

GAO

Testimony

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## VISA WAIVER PROGRAM

# Actions Are Needed to Improve Management of the Expansion Process, and to Assess and Mitigate Program Risks

Statement of Jess T. Ford, Director  
International Affairs and Trade





Highlights of [GAO-08-1142T](#), a testimony before the Chairman, Subcommittee on Terrorism, Technology, and Homeland Security, Committee on the Judiciary, United States Senate

## Why GAO Did This Study

The Visa Waiver Program, which enables citizens of participating countries to travel to the United States without first obtaining a visa, has many benefits, but also has risks. In 2006, GAO found the Department of Homeland Security (DHS) needed to improve efforts to assess and mitigate these risks. In August 2007, Congress passed the 9/11 Act, which provides DHS the authority to consider expanding the program to countries whose short-term business and tourism visa refusal rates were between 3 and 10 percent in the prior fiscal year, if certain conditions are met. This testimony discusses GAO's recent report on the Visa Waiver Program. Specifically, it examines DHS's process for expanding the Visa Waiver Program and evaluates the extent to which DHS is assessing and mitigating program risks. GAO reviewed relevant laws and procedures; and interviewed agency officials in Washington, D.C., and in U.S. embassies in eight aspiring and three Visa Waiver Program countries.

## What GAO Recommends

GAO recommended that DHS establish a more transparent process for Visa Waiver Program expansion, and improve and monitor overstay rates for current and aspiring program countries. DHS generally agreed with GAO's recommendations. The Department of Justice (Justice) discussed the importance of lost and stolen passport reporting, but did not comment on GAO's recommendations.

To view the full product, including the scope and methodology, click on [GAO-08-1142T](#). For more information, contact Jess Ford at (202) 512-4128 or [fordj@gao.gov](mailto:fordj@gao.gov).

## VISA WAIVER PROGRAM

### Actions Are Needed to Improve Management of the Expansion Process, and to Assess and Mitigate Program Risks

#### What GAO Found

The executive branch is moving aggressively to expand the Visa Waiver Program by the end of 2008, but, in doing so, DHS has not followed a transparent process. DHS did not follow its own November 2007 standard operating procedures, which set forth key milestones to be met before countries are admitted into the program. As a result, Departments of State (State) and Justice and U.S. embassy officials stated that DHS created confusion among interagency partners and aspiring program countries. U.S. embassy officials in several aspiring countries told us it had been difficult to explain the expansion process to foreign counterparts and manage their expectations. State officials said it was difficult to explain to countries with fiscal year 2007 refusal rates below 10 percent that have signaled interest in joining the program (Croatia, Israel, and Taiwan) why DHS is not negotiating with them, given that DHS is negotiating with several countries that had refusal rates above 10 percent (Hungary, Latvia, Lithuania, and Slovakia). Despite this confusion, DHS achieved some security enhancements during the expansion negotiations, including agreements with several aspiring countries on lost and stolen passport reporting. DHS, State, and Justice agreed that a more transparent process is needed to guide future program expansion.

DHS has not fully developed tools to assess and mitigate risks in the Visa Waiver Program. To designate new program countries with refusal rates between 3 and 10 percent, DHS must make two certifications. First, DHS must certify that it can verify the departure of not less than 97 percent of foreign nationals who exit from U.S. airports. In February 2008, we testified that DHS's plan to meet this provision will not help mitigate program risks because it does not account for data on those who remain in the country beyond their authorized period of stay (overstays). DHS has not yet finalized its methodology for meeting this provision. Second, DHS must certify that the Electronic System for Travel Authorization (ESTA) for screening visa waiver travelers in advance of their travel is "fully operational." While DHS has not announced when it plans to make this certification, it anticipates ESTA authorizations will be required for all visa waiver travelers after January 12, 2009. DHS determined that the law permits it to expand the program to countries with refusal rates between 3 and 10 percent after it makes these two certifications, and after the countries have met the required conditions, but before ESTA is mandatory for all Visa Waiver Program. For DHS to maintain its authority to admit certain countries into the program, it must incorporate biometric indicators (such as fingerprints) into the air exit system by July 1, 2009. However, DHS is unlikely to meet this timeline due to several unresolved issues. In addition, DHS does not fully consider countries' overstay rates when assessing illegal immigration risks in the Visa Waiver Program. Finally, DHS has implemented many recommendations from GAO's 2006 report, including screening U.S.-bound travelers against Interpol's lost and stolen passport database, but has not fully implemented others. Implementing the remaining recommendations is important as DHS moves to expand both the program and the department's oversight responsibilities.

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September 24, 2008

Chairman Feinstein and Members of the Subcommittee:

I am pleased to be here to discuss our recent report on the Department of Homeland Security's (DHS) oversight of the Visa Waiver Program and executive branch's plans to expand the program by the end of 2008.<sup>1</sup> The Visa Waiver Program enables citizens of 27 participating countries to travel to the United States for tourism or business for 90 days or less without first obtaining a visa from U.S. embassies and consulates.<sup>2</sup> The program has many benefits, including facilitating international travel for millions of foreign nationals seeking to visit the United States each year. However, as we have reported,<sup>3</sup> the program also poses inherent security, law enforcement, and illegal immigration risks to the United States. In September 2007, the Director of National Intelligence testified that al Qaeda is recruiting Europeans because most of them do not require a visa to enter the United States. Effective oversight of the Visa Waiver Program is essential to finding the right balance between facilitating legitimate travel and screening for potential terrorists, criminals, and others who may pose law enforcement and illegal immigration concerns.

The executive branch aims to expand the Visa Waiver Program to countries in Central and Eastern Europe, and to South Korea. According to DHS, some of these countries are U.S. partners in the war in Iraq and have high expectations that they will join the program due to their close economic, political, and military ties to the United States. In August 2007, Congress passed legislation that allows DHS to consider admitting countries with business and tourism visas refusal rates<sup>4</sup> between 3 percent and 10 percent, that otherwise meet the program's requirements, if the

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<sup>1</sup>GAO, *Visa Waiver Program: Actions Are Needed to Improve Management of the Expansion Process, and to Assess and Mitigate Program Risks*, [GAO-08-967](#) (Washington, D.C.: Sept. 15, 2008).

<sup>2</sup>The participating countries are Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

<sup>3</sup>GAO, *Border Security: Stronger Actions Needed to Assess and Mitigate Risks of the Visa Waiver Program*, [GAO-06-854](#) (Washington, D.C.: July 28, 2006).

<sup>4</sup>The refusal rate refers only to the temporary business and tourism visa applications that are denied as a percentage of the total temporary business and tourism visa applications for nationals of that country.

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countries meet certain conditions, such as cooperating with the United States on counterterrorism initiatives.<sup>5</sup> Previously, only countries with refusal rates below 3 percent in the prior fiscal year qualified to be considered for admission. Before DHS can exercise this new authority, the legislation—referred to as the “9/11 Act”—requires that the department complete certain actions aimed at enhancing security of the Visa Waiver Program.

My testimony today will summarize our observations on the (1) process DHS is following to admit countries into the Visa Waiver Program and (2) actions taken to assess and mitigate potential risks in the program. These observations are derived from our review of the Visa Waiver Program based on a request from this subcommittee. In conducting this work, we reviewed laws governing the Visa Waiver Program and its expansion, and relevant regulations and agency operating procedures, as well as our prior reports and testimonies. We met with several DHS component agencies and offices,<sup>6</sup> including the Visa Waiver Program Office, which is responsible for oversight of Visa Waiver Program requirements. In addition, we interviewed officials from the Department of State (State), the International Criminal Police Organization (Interpol), and the Department of Justice (Justice).<sup>7</sup> We also spoke with officials at U.S. embassies in three current and eight aspiring Visa Waiver Program countries. We conducted this performance audit from September 2007 to September 2008, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>5</sup>See Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53.

<sup>6</sup>Specifically, we met with officials from DHS’s Customs and Border Protection (CBP); Immigration and Customs Enforcement (ICE); and U.S. Visitor and Immigrant Status and Indicator Technology (US-VISIT).

<sup>7</sup>In particular, we met with officials in Justice’s Interpol-U.S. National Central Bureau, which facilitates international law enforcement cooperation among the United States and Interpol and its other member countries.

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## Summary

The executive branch is moving aggressively to expand the Visa Waiver Program by the end of 2008, but, in doing so, DHS has not followed a transparent process. The department did not follow its own November 2007 standard operating procedures, which set forth the key milestones that DHS and aspiring countries must meet before additional countries are admitted into the program. As a result, State, Justice, and U.S. embassy officials stated that DHS created confusion among its interagency partners and aspiring visa waiver countries. Absent clear direction from DHS, U.S. embassy officials in several aspiring countries told us it had been difficult to explain the expansion process to their foreign counterparts and manage their expectations about when those countries might be admitted into the Visa Waiver Program. Furthermore, State officials said it was difficult to explain to countries with fiscal year 2007 refusal rates below 10 percent that have signaled interest in joining the Visa Waiver Program (such as Croatia, Israel, and Taiwan) why DHS is not negotiating with them. DHS is, however, negotiating with several countries that had fiscal year 2007 visa refusal rates above the 10 percent ceiling (Hungary, Latvia, Lithuania, and Slovakia), with the expectation that fiscal year 2008 rates will be below this ceiling. Nevertheless, DHS achieved some security enhancements to the Visa Waiver Program during expansion negotiations, including new agreements with several aspiring countries on lost and stolen passport reporting. DHS, State, and Justice agreed, however, that a more transparent process is needed to guide any future consideration of program expansion. In acknowledging weaknesses in the expansion process, DHS's Assistant Secretary for Policy Development said that DHS did not have a clear process at the outset of negotiations in late 2007, in part because the department lacked prior experience in expanding the Visa Waiver Program and because the program's legislative requirements had changed in August of that year.

DHS has not fully developed tools to assess and mitigate risks in the Visa Waiver Program. In particular, DHS has not yet met two key certification requirements in the 9/11 Act that would allow DHS to consider admitting additional countries to the program with refusal rates between 3 percent and 10 percent. First, DHS must certify that it can verify the departure of not less than 97 percent of foreign nationals who exit from U.S. airports. In February 2008, we testified that DHS's plan to meet this provision will not demonstrate improvements in the air exit system and will not help the department mitigate risks of the Visa Waiver Program, because the plan does not account for data on those who remain in the country beyond their authorized period of stay (referred to as "overstays"). Second, DHS must certify that the Electronic System for Travel Authorization (ESTA) for screening visa waiver travelers in advance of their travel is "fully

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operational.” DHS has not yet announced when it plans to make this certification; however, ESTA became available on a voluntary basis on August 1, 2008, and DHS anticipates that ESTA authorizations will be required for all visa waiver travelers after January 12, 2009.<sup>8</sup> DHS determined that the law permits it to expand the program to countries with refusal rates between 3 percent and 10 percent after it makes the two 9/11 Act certifications, and after the countries have met certain conditions, but before ESTA is mandatory for all VWP travelers. DHS may face challenges in implementing ESTA, such as adequately informing the public and travel industry about the system. In addition, for DHS to maintain its authority to admit certain countries into the program, the 9/11 Act requires that the air exit system also incorporate biometric indicators (such as fingerprints) by July 1, 2009. However, DHS is unlikely to meet this timeline due to several unresolved issues. In addition, DHS does not fully consider countries’ overstay rates when assessing illegal immigration risks in the Visa Waiver Program because the department’s overstay data have weaknesses, according to the Visa Waiver Program Office.

To improve management of the Visa Waiver Program and better assess and mitigate risks associated with it, we recommended in our report that DHS establish a clear process, in coordination with State and Justice, for program expansion that would include the criteria used to determine which countries will be considered for expansion and timelines for nominating countries, security assessments of aspiring countries, and negotiation of any bilateral agreements to implement the program’s legislative requirements. In addition, we recommended that DHS designate an office with responsibility for developing overstay rate information for the Visa Waiver Program, explore cost-effective actions to further improve these data’s reliability, and use these validated data to help evaluate whether current or aspiring Visa Waiver Program countries pose a potential illegal immigration risk to the United States. DHS either agreed with, or stated that it was taking steps to implement, all of our recommendations.

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<sup>8</sup>According to DHS, ESTA will be implemented as a mandatory program for all visa waiver travelers 60 days after publication of a notice in the *Federal Register*. DHS anticipates issuing that notice in November 2008, for implementation of the mandatory ESTA requirements on January 12, 2009.

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## Background

In 2007, almost 13 million citizens<sup>9</sup> from 27 countries entered the United States under the Visa Waiver Program. In February 2005, President Bush announced that DHS and State would develop a strategy, or “Road Map Initiative,” to clarify the statutory requirements for designation as a participating country. DHS and State are consulting with 13 “Road Map” countries seeking admission into the Visa Waiver Program—Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, and South Korea.

In August 2007, Congress enacted the 9/11 Act, which provides DHS with the authority to consider admitting into the Visa Waiver Program countries that otherwise meet the program requirements, but have refusal rates between 3 percent and 10 percent, provided the countries meet certain conditions. For example, before being admitted to the program, the countries must demonstrate a sustained reduction in refusal rates, and must be cooperating with the United States on counterterrorism initiatives, information sharing, and the prevention of terrorist travel, among other things. In addition, DHS must also complete two actions aimed at enhancing the security of the program.<sup>10</sup> Specifically, DHS must certify the following to Congress:

- *A system is in place that can verify the departure of not less than 97 percent of foreign nationals who depart through U.S. airports.* While this system will initially be biographic only, Congress required the eventual implementation of a biometric exit system at U.S. airports. If the biometric air exit system is not in place by July 1, 2009, the flexibility that DHS may obtain to consider admitting countries with refusal rates between 3 percent and 10 percent will be suspended until the system is in place.
- *An electronic travel authorization system is “fully operational.”* This system would require nationals from Visa Waiver Program countries to provide the United States with biographical information before boarding a U.S.-bound flight to determine the eligibility of, and whether there exists a law enforcement or security risk in permitting, the foreign national to travel to the United States under the program. To the extent possible, according to DHS, applicants would find out almost immediately whether

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<sup>9</sup>This figure does not account for multiple admissions into the United States under the Visa Waiver Program by the same individual.

<sup>10</sup>Section 711 of the 9/11 Act specifically grants DHS the authority to waive the 3 percent refusal rate requirement for countries—up to a maximum of 10 percent—provided those countries meet other security requirements.

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their travel has been authorized, or if their application has been rejected<sup>11</sup>, in which case they are ineligible to travel to the United States under the Visa Waiver Program.<sup>12</sup>

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## Executive Branch Is Moving Quickly to Expand the Visa Waiver Program without a Transparent Process

DHS has not followed a transparent process for admitting new countries to the program, which has created confusion among U.S. agencies and officials in Washington, D.C., and overseas, and among countries seeking to join the Visa Waiver Program. During the expansion negotiations, DHS has achieved some security enhancements.

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## DHS Has Not Followed a Transparent Process for Visa Waiver Program Expansion

We found that the Visa Waiver Program Office has not followed its own standard operating procedures, completed in November 2007, which set forth the key milestones that DHS and aspiring countries must meet before additional countries are admitted into the program. According to the standard procedures, State should submit to DHS a formal, written nomination for a particular country, after which DHS is to lead an interagency team to conduct an in-country, comprehensive review of the impact of the country's admission into the Visa Waiver Program on U.S. security, law enforcement, and immigration interests. Figure 1 depicts the standard procedures that the program office established to guide expansion of the Visa Waiver Program compared with DHS's actions since August 2007. Although State has only nominated one country—Greece—DHS has nonetheless conducted security reviews for countries that State has not yet nominated—Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia, and South Korea. According to State officials, until DHS has implemented the required provisions of the 9/11 Act, and countries have met all of the Visa Waiver Program's statutory

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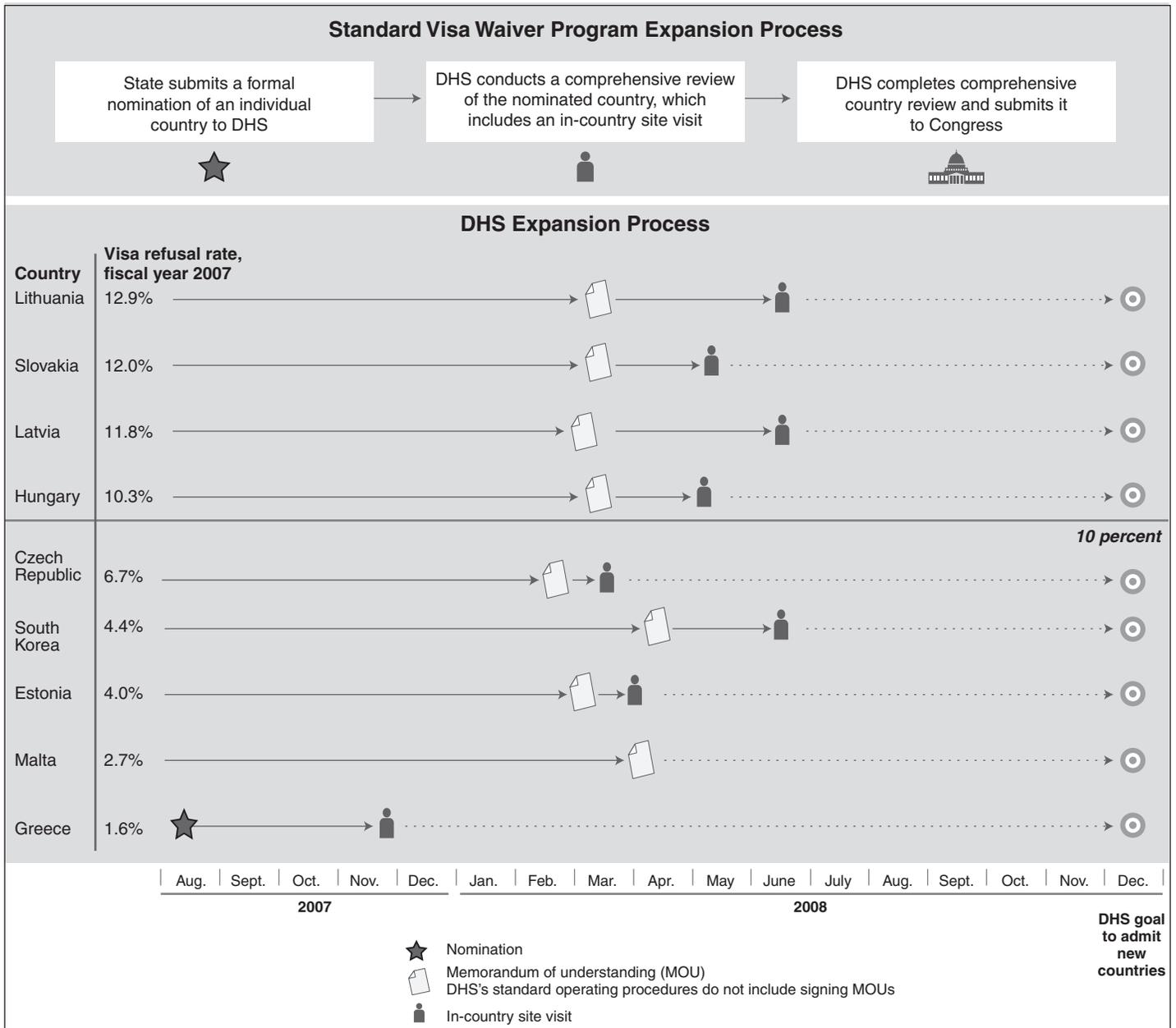
<sup>11</sup>In addition to receiving an authorization or rejection notice upon submitting an ESTA application, the applicant may also receive a response noting that the application is pending.

<sup>12</sup>ESTA authorizations will be valid for up to 2 years and will allow the individual to travel to the United States repeatedly within that period. In some circumstances, such as when a passport has expired or a traveler has changed his or her name, the traveler must apply for a new ESTA.

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requirements, State does not plan to nominate any other countries. DHS's Assistant Secretary for Policy Development told us that the department had determined that it would not follow the standard operating procedures during these expansion negotiations and, thus, had to "make up the process as it went along," in part because DHS had never expanded the program before and because Congress significantly changed the program's legislative requirements in August 2007.

**Figure 1: Comparison of DHS's Process to Expand the Visa Waiver Program against the Standard Operating Procedures for Expansion**



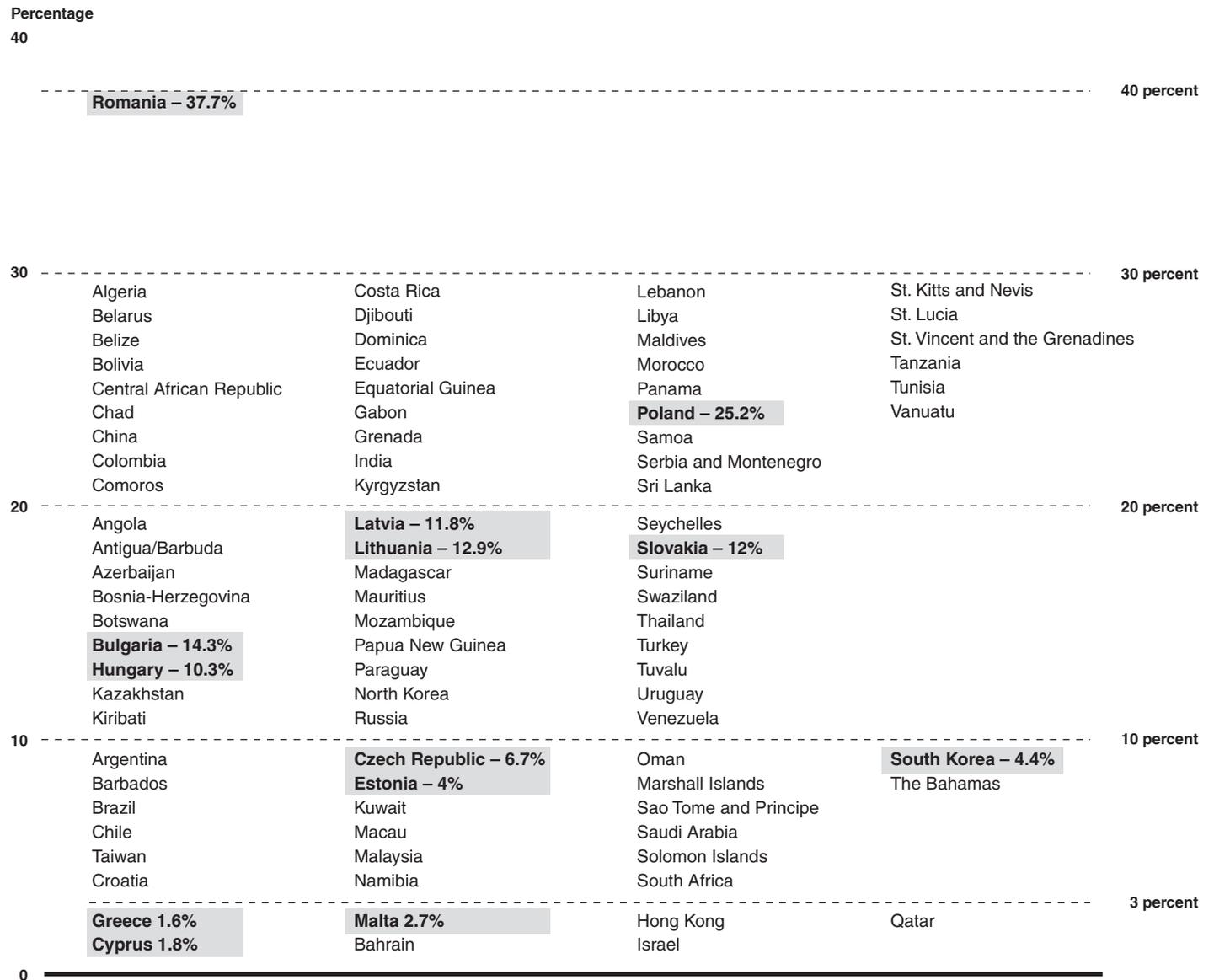
Sources: GAO analysis of DHS data; Art Explosion images.

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State and Justice officials told us that the lack of a transparent timeline and requirements for Visa Waiver Program expansion has led to confusion among U.S. agencies in headquarters' offices and at U.S. embassies overseas, as well as foreign governments seeking to join the program. For example, DHS's standard procedures were not updated to account for the department's plans to sign with each of the aspiring Visa Waiver Program countries separate memorandums of understanding (MOU) that lay out the new legislative requirements from the 9/11 Act. According to DHS, while not required by the act, the U.S. government is seeking to negotiate MOUs with current and aspiring Visa Waiver Program countries to help put the legislative provisions in place. DHS has not yet signed MOUs with any current program countries; the department intends to complete negotiations with existing program countries by October 2009. As indicated in figure 1, DHS signed MOUs with aspiring countries before conducting in-country site visits. As of June 2008, DHS had signed MOUs with eight Road Map countries. However, State and Justice officials told us that DHS had not been clear in communicating these steps to aspiring and current program countries and U.S. embassy officials in several Road Map countries told us that it had been difficult to explain the expansion process to their foreign counterparts and to manage their expectations about when those countries might be admitted into the Visa Waiver Program. In response to our request, in late April 2008, DHS provided us with an outline of the department's completed and remaining actions for expanding the Visa Waiver Program by the end of the year. DHS officials stated that this outline could be a first step in providing guidance for all stakeholders should the program be expanded again in the future. However, this outline does not include criteria for selecting countries under consideration for admission into the program other than the 13 Road Map countries.

The U.S. government is only considering the Road Map countries for potential admission into the program in 2008 because the United States began formal discussions with these 13 countries several years ago, not due to the application of clearly defined requirements. DHS is negotiating with 4 Road Map countries with fiscal year 2007 refusal rates over 10 percent (Hungary, Latvia, Lithuania, and Slovakia), with the expectation that fiscal year 2008 refusal rates for these countries will fall below 10 percent. State officials told us that they lacked a clear rationale to explain to other aspiring, non-Road Map countries with refusal rates under 10 percent (Croatia, Israel, and Taiwan) that they will not be considered in 2008 due to the executive branch's plans to expand the program first to countries in Central and Eastern Europe, and South Korea. (Figure 2 shows the fiscal year 2007 refusal rates for the 13 Road Map countries.)

**Figure 2: Short-term Business and Tourism Visa Refusal Rates, by Country, Fiscal Year 2007**



**“Road Map” initiative countries**

Source: GAO analysis of Department of State data.

Note: DHS may consider adding to the Visa Waiver Program countries with refusal rates below 3 percent in the prior fiscal year, without meeting the two certification requirements in the 9/11 Act.

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According to DHS, it could not wait until all statutory requirements were officially met before beginning bilateral negotiations with Road Map countries, because doing so would not allow sufficient time to add the countries by the end of 2008. DHS plans to complete the security reviews and sign MOUs with Road Map countries by the fall of 2008. If these and all other statutory provisions are completed—including countries' achievement of refusal rates below 10 percent—State indicated that it will then formally nominate the countries. However, DHS has acknowledged that if it and the aspiring countries cannot meet all of the program's statutory requirements, the United States will not admit additional countries into the program. In such an event, the U.S. government could face political and diplomatic repercussions given the expectations raised that many of the Road Map countries will be admitted in 2008. DHS, State, and Justice officials acknowledged that following a more transparent process would be useful in the future as additional countries seek to join the program.

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### DHS Has Achieved Some Results in Visa Waiver Expansion Negotiations

DHS's expansion negotiations with current and aspiring Visa Waiver Program countries have led to commitments from countries to improve information sharing processes with the United States. For example, by signing MOUs, eight aspiring countries have signaled their intent to comply with the program's statutory provision to report to the United States or Interpol in a timely manner the loss or theft of passports—a key vulnerability in the Visa Waiver Program. In addition, as a result of ongoing visa waiver negotiations with the South Korean government, in January 2008, DHS initiated the Immigration Advisory Program at Incheon International Airport in South Korea to help prevent terrorists and other high-risk travelers from boarding commercial aircraft bound for the United States.<sup>13</sup>

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<sup>13</sup>According to CBP, the Immigration Advisory Program aims to enhance the safety of air travel by, among other things, reducing the number of improperly documented passengers traveling from or through a country to the United States. As of August 2008, the program operates in airports in Amsterdam, the Netherlands; Frankfurt, Germany; London, England (Heathrow Airport and Gatwick Airport); Manchester, England; Madrid, Spain; Seoul, South Korea; Tokyo, Japan; and Warsaw, Poland.

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## DHS Has Not Fully Developed Tools Aimed at Assessing and Mitigating Risks in the Visa Waiver Program

As of July 2008, DHS has not yet implemented key certification requirements in the 9/11 Act necessary for expanding the Visa Waiver Program to countries with refusal rates between 3 and 10 percent. In addition, the Visa Waiver Program Office does not fully consider data on overstay rates for current and aspiring Visa Waiver Program countries, even though doing so is integral to meeting a statutory requirement for continued eligibility in the Visa Waiver Program. Finally, DHS has not yet fully implemented some of the recommendations from our 2006 report aimed at improving efforts to assess and mitigate program risks.

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## DHS Has Not yet Implemented Key Security Provisions of 9/11 Act That Are Necessary to Admit Certain Countries into the Visa Waiver Program

On February 28, 2008, we testified that DHS's plan for certifying that it can verify the departure of 97 percent of foreign nationals from U.S. airports will not help the department mitigate risks of the Visa Waiver Program.<sup>14</sup> Furthermore, DHS will face a number of challenges in implementing ESTA by January 2009. Finally, it is unlikely that DHS will implement a biometric air exit system before July 2009, due to opposition from the airline industry.

## Plan to Verify the Air Departure of Foreign Nationals Will Not Help DHS Mitigate Program Risks

As we have previously mentioned, the 9/11 Act requires that DHS certify that a system is in place that can verify the departure of not less than 97 percent of foreign nationals who depart through U.S. airports. An air exit system that facilitates the development of overstay rate data is important to managing potential risks in expanding the Visa Waiver Program. In December 2007, DHS reported to us that it will match records, reported by airlines,<sup>15</sup> of visitors departing the country to the department's existing records of any prior arrivals, immigration status changes,<sup>16</sup> or prior departures from the United States. In February 2008, we testified that this methodology will not demonstrate improvements in the air exit system and will not help the department mitigate risks of the Visa Waiver Program. At the time of our testimony, DHS had confirmed that it planned to employ a methodology that begins with departure records.

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<sup>14</sup>GAO, *Visa Waiver Program: Limitations with Department of Homeland Security's Plan to Verify Departure of Foreign Nationals*, [GAO-08-458T](#) (Washington, D.C.: Feb. 28, 2008).

<sup>15</sup>Air carriers transmit visitor manifest information, which is obtained directly from government-issued passports, to CBP.

<sup>16</sup>This includes changes and extensions of the visits of lawfully admitted, nonimmigrant foreign nationals.

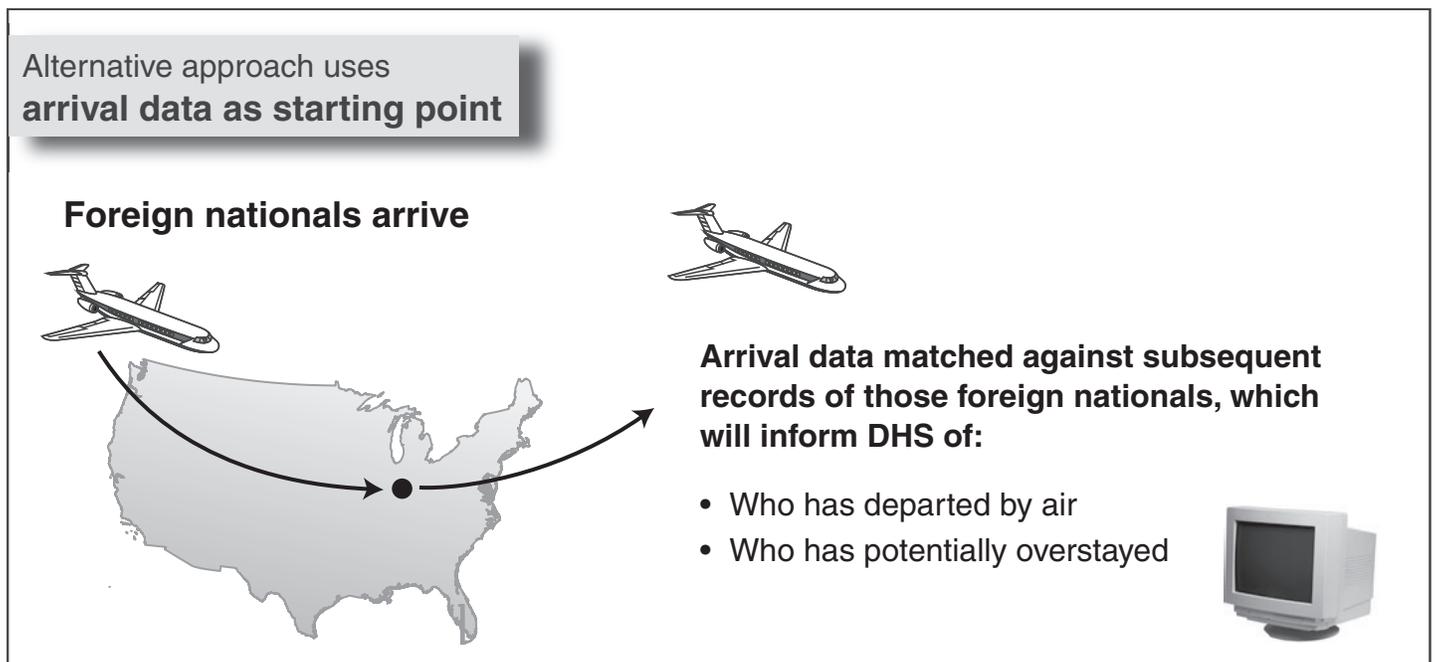
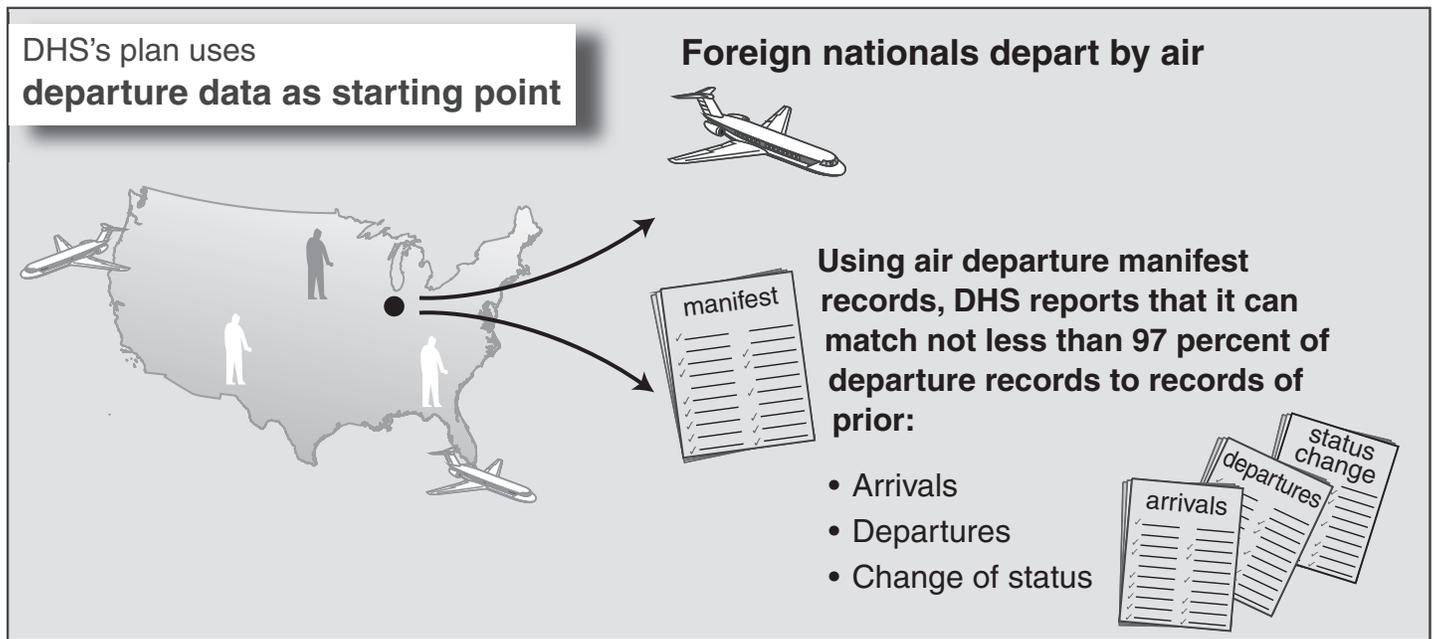
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We identified a number of weaknesses with the approach DHS confirmed in December 2007. In particular, DHS's methodology will not inform overall or country-specific overstay rates, which are key factors in determining illegal immigration risks in the Visa Waiver Program. Also, DHS's methodology does not begin with arrival records to determine if those foreign nationals departed or remained in the United States beyond their authorized periods of admission—useful data for oversight of the Visa Waiver Program and its expansion. As we previously testified, an alternate approach would be to track air arrivals from a given point in time and determine whether those foreign nationals have potentially overstayed.<sup>17</sup> Figure 3 compares DHS's plan to match visitor records using departure data as a starting point with a methodology that would use arrival data as a starting point. An air exit system that facilitates the development of overstay rate data is important to managing potential risks in expanding the Visa Waiver Program. We found that DHS's planned methodology for meeting the "97 percent provision" so it can move forward with program expansion will not demonstrate improvements in the air exit system or help the department identify overstays or develop overstay rates. As of July 2008, DHS had not yet certified this provision nor had it finalized a methodology to meet the provision.

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<sup>17</sup>This could include foreign nationals who departed after their authorized period of admission expired, as well as those foreign nationals who may have remained in the country as overstays.

**Figure 3: DHS's Current Plan to Meet Air Exit System Provision Omits Those Who Remain in the United States**



Sources: GAO analysis of Department of Homeland Security data; Map Resources (maps); Nova Development and Ingram Publishing (clip art).

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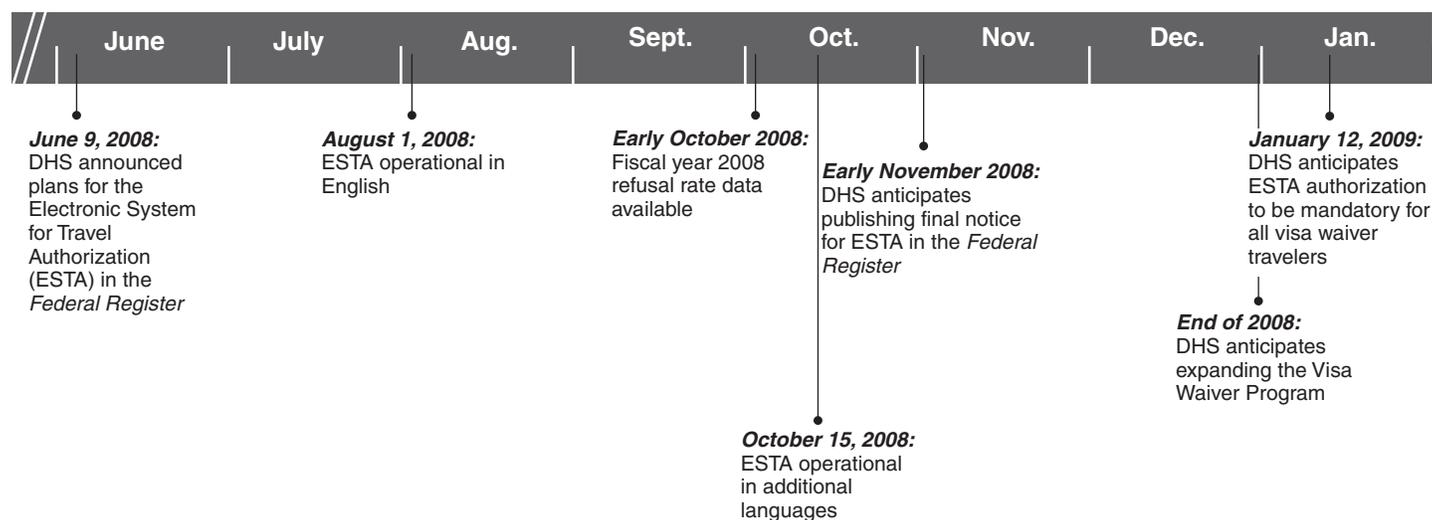
In the 9/11 Act conference report,<sup>18</sup> Congress agreed on the need for significant security enhancements to the Visa Waiver Program and to the implementation of ESTA prior to permitting DHS to admit new countries into the program with refusal rates between 3 and 10 percent. According to DHS, ESTA will allow DHS to identify potential ineligible visa waiver travelers before they embark on a U.S.-bound carrier. DHS also stated that by recommending that travelers submit ESTA applications 72 hours in advance of their departure, CBP will have additional time to screen visa waiver travelers destined for the United States.

DHS must follow several steps in implementing ESTA (see fig. 4). The 9/11 Act requires that DHS must certify both the 97 percent air exit system and ESTA as fully operational before the department can consider expanding the Visa Waiver Program to countries with refusal rates between 3 percent and 10 percent. In June 2008, DHS announced in the *Federal Register* that it anticipates that all visa waiver travelers will be required to obtain ESTA authorization for visa waiver travel to the United States after January 12, 2009. DHS stated that if it admits an additional country prior to January 12, 2009, it will require that visa waiver travelers from that country obtain ESTA authorizations immediately. For example, if Estonia was admitted into the program on October 10, 2008, citizens of that country would be required to begin using ESTA on that date; however, visa waiver travelers from existing program countries would not be required to obtain approval through ESTA until January 12, 2009, more than three months later. Figure 4 illustrates the steps that DHS must follow to implement ESTA.

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<sup>18</sup>Conference Report on H.R. 1, Implementing Recommendations of the 9/11 Commission Act of 2007, July 25, 2007.

**Figure 4: DHS's Anticipated ESTA Implementation Timeline**



Source: GAO.

We identified four potential challenges to DHS's planned implementation of ESTA by January 12, 2009. These challenges include the following:

- *DHS has a limited time frame to adequately inform U.S. embassies in Visa Waiver Program countries and the public about ESTA.* U.S. embassy officials in current and aspiring Visa Waiver Program countries told us that the United States will need to ensure that there is sufficient time to inform travelers, airlines, and the travel industry of ESTA requirements and implementation timelines. However, DHS's announcement in June 2008 accelerated the timeline for ESTA implementation in current visa waiver countries. According to a senior U.S. official at one embassy, DHS had previously confirmed that the department did not plan to require ESTA authorization for travelers from this country until the summer of 2009 or later. Following the June 2008 announcement, a senior U.S. embassy official in another country told us that DHS did not give the embassy adequate advance notice—to prepare translated materials, brief journalists from the major media, prepare the embassy Web site, or set up a meeting with travel and tourism professionals to discuss the implications of ESTA requirements—before publishing the interim final rule for ESTA. DHS officials told us that the department is currently working on an outreach strategy to ensure that travelers are aware of the ESTA requirement.
- *Impact on air and sea carriers could be significant.* DHS estimates that 8 U.S.-based air carriers and 11 sea carriers, as well as 35 foreign-based air

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carriers and 5 sea carriers, will be affected by ESTA requirements for visa waiver travelers. On the basis of DHS's analysis, ESTA could cost the carriers about \$137 million to \$1.1 billion over the next 10 years, depending on how the carriers decide to assist the passengers. DHS has noted that these costs to carriers are not compulsory because the carriers are not required to apply for an ESTA authorization on behalf of their visa waiver travelers.

- *ESTA could increase consular workload.* In May 2008, we reported that State officials and officials at U.S. embassies in current Visa Waiver Program countries are concerned with how ESTA implementation will affect consular workload.<sup>19</sup> We reported that if 1 to 3 percent of current Visa Waiver Program travelers came to U.S. embassies for visas, it could greatly increase visa demand at some locations, which could significantly disrupt visa operations and possibly overwhelm current staffing and facilities.
- *Developing a user-friendly ESTA could be difficult.* Although the ESTA Web site will be operational in a number of languages by October 15, 2008, ESTA will only allow travelers to fill out the application in English, as with CBP's paper-based form. During our site visits, embassy officials also expressed concerns that some Visa Waiver Program travelers do not have Internet access and, thus, will face difficulties in submitting their information to ESTA.<sup>20</sup> Implementing a user-friendly ESTA is essential, especially for those travelers who do not have Internet access or are not familiar with submitting forms online.

### Implementation of Biometric Air Exit System before July 2009 Will Be Difficult

A third provision of the 9/11 Act requires that DHS implement a biometric air exit system before July 1, 2009, or else the department's authority to waive the 3 percent refusal rate requirement—and thereby consider admitting countries with refusal rates between 3 percent and 10 percent—will be suspended until this system is in place. In March 2008, DHS testified that US-VISIT will begin deploying biometric exit procedures in fiscal year 2009. According to the system's proposed rule released in April 2008, air and sea carriers are to collect, store, and transmit to DHS travelers' biometrics. During the public comment period on the proposed

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<sup>19</sup>See GAO, *Border Security: State Department Should Plan for Potentially Significant Staffing and Facilities Shortfalls Caused by Changes in the Visa Waiver Program*, [GAO-08-623](#) (Washington, D.C.: May 22, 2008).

<sup>20</sup>According to DHS, ESTA is designed to allow third parties to file applications on behalf of another person.

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rule, airlines, Members of Congress, and other stakeholders have raised concerns about DHS's proposal, and resolving these concerns could take considerable time. For example, the airline industry strongly opposes DHS's plans to require airline personnel to collect digital fingerprints of travelers departing the United States because it believes it is a public sector function. We have issued a series of reports on the US-VISIT program indicating that there is no clear schedule for implementation of the exit portion of the system, and that DHS will encounter difficulties in implementing the system by July 2009.<sup>21</sup> Although DHS program officials stated that DHS is on track to implement the biometric exit system by July 2009, it is unlikely that DHS will meet this timeline. We are currently reviewing DHS's proposed rule and plan to report later this year on our findings.

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### DHS Does Not Fully Consider Overstay Rates to Assess the Illegal Immigration Risks of the Visa Waiver Program

Some DHS components have expanded efforts to identify citizens who enter the United States under the Visa Waiver Program and then overstay their authorized period of admission. In 2004, US-VISIT established the Data Integrity Group, which develops data on potential overstays by comparing foreign nationals' arrival records with departure records from U.S. airports and sea ports. US-VISIT provides this data to ICE, CBP, and U.S. Citizenship and Immigration Services, as well as to State's consular officers to aid in visa adjudication. In fiscal year 2007, ICE's Compliance Enforcement Unit received more than 12,300 overstay leads from the Data Integrity Group. On the basis of concerns that Visa Waiver Program travelers could be overstaying, ICE has requested that US-VISIT place additional emphasis on identifying potential overstays from program countries. In turn, ICE has received funding to establish a Visa Waiver Enforcement Program within the Compliance Enforcement Unit to investigate the additional leads from US-VISIT. However, DHS is not fully monitoring compliance with a legislative provision that requires a disqualification rate (this calculation includes overstays) of less than 3.5

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<sup>21</sup>GAO, *Homeland Security: Prospects For Biometric US-VISIT Exit Capability Remain Unclear*, [GAO-07-1044T](#) (Washington, D.C.: June 28, 2007); *Border Security: US-VISIT Program Faces Strategic, Operational, and Technological Challenges at Land Ports of Entry*, [GAO-07-248](#) (Washington, D.C.: Dec. 6, 2006).

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percent for a country to participate in the Visa Waiver Program.<sup>22</sup> Monitoring these data is a longstanding statutory requirement for the Visa Waiver Program. We have testified that the inability of the U.S. government to track the status of visitors in the country, to identify those who overstay their authorized period of visit, and to use these data to compute overstay rates have been longstanding weaknesses in the oversight of the Visa Waiver Program.<sup>23</sup> DHS's Visa Waiver Program Office reported that it does not monitor country overstay rates as part of its mandated, biennial assessment process for current visa waiver countries because of weaknesses in US-VISIT's data.<sup>24</sup>

Since 2004, however, the Data Integrity Group has worked to improve the accuracy of US-VISIT's overstay data and can undertake additional analyses to further validate these data. For example, the group conducts analyses, by hand, of computer-generated overstay records to determine whether individuals identified as overstays by the computer matches are indeed overstays. In addition, US-VISIT analysts can search up to 12 additional databases to verify whether a potential overstay may, in fact, be in the country illegally. While it receives periodic reporting on potential overstays from US-VISIT, the Visa Waiver Program Office has not requested that the Data Integrity Group provide validated overstay rate estimates from visa waiver or Road Map countries since 2005. Although DHS has not designated an office with the responsibility of developing such data for the purposes of the Visa Waiver Program, US-VISIT officials told us that, with the appropriate resources, they could provide more reliable overstay data and estimated rates by country to the Visa Waiver Program Office, with support from other DHS components, such as the Office of Immigration Statistics. For example, the Visa Waiver Program

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<sup>22</sup>The disqualification rate is the total for a given fiscal year, of (1) those nationals of the country who were admitted as nonimmigrants and violated the terms of their admission—this would include overstays—and (2) the number of foreign nationals who were denied admission upon arrival in the United States, compared with the total number of nationals of that country who applied for admission as nonimmigrant visitors during the same period. According to the visa waiver statute, the country must be terminated at the beginning of the 2d fiscal year following the fiscal year in which the determination of the disqualification rate was made. See 8 U.S.C. § 1187(f).

<sup>23</sup>For more than 10 years, we have recommended the collection of departure information and the development of estimates of overstays by air. See [GAO/PEMD-93-25](#) and [GAO/PEMD-95-20](#).

<sup>24</sup>According to DHS officials, the mandated country assessments include a placeholder for data on overstay rates, but this data is not included in the 2003-2004 or 2005-2006 assessments.

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Office could request additional analysis for countries where the preliminary, computer-generated overstay rates raised concerns about illegal immigration risks in the program. These resulting estimates would be substantially more accurate than the computer-generated overstay rates. However, the resulting estimates would not include data on departures at land ports of entry and, as we have previously mentioned, airline departure data have weaknesses.<sup>25</sup>

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### DHS Has Implemented Many of GAO's Prior Recommendations Aimed at Improving Efforts to Assess and Mitigate Risks in the Visa Waiver Program

In July 2006, we reported that the process for assessing and mitigating risks in the Visa Waiver Program had weaknesses, and that DHS was not equipped with sufficient resources to effectively monitor the program's risks.<sup>26</sup> To address these weaknesses, we recommended that DHS take a number of actions to better assess and mitigate risks of the Visa Waiver Program. As shown in table 1, DHS has taken actions to implement some of our recommendations, but still needs to fully implement others. In particular, DHS has provided the Visa Waiver Program Office with additional resources since our 2006 report. In addition, DHS, in coordination with the U.S. National Central Bureau, has initiated a system that allows DHS to screen foreign nationals' arriving at all U.S. international airports against Interpol's database of lost and stolen travel documents before arriving in the country. Results to date illustrate that the system identifies two to three instances of fraudulent passports per month. According to the National Central Bureau, Interpol's database has intercepted passports that were not identified by DHS's other screening systems.

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<sup>25</sup>Due to limitations in DHS's data, U.S. VISIT officials also noted that some individuals that appear in DHS's systems as being in country legally may actually be overstays, and that country-specific information is not available for about 2 percent of records.

<sup>26</sup>[GAO-06-854](#).

**Table 1: Status of Prior GAO Recommendations**

Recommendation	Not implemented	Partially implemented	Implemented
Provide additional resources to strengthen the Visa Waiver Program Office.			X
Finalize clear, consistent, and transparent protocols for the biennial country assessments and provide these protocols to stakeholders at relevant agencies at headquarters and overseas. These protocols should provide timelines for the entire assessment process, including the role of a site visit, an explanation of the clearance process, and deadlines for completion.			X
Create real-time monitoring arrangements, including the identification of visa-waiver points of contact at U.S. embassies, for all 27 participating countries; and establish protocols, in coordination with the appropriate headquarters offices, for direct communication between points of contact at overseas posts and DHS's Visa Waiver Program Office.		X	
Require periodic updates from points of contact at posts in countries where there are law enforcement or security concerns relevant to the Visa Waiver Program.		X	
Provide complete copies of the most recent country assessments to relevant stakeholders in headquarters and overseas posts.			X
Require that all Visa Waiver Program countries provide the United States and Interpol with nonbiographical data from lost or stolen, blank and issued passports.		X	
Develop and communicate clear standard operating procedures for the reporting of lost and stolen blank and issued passports, including a definition of timely reporting and to whom in the U.S. government countries should report.			X
Develop and implement a plan to make Interpol's stolen travel document database automatically available during primary inspection at U.S. ports of entry.			X

Source: GAO analysis of DHS data and GAO, Border Security: *Stronger Actions Needed to Assess and Mitigate Risks of the Visa Waiver Program*, [GAO-06-854](#) (Washington, D.C.: July 28, 2006).

While DHS has taken action on many of our recommendations, it has not fully implemented others. We recommended that DHS require that all Visa Waiver Program countries provide the United States and Interpol with non-biographical data from lost or stolen issued and blank passports. According to DHS, all current and aspiring visa waiver countries report lost and stolen passport information to Interpol, and many report to the United States. The 9/11 Act requires agreements between the United States and Visa Waiver Program countries on the reporting of lost and stolen passports within strict time limits; however, none of the current visa waiver countries have established lost and stolen passport reporting agreements by signing MOUs with DHS. DHS also still needs to fully implement our recommendations to create real-time monitoring arrangements, establish protocols for direct communication with contacts at overseas posts, and require periodic updates from these contacts. For example, while the Visa Waiver Program Office has recently begun communicating and disseminating relevant program information regularly

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with U.S. embassy points of contact at Visa Waiver Program posts, officials at other Visa Waiver Program posts reported that they had little contact with the office and were not regularly informed of security concerns or developments surrounding the program.

In closing, the executive branch is moving aggressively to expand the Visa Waiver Program in 2008 to allies in Central and Eastern Europe and South Korea, after the countries have met certain requirements and DHS has completed and certified key security requirements in the 9/11 Act. However, DHS has not followed a transparent process for expanding the program, thereby causing confusion among other U.S. agencies and embassies overseas. The lack of a clear process could bring about political repercussions if countries are not admitted to the program in 2008, as expected. In addition, DHS is not fully assessing a critical illegal immigration risk of the Visa Waiver Program and its expansion since it does not consider overstay data in its security assessments of current and aspiring countries. DHS should determine what additional data and refinements of these data are necessary to ensure that it can assess and mitigate this potential risk to the United States. Finally, DHS still needs to take actions to fully implement our prior recommendations in light of plans to expand the program.

Chairman Feinstein, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

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## Contact and Acknowledgments

For further information about this statement, please contact Jess Ford at (202) 512-4128 or [fordj@gao.gov](mailto:fordj@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. In addition, John Brummet, Assistant Director; Teresa Abruzzo; Kathryn Bernet; Joseph Carney; Martin de Alteriis; Etana Finkler; Eric Larson; and Mary Moutsos made key contributions to this statement.

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