

Before

**U.S. CUSTOMS AND BORDER PROTECTION
DEPARTMENT OF HOMELAND SECURITY**

Washington, DC 20229

60-Day Notice: Agency Information
Collection Activities; Revision; Arrival and
Departure Record (Form I-94) and
Electronic System for Travel
Authorization (ESTA), OMB Control
Number 1651-0111, FR Doc. 2025-22461

**COMMENTS OF
THE IDENTITY PROJECT (IDP)**

The Identity Project (IDP)

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February 5, 2026

The Identity Project (IDP) submits these comments in response to the “60-Day Notice: Agency Information Collection Activities; Revision; Arrival and Departure Record (Form I-94) and Electronic System for Travel Authorization (ESTA)”, OMB Control Number 1651-0111, FR Doc. 2025-22461, published by U.S. Customs and Border Protection (CBP) at 90 *Federal Register* 57208-57211 (December 10, 2025).

The Identity Project (IDP) is an independent, nonprofit project which provides advice, assistance, publicity, and legal defense to those who find their rights infringed, or their legitimate activities curtailed, by demands for identification, and builds public awareness about the effects of ID requirements on fundamental rights.

Implementing regulations for the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35) at 5 CFR §1320.8(d)(2) include the following notice requirements:

If the agency does not publish a copy of the proposed collection of information, together with the related instructions, as part of the FEDERAL REGISTER notice, the agency should—

(i) Provide more than 60-day notice to permit timely receipt, by interested members of the public, of a copy of the proposed collection of information and related instructions; or

(ii) Explain how and from whom an interested member of the public can request and obtain a copy without charge, including, if applicable, how the public can gain access to the collection of information and related instructions electronically on demand.

These provisions insure that members of the public have an adequate 60-day opportunity to review each proposed information collection and submit informed comments.

CBP has complied with neither clause (i) nor clause (ii) of 5 CFR §1320.8(d)(2).

This notice in the *Federal Register* does not include a copy of any portion of the proposed collection of information, in any form or format, much less a complete copy. CBP has failed to provide more than 60 days notice in order for interested persons to request and receive a copy of the proposed collection of information, in accordance with 5 CFR §1320.8(d)(2)(i). And CBP has failed to explain how and from whom an interested member of the public can request and obtain a copy without charge, in accordance with 5 CFR §1320.8(d)(2)(ii).

As discussed below, since the day this notice was published in the *Federal Register* we have been diligently, but to date entirely unsuccessfully, attempting to request and obtain a copy of the proposed collection of information from the points of contacts specified in the notice.

The notice fails to satisfy the requirements in the regulations for 60-day notice of a proposed collection of information. The notice must either be withdrawn or a new 60-day notice, including accurate information for how a copy of the proposed information can be obtained without charge by any member of the public, must be published, and a new comment period of at least 60 days after the time required for receipt of such a copy must be provided, before the proposed collection of information is submitted to the Office of Management and Budget (OMB) for approval. If the proposed collection of information is submitted to OMB without first publishing a valid notice, making copies of the proposed collection of information available to the public, and providing a 60-day comment period thereafter, the request for approval must be rejected by OMB as failing to satisfy the notice requirements of the PRA regulations.

The proposed collection of information is an app. According to the notice, “CBP will decommission the ESTA website Application process to establish the ESTA Mobile application

as the sole platform to apply for a new ESTA.” This means that the proposed collection of information would be conducted solely and exclusively through the ESTA mobile app. An “app” is, by definition, a bundle of code. Only a copy of that app including its source code could satisfy the requirement to make available on request “a copy of the proposed collection of information and related instructions.”¹

The notice provides no instructions for how to request or obtain a copy of the app.

According to the notice:

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice.

On December 10, 2025 – the same day the notice was published in the *Federal Register* – we telephoned this phone number and sent email to this email address to request a copy of the ESTA mobile app and its source code, in its versions for iOS and Android. Our phone call was answered by a voicemail system with the name of Mr. Renkema. We left a voicemail message, requesting a callback and instructions for obtaining a copy of the ESTA mobile app, in order to be able to provide informed comment on the proposed collection of information.

1. While the notice is described solely as notice of a proposed collection of information, the notice also refers to “auto-denying applications”, thereby suggesting that CBP also intends to propose statutory or regulatory changes to delegate some decisions to automated procedures within the app. While we reserve the oppose any bill in Congress and/or submit comments objecting to any proposed regulations delegating decisions to an app, we note that if decision-making is delegated to code, inspection of the source code is essential to provide informed comment on the decision-making logic embodied in that code and the information used as input to its algorithms. It would clearly be arbitrary and capricious to delegate authority for ESTA denials to a “black box” app running undisclosed code and using undisclosed inputs. And while an individual whose ESTA application is denied can apply for a visa, denial of an ESTA application imposes, at a minimum, a substantial penalty in a visa fee. Because a visa application typically takes months, ESTA denials also often amount to *de facto* denials of entry, such as when entry is sought for a medical emergency, funeral, etc., on too short notice for a visa.

In each of these and our subsequent voicemail and email messages, we provided the OMB Control Number and a citation to the *Federal Register* notice of the proposed collection of information.

On December 23, 2025, having received no response, we left a second voicemail message and sent a second email message.

On January 2, 2026, still having received no response, we left a third voicemail message and sent a third email message.

On January 5, 2026 – three and half weeks after our first request – we received an email message from Mr. Renkema: “Can you confirm that you are writing in reference to OMB Control Number 1651-0111, which covers ESTA? If so, I’ll send your request on to the appropriate program office.” Below this query in Mr. Renkema’s message was a copy of our message, in which we had referenced this OMB Control Number and had provided the citation to the notice in the *Federal Register*. We left voicemail and replied immediately by email, that same day, January 5, 2026, “Yes, that is correct, as stated in our previous messages.”

We heard nothing further until January 13, 2026 – more than a month after our initial request, and with less than half of the 60-day comment period remaining.

On January 13, 2026, we received an email message from “CBP_PRA@cbp.dhs.gov”, signed only “Shade”:

Thank you for taking the time to engage with the agency and leave a comment, we welcome public comments and want to hear your thoughts! For future reference, CBP is an agency with varying notices, published, asking for public comments on a multitude of ongoing, upcoming, and/or ending programs throughout the agency. On this notice alone, we received thousands of comments and more continue to come

everyday until the comment period is over. Due to the volume of comments--response times will be varied....

To ensure response please be sure to follow the federal register notice instructions on how to properly submit comments to the agency inbox--for convenience I've copied it here: "Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0111 in the subject line and the agency name."

Following these instructions ensure we know who to forward/route the comments to the right SMEs. It also lets us know which timeline/deadline in which comments must be addressed and when the comment period ends.

Thank you for verifying which collection and we'll forward your request for more information to the appropriate ESTA program office SMEs for their review and response.

This message appears to be the output of generative artificial intelligence, and not to be a human response to our messages. No competent and diligent human reading our message would have thought that it was intended to be a "comment" rather than, as it was explicitly described in the subject line of each of our email messages, a "Request for PRA information". The references in this email message to "this notice" and "OMB Control Number 1651-0111" make clear that the sender, "Shade", understood to which notice our request for information pertained.

We replied immediately by email that same day, January 13, 2026:

These are not our comments. This is a request for information needed in order to prepare informed comments on the notice cited in our original request and in each of our follow-up messages, which we sent to the contact address provided in the notice for such requests for information.

To reiterate, we are requesting further information regarding the notice pertaining to OMB Control Number 1651-0111, as published at 90 Federal Register 57209-57211.

As originally requested, in order to provide informed comment on the PRA notice and request for comment,, please provide a copy of the complete source code for each version (iOS and Android) of the ESTA mobile app.

In your previous message, you said, "we'll forward your request for more information to the appropriate ESTA program office SMEs for their review and response."

We still have received no communication from that office or response to our request for information.

Time is of the essence in order to be able to provide informed comments.

Later that day we received another email message from "Shade", continuing to misrepresent our request for information as a "comment".

We replied, still that same day:

We reiterate: We have not yet submitted *any* comments concerning the notice and proposal. On December 10, 2025, we submitted a *request for information* which we need in order to prepare informed comments. More than a month later, we have received no response to that request for information.

Please advise when or if we can expect to receive the requested information, which we need in order to prepare and submit informed comments.

The next day, January 14, 2026, we received an email message from Mr. Renkema, "I've reached out to the ESTA program office about this and they are looking at your request now." This message did not identify or provide contact information for "the ESTA program office".

To date, with too little time remaining before the comment deadline for nay menaingfully review of the proposed collection of information, we still have received no further communication from CBP, no copy of the proposed collection of information, no instructions on how to obtain a copy, and no substantive response to our repeated requests for a copy.

Without the source code, we can't tell -- or provide informed comment on -- what information is collected by the app, what notices are provided within the app, or the criteria embodied in the code for "auto-denying" applications. While the notice makes claims about what

information the app collects and what the app does, it's impossible to provide informed comment on the accuracy of those claims without access to a copy of the source code of the app.

CBP must either withdraw the invalid notice or publish a valid new notice including instructions for how any interested member of the public can obtain a copy of the proposed collection of information (the ESTA app and its source code) without charge, and provide a new 60-day comment period. If CBP submits this proposal to OMB, OMB must reject it as failing to comply with the implementing regulations for the PRA at 5 CFR §1320.8(d)(2).

We reserve the right to submit additional comments concerning the proposed collection of information if and when a new valid notice is published in the *Federal Register*, including instructions for how we can actually obtain a copy of the proposed collection of information without charge, and a new comment period of at least 60 days is provided.

Respectfully submitted,

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_____/s/____

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