

September 2008

VISA WAIVER PROGRAM

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





Highlights of [GAO-08-967](#), a report to congressional requesters

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 it also has risks. In 2006, GAO found that 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 with 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. Countries must also meet certain conditions, and DHS must complete actions to enhance the program's security. GAO has examined DHS's process for expanding the Visa Waiver Program and evaluated 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 recommends that DHS establish a 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) noted the importance of lost and stolen passport reporting, but did not comment on the recommendations.

To view the full product, including the scope and methodology, click on [GAO-08-967](#). For more information, contact Jess T. Ford at (202) 512-4128 or 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 also 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 first 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 travelers. 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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Abbreviations

CBP	Customs and Border Protection
DHS	Department of Homeland Security
ESTA	Electronic System for Travel Authorization
ICE	Immigration and Customs Enforcement
Interpol	International Criminal Police Organization
MOU	memorandum of understanding
US-VISIT	U.S. Visitor and Immigrant Status and Indicator Technology

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United States Government Accountability Office
Washington, DC 20548

September 15, 2008

The Honorable Joseph I. Lieberman
Chairman
The Honorable Susan M. Collins
Ranking Member
Committee on Homeland Security and
Governmental Affairs
United States Senate

The Honorable Dianne Feinstein
Chairman
The Honorable Jon Kyl
Ranking Member
Subcommittee on Terrorism, Technology,
and Homeland Security
Committee on the Judiciary
United States Senate

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 a U.S. embassy or consulate.¹ The program has many benefits, including facilitating travel for millions of foreign nationals seeking to visit the United States each year. However, as we have reported,² the program also poses inherent security, law enforcement, and illegal immigration risks to the United States. In particular, Visa Waiver Program travelers are not subject to the same degree of screening as those with visas because they are not interviewed by a Department of State (State) consular officer before arriving at a U.S. port of entry. During the visa issuance process, State consular officers can determine if an individual has a criminal record or has prior immigration violations. On the basis of their assessments, consular officers decide

¹The 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.

²GAO, *Border Security: Stronger Actions Needed to Assess and Mitigate Risks of the Visa Waiver Program*, [GAO-06-854](#) (Washington, D.C.: July 28, 2006).

whether to approve or deny a visa and, in doing so, help protect against individuals who pose a risk to the United States. Without the added safeguard of the visa issuance process, the Visa Waiver Program could be exploited to gain illegal entry into the United States. Indeed, 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 South Korea. According to the Department of Homeland Security (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. The executive branch has supported more flexible criteria for admission to the program. In August 2007, Congress passed legislation that allows DHS to consider admitting countries that otherwise meet the program's requirements but that have business and tourism visas refusal rates³ between 3 percent and 10 percent, if the countries meet certain conditions, such as cooperating with the United States on counterterrorism initiatives.⁴ 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 the security of the Visa Waiver Program.

At your request, this report (1) examines the process DHS is following to admit countries into the Visa Waiver Program and (2) evaluates actions taken to assess and mitigate potential risks in the program.

Throughout the course of our work, we reviewed laws governing the Visa Waiver Program and its expansion, and relevant regulations and agency

³The 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.

⁴See Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53.

operating procedures, as well as our prior reports and testimonies. We met with several DHS component agencies and offices, including Customs and Border Protection (CBP); Immigration and Customs Enforcement (ICE); the U.S. Visitor and Immigrant Status and Indicator Technology (US-VISIT); and the Visa Waiver Program Office,⁵ which is responsible for oversight of Visa Waiver Program requirements. In addition, we interviewed officials from State's Consular Affairs, Europe and Eurasia, and East Asia and Pacific Bureaus, and met with International Criminal Police Organization (Interpol) officials in Lyon, France, as well as officials from the Department of Justice's (Justice) Interpol-U.S. National Central Bureau.⁶ We also spoke with officials at U.S. embassies in three current and eight aspiring Visa Waiver Program countries. Appendix I contains a more detailed discussion of our objectives, scope, and methodology. 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.

Results in Brief

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 Program countries. Indeed, absent clear direction from DHS, U.S. embassy officials in several aspiring countries told us that 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

⁵DHS's Visa Waiver Program Office, known prior to September 2007 as the Visa Waiver Oversight Unit within the Office of International Enforcement, is led by a director, who reports to the DHS Assistant Secretary for Policy Development.

⁶The U.S. National Central Bureau in Washington, D.C., facilitates international law enforcement cooperation among the United States and Interpol and its other member countries.

officials said that it was difficult to explain to countries with fiscal year 2007 refusal rates below 10 percent that have signaled interest in joining the program (such as Croatia, Israel, and Taiwan) why DHS is not negotiating with them. DHS, however, is 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. Specifically, 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 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, 2009.⁷ 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

⁷According 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.

9/11 Act certifications, and after the countries have met certain conditions, but before ESTA is mandatory for all Visa Waiver Program 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. Finally, DHS has fully implemented many recommendations from our 2006 report aimed at improving DHS's ability to assess and mitigate program risks, including screening U.S.-bound travelers against Interpol's database of lost and stolen passports. However, DHS has not yet fully implemented others, such as requiring that all Visa Waiver Program countries report the theft or loss of blank and issued passports to the United States and Interpol. Fully implementing the remaining recommendations is important as DHS moves to expand both the Visa Waiver Program and the department's oversight responsibilities.

To improve management of the Visa Waiver Program and better assess and mitigate risks associated with the program, we recommend 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 recommend 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.

We received written comments on a draft of our report from DHS and Justice, which we have reprinted in appendices IV and V, respectively. State did not provide comments on the draft. DHS either agreed with, or stated that it was taking steps to implement, all of our recommendations. Justice did not comment on our recommendations, but provided additional information about the importance of monitoring countries' reporting of lost and stolen passports to Interpol, and its efforts, in

collaboration with DHS, to include screening against Interpol's lost and stolen passport database in ESTA.

Background

In 2007, almost 13 million citizens⁸ from 27 countries entered the United States under the Visa Waiver Program.⁹ The program was created to promote the effective use of government resources and facilitate international travel without jeopardizing U.S. national security. The United States last expanded the Visa Waiver Program's membership in 1999; since then, other countries have expressed a desire to become members. 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. According to DHS, some of the countries seeking admission to the program 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. As we reported in July 2006, 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.

Following the terrorist attacks of September 11, 2001, Congress passed additional laws to strengthen border security policies and procedures, and DHS and State instituted other policy changes that have affected a country's qualifications for participating in the Visa Waiver Program. 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 (see app. II for worldwide refusal rates for fiscal year 2007). Before being admitted to the program, for example, 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 complete two actions aimed at enhancing the security of the program (see app. III for the key legislative

⁸This figure does not account for multiple admissions into the United States under the Visa Waiver Program by the same individual.

⁹The Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, created the Visa Waiver Program as a pilot program. In 2000, the program became permanent under the Visa Waiver Permanent Program Act, Pub. L. No. 106-396.

requirements for inclusion in the Visa Waiver Program).¹⁰ In particular, to consider admitting countries into the Visa Waiver Program with refusal rates between 3 percent and 10 percent, 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.* Initially, this system will 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 will 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. DHS recommends that applicants obtain ESTA authorizations at the time of reservation or ticket purchase, or at least 72 hours before their planned date of departure for the United States. The ESTA application will electronically collect information similar to the information collected in paper form by CBP.¹¹ To the extent possible, according to DHS, applicants will find out almost immediately whether their travel has been authorized, in which case they are free to travel to the United States, or if their application has been rejected, in which case they are ineligible to travel to the United States under the Visa Waiver Program.¹² Those found ineligible to travel under the

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

¹¹This form is CBP’s I-94W Nonimmigrant Visa Waiver Arrival/Departure Form. According to DHS, the department is coordinating with commercial aircraft and vessel carriers on the development and implementation of messaging capabilities that will enable CBP to provide the carriers with messages pertaining to a passenger’s boarding status. Once ESTA is mandatory and all carriers are capable of receiving and validating messages from CBP pertaining to the traveler’s ESTA status as part of their boarding status, DHS plans to eliminate the I-94W requirement.

¹²ESTA 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 authorization.

Visa Waiver Program must apply for a visa at a U.S. embassy to travel to the United States.¹³

In addition, the 9/11 Act requires that visa waiver countries

- enter into an agreement with the United States to report, or make available through Interpol or other means as designated by the Secretary of Homeland Security, to the U.S. government information about the theft or loss of passports within a strict time frame;
- enter into an agreement with the United States to share information regarding whether citizens and nationals of that country traveling to the United States represent a threat to U.S. security; and
- accept for repatriation any citizen, former citizen, or national of the country against whom the United States has issued a final order of removal.

When DHS exercises its authority to waive the 3 percent refusal rate requirement, it shall, in consultation with State, take into account other discretionary factors, pursuant to the 9/11 Act, including a country's airport security standards; whether the country assists in the operation of an effective air marshal program; the standards of passports and travel documents issued by the country; and other security-related factors, including the country's cooperation with (1) the United States' initiatives toward combating terrorism and (2) the U.S. intelligence community in sharing information regarding terrorist threats. DHS works in consultation with State and Justice, as well as the intelligence community, as part of DHS's assessment of countries seeking to join the Visa Waiver Program.

¹³In 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.

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

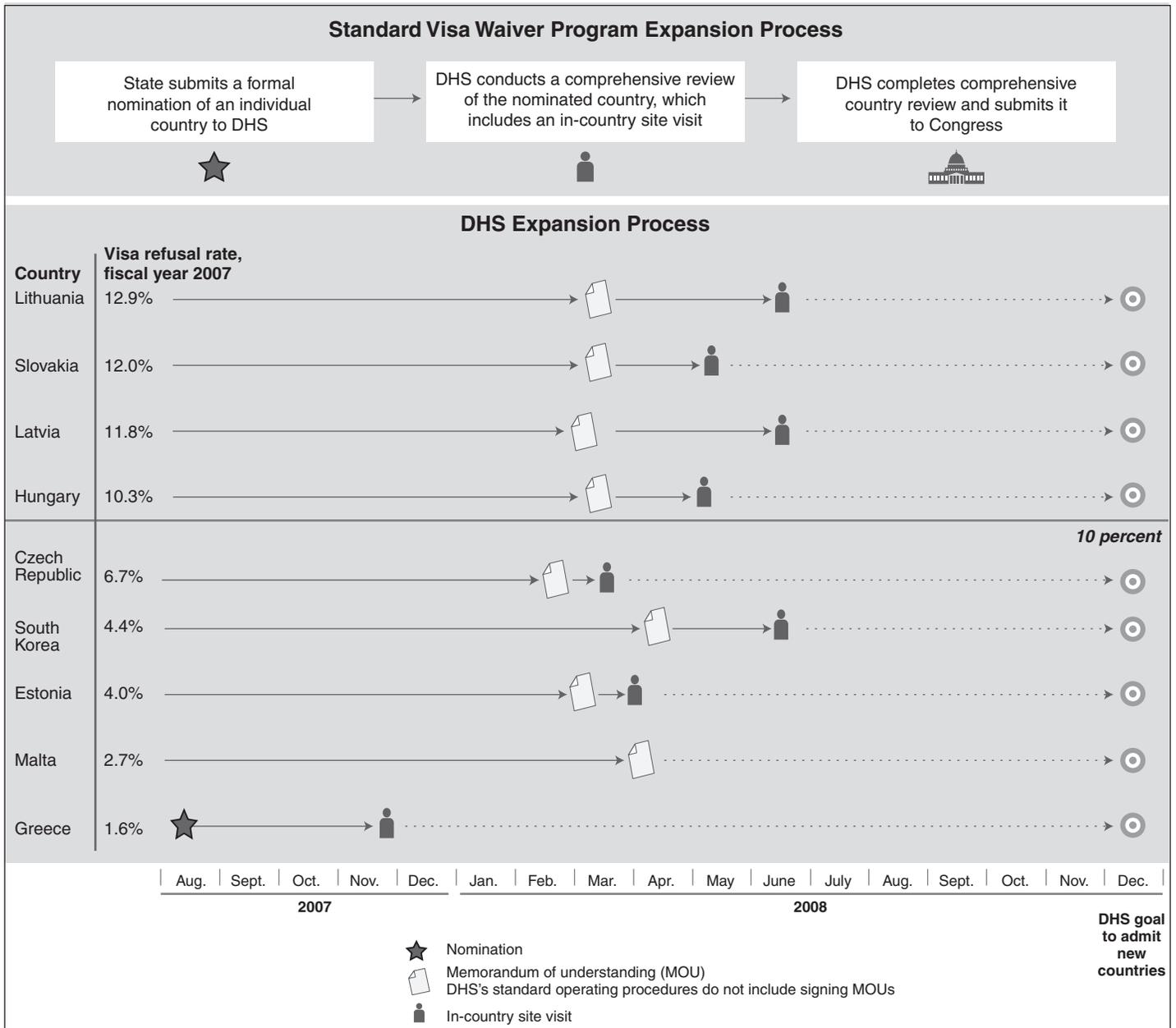
The executive branch is moving aggressively to expand the Visa Waiver Program by the end of 2008, but, in doing so, DHS has not followed a transparent process for admitting new countries to the program—an approach that has created confusion among other U.S. agencies in Washington, D.C.; U.S. embassy officials overseas; and those countries that are seeking to join the Visa Waiver Program. During the expansion negotiations, DHS has achieved some security enhancements, such as new agreements that, among other things, require the reporting of lost and stolen blank and issued passports.

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.¹⁴ 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 aspiring countries have met all of the Visa Waiver Program's statutory 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.

¹⁴In 2006, we reported on the executive branch's process for admitting additional countries into the Visa Waiver Program. See GAO, *Process for Admitting Additional Countries into the Visa Waiver Program*, [GAO-06-835R](#) (Washington, D.C.: July 26, 2006).

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



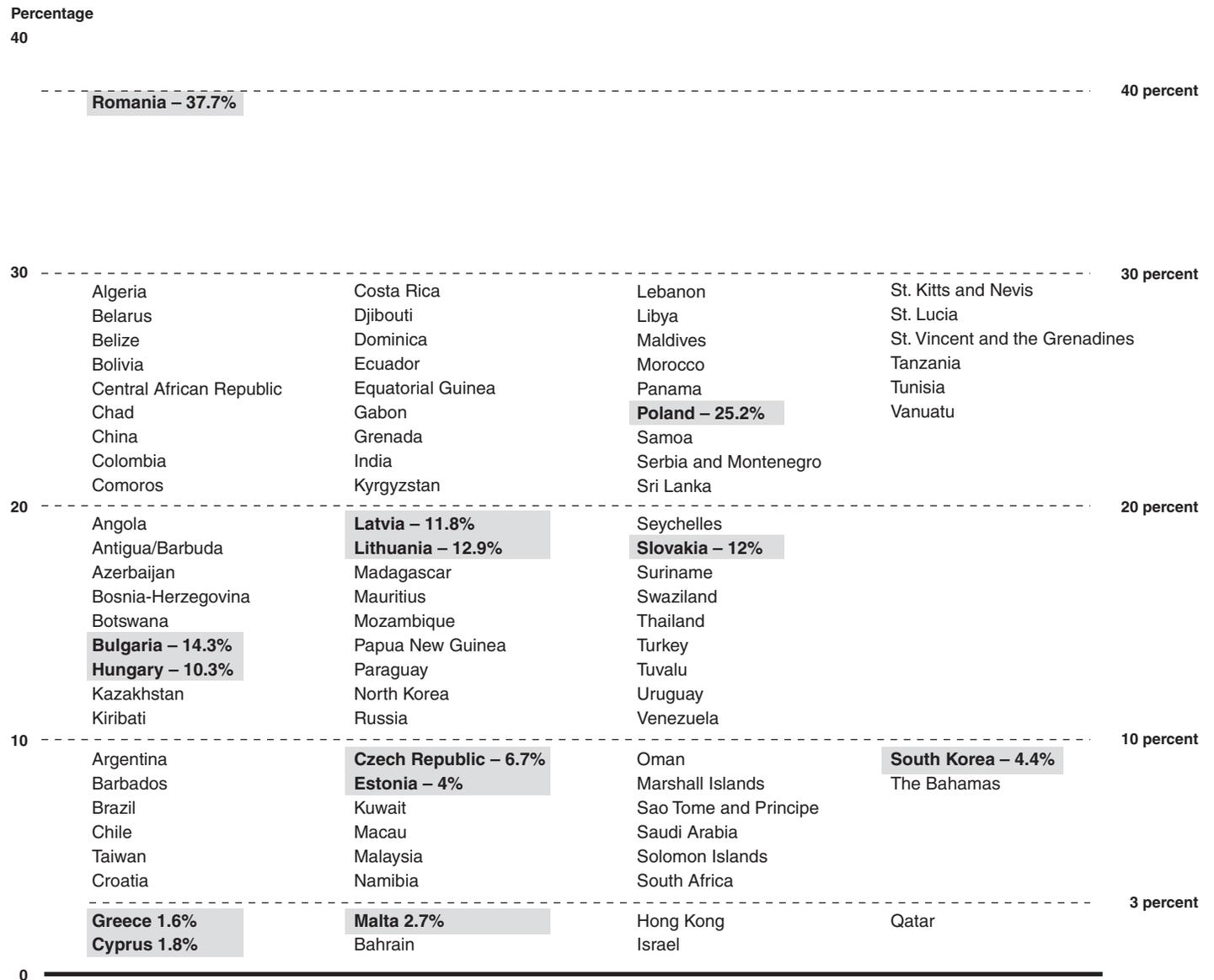
Sources: GAO analysis of DHS data; Art Explosion images.

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. Although 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 security reviews. The MOUs are to be accompanied by more specific "implementing arrangements" for sharing biographic, biometric, and other data, as required by the 9/11 Act, within general parameters of what the United States is willing and able to reciprocate—this includes sharing information on known or suspected terrorists. According to DHS, the type and scope of these arrangements will vary by country and will take into account existing bilateral information-sharing arrangements. As of June 2008, DHS had signed MOUs with eight Road Map countries and had begun negotiations on the implementing arrangements. However, State and Justice officials told us that DHS had not been clear in communicating these steps to aspiring and current program countries. DHS officials acknowledged that the department was still exploring how to best complete the implementing arrangements. 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 manage their expectations about when those countries might be admitted into the Visa Waiver Program. Justice officials and U.S. officials in several embassies told us that the implementing arrangements may be more difficult to negotiate than the nonbinding MOUs because some countries have expressed concerns about sharing private information on their citizens due to strict national privacy laws—concerns that the United States also has about its citizens' information. 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 this 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, the 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 South Korea and countries in Central and Eastern Europe. In addition, on May 1 of each year, State must report to Congress those countries that are under consideration for inclusion in the Visa Waiver Program; the department has never submitted this report because, according to consular officials, no country has been under consideration for admission into the program since the reporting requirement was established in 2000.¹⁵ As of late June 2008, State had not yet submitted its report for 2008. A State official told us that, despite the actions that DHS, State, and other U.S. agencies have taken to expand the Visa Waiver Program to as many as 9 countries in 2008, State was initially unclear about which countries it should include in this report. While only Greece has been nominated, DHS has made clear its goal to admit many of the Road Map countries in 2008. (Fig. 2 shows the fiscal year 2007 refusal rates for the 13 Road Map countries.)

¹⁵State must report to the appropriate congressional committees on the total number of nationals of that country who applied for U.S. visas in that country during the previous calendar year; the total number of such nationals who received U.S. visas during the previous calendar year; the total number of such nationals who were refused U.S. visas during the previous calendar year, and, specifically, under which provision of the Immigration and Nationality Act they were refused; and the number of such nationals who were refused visas under section 214(b) of the Immigration and Nationality Act as a percentage of the visas that were issued to such nationals. In addition, not later than May 1 of each year, the U.S. chief of mission (acting or permanent) to each country under consideration for inclusion in the Visa Waiver Program, must certify to the appropriate congressional committees that the information described in the report is accurate, and must provide a copy of the certification to the congressional committees.

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 aspiring countries with refusal rates below 3 percent in the prior fiscal year, without meeting the two certification requirements in the 9/11 Act.

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 and implementing arrangements 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.

DHS Has Achieved Some Results in Visa Waiver Program 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, as we have previously reported.¹⁶ 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.¹⁷ Furthermore, a senior consular official testified that the executive branch's dialogue on Visa Waiver

¹⁶GAO-06-854.

¹⁷According 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.

Program expansion is helping to stimulate U.S. negotiations on other terrorist watch-list- sharing arrangements with Road Map countries.¹⁸

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

As of early September 2008, DHS had not yet met two key certification requirements in the 9/11 Act that are necessary to allow the department to consider expanding the Visa Waiver Program to countries with refusal rates between 3 percent 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, in reviewing recommendations from our 2006 report aimed at improving efforts to assess and mitigate program risks, we found that DHS has implemented many of our prior recommendations, but some are only partially implemented.

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.¹⁹ 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. In December 2007, DHS reported to us that it will match records, reported by

¹⁸Homeland Security Presidential Directive-6 required the Secretary of State to develop a proposal for the President's approval for enhancing cooperation with certain foreign governments—beginning with those countries for which the United States has waived visa requirements—to establish appropriate access to the participating governments' terrorism screening information. State determined that the most effective way to obtain this information was to seek bilateral agreements to share information on a reciprocal basis. In May 2008, the Deputy Assistant Secretary of State for Visa Services testified that State anticipates completing these agreements with all of the Road Map countries by the end of September 2008. See, The White House, *Homeland Security Presidential Directive/HSPD-6, Subject: Integration and Use of Screening Information* (Washington, D.C.: Sept. 16, 2003).

¹⁹GAO, *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).

airlines,²⁰ of visitors departing the country to the department's existing records of any prior arrivals, immigration status changes,²¹ or prior departures from the United States. At the time of our February 2008 testimony, DHS had confirmed that it planned to employ a methodology that begins with departure records. During the hearing, we also 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. We identified a number of weaknesses with this approach, as follows:

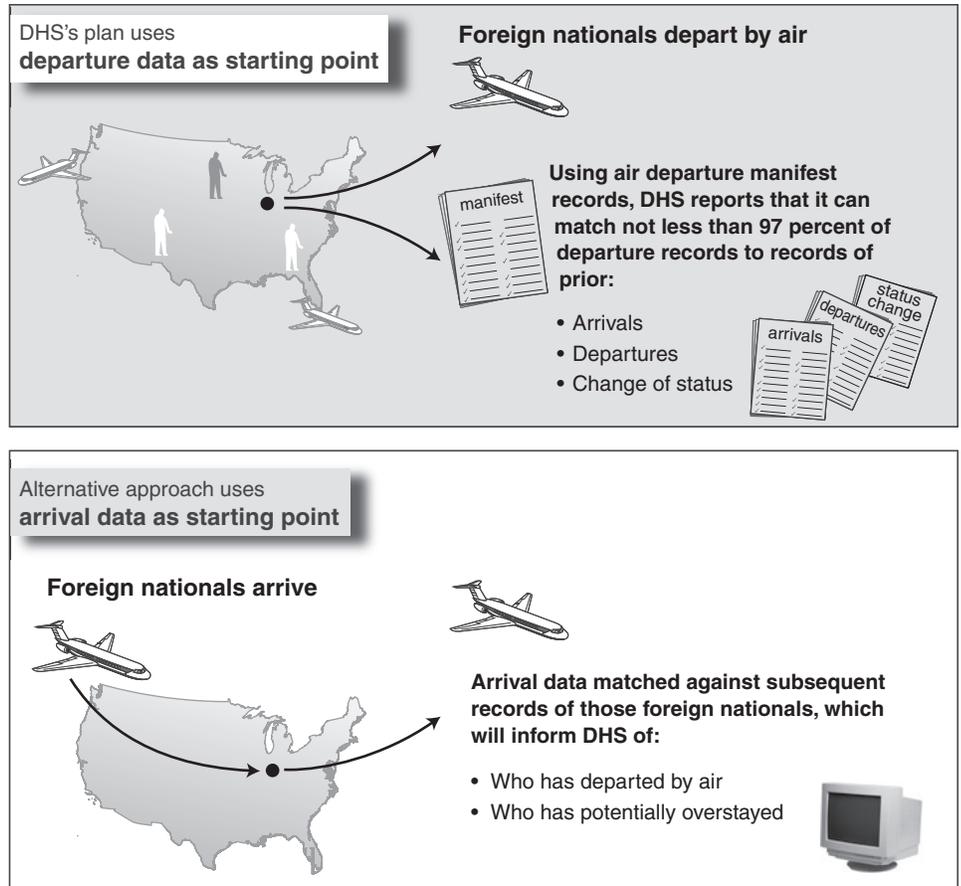
- First, DHS's methodology will not inform overall or country-specific overstay rates, which are key factors in determining illegal immigration risks in the Visa Waiver Program. In particular, DHS's methodology does not begin with arrival records to determine if those foreign nationals departed or remained 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.²² 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.

²⁰Air carriers transmit visitor manifest information, which is obtained directly from government-issued passports, to CBP through the Advanced Passenger Information System. This system includes arrival and departure manifest information, such as name, date of birth, travel document issuing country, gender, U.S. destination address, entry date, and departure date. As of February 19, 2008, commercial carriers are required to transmit manifest information to be vetted by DHS prior to departure of the aircraft.

²¹This includes changes and extensions of the visits of lawfully admitted, nonimmigrant foreign nationals.

²²This 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).

- Second, for purposes of this provision and Visa Waiver Program expansion, we do not see the value in verifying that a foreign national leaving the United States had also departed at a prior point in time²³—in other words, matching a new departure record back to a previous

²³ According to ICE officials at DHS, this type of information provides a more complete history of an alien and is useful for law enforcement purposes, such as criminal prosecution and documenting activities.

departure record from the country.²⁴ DHS's Assistant Secretary for Policy Development told us in January 2008 that the department chose to include previous departures and changes of immigration status records because this method allowed the department to achieve a match rate of 97 percent or greater.

- Third, DHS's methodology does not address the accuracy of airlines' transmissions of departure records, and DHS acknowledges that there are weaknesses in the departure data. Foreign nationals who enter the United States by air are inspected by DHS officers—a process that provides information that can be used to verify arrival manifest data—and, since 2004, DHS has implemented the US-VISIT program to collect biometric information on foreign nationals arriving in the United States.²⁵ However, the department has not completed the exit portion of this tracking system; thus, there is no corresponding check on the accuracy and completeness of the departure manifest information supplied by the airlines.²⁶ According to DHS, it works with air carriers to try to improve both the timeliness and comprehensiveness of manifest records, and fines carriers that provide incomplete or inaccurate information. If DHS could evaluate these data, and validate the extent to which they are accurate and complete, the department would be able to identify problems and work with the airlines to further improve the data.

An air exit system that facilitates the development of overstay rate data is important to managing potential risks in expanding the Visa Waiver

²⁴A DHS official told us that the system functions by matching the departure record with an alien's "account," which may contain numerous prior arrivals, departures, and immigration benefit transaction records. The official also stated that a specific departure record match may not fall chronologically in the alien's account after an arrival; it may fall, for example, after a record that an immigrant benefit was granted to extend the alien's stay for an additional 6 months.

²⁵DHS's US-VISIT program collects, maintains, and shares data, including biometric identifiers like digital fingerprints, on selected foreign nationals entering the United States to verify their identities as they arrive at U.S. air, sea, and land ports of entry. DHS currently operates the entry portion of the US-VISIT program at more than 300 U.S. air, sea, and land ports of entry. When fully implemented, US-VISIT is also intended to capture the same information from foreign nationals as they depart the country. The program aims to, among other things, identify foreign nationals who have overstayed or violated the terms of their visit.

²⁶DHS has not implemented long-standing GAO recommendations to collect departure information and make new estimates of overstays by air. See GAO, *Illegal Immigration: INS Overstay Estimation Methods Need Improvement*, GAO/PEMD-95-20 (Washington, D.C.: Sept. 26, 1995); and *Illegal Aliens: Despite Data Limitations, Current Methods Provide Better Population Estimates*, GAO/PEMD-93-25 (Washington, D.C.: Aug. 3, 1993).

DHS's Planned Implementation of ESTA by January 2009 Will Face Challenges

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 early September 2008, DHS had not yet certified this provision, nor had it finalized a methodology to meet the provision.

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. However, we identified four potential challenges that DHS may face in implementing ESTA, including a limited time frame to adequately inform U.S. embassies and the public and the significant impact that ESTA will have on the airline and travel industry.

We have previously reported that visa waiver travelers pose inherent security and illegal immigration risks to the United States, since they (1) are not subject to the same degree of screening as travelers with visas and (2) are not interviewed by a consular officer before arriving at a U.S. port of entry.²⁷ In the 9/11 Act conference report,²⁸ 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 percent 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). First, 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. DHS has not announced when it plans to make this certification. DHS attorneys told us that the department could admit additional countries to the program once it provides this

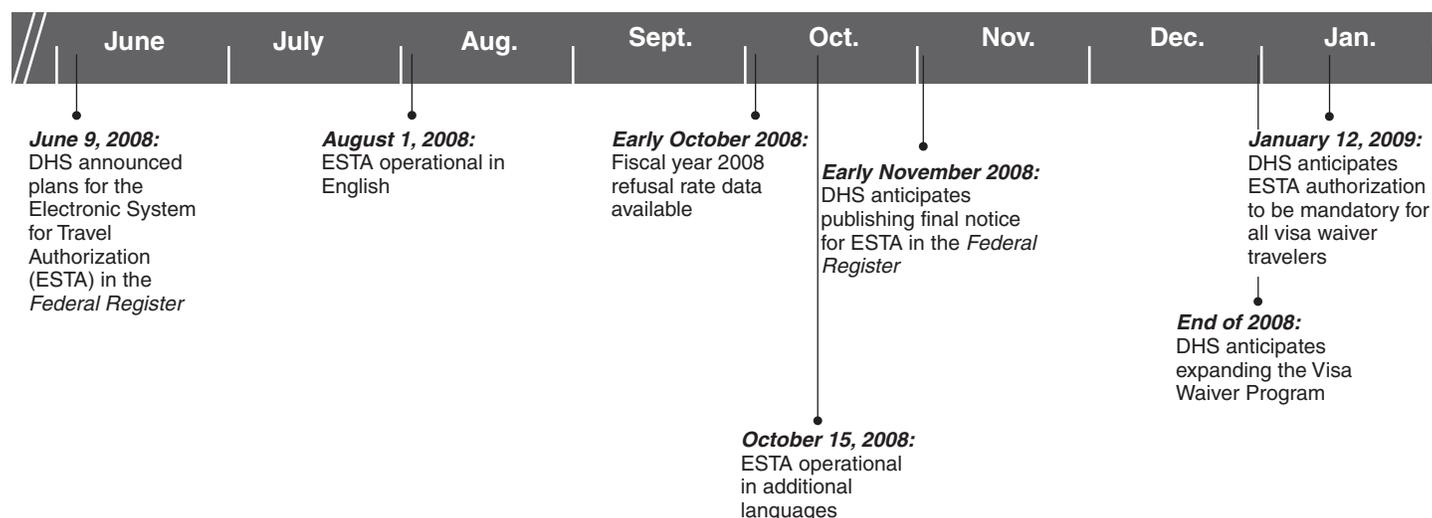
²⁷GAO-06-854.

²⁸Conference Report on H.R. 1, Implementing Recommendations of the 9/11 Commission Act of 2007 (July 25, 2007).

certification. In addition, according to DHS, the act provides that 60 days after the Secretary of Homeland Security publishes a final notice in the *Federal Register* of the ESTA requirement, each alien traveling under the Visa Waiver Program must use ESTA to electronically provide DHS with biographic and other such information as DHS deems necessary to determine, in advance of travel, the eligibility of, and whether there exists a law enforcement or security risk in permitting, the alien to travel to the United States.²⁹ DHS stated that it expects to issue this final notice in early November 2008, and, as of January 12, 2009, all visa waiver travelers would be required to obtain authorization through ESTA prior to boarding a U.S.-bound flight or cruise vessel. DHS stated that if, after certifying ESTA as fully operational, 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 were admitted into the Visa Waiver Program on October 10, 2008, citizens of that country traveling to the United States under the program 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 3 months later.

²⁹DHS attorneys stated that the department also hopes to certify ESTA as fully operational in early November. In addition, as we have previously mentioned, to consider admitting countries into the program with refusal rates between 3 percent and 10 percent, DHS must also certify that the air exit system is in place.

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. It is difficult to predict the extent to which DHS will address these challenges due to the short time frame in which the department is implementing the system. 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. U.S. commercial and consular officials at a U.S. embassy in a current Visa Waiver Program country told us that they would ideally like 1 year's advance notice before ESTA is implemented to allow sufficient time to inform and train the public and the travel industry of the new requirement. However, DHS's announcement in June 2008 accelerated the timeline for ESTA implementation in current visa waiver countries. During our site visits in March 2008, U.S. embassy officials in a visa waiver country told us that they had been informed by DHS officials that the department did not plan to require ESTA authorization for travelers from that country until the summer of 2009 or later. According to a senior U.S. official at one embassy, DHS had confirmed this plan with host country government officials in early May 2008. 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. 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 carriers and 5 sea carriers, will be affected by ESTA requirements for visa waiver travelers. In addition, DHS stated that it did not know how many passengers annually would request that their carrier apply for ESTA authorization on their behalf to travel under the Visa Waiver Program or how much it will cost carriers to modify their existing systems to accommodate such requests. Thus, in the short term, DHS expects that the carriers could face a notable burden if most of their non-U.S. passengers request that their carriers submit ESTA applications. 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. DHS is developing a separate system, independent from ESTA, which will enable the travel industry to voluntarily submit an ESTA application on behalf of a potential Visa Waiver Program traveler. As of early August 2008, DHS had analyzed the role that transportation carriers could play in applying for and submitting ESTA applications on behalf of their customers when they arrive at an air or sea port. However, CBP stated that there had been no further development on this issue.
- *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.³⁰ Consular officers are concerned that more travelers will apply for visas at consular posts if their ESTA applications are rejected or because they may choose to apply for a visa that has a longer validity period (10 years) than an ESTA authorization. We reported that if 1 percent to 3 percent of current Visa Waiver Program travelers

³⁰GAO, *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).

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

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.³¹ DHS officials told us that the department is aware of concerns regarding rejection rates and has been working with State to create a system that mitigates these concerns.

- *Developing a user-friendly ESTA could be difficult.* According to DHS, the ESTA Web site will initially be operational in English; additional languages will be available by October 15, 2008. Even when the Web site is operational in additional languages, ESTA will only allow travelers to fill out the application in English, as with CBP's paper-based form. In addition, during our site visits, embassy officials expressed concerns that some Visa Waiver Program travelers do not have Internet access and, thus, will face difficulties in submitting their information to ESTA.³² 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.

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. DHS released a proposed rule for the biometric exit system in April 2008, and the department plans to issue a final rule before the end of 2008. According to the proposed rule, air and sea carriers are to collect, store, and transmit to DHS travelers' biometrics. During the public comment period on the proposed 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

³¹As of May 2008, DHS had provided State with preliminary data that suggest how many names might be rejected by ESTA, on the basis of rejection rates from CBP's Advance Passenger Information System; however, we found that DHS had not developed any estimates of the number of people who would choose to proactively apply for visas rather than submit an application to ESTA. According to consular officials, the percentage of travelers who choose to obtain a visa could exceed potential ESTA rejection rates of 1 percent to 3 percent. See [GAO-08-623](#).

³²According to DHS, ESTA is designed to allow third parties to file applications on behalf of other persons.

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 2009.³³ 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.

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 data on potential overstays to ICE, CBP, and U.S. Citizenship and Immigration Services, as well as to State's consular officers to aid in visa adjudication. For example, US-VISIT sends regular reports to ICE's Compliance Enforcement Unit on potential overstays, and ICE officials told us they use these data regularly during investigations. In fiscal year 2007, ICE's Compliance Enforcement Unit received more than 12,300 overstay leads from the Data Integrity Group.³⁴ As an example of one of these leads, on November 27, 2007, ICE agents in Ventura, California, arrested and processed for removal from the United States an Irish citizen whose term of admission expired in September 2006. 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. As part of this funding, ICE plans to hire 46 additional employees to help the unit increase its focus on identifying individuals

³³GAO, *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).

³⁴In June 2003, ICE's Office of Investigations established the Compliance Enforcement Unit, which focuses on preventing criminals and terrorists from exploiting the nation's immigration system by developing cases for investigation on the basis of information provided from other DHS components, including US-VISIT.

who traveled to the United States under the Visa Waiver Program and potentially overstayed.

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 percent for a country to participate in the Visa Waiver Program.³⁵ Monitoring these data is a long-standing statutory requirement for the program. We have testified that the inability of the U.S. government to track the status of visitors in the country, identify those who overstay their authorized period of visit, and use these data to compute overstay rates has been a long-standing weakness in the oversight of the Visa Waiver Program.³⁶ 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.³⁷

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, using available resources, 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 law enforcement and immigration databases to verify whether a potential overstay may, in fact, be in the country illegally. While it receives periodic reporting on potential

³⁵The 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).

³⁶For 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](#).

³⁷According to DHS officials, the mandated country assessments include a placeholder for data on overstay rates, but these data are not included in the 2003-2004 or 2005-2006 assessments. The May 2002 Enhanced Border Security and Visa Entry Reform Act increased the frequency—from once every 5 years to once every 2 years—of mandated assessments of the effect of each country's continued participation in the Visa Waiver Program on U.S. security, law enforcement, and immigration interests. See Pub. L. No. 107-173.

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 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. In addition, as we have previously mentioned, airline departure data have weaknesses.³⁸ DHS has asserted that overstay data will continue to improve with the implementation of the biometric US-VISIT exit program.

In addition to US-VISIT, State's overseas consular sections develop data on overstay rates that might be useful for assessing potential illegal immigration risks of the Visa Waiver Program. Specifically, some consular sections have conducted validation studies to determine what percentage of visa holders travel to the United States and potentially overstay. For example, at the U.S. embassy in Estonia, consular officials conducted a validation study in the summer of 2006 that concluded that 2.0 percent to 2.7 percent of Estonian visa holders traveling to the United States in 2005 had potentially overstayed.³⁹ US-VISIT overstay data, after appropriate analysis and in conjunction with other available data, such as validation studies, would provide DHS with key information to help evaluate the

³⁸Due to limitations in DHS's data, U.S. VISIT officials also noted that some individuals who 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.

³⁹Validation studies are traditionally conducted over the telephone, with the embassy contacting nationals who traveled to the United States. According to a State consular official, 200 posts have access to DHS's Automated Departure Information System database. This database contains records of foreign nationals' arrival and departure data received from air and sea carrier manifests. DHS's data will assist embassies in conducting validation studies and may preclude the need for telephone calls to foreign nationals, while also improving the accuracy of departure data assessed for these studies. Access to these records will allow consular posts to more accurately determine whether a foreign national departed the United States.

illegal immigration risks of maintaining a country's membership or admitting additional countries into the Visa Waiver Program.

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.⁴⁰ For example, at the time of our report, DHS had only two full-time staff charged with monitoring countries' compliance with the program's requirements and working with countries seeking to join the program. We identified several problems with the process by which DHS was monitoring countries' adherence to the program requirements, including a lack of consultation with key interagency stakeholders. In addition, we reported that DHS needed to improve its communication with officials at U.S. embassies so it could communicate directly with officials best positioned to monitor compliance with the program's requirements, and report on current events and issues of potential concern in each of the participating countries. Also, at the time of our 2006 report, the law required the timely reporting of passport thefts for continued participation in the Visa Waiver Program, but DHS had not established or communicated these time frames and operating procedures to participating countries. In addition, DHS had not yet issued guidance on what information must be shared, with whom, and within what time frame.

To address these weaknesses, we recommended that DHS take a number of actions to better assess and mitigate risks in the Visa Waiver Program. As we note 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. As of April 2008, the office had five additional full-time employees, and two other staff from the Office of Policy that devote at least 50 percent of their time to Visa Waiver Program tasks. In addition, staff from several other DHS components assists the office on a regular basis, as well as during the in-country security assessments for Road Map and current program countries. In response to our recommendation to finalize clear, consistent, and transparent protocols for the biennial country assessment, the Visa Waiver Program Office drafted standard operating procedures in November 2007 for conducting reviews of nominated and participating visa waiver countries.

⁴⁰[GAO-06-854](#).

In addition, DHS now provides relevant stakeholders with copies of the most current mandated, biennial country assessments; during our visits in early 2008, U.S. embassy officials confirmed that the assessments are now accessible. Furthermore, regarding our recommendation to develop and communicate clear, standard operating procedures for the reporting of lost and stolen blank and issued passports, DHS established criteria for the reporting of lost and stolen passport data—including a definition of “timely reporting” and an explanation of to whom in the U.S. government countries should report—as part of the MOUs it is negotiating with participating and Road Map countries.

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

Sources: 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).

Furthermore, 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 the foreign nationals arrive in the country. Results to date indicate 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. For example, on February 18, 2008, the Interpol database identified a Nigerian national traveling on a counterfeited British passport who attempted to enter the United States at Newark International Airport. Upon arrival, the individual was referred to secondary inspection and determined to be inadmissible to the United States.

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 nonbiographical data from lost or stolen blank and issued passports. According to DHS, all current and aspiring visa waiver countries report lost and stolen passport information to Interpol, and many report such information 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 yet to formally establish 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 with U.S. embassy points of contact at Visa Waiver Program posts, officials at some of the posts we visited in early 2008 reported that they had little contact with the office and were not regularly informed of security concerns or developments surrounding the program.

Conclusions

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 that 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.

Recommendations for Executive Action

To improve management of the Visa Waiver Program and better assess and mitigate risks associated with it, we are recommending that the Secretary of Homeland Security take the following four actions:

- establish a clear process, in coordination with the Departments of 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;
- designate an office with responsibility for developing overstay rate information for the purposes of monitoring countries' compliance with the statutory requirements of the Visa Waiver Program;
- direct that established office and other appropriate DHS components to explore cost-effective actions necessary to further improve, validate, and test the reliability of overstay data; and
- direct the Visa Waiver Program Office to request an updated, validated study of estimated overstay rates for current and aspiring Visa Waiver Program countries, and determine the extent to which additional research and validation of these data are required to help evaluate whether particular countries pose a potential illegal immigration risk to the United States.

Agency Comments and Our Evaluation

We provided a draft of this report to DHS, State, and Justice for review and comment. DHS provided written comments, which are reproduced in appendix IV, and technical comments, which we incorporated into the report, as appropriate. Justice also provided written comments, which are

reprinted in appendix V. State did not provide comments on the draft report.

DHS either agreed with, or stated that it was taking steps to implement, all of our recommendations. For example, DHS indicated that it is working with State to create procedures so that future Visa Waiver Program candidate countries are selected and designated in as transparent and uniform a manner as possible. In addition, DHS noted that it is taking steps to improve the accuracy and reliability of the department's overstay data. DHS also provided additional details about its continued outreach efforts to the department's interagency partners and foreign counterparts on the expansion process for the Visa Waiver Program. Justice did not comment on our recommendations, but provided additional information about the importance of monitoring countries' reporting of lost and stolen passport data to Interpol. In addition, Justice discussed its efforts, in collaboration with DHS, to include screening against Interpol's lost and stolen passport database as part of ESTA. Justice noted that use of Interpol's database continues to demonstrate significant results in preventing the misuse of passports to fraudulently enter the United States.

We are sending copies of this report to interested congressional committees, the Secretaries of Homeland Security and State, and the U.S. Attorney General. Copies of this report will be made available to others upon request. In addition, this report is available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact Jess T. Ford, Director, International Affairs and Trade, at (202) 512-4128 or fordj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix VI.

A handwritten signature in black ink that reads "Jess T. Ford". The signature is written in a cursive, flowing style.

Jess T. Ford
Director, International Affairs and Trade

Appendix I: Objectives, Scope, and Methodology

To describe the process that the Department of Homeland Security (DHS) is following to admit countries into the Visa Waiver Program, we reviewed laws governing the program and its expansion, and relevant regulations and agency operating procedures, as well as our prior reports and testimonies. In particular, we reviewed DHS's standard operating procedures for oversight and expansion of the Visa Waiver Program. We spoke with officials from the Visa Waiver Program Office, which is responsible for oversight of Visa Waiver Program requirements, as well as representatives from the Department of State's (State) Consular Affairs, Europe and Eurasia, and East Asia and Pacific Bureaus. In addition, we visited U.S. embassies in three current visa waiver countries—France, Japan, and the United Kingdom—whose nationals comprise a large percentage annually of visa waiver travelers to the United States. We also visited U.S. embassies in four countries—Czech Republic, Estonia, Greece, and South Korea—with which DHS is negotiating visa waiver status. During these visits, we interviewed political, economic, consular, commercial, and law enforcement officials regarding oversight of the Visa Waiver Program and its expansion. We also conducted telephone interviews with consular officials in four additional countries—Hungary, Latvia, Lithuania, and Slovakia—that DHS also aims to admit into the Visa Waiver Program in 2008. We did not interview officials in Bulgaria, Poland, or Romania because DHS told us that it does not anticipate that these countries will be admitted into the program in 2008. We did not interview officials in Malta because of the country's relatively small number of annual Visa Waiver Program travelers to the United States.

To assess actions taken to mitigate potential risks in the Visa Waiver Program, we focused on DHS's efforts to implement the new security enhancements required by the 9/11 Act, as well as the recommendations from our July 2006 report.¹ First, to review the department's plans for air exit system implementation, we collected and analyzed documentation and interviewed officials from DHS's Office of Policy, Customs and Border Protection (CBP), and the U.S. Visitor and Immigrant Status and Indicator Technology (US-VISIT) Program Office. We also reviewed prior GAO reports on immigrant and visitor entry and exit tracking systems.

Second, to analyze plans for the implementation of the Electronic System for Travel Authorization (ESTA), we collected and analyzed

¹GAO, *Border Security: Stronger Actions Needed to Assess and Mitigate Risks of the Visa Waiver Program*, [GAO-06-854](#) (Washington, D.C.: July 28, 2006).

documentation and interviewed officials from DHS's Offices of Policy, Screening Coordination, and General Counsel, as well as CBP officials who are implementing the Web-based program. In addition, to understand DHS's legal position regarding the statutory requirements for ESTA implementation, on May 5, 2008, we requested, in writing, DHS's legal position on certain ESTA statutory requirements, which the department provided to us on June 6, 2008.

Third, regarding DHS's efforts to monitor citizens who enter the United States under the Visa Waiver Program and then overstay their authorized period of admission (referred to as "overstays"), we assessed the reliability of the US-VISIT data on potential overstays, which are based on air and sea carriers' arrival and departure data. We reviewed documentation and interviewed cognizant U.S. VISIT officials about how data on potential overstays are generated and validated. As we have previously mentioned, we determined that data on potential overstays that are generated automatically by US-VISIT's systems have major limitations; however, many of these limitations could be overcome by a series of manual checks and validations that US-VISIT can perform, upon request.

Fourth, to determine the status of our prior recommendations to DHS on oversight of the Visa Waiver Program, we developed a scale to classify them as (1) implemented, (2) partially implemented, or (3) not implemented. We collected and analyzed documentation and interviewed officials from DHS's Visa Waiver Program Office on the actions that office has taken since July 2006 to respond to our recommendations. In addition, we met with International Criminal Police Organization (Interpol) officials in Lyon, France, as well as officials from the Department of Justice's Interpol-U.S. National Central Bureau to discuss the status of DHS's access to Interpol's database of lost and stolen travel documents. We concluded that a recommendation was (1) "implemented," if the evidence indicated that DHS had taken a series of actions addressing the recommendation; (2) "partially implemented," if the evidence indicated that DHS had taken some action toward implementation; and (3) "not implemented," if the evidence indicated that DHS had not taken any action.

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.

Appendix II: Worldwide Refusal Rates for Short-term Business and Tourism Visas, Fiscal Year 2007

The Visa Waiver Program nonimmigrant visa refusal rate is based on the number of visitor visa applications submitted, worldwide, by nationals of that country. Visitor visas are issued for short-term business or pleasure travel to the United States. The adjusted refusal rate is calculated by first subtracting from the number of visas that were initially refused (referred to as “refusals”), the number of visas that were subsequently issued after further administrative consideration (referred to as “overcomes”)—or, in short, refusals minus overcomes (see table 2). This resulting number is then divided by the number of visa issuances plus refusals minus overcomes—that is, refusals minus overcomes divided by issuances plus refusals minus overcomes. Adjusted visa refusal rates for nationals of Visa Waiver Program countries reflect only visa applications submitted at U.S. embassies and consulates abroad. These rates do not take into account persons who, under the Visa Waiver Program, travel to the United States without visas. Visa Waiver Program country refusal rates, therefore, tend to be higher than they would be if the Visa Waiver Program travelers were included in the calculation, since such travelers in all likelihood would have been issued visas had they applied, according to State. We are presenting these data to show that the countries under consideration for Visa Waiver Program admission do not all have refusal rates of less than 10 percent; we did not assess the reliability of these data.

Table 2: Worldwide Refusal Rates for Short-term Business and Tourism Visas, Fiscal Year 2007

Country	Adjusted refusal rate
Afghanistan	38%
Albania	50
Algeria	23
Andorra	9
Angola	13
Antigua and Barbuda	15
Argentina	4
Armenia	61
Australia	17
Austria	16
Azerbaijan	15
Bahrain	2
Bangladesh	50
Barbados	6
Belarus	26

**Appendix II: Worldwide Refusal Rates for
Short-term Business and Tourism Visas, Fiscal
Year 2007**

Country	Adjusted refusal rate
Belgium	13
Belize	27
Benin	37
Bhutan	44
Bolivia	29
Bosnia-Herzegovina	19
Botswana	16
Brazil	10
Brunei	2
Bulgaria	14
Burkina Faso	43
Burma	50
Burundi	56
Cambodia	53
Cameroon	43
Canada	37
Cape Verde	40
Central African Republic	29
Chad	29
Chile	7
China - Mainland	21
China - Taiwan	5
Colombia	29
Comoros	25
Congo (Brazzaville)	32
Congo (Kinshasa)	35
Costa Rica	22
Cote D`Ivoire	46
Croatia	5
Cuba	53
Cyprus	2
Czech Republic	7
Denmark	11
Djibouti	22
Dominica	29
Dominican Republic	41
Ecuador	28

**Appendix II: Worldwide Refusal Rates for
Short-term Business and Tourism Visas, Fiscal
Year 2007**

Country	Adjusted refusal rate
Egypt	34
El Salvador	50
Equatorial Guinea	24
Eritrea	49
Estonia	4
Ethiopia	46
Federated States of Micronesia	0
Fiji	33
Finland	16
France	8
Gabon	23
Georgia	55
Germany	10
Ghana	55
Great Britain and Northern Ireland	21
Greece	2
Grenada	27
Guatemala	54
Guinea	58
Guinea - Bissau	55
Guyana	62
Haiti	44
Honduras	38
Hong Kong (BNO HK passport)	2
Hong Kong S. A. R.	3
Hungary	10
Iceland	9
India	22
Indonesia	40
Iran	45
Iraq	45
Ireland	24
Israel	3
Italy	7
Jamaica	38
Japan	12
Jordan	39

**Appendix II: Worldwide Refusal Rates for
Short-term Business and Tourism Visas, Fiscal
Year 2007**

Country	Adjusted refusal rate
Kazakhstan	12
Kenya	34
Kiribati	20
Kuwait	4
Kyrgyzstan	30
Laos	73
Latvia	12
Lebanon	25
Lesotho	40
Liberia	51
Libya	25
Liechtenstein	7
Lithuania	13
Luxembourg	6
Macau S.A.R.	10
Macedonia	36
Madagascar	14
Malawi	37
Malaysia	8
Maldives	22
Mali	56
Malta	3
Mauritania	59
Mauritius	13
Mexico	33
Moldova	36
Monaco	38
Mongolia	61
Morocco	24
Mozambique	18
Namibia	5
Nauru	0
Nepal	55
Netherlands	12
New Zealand	8
Nicaragua	46
Niger	53

**Appendix II: Worldwide Refusal Rates for
Short-term Business and Tourism Visas, Fiscal
Year 2007**

Country	Adjusted refusal rate
Nigeria	32
Norway	9
Oman	4
Pakistan	40
Palestinian Authority	56
Panama	26
Papua New Guinea	12
Paraguay	18
Peoples Republic of Korea - North Korea	14
Peru	44
Philippines	32
Poland	25
Portugal	8
Qatar	2
Republic of Palau	0
Republic of the Marshall Islands	3
Romania	38
Russia	12
Rwanda	47
Samoa	29
San Marino	40
Sao Tome and Principe	10
Saudi Arabia	6
Senegal	61
Serbia	64
Serbia and Montenegro	23
Seychelles	19
Sierra Leone	43
Singapore	9
Slovakia	12
Slovenia	7
Solomon Islands	5
Somalia	52
South Africa	6
South Korea	4
Spain	7
Sri Lanka	28

**Appendix II: Worldwide Refusal Rates for
Short-term Business and Tourism Visas, Fiscal
Year 2007**

Country	Adjusted refusal rate
St. Kitts and Nevis	21
St. Lucia	27
St. Vincent and The Grenadines	23
Sudan	34
Suriname	11
Swaziland	19
Sweden	8
Switzerland	7
Syria	36
Tajikistan	30
Tanzania	21
Thailand	17
The Bahamas	5
The Gambia	57
Timor-Leste	0
Togo	48
Tonga	45
Trinidad and Tobago	20
Tunisia	24
Turkey	15
Turkmenistan	49
Tuvalu	12
Uganda	43
Ukraine	38
United Arab Emirates	5
Unknown place of birth or stateless	42
Uruguay	12
Uzbekistan	71
Vanuatu	25
Vatican City	0
Venezuela	19
Vietnam	36
Yemen	64
Zambia	46
Zimbabwe	32

Source: Department of State.

^aIncludes applications for both B visas and combination B-1/B-2/Mexican Border Crossing Cards.

Appendix III: Key Legislative Requirements for Inclusion in the Visa Waiver Program

The Immigration Reform and Control Act of 1986 created the Visa Waiver Program as a pilot program.¹ In 2000, the program became permanent under the Visa Waiver Permanent Program Act.² In 2002, we reported on the legislative requirements to which countries must adhere before they are eligible for inclusion in the Visa Waiver Program.³ In general, the requirements are as follows:

- *A low nonimmigrant visa refusal rate.* To qualify for visa waiver status, a country must maintain a refusal rate of less than 3 percent for its citizens who apply for business and tourism visas. If DHS certifies that it has met certain requirements under the 9/11 Act, it will have the authority to waive the 3 percent refusal rate requirement—currently up to a maximum of 10 percent—provided that the country meets other security requirements.
- *A machine-readable passport program.* The country must certify that it issues machine-readable passports to its citizens. As of June 26, 2005, all travelers are required to have a machine-readable passport to enter the United States under this program.
- *Reciprocity.* The country must offer visa-free travel for U.S. citizens.

Persons entering the United States under the Visa Waiver Program must

- have a valid passport issued by the participating country and be a national of that country;⁴
- be seeking entry for 90 days or less as a temporary visitor for business or tourism;
- have been determined by CBP at the U.S. port of entry to represent no threat to the welfare, health, safety, or security of the United States;

¹Pub. L. No. 99-603.

²Pub. L. No. 106-396.

³GAO, *Border Security: Implications of Eliminating the Visa Waiver Program*, [GAO-03-38](#) (Washington, D.C.: Nov. 22, 2002).

⁴All passports issued to visa waiver travelers after October 26, 2006, must be electronic. Travelers with passports issued after the deadline that do not meet these requirements must obtain a visa from a U.S. embassy or consulate overseas before departing for the United States.

**Appendix III: Key Legislative Requirements
for Inclusion in the Visa Waiver Program**

- have complied with conditions of any previous admission under the program (e.g., individuals must have stayed in the United States for 90 days or less during prior visa waiver visits);
- if entering by air or sea, possess a round-trip transportation ticket issued by a carrier that has signed an agreement with the U.S. government to participate in the program, and must have arrived in the United States aboard such a carrier; and
- if entering by land, have proof of financial solvency and a domicile abroad to which they intend to return.

Appendix IV: Comments from the Department of Homeland Security

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

August 27, 2008

Mr. Jess T. Ford
Director, International Affairs and Trade
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Ford:

RE: Draft Report GAO-08-967, Visa Waiver Program: Actions Needed to Improve Management of Expansion Process and Assess and Mitigate Program Risks (GAO Job Code 320540)

The Department of Homeland Security (DHS or the Department) appreciates the opportunity to review and comment on the draft report referenced above.

The report is broadly supportive of the Department's efforts to date. It acknowledges that DHS has achieved several significant security enhancements during the expansion process. It also concludes that DHS has fully implemented the majority of the recommendations from the 2006 U.S. Government Accountability Office (GAO) report thereby improving the Department's ability to assess and mitigate program risks. Moreover, many of its recommendations are consistent with our current approach, and we expect to be able to implement them. In fact, the Department began, even before the report was drafted, to address several of these issues. We also believe that the steps the Department has taken to implement the security provisions mandated by the "Implementing the 9/11 Commission Recommendations Act of 2007," P.L. 109-13 (9/11 Act) will ensure that the Visa Waiver Program (VWP) continues to be appropriately structured to assess and mitigate program risks and to adapt to evolving travel needs and security standards.

The following details the Department's response to issues raised in the report particularly with respect to GAO's conclusions and recommendations.

GAO states that the executive branch is moving quickly to expand the Visa Waiver Program, but DHS has not followed a transparent process.

The report does not acknowledge sufficiently the dynamic and fluid nature of the VWP expansion process. At various points over the past year, DHS has had to adjust the schedule and manner of engagement to expand and modernize the VWP in response to events. As evidenced by the following information, DHS made these adjustments in as

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transparent a manner as possible under the circumstances. In addition, DHS responded promptly and favorably to all Congressional requests for information and briefings.

DHS did not follow its own November 2007 standard operating procedures (SOPs), which set forth the key milestones that DHS and aspiring countries must meet before countries are admitted into the program.

DHS agrees that it did not precisely follow the November 2007 SOPs (which have since been updated). Nevertheless, the Visa Waiver Program Office (VWPO) staff followed a logical and transparent process for expansion of the program. The VWPO initially created the SOP as an internal document to assist program staff. It was not intended as formal guidance; nor was it meant for a wider audience. Moreover, VWPO staff understood that the procedures were subject to change should circumstances warrant. In fact, the SOP is normally updated after the completion of a country review cycle to account for relevant developments and lessons learned.

State, Justice, and U.S. Embassy officials stated that DHS created confusion among interagency partners and aspiring Visa Waiver Program countries.

DHS has successfully mitigated any confusion caused by a fluid and dynamic expansion process in the following ways: technical briefings for each of the aspirant countries to explain the new requirements and the designation process; regular communication with U.S. embassy personnel, DHS offices/personnel overseas, State and Justice offices with equities in the VWP, and foreign government representatives; and numerous staff and high-level meetings with State, Justice, and aspirant country officials who are partners in the expansion process.

U.S. Embassy officials in several aspiring countries told us that it had been difficult to explain the expansion process to foreign counterparts and manage their expectations.

DHS headquarters officials have made and continue to make significant and successful efforts to communicate next steps in VWP modernization and expansion to various DHS and U.S. embassy personnel as well as to representatives from the embassies of current and aspirant VWP countries in Washington, D.C. The VWPO is in near-daily contact with the Department of State's Bureau of Consular Affairs, the designated contact point for VWP issues, as well as with multiple consular sections overseas. More formally, DHS sent regular email updates on VWP reform efforts to U.S. embassies in aspiring countries and held a number of teleconferences with affected posts to discuss current developments in the VWP. Finally, DHS held three high-level informational meetings with the embassies of current VWP and "Road Map" countries between March 2008 and July 2008, to explain the U.S. government's approach to VWP modernization and expansion and sent a number of email announcements to the same audience.

State officials said that 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

See comment 1.

several countries that had visa refusal rates above 10 percent (Hungary, Latvia, Lithuania, and Slovakia).

See comment 2.

As GAO mentions in its report, State Department and DHS formulated a list of 13 countries with whom the U.S. government planned to engage as it sought to expand the Visa Waiver Program, called the "Road Map Initiative." The State Department and DHS formulated the list on the basis of a variety of factors, including the likely impact of a country's entry on the law enforcement, national security, and immigration interests of the United States; travel patterns; and whether the country already offered U.S. citizens visa-free travel privileges. As State Department personnel are well aware, a low visa refusal rate alone was not sufficient basis for inclusion in the "Road Map." Furthermore, in White House-led policy discussions including all agencies it was agreed that due to workload management issues the focus this year would remain on identified Roadmap countries.

GAO states that DHS has not fully developed tools aimed at assessing and mitigating risks of the Visa Waiver Program noting that

- a. DHS must certify that it can verify the departure of not less than 97 percent of foreign nationals exiting U.S. airports;
- b. DHS must certify that an Electronic System for Travel Authorization for screening visa waiver travelers in advance of their travel is "fully operational;"
- c. 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 will likely face difficulties implementing this program due, in part, to opposition from the airline industry.

See comment 3.

The GAO's claim that DHS has not fully developed the tools to assess and mitigate risks in the VWP is premature as it rests on incomplete information regarding the status of both the biographic and biometric air exit systems and the Electronic System for Travel Authorization (ESTA). As of the date of the draft report, these requirements have not yet been completely met; the Department has not claimed otherwise. On the contrary, DHS has consistently stated its intention to certify later in 2008 both that an air exit system is in place that can verify the departure of not less than 97% of foreign nationals who exit through U.S. airports and that ESTA is fully operational. Similarly, the Department expects to implement a biometric exit system as required by the 9/11 Act, despite significant resistance both on Capitol Hill and in the private sector. Overall, GAO's finding at best reflects the state of the VWP program in July 2008, prior to the implementation of the new requirements. For example, ESTA was made available to VWP travelers on a voluntary basis on August 1, 2008, the week after the draft GAO report was released. The rollout has been smooth and successful—with more than 50,000 applications processed to date—and the Department continues to work with the Departments of State and Commerce, as well as the travel and tourism industries, on outreach efforts. Therefore, the draft report presents outdated information that does not reflect the current state of the VWP or the publicly announced implementation dates for the 9/11 Act security enhancements.

GAO states that DHS does not fully consider countries' overstay rates when assessing illegal immigration risks in the Visa Waiver Program.

Neither the VWP statute nor regulations require that DHS consider a country's overstay rates when determining the eligibility of a country to join the VWP. A VWP member country's overstay rate would, however, be considered as a factor to determine a country's continued eligibility for participation in the Program. Countries' overstay rates also may be considered as a factor to determine whether a country is eligible for VWP membership based on a waiver of the low nonimmigrant refusal rate requirement. However, waiver under that provision (8 U.S.C. § 1187(c)(8)) is not possible until the 97 percent air exit system is certified and the Secretary, jointly with the Secretary of State, establishes the maximum visa overstay rate. To date, DHS has not formally relied on overstay data during country assessments because of weaknesses in the quality of the relevant data. Nevertheless, DHS agrees that overstay information should be developed to assess and mitigate risks, and has been working to remedy these data problems and develop overstay rates for foreign nationals arriving in the United States. Based on its preliminary analysis, the Department believes that the current data will soon be reliable enough to use to inform its country assessments.

GAO states that DHS has implemented many recommendations from the 2006 report, but has not fully implemented others. GAO asserts that DHS has "partially implemented" the following:

- a. 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 appropriate headquarters offices, for direct communications between points of contact at overseas posts and DHS's Visa Waiver Program Office.

DHS has fully implemented this recommendation. The VWPO monitors both open source information and classified intelligence relating to VWP countries on a daily basis. The VWPO has established points of contact (POCs) at U.S. Embassies and Consulates in the 27 participating countries, as well as 13 roadmaps, to include Consular Section officials, Immigration and Customs Enforcement (ICE) Attaches, Customs and Border Protection (CBP) Attaches, U.S. Citizenship and Immigration Services (USCIS) Attaches, and Legal Attaches. The VWPO communicates directly with these officials (as well as with Consular Affairs in Washington) and utilizes more formal tasking processes with the appropriate headquarters offices when necessary. For example, the VWPO distributes formal requests for information (RFIs) to ICE, CBP, USCIS, State, and Justice headquarters offices before a VWP site-visit is conducted. Many of the questions contained in these RFIs are for embassy personnel to answer.

- b. Require periodic updates from points of contacts at posts in countries where there are law enforcement or security concerns relevant to the Visa Waiver Program.

See comment 4.

DHS has fully implemented this recommendation. The VWPO actively engages POCs at U.S. Embassies and Consulates to augment its continual monitoring process. In addition, the VWPO receives—via appropriate channels—frequent updates on law enforcement and security concerns from the Intelligence Community.

- c. Require that all Visa Waiver Program countries provide the United States and Interpol with non-biographical data from lost and stolen issued and blank passports.

See comment 5.

Several VWP countries already report this data to the United States, either directly or through Interpol or the Regional Movement Alert System. Moreover, pursuant to an agreement between the U.S. National Central Bureau and the Department, the VWPO receives data on lost and stolen passport reporting to Interpol and engages countries as appropriate. As part of DHS's efforts to expand and modernize the VWP, the Department is requiring current members to sign Memoranda of Understanding (MOU). Among its other provisions, the MOU commits signatories to report to Interpol or otherwise make available to the United States Government information about lost and stolen issued and blank passports. Eight aspirant countries have signed MOUs to date. DHS has supplied templates of the MOU to all current VWP countries in preparation for negotiations and is in active negotiations with several of them.

See comment 6.

GAO quotes DHS Assistant Secretary for Policy Development Richard Barth as follows: "The Department chose to include previous departures and changes of immigration status records in its methodology because this method allowed the department to achieve a match rate of 97 percent or greater."

The quote attributed to Assistant Secretary Barth is inaccurate. As DHS has made clear on several occasions, it has not decided on a final methodology to verify the departure of not less than 97 percent of foreign nationals exiting U.S. airports. As noted above, the Department intends to make this certification later this year consistent with the statutory requirement.

Recommendations and Action Taken or Planned

The U.S. Government Accountability Office makes four recommendations in this draft report to improve the management of the Visa Waiver Program and better assess and mitigate risks:

1. Establish a clear process, in coordination with the Departments of 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.

DHS and State are currently working to create procedures so that future candidate countries are selected and designated in as transparent and uniform manner as possible and that expectations are appropriately managed during the process. That being said,

program expansion criteria can not be boiled down to a simple “check-list.” Potential candidate countries will be evaluated based on a variety of factors, including the likely impact of their designation on the law enforcement, national security, and immigration interests of the United States; travel patterns; and the extent of security cooperation with the United States.

2. Designate an office with responsibility for developing overstay rate information for the purposes of monitoring countries’ compliance with the statutory requirements of the Visa Waiver Program.

To date, three DHS offices have collaboratively developed overstay rate estimates based on their roles in the process: CBP Office of Field Operations, US-VISIT, and the Office of Immigration Statistics. DHS is currently assessing the feasibility and effectiveness of designating a single office to assume this responsibility.

3. Direct that office and other appropriate DHS components to explore cost effective actions necessary to further improve, validate, and test the reliability of overstay data;

DHS is currently taking several steps to improve the accuracy and reliability of the overstay data. For example, CBP will continue to audit carrier performance and work with airlines to improve the accuracy and completeness of data collection. The accuracy of the overstay rate estimates also depends on the precision of the matching algorithms. US-VISIT expects to receive a preliminary evaluation of the current matching algorithms with possible recommended improvements from the Lawrence-Livermore National Labs this fall.

4. Direct the Visa Waiver Program Office to request an updated, validated study of estimated overstay rates for current and aspiring Visa Waiver Program countries and determine the extent to which additional research and validation of the data is required to help evaluate whether particular countries pose a potential illegal immigration risk to the United States.

The VWPO—working with the Office of Immigration Statistics—has requested estimated overstay rates for current and aspiring VWP countries. The VWPO has further requested additional validation of these estimates. Based on its preliminary analysis of data provided by US-VISIT, the Department believes that the current data will soon be reliable enough to inform VWP country assessments.

Sincerely,



Gerald E. Levine

Director

Departmental GAO/OIG Liaison Office

Following are GAO's comments on the Department of Homeland Security's letter dated August 27, 2008.

GAO Comments

1. We disagree that the department followed a transparent process for expansion of the program. As we state in our report, 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. Moreover, absent clear direction from DHS, U.S. embassy officials in several aspiring countries told us that 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. Therefore, we recommend in this report that DHS establish a clear process, in coordination with State and Justice, for program expansion. DHS noted that it is currently working to create procedures so that future candidate countries are selected and designated in as transparent and uniform a manner as possible and expectations are appropriately managed during the process.
2. Aside from the 13 Road Map countries identified in 2005, 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 South Korea and countries in Central and Eastern Europe. DHS noted that it is currently working to create procedures so that future candidate countries are selected and designated in as transparent and uniform a manner as possible and expectations are appropriately managed during the process.
3. We have updated the report to indicate that ESTA began accepting voluntary applications from visa waiver travelers on August 1, 2008. However, DHS does not anticipate that ESTA authorizations will be mandatory for visa waiver travelers until after January 12, 2009. As we state in our report, and as DHS noted, the department has not yet certified that it can verify the departure of not less than 97 percent of foreign nationals exiting U.S. airports, or that an Electronic System for Travel Authorization (ESTA) for screening visa waiver travelers in advance of their travel is "fully operational." Moreover, DHS has not yet implemented a biometric air exit system at U.S. airports. Thus, DHS has not yet fully developed the tools to assess and mitigate risks in the Visa Waiver Program.

4. In July 2006, we reported that DHS needed to improve its communication with officials at U.S. embassies so it could communicate directly with officials best positioned to monitor compliance with the program's requirements, and report on current events and issues of potential concern in each of the participating countries. Therefore, we recommended that DHS establish points of contact at U.S. embassies and develop protocols to ensure that the Visa Waiver Program Office receives periodic updates in countries where there are security concerns. As we note in this report, the Visa Waiver Program Office has recently begun communicating and disseminating relevant program information regularly with U.S. embassy officials at Visa Waiver Program posts. However, despite our requests during the course of this review—and again following our receipt of DHS's formal comments on the draft of this report—the department has not provided us with sufficient documentation to demonstrate that it has established points of contact at U.S. embassies for all 27 participating countries or established protocols for communications between these contacts and the Visa Waiver Program Office. Furthermore, the department has not provided us with documentation to demonstrate that established points of contact are reporting periodically to the Visa Waiver Program Office. Therefore, we cannot conclude that these 2006 recommendations are fully implemented.
5. DHS noted that it has not yet signed memorandums of understanding (MOU) with any of the 27 current Visa Waiver Program countries. Because the MOUs will commit all signatories to report to Interpol or otherwise make available to the United States information about lost and stolen blank and issued passports, this recommendation will remain open until all MOUs are finalized.
6. To verify the departure of not less than 97 percent of foreign nationals exiting U.S. airports, DHS reported to us in December 2007 that it will match records, reported by airlines, of visitors departing the country with the department's existing records of any prior arrivals, immigration status changes, or prior departures from the United States. In January 2008, the Assistant Secretary for Policy Development made this statement, which corroborated data that we received from US-VISIT in late October 2007. At the time of our February 2008 testimony,¹ DHS confirmed to us that it planned to

¹GAO, *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).

employ a methodology that begins with departure records; however, as DHS indicated in its written comments on a draft of this report, it has still not decided on a final methodology. DHS has not provided us with information on any other options that it might be considering to meet this provision. Furthermore, the department has not explained how and when it intends to validate these data.

Appendix V: Comments from the Department of Justice



U.S. Department of Justice

National Central Bureau - INTERPOL

Washington, D.C. 20530

August 26, 2008

Jess T. Ford
Director
International Affairs and Trade
U.S. Government Accountability Office
441 G. Street, NW
Washington, DC 20548

Dear Mr. Ford:

Thank you for the opportunity to review the final draft of the Government Accountability Office (GAO) report entitled "Visa Waiver Program: Actions Needed to Improve Management Expansion Process and Assess and Mitigate Program Risks." The draft was reviewed by the US National Central Bureau of Interpol (USNCB), and relevant components of the Department of Justice (DOJ). This letter constitutes the USNCB's formal comments. I request that the GAO include this letter in the final report.

As noted in the report, DOJ and the Departments of Homeland Security (DHS) and State (DoS) have collaborated extensively to bring international lost and stolen passport data, provided by Interpol, to United States (US) ports-of-entry and the US law enforcement community. Use of the Interpol Lost and Stolen Travel Document Database (SLTD) in the United States continues to demonstrate significant and sustained results in thwarting the misuse of lost and stolen passports by criminals seeking to fraudulently enter the US.

USNCB, in collaboration with DHS and DoS, played a key role in the development of international standard operating procedures for the reporting of lost and stolen passport data to Interpol. The United States is presently in the top tier of Interpol member countries for both reporting and consulting of this data. We believe that the establishment, by Interpol, of a formal, transparent and accurate monitoring system for country reporting to the SLTD would greatly benefit the overall success of the system and bolster DHS' Visa Waiver Program. Such a mechanism would allow the US and other participating countries to track reporting compliance, identify discrepancies and eliminate the need for duplicate reporting.

Director Jess T. Ford
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Based on the success of the Advance Passenger Manifest (APIS)-Interpol interface, currently in place at all US ports-of-entry, the USNCB engaged in a cooperative arrangement with DHS to incorporate SLTD database checks for the Electronic System for Travel Authorization (ESTA) program. The Interpol-ESTA interface was established in May 2008 and tested in a production environment in July 2008, prior to the program launch earlier this month. At this time, I am happy to report that the ESTA-Interpol system is functioning seamlessly and has already resulted in automated denials of applications involving passports known to the Interpol lost/stolen database.

We appreciate the efforts of you and your staff in highlighting the work of the Department and Interpol in this important program.

Sincerely,



Martin Renkiewicz
Director

cc: Vicky Caponiti, Audit Liaison
US Department of Justice

Ronald K. Noble
Interpol Secretary General

Appendix VI: GAO Contact and Staff Acknowledgments

GAO Contact

Jess T. Ford, (202) 512-4128, or fordj@gao.gov

Staff Acknowledgments

In addition to the individual named above, 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 report.

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