

SUPPORTING STATEMENT

Arrival and Departure Record (Forms I-94, I-94W) and Electronic System for Travel Authorization (ESTA) OMB No. 1651-0111

A. Justification

Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

Background

Passengers traveling under the Visa Waiver Program (VWP) by air or sea, are required to receive a travel authorization through the Electronic System for Travel Authorization (ESTA) prior to travel to the United States. 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 VWP in the air and sea environments. Passengers who are not eligible to travel under VWP may apply for a visa at a U.S. Embassy or Consular Office.

ESTA was provided for by Section 711 of the Secure Travel and Counterterrorism Partnership Act of 2007 (part of the Implementing Recommendations of the 9/11 Commission Act of 2007, also known as the "9/11 Act," Public Law 110-53) which requires that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement an electronic system which shall collect such biographical and other information as the Secretary of Homeland Security determines necessary to determine, in advance of travel, the eligibility of the alien to travel to the United States and whether such travel poses a law enforcement or security risk.

U.S. Customs and Border Protection (CBP) Forms I-94 (Arrival/Departure Record) and I-94W (Nonimmigrant Visa Waiver Arrival/Departure Record) are included in the manifest requirements imposed by Sections 231 and 235 of the Immigration and Nationality Act (INA), and are required to be prepared by aliens while enroute to the United States and presented upon arrival at a sea or air port of entry within the United States. Under the INA, it is the duty of the master or commanding officer, or authorized agent, owner, or consignee of the vessel or aircraft, having any alien on board, to deliver lists or manifests of the persons on board such vessel or aircraft to CBP officers at the port of arrival. However, CBP

now gathers I-94 data from existing automated sources such as the Advance Passenger Information System (APIS) in lieu of requiring passengers arriving by air or sea to submit a paper I-94 upon arrival. The paper I-94 is still required from travelers entering the United States at a land border. Passengers can access and print their electronic I-94 record via the website www.cbp.gov/I94.

Aliens traveling under the VWP are required to present a completed and signed Nonimmigrant Visa Waiver Arrival Departure Form I-94W as a condition of admission pursuant to 8 C.F.R. § 217.2(b)(1). However, so long as these aliens are traveling in the air or sea environment and have a travel authorization obtained through ESTA, they may forgo completing the paper Form I-94W. ESTA is not required for VWP travelers at land border crossings, though it should be noted that the overwhelming majority of VWP travelers (approximately 99 percent) arrive in the United States in the air environment.

On December 18, 2015, the President signed into law the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 (“VWP Improvement Act”) as part of the Consolidated Appropriations Act, 2016. To meet the requirements of this new act, the Department of Homeland Security (DHS, or the Department) strengthened the security of the VWP through enhancements to the ESTA application and to the Form I-94W.¹ Many of the provisions of the new law became effective on the date of enactment of the Visa Waiver Program Improvement Act. The act generally makes certain nationals of VWP countries ineligible (with some exceptions) from traveling to the United States under the VWP, specifically, if the applicant is also a national of, or has at any time on or after March 1, 2011 been present in Iraq, Syria, a country that is designated a state sponsor of terrorism (currently Iran, North Korea, Cuba and Syria),² or any other country or area of concern as designated by the Secretary of Homeland Security.³ A delay in implementation has significant national security implications and would put DHS at risk of not being in compliance with these new requirements.

DHS approved an emergency request to revise this information collection, to add North Korea to the list of countries in the ESTA application questions, specified below to permit the adjudication, on a case-by-case basis, of the waiver authority included in the VWP Improvement and Terrorist Travel Prevention Act of 2015. Because potential waivers will only be considered through the ESTA process, the conditional questions are not included on the I-94W form. The I-94W form includes the mandatory question about travel or presence in particular countries.

¹ Note that the Form I-94 is not affected by this change.

² 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).

³ The Act contains exceptions 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).

This request is being made due to North Korea being designated as State Sponsors of Terrorism on November 27, 2017.

<p>Have you traveled to, or been present in, Iraq, Syria, Iran, North Korea, Cuba, Yemen, Libya, or Somalia on or after March 1, 2011?</p>	<p>Mandatory (for each instance of travel or presence.)</p>
<p>You have indicated that you are not a citizen or national of your country of birth. From the list below, please select ALL statements that apply with respect to your country of birth:</p> <ul style="list-style-type: none"> • Did not acquire citizenship at birth or have never held citizenship in birth country • Renounced citizenship of birth country • Have not lived or resided in birth country within the past five years • Have not held a passport or national identity card from birth country within the past five years <p>Other</p>	<p>Conditional (Only seen by applicants who identify Iraq, Syria, Iran, North Korea, or Cuba as their Country of Birth on ESTA, but who do not also identify that country under "Other countries of current citizenship"; in which case, the question is mandatory.)</p>
<p>If the applicant answers Yes to "presence in" question and selects "Humanitarian" as reason:</p> <ul style="list-style-type: none"> • Please identify the organization or entity on behalf of which you traveled to Iraq, Syria, Iran, North Korea, Cuba, Yemen, Libya or Somalia for humanitarian purposes. • Does your organization or entity have consultative status with the United Nations Economic and Social Council? • What was your official position/title with the organization or entity identified? • If different than your current employer, please provide contact information for the organization or entity identified, including primary address and telephone number • Please provide your Iraqi, Syrian, Iranian, North Korean, Cuban, Yemeni, Libyan, or Somali Visa Number related to your humanitarian travel. • If your organization or entity has been a recipient of U.S. government funding for humanitarian assistance within the last five years, please provide the most recent grant number. • Please provide us information about the type of work you were doing in country during this time • Please include any information you are willing to share about other NGOs or international, national or state agencies with which you worked. • Any additional comments. 	<p>Conditional (Only seen if the applicant answered affirmative to travel question for humanitarian purposes; in which case, the question is mandatory. The applicant can answer "unknown.")</p>
<p>If the applicant answers Yes to "presence in" question and selects "International or Regional" or "Sub-National" as reason:</p> <ul style="list-style-type: none"> • Please identify the international (multilateral or intergovernmental) organization or regional (multilateral or intergovernmental) organization, on behalf of which you traveled to Iraq, Syria, Iran, North Korea, Cuba, Yemen, Libya or Somalia • Please identify the sub-national government or body of a VWP country on behalf of which you traveled to Iraq, Syria, Iran, North Korea, Cuba, Yemen, Libya or Somalia. • What was your official position/title with the organization or 	<p>Conditional (Only seen if the applicant answered affirmative to travel question for international/regional/sub-national government; in which case, the question is mandatory. The applicant can answer "unknown.")</p>

<p>government identified?</p> <ul style="list-style-type: none"> • Please provide your Iraqi, Syrian, Iranian, North Korea, Cuban, Yemeni, Libyan or Somali Visa Number related to your official travel on behalf of an international or regional organization, or subnational government. [Write-in field] • Have you ever been issued a G-Visa or A-Visa by a United States Embassy or Consulate • If “Yes”, please provide your G-Visa or A-Visa number, if known • Have you ever been issued a United Nations Laissez-Passer • If “Yes,” please provide your Laissez-Passer number 	
<p>If the applicant answers Yes to “presence in” question and selects “Journalism” as reason:</p> <ul style="list-style-type: none"> • Please identify the company, entity, or organization on behalf of which you traveled to Iraq, Syria, Iran, North Korea, Cuba, Yemen, Libya, or Somalia to engage in journalism. • What is your official position with the company, entity, or organization identified? • Have you ever been issued an I-visa by a United States Embassy or Consulate? • If Yes- please provide your I-visa number, if known. 	<p>Conditional (Only seen if the applicant answered affirmative to travel question for journalism; in which case, the question is mandatory. The applicant can answer “unknown.”)</p>

Proposed Changes:

1. Complete biographic page, passport photograph and MRZ:
 Currently, the ESTA website allows applicants to upload their passport page to capture the passport’s machine-readable zone (MRZ), which automatically populates the individual’s biographic information, eliminating the need to manually enter the information into the ESTA application. Applicants were able to voluntarily submit a photo with their ESTA application, CBP will now require applicants to upload a picture of their complete biographic passport page, including the MRZ and passport photograph. The addition of passport photos will increase CBP’s capability to confirm an applicant’s identity and compare the photo against CBP and other government holdings to locate any derogatory information. Photos collected as part of the ESTA applications may also be used to match travels through the biometric entry/exit process. CBP is amending the ESTA application to require the uploading of the complete biographic page to include the photograph and the MRZ.
1. Mandatory Social Media Collection:
 On May 31, 2019, the Department of State updated its immigrant and nonimmigrant visa application forms to request additional information, including social media identifiers, from most U.S. visa applicants worldwide. In keeping with this change, CBP is amending the ESTA application to change social media collection from optional to mandatory. National security is CBP’s top priority when adjudicating ESTA applications, and every prospective traveler to the United States

undergoes extensive security screening. CBP is continually working to find mechanisms to improve our screening processes to protect U.S. citizens, while supporting legitimate travel to the United States. CBP already requests certain contact information, travel history and family member information from all ESTA applicants. Making social media a mandatory field in the ESTA application will enhance our vetting processes and assist in confirming applicants' identities. While the completion of the field is mandatory, applicants can still select "none".

2. Biometric Information Collection:

CBP will begin collecting biometric data for identity confirmation on ESTA applications. ESTA applicants will be prompted to take a selfie or "live" photo to conduct a "liveness" test to determine if the ESTA application is interfacing with a physically present human being and not an inanimate object, or if it is a photo of someone other than the lawful passport holder. Respondents will be able to scan their passport biographic page, in order to submit biographic information, including passport photograph.

3. ESTA Mobile Application (App):

CBP will implement the ESTA Mobile Application to provide an additional and more convenient option for intending VWP travelers to obtain an ESTA. The Mobile App will collect biometric data for confirmation of identity. This is another enhancement that will assist in preventing persons intending to travel to the United States under the VWP by fraud.

This new function will be accessible via mobile devices, i.e., mobile phones, tablets. The portability of mobile devices will facilitate applying for an ESTA application, because an ESTA applicant will not be limited to applying on a desktop computer. The first phase will enable Android devices to use the ESTA App, and the second phase will follow with iOS. No implementation date has been set for iOS implementation.

The Mobile App will be very similar to the already established ESTA application website at <https://esta.cbp.dhs.gov>, but with Near Field Communication (NFC).

The NFC:

- Allows users to scan the passport e-Chip (embedded in the passport) to extract passenger data.
- A Mobile Device with NFC capability is required to scan the Passport e-Chip when applying for a new application using the ESTA Mobile App.
- Data on the e-Chip enables the NFC Scan.

- If the mobile device does not have NFC capability, the user can submit an ESTA application via the established website.

After determining if the mobile device has NFC capability:

1. The applicant takes a selfie or “live” photo (another person may also take a photo of the applicant).
2. The Mobile App will do a “liveness” test to determine that it is interfacing with a physically present human being and not an inanimate object, or if it is a photo of someone other than the lawful passport holder.
3. If the passport photo does not match the “liveness” photo, a “Third Party Acknowledgement” screen will display, which requires confirmation.
4. The applicant proceeds by completing the data fields the same as with the established ESTA application.
5. When the applicant completes the application, he/she can review his/her responses.

The payment process will be the same as the established ESTA application, and the cost of each ESTA application will continue to be 14 USD, except in the case of a denial, the fee is 4 USD.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

Information collected via the ESTA application helps DHS determine whether an alien is eligible to travel to the United States under the VWP.

DHS was mandated by Congress to undertake additional national security measures to increase the collection of information on VWP travelers before such travelers embark on a carrier destined for the United States. As the rationale for mandating the implementation of ESTA, Congress noted that VWP travelers are not subject to the same degree of screening as those travelers who must first obtain a visa before departing for the United States. Therefore, the data collected via ESTA is to enhance the security of the VWP.

The data collected on CBP Forms I-94/I-94W and on the ESTA applications provide information required to support DHS mission requirements as they relate to the screening of alien visitors to the United States. Specifically, the information collected is used to assess 1) potential law enforcement, national security and illegal immigration risks, and 2) alien compliance with U.S. based on collected arrival and departure record data.

3. Describe whether, and to what extent, the collection of information involves

the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

Previously, paper Forms I-94 and I-94W required arrival/departure data upon arrival, but are no longer used for air travel, because CBP automated the collection of that data. Automating this process reduced the time required for manual data entry into CBP systems and reduced data entry errors. Information about these forms can be found at: <https://www.cbp.gov/travel/international-visitors/i-94> and <http://www.cbp.gov/travel/international-visitors/visa-waiver-program>.

CBP captures Form I-94 data for passengers arriving by air or sea from APIS in lieu of passengers submitting a paper Form I-94. Passengers can access and print their electronic Form I-94 via www.cbp.gov/i94. This supplements the existing process whereby passengers who want a copy of their Form I-94 would need to file a Form I-102. Passengers may still file a Form I-102 for this purpose if desired.

CBP modified the process by which a traveler arriving at the land border can provide Form I-94 information and pay the related fee by adding an electronic option. Specifically, CBP enhanced the I-94 website to enable travelers arriving at a land port of entry to submit the Form I-94 information to CBP and pay the required fee prior to arrival.

ESTA is a web and mobile based system that was created in response to a mandate by the 9/11 Act to create an automated system to enable DHS to determine whether the individual is eligible to travel to the United States under the VWP prior to travel to the United States. ESTA can be accessed at: <https://esta.cbp.dhs.gov>. Samples of Forms I-94 and I-94W can be found at: <http://www.cbp.gov/document/forms/form-i-94-arrivaldeparture-record> and <http://www.cbp.gov/document/forms/form-i-94w-visa-waiver-arrivaldeparture-record>.

The ESTA Mobile App has been designed with newer automated capabilities that provides intending VWP travelers a more convenient way to apply for authorization for U.S. travel. CBP is continually working to find mechanisms to improve our screening processes to protect U.S. citizens, while supporting legitimate travel to the United States. We already request certain contact information, travel history and family member information from all ESTA applicants. Making social media a mandatory field in the ESTA application will enhance our vetting processes and assist in confirming applicants' identities.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

This information is not duplicated in any other place or any other form.

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

This information collection does not have an impact on small businesses or other small entities.

- 6. Describe consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

The data elements collected from VWP travelers allow DHS to remain compliant with its legal requirements and identify those who may not be eligible to enter the United States through the VWP and those who may seek to exploit the VWP or do harm to the United States. Research by DHS and our interagency partners has determined that obtaining this data increases the ability of the Department to identify these travelers before they attempt to travel to the United States. Because law enforcement violations and threats of harm to national security may occur at any time, DHS must receive continual updates to criminal and national security information to affect a timely response.

- 7. Explain any special circumstances.**

This information is collected in a manner consistent with the guidelines of 5 CFR 1320.6.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Public comments were solicited through two Federal Register notices including a 60-day notice published on November 18, 2021 (86 FR 64508) on which one letter of support was received, and a 30-day notice published on February 23, 2022 (87 FR 10223) on which no comments were received.

- 9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

There is no offer of a monetary or material value for this information collection.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

There is no assurance of confidentiality provided to the respondents. CBP previously published a SORN entitled “DHS/CBP-009 Electronic System for Travel Authorization,” last updated on June 27, 2019, 84 FR 30746); as well as several ESTA Privacy Impact Assessment’s (PIA) under the DHS/PIA/CBP-007 Electronic System for Travel Authorization PIA series. CBP is updating the ESTA SORN and publishing a new ESTA PIA Update to account for the mandatory social media question field and collection of photographs on mobile application and the uploading of the biographical page to include the passport photograph and the MRZ on ESTA applications.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, and the explanation to be given to persons from whom the information is requested.

The ESTA application and I-94W form ask respondents if they have certain diseases. This information assists CBP in determining admissibility into the United States under U.S. immigration law. All questions directly address the grounds of inadmissibility and criteria for VWP travel eligibility described in sections 212(a) and 217(a), respectively, of the INA. Otherwise, no information is requested on either the ESTA application or Form I-94W relating to sexual behavior and attitudes, religious beliefs, or any other personal information that is considered private and is outside the scope of the INA.

12. Provide estimates of the hour burden of the collection of information.

Form/Collection	Number of Respondents	Number of Responses Per Respondent	Total Annual Responses	Time Per Respondent	Annual Reporting Burden Hours
I-94	4,387,550	1	4,387,550	8 minutes (0.13333333 hours)	585,007
I-94 Website	3,858,782	1	3,858,782	4 minutes (0.06666667 hours)	257,252
I-94W	941,291	1	941,291	16 minutes (0.26666667 hours)	251,011

				hours)	
ESTA Mobile Application	500,000	1	500,000	28 minutes (0.46666667 hours)	233,333
ESTA Website	15,000,000	1	15,000,000	23 minutes (0.38333333 hours)	5,750,000
ESTA fee* (subset of total ESTA respondents)	18,930,000 (subset of 23.01m above)		18,930,000 (subset of 23.01m above)	0.00 (already included in ESTA burden above)	0.00 (already included in ESTA burden above)
TOTAL	24,687,623		24,687,623	79 minutes	7,076,603

*Note: The 18.93 million respondents paying the \$14.00 fee (\$10 Travel Promotion Act charge plus \$4 ESTA fee) are a subset of the total 23.01 million ESTA respondents. They should not be added to the total respondents (or else they would be double counted).

Public Cost:

The estimated annual public cost is calculated as follows:

Form/ Collection	Number of Respondents	Annual Reporting Burden Hours	Value of time*	Fee charge (\$6.00 per respondent)	ESTA fee (\$14.00 per respondent)	Total public cost
I-94	4,387,550	585,007	\$11,373,273	\$26,325,300	\$0	\$37,698,573
I-94 Website	3,858,782	257,252	\$11,608,269	\$0	\$0	\$11,608,269
I-94W	941,291	251,011	\$4,892,809	\$5,647,746	\$0	\$10,540,555
ESTA burden**	(15,500,000)	5,983,333	\$189,522,685		\$14	\$189,522,685
ESTA fee	15,500,000		\$0	Included in ESTA burden \$0	\$14	\$217,000,000
TOTAL	24,687,623	7,076,603		\$31,973,046		

* Recall from the previous table that the burden for Form I-94 is 8 minutes; the burden for the I-94 website is 4 minutes ; the burden for Form 94W is 16 minutes ; and the burden for ESTA is 23 minutes . DHS uses the Department of Transportation’s guidance on value of travel time for its value of time estimates

http://www.dot.gov/sites/dot.dev/files/docs/vot_guidance_092811c.pdf \$19.49 for travel by land (this applies to I-94 and I-94W) and \$31.90 for travel by air and sea (this applies to ESTA and I-94 website).

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information.

There are no record keeping, capital, start-up, or maintenance costs associated with this information collection.

14. Provide estimates of annualized cost to the Federal Government.

The total estimated cost to the Federal government is \$195,000,000.

Providing and administering the ESTA system costs the Federal government approximately \$13 per application. These costs are offset by the ESTA user fee, which constitutes a transfer from the ESTA applicant to the government.^[1] The estimated collections for the \$4 fee CBP retains for 15,000,000 respondents are \$60,000,000. Any excess collections over the cost to the Federal government represent a transfer from the applicant to the government and are recorded as a cost to the public. CBP is currently in the process of updating the regulation to increase ESTA user fee to reflect the cost of the ESTA program.

Providing and administering the ESTA system costs the Federal government approximately \$4 per application. These costs are offset by the ESTA user fee, which constitutes a transfer from the ESTA applicant to the government.⁴ The estimated collections for the \$4 fee CBP retains for 1,930,000 respondents are \$75,720,000. Any excess collections over the cost to the Federal government represent a transfer from the applicant to the government and are recorded as a cost to the public. CBP does not intend to change the ESTA user fee at this time.

Note: \$10.00 of the \$14.00 ESTA fee is a Travel Promotion Act fee that is not related to the costs of ESTA. In fact, this fee is deposited into an account where it is not available to CBP/DHS. CBP is required to collect this fee, alongside the \$4 ESTA fee, by the Travel Promotion Act, as amended. The \$10 fee is a transfer from the traveler to the government and is counted as a cost to the public for the purpose of this collection.

Forms I-94 and I-94W cost the Government \$6.00 to process multiplied (x) by the number of applications filed (5,328,841) for a total of \$31,973,046. These costs are offset by the Forms I-94 and I-94W application fees.⁵

⁴ The ESTA user fee is the sum of \$10.00 per application credited to the Travel Promotion Fund and \$4.00 per application available to CBP to recover the costs of administering and providing the system. See 8 U.S.C. 1187(h)(3).

CBP estimates that the optional process for land border travelers to file and pay the I-94 fee online is estimated will save CBP officers 10 minutes per instance. In the economic analysis for the final rule titled, "Definition of Form I-94 to Include Electronic Format," CBP estimates that, in total, this option will save CBP officers 58,333 hours and \$4,985,750 each year.

15. Explain the reasons for any program changes or adjustments reported in Items 12 or 13 of this Statement.

There has been a decrease in the estimated annual burden hours previously reported due to a reduction in the level of participants in the program from approximately 19 million to 15 million annual applications.

Additionally, a correction in estimates regarding burden calculations led to a decrease in the reported annual burden hours.

16. For collection of information whose results will be published, outline plans for tabulation, and publication.

This information collection will not be published.

17. If seeking approval to not display the expiration date, explain the reasons that displaying the expiration date would be inappropriate.

CBP requests not to display the expiration date on these two paper forms because large quantities are stocked at CBP ports and by airlines in 22 languages. However, the expiration date is displayed on the ESTA Application website, Mobile Application and on the I-94 website.

18. "Certification for Paperwork Reduction Act Submissions."

CBP does not request an exception to the certification of this information collection.

B. Collection of Information Employing Statistical Methods

No statistical methods were employed.

⁵ Federal statute requires CBP to deposit these two fee collections into the Land Border Inspection Fee Account, where they are then available only for certain statutorily-enumerated purposes. See 8 U.S.C. 1356(q)(2)-(3).