

# U.S. Business Visitors Using the Visa Waiver Program May Soon Be Asked for Social Media Information

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The federal government has proposed a new rule requiring that applicants for the Visa Waiver Program (VWP)—which allows citizens of certain countries to enter the United States without visas—be asked to voluntarily disclose their social media accounts in order to allow U.S. Customs and Border Protection (CBP) to further investigate their backgrounds before allowing them to use the program.

The federal government has proposed a [new rule](#) requiring that applicants for the [Visa Waiver Program \(VWP\)](#)—which allows citizens of certain countries to enter the United States without visas—be asked to voluntarily disclose their social media accounts in order to allow U.S. Customs and Border Protection (CBP) to further investigate their backgrounds before allowing them to use the program. The VWP allows citizens or nationals of the following countries to enter the United States without visas for the purposes of tourism or business: Andorra, Australia, Austria, Belgium, Brunei, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, and the United Kingdom. The VWP application process is quick and easy via the online Electronic System for Travel Authorization ([ESTA](#)).

According to CBP, the agency's collection of social media data will enhance the investigative process and provide the U.S. Department of Homeland Security (DHS) with a greater ability to detect dangerous activities that may render an applicant inadmissible to the United States. Although the proposed rule suggests that the disclosure of social media accounts will be voluntary, critics of the policy are concerned that an applicant's failure to provide the information may result in an unjustified denial, especially since it is not clear what standards will be applied to information that is discovered.

If an application for the VWP is denied, the applicant must apply for a visa abroad—a much longer process involving an interview at a consulate and higher scrutiny of an applicant's background and activities in the United States. Note that this proposal applies only to applications for the VWP, and applicants from countries

whose citizens must apply for visas will not be affected, as they already are subjected to extensive security checks. However, Congress has recently proposed legislation that would require the collection of social media information on all foreign visitors. Already, pilot projects are underway to use social media in the vetting of applications for immigration benefits, including applications for “fiancé(e) visas.”

Employers should be aware that employees entering the United States on the VWP for business activities—which are generally limited to meetings, consultations with associates, contract negotiations, conferences, and other activities not constituting productive employment—may soon be asked for social media information in the application for the program. The consequences of not providing the information are not known. With regard to employees who are applying for work visas, other U.S. pilot programs are already in place that may involve vetting visa applicants’ social media accounts, and pending legislation may soon require applicants to provide social media information.

## TOPICS

Cross-Border, Immigration