

Revised Immigration Executive Order: President Trump’s Temporary Travel Ban Now Impacts Six, Not Seven, Countries Along With Other Changes¹

On March 6, 2017, President Trump signed a new Executive Order which revokes the controversial January 27, 2017, Executive Order that temporarily banned visitors from seven predominantly Muslim countries. Like the revoked order, the new [Executive Order](#) (“new EO”) is entitled “Protecting the Nation From Foreign Terrorist Entry Into the United States.” It imposes a temporary ban on certain entries to the United States from six, rather than seven (Iraq is excluded), countries: **Iran, Libya, Somalia, Sudan, Syria and Yemen**.

For a period of 90 days starting on March 16, 2017, the new EO limits the ability of people from these six countries to obtain visas to come to the United States. The ban includes exceptions, and where a person does not fall into an exception the person may be able to seek a waiver on a case-by-case basis. While Iraqis are not subject to the ban, Iraqi visa holders and applicants will be subject to additional inquiries related to terrorism.

The Government’s guidance appears to contend that the new EO would not adversely affect students, faculty, scholars or staff who are currently in the United States or who have a valid U.S. visa, even if they are from one of the six targeted countries. Indeed, [a statement](#) released by Secretary of Homeland Security John Kelly emphasized that “nothing in this executive order affects current lawful permanent residents or persons with current authorization to enter our country.” However, the new EO is likely to be problematic for individuals aspiring to study in the U.S., and for new hires of faculty and staff from those countries, especially if the ban is extended.

Key Points of Interest to Higher Education Institutions

1. **Effective date:** March 16, 2017 is the effective date for restrictions imposed by the new EO
2. **Temporary travel/visa ban:**
 - The ban does **not** apply to nationals/citizens of the six covered countries who are:
 - U.S. permanent residents (“green card” holders), or
 - In possession of a valid U.S. visa as of January 27, 2017, or as of March 16, 2017, or
 - Physically in the United States on March 16, 2017 (a range of highly fact-based circumstances exist whereby a person may be physically in the United States on March 16, 2017, and not have a valid U.S. visa in their passport on that date, such as refugees already admitted to the U.S., persons granted asylum, and persons who change visa status in the U.S. after entering under a different visa category), or

¹ *This issue brief was prepared by ACE Vice President and General Counsel Peter McDonough and the international law firm Hogan Lovells US LLP (March 2016).*

- In possession of a valid U.S. document (other than a visa) that permits the person to seek entry to the United States (e.g., an advance parole document that persons with pending green card applications can obtain), or
- Dual nationals who are traveling on a passport issued by a non-designated country (e.g., a dual citizen of Libya and Morocco who is traveling to the U.S. with a valid U.S. visa issued in his/her Moroccan passport), or
- Students or faculty/staff who have diplomatic (A) visas or UN/World Bank/IMF (G) visas as dependents.

While the above exceptions provide good guideposts, whether or not an individual should travel through U.S. borders in reliance on an exception to the ban is a fact-based determination that should be considered on an individualized basis.

- Those who do not qualify for one of the exceptions above may seek an individual waiver, i.e., discretionary relief, on a case-by-case basis, based on undue hardship and being no threat to national security. Some of the grounds for granting waivers in particular cases include:
 - The person is a “landed immigrant” (permanent resident) in Canada who applies for a U.S. visa at a location within Canada, or
 - The person has previously been admitted to the U.S. for a continuous period of work, study or other long-term activity, is outside the United States on March 16, and seeks to re-enter the United States to resume that activity, and the denial of reentry would impact that activity, or
 - The person has previously established significant contacts with the United States but is outside the country on March 16 for work, study or other lawful activity.
- Visa holders may renew visas in certain cases. As part of a [Frequently Asked Questions document](#), the U.S. government stated:

25. What happens to international students, exchange visitors or their dependents from the six countries, such as F, M or J visa holders if their visa expires while the Executive Order is in place and they have to depart the country?

The Executive Order does not affect F, M, or J visa holders if they currently have a valid visa on the effective date or held a valid visa on January 27, 2017 prior to the issuance of the Executive Order. With that said, travelers must have a valid visa to travel to the United States, regardless of the Executive Order. Travelers whose visa expires after the effective date of the Executive Order must obtain a new, valid visa to return to the United States.

3. Uniform immigration screening and vetting standards to be developed, regardless of country:

- The new EO calls for implementation of a program to identify individuals who “seek to enter the United States on a fraudulent basis, who support terrorism, violent extremism, acts of violence toward any group or class of people within the United States, or who present a risk of causing harm subsequent to their entry.”
- The new EO provides certain parameters for such a new program, including, for example, the development of a uniform baseline for screening and vetting standards

- and procedures; a database of identity documents proffered by applicants to ensure that duplicate documents are not used by multiple applicants; and amended application forms that include questions aimed at identifying fraudulent answers and malicious intent.
- The new EO does not impose a specific deadline for the implementation of such new vetting program but requires the U.S. government to submit progress reports to the President 60 days, 100 days, and 200 days after March 16.
 - This new program, which the EO does not limit to the six countries otherwise targeted in the EO, may affect all future visa applications by students, faculty, staff or scholars, but it remains to be seen how it will be implemented and whether it will cause processing delays during the visa application process.

4. In-person visa interviews required for most non-immigrant visa applicants:

- Similar to the revoked order, the new EO suspends the Visa Interview Waiver Program which allowed U.S. consulates to waive an in-person interview for certain types of nonimmigrant visa applications (e.g., renewals of visas in the same category).
- As a result, all individuals seeking a non-immigrant visa—which includes student or work visas—will have to undergo an in-person interview, subject to specific statutory exceptions.