



**Privacy Impact Assessment Update
for the
Electronic System for Travel
Authorization (ESTA)**

DHS/CBP/PIA-007(f)

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Abstract

The Electronic System for Travel Authorization (ESTA) is a web-based application and screening system used to determine whether certain foreign nationals are eligible to travel to the United States under the Visa Waiver Program (VWP). The U.S. Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) is publishing this update to the Privacy Impact Assessment (PIA) for ESTA, last updated on February 17, 2016, to provide notice and privacy risk assessment of the updated enhancements to the ESTA application questionnaire to apply stricter screening standards to certain foreign nationals who have traveled to Somalia, Libya, and Yemen; and to include a Global Entry traveler number for ESTA applicants, if applicable.

Overview

In the wake of the terrorist attack on the Nation on September 11, 2001, Congress enacted the Implementing Recommendations of the 9/11 Commission Act of 2007.¹ Section 711 of that Act sought to address the security vulnerabilities associated with Visa Waiver Program (VWP) travelers who are not subject to the same degree of screening as other international visitors to the United States. As a result, section 711 required CBP to develop and implement a fully automated electronic travel authorization system to collect biographic and other information necessary to evaluate the security risks and eligibility of an applicant to travel to the United States under the VWP. The VWP is a travel facilitation program with robust security standards designed to prevent terrorists and other criminal actors from exploiting the VWP to enter the United States.

ESTA is a web-based system designed to determine foreign nationals' eligibility to travel to the United States under the VWP. Applicants use the ESTA website to submit biographic information and respond to questions related to an applicant's eligibility to travel under the VWP. ESTA information is necessary to issue a travel authorization, consistent with the requirements of the Form I-94W.² A VWP traveler who intends to arrive at a U.S. air or sea port of entry must obtain an approved travel authorization via the ESTA website prior to boarding a carrier bound for the United States. The ESTA program allows CBP to eliminate the requirement that VWP travelers complete a Form I-94W prior to being admitted to the United States via an air or sea port of entry because the ESTA application electronically captures duplicate biographical and travel data elements collected on the paper Form I-94W.

DHS/CBP published an ESTA PIA update on February 17, 2016³ in accordance with the

¹ Pub. L. 110-53, codified at 8 U.S.C. § 1187(a)(11), (h)(3).

² See 8 CFR § 217.5(c). The Form I-94W must be completed by all nonimmigrant visitors not in possession of a visitor's visa, who are nationals of one of the VWP countries enumerated in 8 CFR § 217.

³ See DHS/CBP/PIA-007 Electronic System for Travel Authorization (ESTA), and subsequent updates, *available at*



new requirements of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015.⁴ In that update, DHS/CBP addressed new eligibility requirements established by the Act to strengthen the security of the VWP to appropriately meet the current threat environment to the United States.

Reason for the PIA Update

DHS/CBP is updating the ESTA questionnaire with the following enhancements: (1) expanding the ineligibility (with some exceptions) of ESTA for certain nationals of VWP countries if the applicant, at any time on or after March 1, 2011, was present in Libya, Somalia or Yemen; (2) including “Global Entry Program Number” as part of the ESTA questionnaire; and (3) including an optional field in which ESTA applicants may include information about their presence on select social media platforms.

1. Travel History Ineligibility Expansion

As described in the previously published ESTA PIA update,⁵ the newly issued Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015⁶ required enhancements to the ESTA questionnaire for certain VWP nationals who have traveled to, or are dual nationals of, certain countries. The initial expansion included applicants who are nationals of, or who have traveled to Iraq, Iran, Syria, and Sudan at any time on or after March 1, 2011.⁷

The Secretary of Homeland Security, using his discretion under the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015,⁸ determined that due to national security concerns and the ongoing threat posed by foreign fighters returning to VWP countries, the ESTA ineligibility requirements will now apply to certain nationals of VWP countries if the applicant has at any time on or after March 1, 2011 been present in Libya, Somalia, or Yemen.

These individuals must complete an additional list of questions about their travel history on the ESTA questionnaire and may be determined to be ineligible for an ESTA. The expanded questionnaire, and available access, correction, amendment, or redress procedures through the DHS Traveler Redress Inquiry Program, remain the same as described in the February 2016 PIA update.

<https://www.dhs.gov/publication/electronic-system-travel-authorization>.

⁴ See Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, Pub. L. No. 114-113, Division O, Title II.

⁵ See *supra* note 3.

⁶ See *supra* note 4.

⁷ See *supra* note 3.

⁸ See *supra* note 4.

2. Global Entry Program Number

Certain categories of ESTA applicants may be considered for visa waivers at the discretion of the Secretary of Homeland Security. If an individual is deemed ineligible to travel to the United States under the VWP based on the dual national or prior travel restrictions under the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, he or she may be eligible for a waiver.

If an individual referred for consideration for a visa waiver has a Global Entry Program Number,⁹ they have already been pre-approved for travel under the Global Entry Program, therefore DHS has previously assessed the individual to be low-risk traveler. This previous assessment and continued vetting under the Global Entry Program will provide CBP with valuable information when considering an applicant's ESTA application, including allowing CBP to make better informed determinations when assessing whether an applicant presents a security risk, and when considering an applicant's eligibility for a waiver of VWP ineligibility.

Privacy Impact Analysis

Authorities and Other Requirements

No change from the previously published ESTA PIA update.

Characterization of the Information

CBP is expanding the ESTA data elements to include the Global Entry Program Number.

There is no privacy risk to this expanded information collection. ESTA applicants may voluntarily provide their Global Entry Number, if they opted to obtain one, to assist in the CBP vetting process.

Uses of the System and the Information

CBP will continue to use the information submitted as part of an ESTA application to determine the eligibility of a foreign national to travel to the United States and to determine

⁹ Participation in the Global Entry program is completely voluntary and allows applicants to exchange personally identifiable information in return for expedited transit at United States border entry points. Global Enrollment System data is used only for the purposes of border and immigration management, national security, and law enforcement. For additional information about Global Entry, please *see* https://www.dhs.gov/sites/default/files/publications/privacy_pia_cbp_goes_0.pdf.



whether the visitor poses a law enforcement or security risk to the United States.¹⁰ CBP will continue to vet the ESTA applicant information against selected security and law enforcement databases at DHS, including TECS¹¹ (not an acronym) and the Automated Targeting System (ATS).¹²

There are no privacy risks to use of this information. CBP will use the Global Entry Number to assist in vetting efforts since Global Entry holders have been previously assessed by CBP as a low-risk traveler. This previous assessment and continued vetting under the Global Entry Program will provide CBP with valuable information when considering an applicant's ESTA application, including allowing CBP to make better informed determinations when assessing whether an applicant presents a security risk, and when considering an applicant's eligibility for a waiver of VWP ineligibility.

Data Retention by the Project

The CBP retention period for ESTA has not changed. CBP retains ESTA application data for no more than three years in an active database (one year beyond the ESTA authorization expiration date) and twelve years in archive status.

Internal Sharing and Disclosure

No changes have been made to internal sharing and disclosure.

External Sharing and Disclosure

No changes have been made to external sharing and disclosure. CBP will continue to share ESTA information in bulk with other federal Intelligence Community partners (e.g., the National Counterterrorism Center), and CBP may share ESTA on a case-by-case basis to appropriate state, local, tribal, territorial, or international government agencies. Existing external information sharing and access agreements will continue and will now include the expanded categories or records noted above.¹³

¹⁰ See 8 U.S.C. § 1187(h)(3).

¹¹ DHS/CBP-011 U.S. Customs and Border Protection TECS (73 Fed. Reg. 77778, December 19, 2008).

¹² DHS/CBP-006 Automated Targeting System (77 Fed. Reg. 30297, May 22, 2012).

¹³ This sharing takes place after CBP determines that the recipient has a need to know the information to carry out functions consistent with the exceptions under the Privacy Act of 1974, 5 U.S.C. § 552a(b), and the routine uses set forth in the ESTA SORN. Additionally, for ongoing, systematic sharing, CBP completes an information sharing and access agreement with federal partners to establish the terms and conditions of the sharing, including documenting the need to know, authorized users and uses, and the privacy protections for the data.



Notice

The online ESTA application contains a Frequently Asked Questions (FAQ) section that will address the addition of social media elements to the ESTA application. In addition to the FAQs on the online application, there will be a question mark indicator next to social media field(s) that an applicant can click on, which will provide additional information regarding the collection of social media information.

The System of Records Notice (SORN) for ESTA, last published on February 23, 2016, is being updated concurrently with this PIA to reflect the ESTA enhancements, including the new eligibility questions and collection of an additional data element on the ESTA application.

Due to the sensitive national security concerns necessitating the expanded information collection required by the VWP and Terrorist Travel Prevention Act of 2015, CBP has determined that the updated ESTA SORN will become effective upon publication, without a prior comment period. Despite the exigent circumstances requiring immediate publication and implementation of this new information collection, members of the public can still submit comments on the updated SORN. CBP will evaluate these comments to determine if any future changes should be made.

Individual Access, Redress, and Correction

No changes have been made to individual access, redress, and correction. The ESTA enhancements will result in CBP denying some individuals eligibility for a travel authorization under the VWP. Applicants denied a travel authorization to the United States via ESTA may still apply for a visa from the U.S. Department of State. General complaints about treatment can be made to the DHS Traveler Redress Inquiry Program (TRIP), 601 South 12th Street, TSA-901, Arlington, VA 22202-4220 or online at www.dhs.gov/trip. Generally, if a traveler believes that CBP actions are the result of incorrect or inaccurate information, then inquiries should be directed to:

CBP INFO Center
OPA - CSC - Rosslyn
U.S. Customs and Border Protection
1300 Pennsylvania Ave, NW
Washington, D.C. 20229

In addition, CBP has updated the address to which individuals should submit their requests for access and correction. Under the Privacy Act and the Freedom of Information Act (FOIA), individuals may request access to the information they provide which is maintained in the applicable CBP system of record. Proper written requests under the Privacy Act and FOIA should be addressed to:



CBP FOIA Headquarters Office
U.S. Customs and Border Protection
FOIA Division
90 K Street NE, 9th Floor
Washington, D.C. 20002

Requests for access should conform to the requirements of 6 CFR Part 5, which provides the rules for requesting access to Privacy Act records maintained by CBP. The envelope and letter should be clearly marked "Privacy Act Access Request." The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury.

Technical Access and Security

No changes have been made to technical access or security.

Technology

No changes have been made to technology.

Responsible Official

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