

Highlights of [GAO-12-599T](#), a testimony before the Subcommittee on Immigration, Refugees, and Border Security, Committee on the Judiciary, U.S. Senate

Why GAO Did This Study

DHS manages the Visa Waiver Program, which allows nationals from 36 countries to apply for admission to the United States as temporary visitors for business or pleasure without a visa. From fiscal years 2005 through 2010, over 98 million visitors were admitted to the United States under the Visa Waiver Program. During that time period, the Department of State issued more than 36 million nonimmigrant visas for temporary travel to the country. DHS is also responsible for investigating overstays—unauthorized immigrants who entered the country legally on a temporary basis but then overstayed their authorized periods of admission. The Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) required DHS, in consultation with the Department of State, to take steps to enhance the security of the program. This testimony is based on GAO products issued in September 2008; April, May, and December 2011; and selected updates from DHS as of March 2012 on the status of DHS's efforts to implement the 9/11 Act requirements and to address prior GAO recommendations. As requested, it addresses the following issues: (1) challenges in the Visa Waiver Program, and (2) overstay enforcement efforts.

What GAO Recommends

GAO made recommendations in prior reports for DHS to, among other things, strengthen plans to address certain risks of the Visa Waiver Program and for overstay enforcement efforts. DHS generally concurred with these recommendations and has actions planned or underway to address them.

View [GAO-12-599T](#) or key components. For more information, contact Rebecca Gambler at (202) 512-6912 or gambler@gao.gov.

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VISA WAIVER PROGRAM

Additional Actions Needed to Mitigate Risks and Strengthen Overstay Enforcement

What GAO Found

GAO has reported on actions that the Department of Homeland Security (DHS) has taken to improve the security of the Visa Waiver Program; but, additional risks remain. In May 2011, GAO reported that DHS implemented the Electronic System for Travel Authorization (ESTA), required by the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act), and took steps to minimize the burden associated with this requirement. DHS requires Visa Waiver Program travelers to submit biographical information and answers to eligibility questions through ESTA prior to travel. DHS made efforts to minimize the burden imposed by this requirement. For example, although travelers formerly filled out a Visa Waiver Program application form for each journey to the United States, ESTA approval is generally valid for 2 years. However, GAO reported that DHS had not fully evaluated security risks related to the small percentage of travelers without verified ESTA approval. In 2010, airlines complied with the requirement to verify ESTA approval for almost 98 percent of Visa Waiver Program passengers prior to boarding, but the remaining 2 percent—about 364,000 travelers—traveled under the program without verified ESTA approval. In May 2011, GAO reported that DHS had not yet completed a review of these cases to know to what extent they pose a risk to the program and recommended that it establish timeframes for regular review. DHS concurred and has since established procedures to review a sample of noncompliant passengers on a quarterly basis. Further, per the 9/11 Act, DHS requires Visa Waiver Program countries to enter into three information-sharing agreements with the United States; however, DHS reported that only about half of the 36 countries have fully complied with this requirement as of March 2012, and many of the signed agreements have not been implemented. DHS, with its interagency partners, established a compliance schedule to finalize these agreements by June 2012. Also, DHS and its interagency partners have developed measures short of termination that could be applied on a case-by-case basis to countries not meeting their compliance date.

In April 2011, GAO reported that federal agencies take actions against a small portion of overstays, but improving planning could strengthen overstay enforcement. Immigration and Customs Enforcement's (ICE) Counterterrorism and Criminal Exploitation Unit (CTCEU) is responsible for overstay enforcement. CTCEU arrests a small portion of the estimated 4 to 5.5 million overstays in the United States because of, among other things, competing priorities, but ICE expressed an intention to augment its overstay enforcement resources. From fiscal years 2006 through 2010, ICE reported devoting about 3 percent of its total field office investigative hours to CTCEU overstay investigations. ICE was considering assigning some responsibility for noncriminal overstay enforcement to its Enforcement and Removal Operations (ERO) directorate, which apprehends and removes aliens subject to removal from the United States. In April 2011, GAO recommended that developing a time frame for assessing needed resources ICE could strengthen ICE's planning efforts. DHS concurred and stated that ICE planned to identify resources needed to transition this responsibility to ERO as part of its fiscal year 2013 resource planning process.