning travel to Iraq, Syria, Iran, and Sudan and potential dual nationality.

8. Are there other countries that I have traveled to that might impact VWP travel?

Yes, on February 18, 2016, DHS announced that it is continuing its implementation of the Act with the addition of Libya, Somalia, and Yemen as three countries of concern, limiting VWP travel for certain individuals who have traveled to these countries. DHS continues to consult with the Department of State and the Office of the Director of National Intelligence to determine whether other countries would be added to this list.

9. When will travelers who have traveled to or been present in Libya, Somalia or Yemen be notified?

CBP is working on implementing that as soon as possible, and will notify those affected directly. An updated ESTA application with questions on travel to Libya, Somalia, and Yemen will be released this spring 2016 .

10. Do I have to answer the new questions if the provisions of the new Act do not apply to me?

Yes, all ESTA applicants must complete the entire ESTA application.

11. Is there a mechanism to inform all current ESTA holders (not just those who have previously indicated holding dual nationality) of the new requirements to prevent misunderstandings and complications?

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CBP is engaging with the Departments of State and Commerce in extensive outreach. CBP and the Department of State will also post new information and frequently asked questions on their websites, www.cbp.gov and travel.state.gov.

We strongly urge all travelers to acquire an ESTA authorization or a valid U.S. visa prior to making travel reservations. If you are concerned about your ESTA status, please go to [website] to verify. All travelers should verify their ESTA status prior to traveling.

12. Are there any waivers to the new eligibility requirements?

Under the new Act, the Secretary of Homeland Security may waive these new VWP restrictions if he determines that such a waiver is in the law enforcement or national security interests of the United States. Such waivers will be granted only on a case-by-case basis. As a general matter, categories of travelers who may be eligible for a waiver include:

- Individuals who have traveled to Iran, Iraq, Sudan or Syria on behalf of international organizations, regional organizations, or sub-national governments on official duty;
- Individuals who have traveled to Iran, Iraq, Sudan or Syria on behalf of a humanitarian non-governmental organizations (NGO);
- Individuals who have traveled to Iran, Iraq, Sudan or Syria as a journalist for reporting purposes;
- Individuals who traveled to Iran for legitimate business-related purposes following the conclusion of the Joint Comprehensive Plan of Action (July 14, 2015); and
- Individuals who have traveled to Iraq for legitimate business-related purposes.

13. How do I obtain a waiver if I think I am eligible for one? How do I obtain a waiver if my ESTA is denied or revoked?

You do not apply separately for a waiver. Travelers can apply for an ESTA and whether they are eligible for a waiver will be determined on a case-by-case basis as part of the ESTA process, consistent with the terms of the law.

If you wish to travel to the United States and if your ESTA is denied or revoked, you must apply for a nonimmigrant visa at a U.S. Embassy or Consulate to travel to the United States. If you are applying for a nonimmigrant visa after ESTA denial or revocation as a result of the new Act, and have imminent business, medical, or humanitarian travel to the United States you may request an expedited visa appointment. We suggest that you retain a copy of any ESTA denial or revocation; it may be requested in order to schedule an expedited appointment.

14. How will the public be notified of ESTA changes?

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All changes to the ESTA process will be announced on CBP's website, www.cbp.gov. Please keep up to date via the website for all ESTA changes. Travelers whose ESTA status has changed as a result of these new eligibility requirements will be notified via the email addressed provided in the applicant's ESTA application. We strongly encourage all travelers to verify their ESTA status and update appropriate contact information prior to traveling to the United States.

Additionally, all changes to the ESTA form go through notice (in the Federal Register) and public comment under the Paperwork Reduction Act and are available on reginfo.gov under OMB Control Number 1651-0111. The public is invited to provide CBP with feedback during the public comment periods that accompany each change to the form.

15. *Will everyone—including those with no ties to Iraq, Syria, Iran, or Sudan—have to reapply and update their ESTA applications?*

No. If you are not covered by the new eligibility requirements of the Act and you have not had your ESTA revoked, you do not have to reapply for a new ESTA authorization until your current one expires. CBP recommends that you check the status of your ESTA authorization prior to making a reservation to travel to the United States and prior to your actual travel.

However, if you have traveled to one of the four countries covered by the new eligibility requirements on or after March 1, 2011, CBP recommends that you do apply for a new ESTA to help facilitate your travel to the United States, or apply for a visa.

16. *How is “dual citizen” or “dual national” defined? What if I was born in a country, but never lived there and do not consider myself a national or citizen?*

We will make nationality determinations in accordance with U.S. legal standards and practices, not merely by reference to the laws and practices of foreign governments. If an individual believes that he or she is eligible for an ESTA travel authorization, the individual should apply for an ESTA, answer all questions truthfully and accurately, and that individual's eligibility for an ESTA authorization will be determined in accordance with U.S. law. If you have any questions, please contact CBP at 1-202-344-3710.

17. *What qualifies as a subnational government/entity?*

Subnational governments are state, regional or provincial counties, territories, and other intermediate levels of government.

18. *How is “international (multilateral or intergovernmental)” organization or “regional (multilateral or intergovernmental)” organization defined?*

An international (multilateral or intergovernmental) organization is an organization formed pursuant to a multilateral act, such as a treaty, the membership of which is composed primarily of sovereign or member states or other intergovernmental organizations. An international organization can be global or regional in nature. Examples of such organizations in this context

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include the United Nations, the North Atlantic Treaty Organization, the International Atomic Energy Agency, the International Monetary Fund, and the European Union.

19. How is a government official defined?

A government official is an individual performing official duties or services for the government of a VWP country.

20. Will guidance be provided as to what documents are necessary to prove an individual falls under an exception (military/official) from the new Act?

During the admissions process, CBP will review any documents presented at a port of entry that demonstrate a VWP traveler meets the official government or military exceptions under the new Act. Travelers are recommended to bring certain documentation with them when they travel to the United States, including but not limited to, travel orders, official or diplomatic visas, or an official letter from a VWP country government entity, if available. Travelers may also be asked questions about their travel during the admissions process.

21. Will the ESTA fee increase with these changes to the application?

There is no plan to increase the ESTA fee when the changes take effect. However, travelers who apply for a new ESTA through the enhanced system will be charged the standard ESTA fee.

22. Will there be fee waivers for those whose ESTAs were denied/revoked and now have to apply for a nonimmigrant visa?

No. DHS does not have the legal authority to waive the ESTA fee. The fee is a processing fee per application. Travelers who apply for visas will be required to pay the associated visa processing fee.

23. How will the new information collected be used?

DHS will handle the new information in the same manner as other information collected through ESTA and will document these procedures in the System of Record Notice (SORN) and Privacy Impact Assessment (PIA). As before, DHS will screen intending VWP travelers to determine their eligibility to travel to the United States under the VWP. The additional questions will be used to help DHS determine whether applicants are eligible for travel and admission to the United States under the VWP.

24. Will DHS share the new ESTA information outside of DHS?

The information collected by and maintained in ESTA may be used by other components of DHS on a strictly need-to-know basis consistent with the component's mission.

Under current agreements between DHS and DOS, information submitted during an ESTA application may be shared with consular officers of DOS to assist them in determining whether a

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visa should be issued to an applicant after an ESTA travel authorization application has been denied.

Information may be shared with appropriate federal, state, local, tribal, and foreign governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order or license, or where DHS believes information would assist enforcement of civil or criminal laws.

Additionally, information may be shared when DHS reasonably believes such use will assist in anti-terrorism efforts or intelligence gathering related to national or international security or transnational crime. All sharing, including the sharing mentioned above, will remain consistent with the Privacy Act's SORN, which was published in the Federal Register on February 23, 2016 and is available on the DHS web site, www.dhs.gov.

Although carriers will not receive the ESTA application information that travelers provide to DHS, they will receive confirmation of a passenger's ESTA status via the Advance Passenger Information System indicating whether an ESTA is required and whether authorization has been granted.

25. How long will DHS retain the data generated from these additional ESTA questions?

The data retention period remains unchanged. ESTA application data remains active for the period of time that the approved ESTA is valid, which is generally two years, or until the traveler's passport expires, whichever comes first. DHS then maintains this information for an additional year after which it is archived for 12 years—with further limited access—to allow retrieval of the information for law enforcement, national security, or investigatory purposes. These policies are consistent with both CBP's search authority and with the border security mission mandated for CBP by Congress. Data linked to active law enforcement lookout records, CBP matches to enforcement activities, and/or investigations or cases, including applications for ESTAs that are denied, will remain accessible for the life of the law enforcement activities to which they are related.

26. How will the new information collected be safeguarded?

DHS will handle the new information in the same manner as other information collected through ESTA and will document these procedures in the SORN and PIA. Information submitted by applicants through the ESTA website will continue to be subject to the same strict privacy provisions, use limitations, and access controls that are currently in place for ESTA, and consistent with similar traveler screening programs.

27. Why is DHS taking action under a Paperwork Reduction Act (PRA) notice and not a regulation?

The relevant regulatory provision does not list the specific data elements that VWP travelers must provide in order to obtain an ESTA. Instead, the regulation states that "ESTA will collect such information as the Secretary [of Homeland Security] deems necessary to issue a travel

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authorization, as reflected by the I-94W Nonimmigrant Alien Arrival/Departure Form (I-94W).” Since there are no data elements listed in the regulation, there is no need to update the regulation. The revisions to the ESTA data elements fall under the PRA since DHS is amending an information collection (Form I-94W) and not amending a regulation.

28. Will this change to the ESTA application discourage legitimate foreign national travelers?

No. The new VWP eligibility requirements do not bar legitimate travel to the United States. If a traveler is not granted an ESTA, the traveler will need to obtain a U.S. visa from a U.S. Embassy or Consulate.

DHS is committed to facilitating legitimate trade and travel while maintaining the highest standards of security and border protection. Requirements for travel to the United States have increased, especially since September 11, 2001, to enhance security at U.S. borders; however, the flow of goods and visitors into the United States continues to grow each year.

29. By adding these additional questions, will the ESTA now be the equivalent of an electronic visa?

No. The requirements for a nonimmigrant visitor (B1/B2) visa are different under U.S. law and more complex than the requirements for an ESTA. Applicants for a B1/B2 visa must complete an online visa application (DS-160) and, with limited exception, appear for an interview with a U.S. consular officer. Part of the visa application process requires that applicants submit their biometric information in advance of travel, and provide additional biographic information as required.

30. Even with these additional ESTA questions, does the VWP represent a security vulnerability?

No. Countries that participate in the VWP are required to have a high degree of security cooperation with the United States; sign and implement information sharing agreements regarding known, suspected or potential terrorists and serious criminals; report lost and stolen passport data to the United States or other means approved by the United States; and issue International Civil Aviation Organization-compliant electronic passports. VWP countries are also subject to biennial eligibility reviews, which provide DHS with the opportunity to conduct broad and consequential inspections of foreign security standards and operations, and verify the level of law enforcement and counterterrorism cooperation with the United States. The Director of National Intelligence is required to complete an intelligence assessment to support each eligibility review conducted by DHS.

VWP travelers must obtain approval through the ESTA process prior to commencing VWP travel to the United States. ESTA continuously vets applicants’ biographic information against the Terrorist Screening Database; lost and stolen passport records (including INTERPOL’s Stolen and Lost Travel Documents database); visa revocations; previous VWP refusals; expedited removals; and Public Health records, e.g., records from the Centers for Disease

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Control and Prevention for persons who have a communicable disease constituting a public health threat.

31. Is VWP travel at the land border affected by the Act?

The new eligibility requirements apply to all VWP applicants regardless of mode of entry. If you do not meet one of the new eligibility requirements established by the Act, you are ineligible for travel and admission to the United States under the VWP. You will be required to obtain a nonimmigrant visa. Waivers for a respondent's travel history will not be adjudicated at the border through the I-94W.

32. Are there new passport requirements for travel to the United States under the VWP?

Yes, effective April 1, 2016, all VWP country citizens must possess an electronic passport to travel to the United States under the VWP. If not in possession of an electronic passport, a valid nonimmigrant visa is required to travel to the United States.

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