

Department of Homeland Security **Office of Inspector General**

The Visa Waiver Program





OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

November 2, 2012

MEMORANDUM FOR: The Honorable David Heyman
Assistant Secretary
Office of Policy

FROM: Charles K. Edwards
Acting Inspector General

SUBJECT: *The Visa Waiver Program*

Attached for your action is our final report, *The Visa Waiver Program*. We incorporated the formal comments from the Office of Policy in the final report.

The report contains four recommendations aimed at improving the Visa Waiver Program. Your office concurred with all recommendations. As prescribed by the Department of Homeland Security Directive 077-1, Follow-Up and Resolutions for the Office of Inspector General Report Recommendations, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. We consider recommendations #2 and #4 resolved and open. Recommendations #1 and #3 are unresolved.

Consistent with our responsibility under the *Inspector General Act*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Deborah L. Outten-Mills, Acting Assistant Inspector General for Inspections, at (202) 254- 4015

Attachment



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Abbreviations

CBP	U.S. Customs and Border Protection
DHS	Department of Homeland Security
DOJ	Department of Justice
DOS	Department of State
ESTA	Electronic System for Travel Authorization
FY	fiscal year
I&A	Office of Intelligence and Analysis
OIA	Office of International Affairs
OIE	Office of International Enforcement
OIG	Office of Inspector General



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VWP Visa Waiver Program
VWPO Visa Waiver Program Office



Executive Summary

The Visa Waiver Program was established in 1986 to promote international tourism without jeopardizing U.S. security. The program allows nationals from designated countries to enter the United States and stay for up to 90 days without obtaining a visa from a U.S. embassy or consulate. Currently, there are 36 Visa Waiver Program countries. The *Immigration and Nationality Act*, as amended, requires the Secretary of Homeland Security, in consultation with the Secretary of State, to assess the law enforcement and security risks of Visa Waiver Program countries, and terminate a country from the Visa Waiver Program if necessary.

The purpose of our review was to determine the adequacy of processes used to determine (1) a country's initial designation as a Visa Waiver Program participant, and the continuing designation of current Visa Waiver Program countries; and (2) how effectively the Visa Waiver Program Office collaborates with key stakeholders.

Within the Office of Policy, the Visa Waiver Program Office is responsible for determining a country's initial and continuing eligibility to participate in the Visa Waiver Program, and preparing the Secretary of Homeland Security's decision on whether each country's participation should be continued or terminated. The Visa Waiver Program Office conducts mandatory reviews of countries requesting to participate in the program, as well as countries already in the program.

We determined that the Visa Waiver Program Office had established standard operating procedures and review criteria that satisfy the goals for conducting country reviews. Although Visa Waiver Program officials maintained effective collaboration with stakeholders during the review process, additional efforts are needed to communicate with appropriate officials the standards needed to achieve compliance with Visa Waiver Program requirements and the criteria used to assess compliance. In addition, challenges that may reduce the effectiveness of the Visa Waiver review process include untimely reporting of results, current staffing levels within the Visa Waiver Program Office, and its location in the Department of Homeland Security (DHS) organizational structure.

We are recommending that the Visa Waiver Program Office develop processes for communicating with embassy and foreign representatives the standards for Visa Waiver Program countries to achieve compliance, and for meeting mandated timeframes for reporting on a country's compliance with program requirements. In addition, we recommend that the Visa Waiver Program Office be appropriately staffed to fulfill its oversight responsibility, and located within an organizational structure that will enhance its overall performance and reporting capabilities.



Background

The Visa Waiver Program (VWP) allows nationals from participating countries to travel to the United States for tourism or business for 90 days or less without a nonimmigrant visa. The *Immigration Reform and Control Act of 1986* created the VWP as a pilot program to (1) promote international business and tourism, (2) focus consular resources on higher-risk visa applicants, and (3) allow reciprocal visa-free travel for Americans to VWP designated countries. After recognizing the benefits of this type of travel with eight participating countries, Congress passed the *Visa Waiver Permanent Program Act* in October 2000. Table 1 shows the 36 countries currently participating in the VWP.

Table 1. VWP Participating Countries

Andorra	Hungary	New Zealand
Australia	Iceland	Norway
Austria	Ireland	Portugal
Belgium	Italy	San Marino
Brunei	Japan	Singapore
Czech Republic	Latvia	Slovakia
Denmark	Liechtenstein	Slovenia
Estonia	Lithuania	South Korea
Finland	Luxembourg	Spain
France	Malta	Sweden
Germany	Monaco	Switzerland
Greece	The Netherlands	United Kingdom

Source: Department of Homeland Security.

Travelers visiting the United States under the VWP are not subject to the same screening as non-VWP travelers. For example, non-VWP travelers are usually interviewed by a consular officer as part of their visa application process. In contrast, VWP travelers' first encounter with a U.S. official is usually at a U.S. port of entry.

To balance the competing concerns of facilitating VWP travel without affecting U.S. law enforcement and security interests, the *Visa Waiver Permanent Program Act* included provisions to strengthen documentation and reporting requirements for VWP countries. Specifically, participating countries must meet statutory and policy requirements, including:

- Have a non-immigrant visitor visa refusal rate of less than 3 percent for the previous year or an average of no more than 2 percent over the past 2 fiscal years with neither year exceeding 2.5 percent;



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- Issue their nationals machine-readable passports that incorporate biometric identifiers;
- Issue their citizens International Civil Aviation Organization–compliant machine-readable passports containing an electronic chip;
- Not compromise the law enforcement or security interests of the United States;
- Offer at least 90 days of reciprocal visa-free travel to U.S. citizens;
- Enter into an agreement with the United States to report, or make available through Interpol, information about the theft or loss of passports;
- Enter into an agreement with the United States to share information regarding whether its citizens and nationals traveling to the United States represent a threat to the security or welfare of the United States; and
- Accept the repatriation of any citizens, former citizens, or nationals against whom a final order of removal is issued no later than 3 weeks after the order is issued.

Nationals from participating VWP countries traveling to the United States must—

- Not be a threat to the welfare, health, safety, or security of the United States, as determined by Customs and Border Protection (CBP) at the U.S. port of entry;
- Have complied with conditions of any previous admissions under the program;
- Have a round-trip transportation ticket issued by a carrier that has signed an agreement with the U.S. Government to participate in the program if entering the United States by air or sea;
- Arrive in the United States aboard such a carrier;
- Waive their right to review or appeal an immigration officer’s determination as to admissibility at the port of entry, and also waived the right to contest, other than on the basis of an application for asylum, any action for removal; and
- Have proof of financial solvency and a home abroad to which they intend to return if entering the United States by land.



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The *Enhanced Border Security and Visa Reform Act of 2002* was established in response to evolving threats to international travel following the events of the 9/11 terrorist attacks. This act required VWP countries to report or make available all lost and stolen passport data, and increased the frequency of mandatory country reviews from 5 years to at least once every 2 years for evaluating and reporting security risks posed by their continued participation in the program.

The *Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act)*, as amended, required the creation of the Electronic System for Travel Authorization (ESTA). ESTA determines an applicant's eligibility to travel to the United States under the VWP. The system became fully operational in the fall of 2008 and mandatory for all VWP visitors traveling to the United States by airplane or cruise ship in January 2009.

Before departing for travel under the VWP, travelers are required to use ESTA to provide biographical and travel information and respond to eligibility questions. ESTA applications are queried against databases for law enforcement, lost and stolen passports, some visa refusals, and visa revocations. An approved ESTA is valid for 2 years or until the passport expires. A new ESTA is also required when a traveler's biographical information or circumstances underlying any of the previous answers to the traveler's eligibility questions have changed. ESTA approval can be revoked at any time and does not grant admission, which is determined by CBP inspectors at a U.S. port of entry.¹

The 9/11 Act also mandated that all VWP countries enter into agreements with the United States to share information on their citizens who may represent a threat to the security and welfare of the United States and enter into an agreement to share all lost and stolen passport data with the United States. DHS, in consultation with other Federal agencies, has determined that VWP countries can satisfy these requirements by entering into the following bilateral agreements:

- Homeland Security Presidential Directive-6 – establishes procedures to share watchlist information about known or suspected terrorists between the United States and VWP participant countries.
- Preventing and Combating Serious Crime – enhances law enforcement cooperation through the sharing of law enforcement data, including fingerprints and other biometric and biographic information, to better identify terrorists and criminals during investigations and other law enforcement activities.

¹ 8 C.F.R. 217.5.



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- Lost and Stolen Passports – requires VWP countries to enter into an agreement with the United States to report, or make available through Interpol or other means as designated by DHS, information about all stolen or lost passports.

The Visa Waiver Program Office (VWPO) manages the oversight of participating VWP countries, as well as the process for assessing the law enforcement and security implications of including additional countries. To determine compliance with program requirements, the VWPO conducts the following mandatory reviews of countries requesting to participate in the program, as well as countries already in the program:

- Designation Review – An initial evaluation to determine eligibility of a candidate country. It includes a site-visit and analysis of information received from open sources, intelligence reports, and requests for information.
- Continuing Designation Review – An evaluation to determine whether a country may continue to participate in the VWP, which includes an analysis of relevant information and documentation produced by the VWPO, the VWP country, Department of Justice (DOJ), Department of State (DOS), DHS components, and the Intelligence Community. The VWPO can perform two types of reviews to make this determination:
 - In-country review – a site-visit to the country to gather and analyze targeted information and make observations that may affect U.S. security and law enforcement interests; or
 - Administrative review – similar to an in-country review, but without a site-visit, and can be enhanced through video- or teleconferencing with embassy and/or foreign officials.

Based on these reviews, the VWPO is required to produce a report to Congress. To meet this mandate, the VWPO prepares a country report that describes all findings and recommendations of the review. A summary report to Congress is provided that includes the Secretary's determination, how that determination was reached, and highlights any issues of concern regarding the VWP country.

The VWPO also regularly monitors political activities and current affairs in participating countries as part of an overall effort to identify issues that would affect security, immigration enforcement, and other risks to the United States.



Results of Review

We evaluated processes and procedures used by the VWPO to (1) determine the impact of a country's initial or continuing designation in the VWP on U.S. national security, immigration enforcement, and other risks; and (2) assist in the Secretary's decision regarding a country's participation in the VWP. We also assessed the collaboration among the VWPO, DOS, and DOJ in ensuring country compliance with VWP requirements, and in balancing the law enforcement and security interests with existing bilateral diplomatic relations.

The VWPO has developed and implemented standard operating procedures and evaluation criteria that ensure that the objectives for conducting initial and continuing designation reviews, as mandated by Congress, are met. In addition, the VWPO has engaged in on-going communication and effective collaborations with DOS and DOJ officials during each phase of the VWP review process.

We identified areas that need to be addressed to increase the effectiveness of the VWPO review process: (1) communicating to embassy and DOS officials in VWP countries the standards necessary to achieve compliance with VWP requirements and the criteria used by the VWPO to assess compliance, and (2) issuing required reports to Congress within mandated timeframes. In addition, the DHS Office of Policy should evaluate the VWPO's staffing levels and organizational reporting lines to ensure the VWPO's ability to fulfill oversight responsibilities and enhance overall operational performance.

Standards for Compliance Need To Be Communicated

The VWPO has established evaluation criteria and procedures for determining a country's initial eligibility and continuing compliance with VWP requirements. The following areas are covered during the country reviews:

- Nationality and citizenship laws;
- Security of passports;
- Border and immigration controls;
- Security and law enforcement threats; and
- Political and economic disruptions.

Although the country reviews have provided sufficient information to make required determinations, embassy and DOS officials expressed the need for greater transparency in the review process. Specifically, they raised concerns regarding their understanding of VWP compliance standards.



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DOS and embassy officials explained that many U.S. and foreign representatives are not aware of the specific criteria, standards, or metrics that the VWPO team applies during its review to determine a country's continued designation in the VWP. As a result, some foreign officials expressed uncertainty about what constitutes compliance, and were concerned about the effect of reviews on their country's VWP status.

Understanding why certain data are collected, laws are questioned, or representatives are interviewed would lead to greater cooperation and compliance. Engaging appropriate officials in dialogue that enhances their understanding of the review methodology and what is needed to achieve compliance would minimize concerns over the review process and its results.

Recommendation

We recommend that the Office of Policy:

Recommendation #1: Communicate to Department of State and foreign officials the compliance standards and the criteria used to assess compliance.

Management Comments and OIG Analysis

Office of Policy Response: The Office of Policy concurs. The Office of Policy explained that the VWPO currently shares information with foreign officials from VWP countries and aspirants. Furthermore, it states that information regarding statutory and policy requirements for VWP participation and criteria used by the VWPO is also shared with State Department colleagues. The VWPO will continue this level of communication and transparency.

OIG Analysis: The Office of Inspector General (OIG) recognizes that there is ongoing communication between the VWPO and the Department of State. However, the level of detail regarding compliance standards and criteria being communicated may not be consistent across all VWP participants. Pending our receipt of a standardized approach to communicating with Department of State and foreign officials regarding compliance standards and criteria used for assessing compliance, we consider this recommendation unresolved and open.

Reporting Timeframes Have Not Been Met Consistently

As part of each initial or continuing designation review, the VWPO prepares a country report that documents all of the information collected during the



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review, analysis of the information, and the Secretary's determination of whether to (1) designate a country as a new member of the VWP or (2) continue or terminate a participating country's membership in the VWP. In addition, each country report includes the findings of an independent intelligence assessment prepared by the DHS Office of Intelligence and Analysis (I&A). Based on the country report, a mandatory summary report to Congress is prepared and provided to appropriate congressional committees.² The summary report should be provided no later than 2 years after the previous summary report. However, we learned that even though the on-site reviews are conducted, some summary reports are not prepared and submitted to Congress within required timeframes.

As of July 2012, 11 of 36 summary reports exceeded the congressionally mandated 2-year reporting cycle. VWPO staff explained that reporting delays can be attributed to inadequate staffing to manage the workload, and delays receiving I&A intelligence assessments. However, VWPO officials added that these delays have not posed any undue risks or threats to U.S. security interests, since any issues within a VWP country that might affect its continued compliance with VWP requirements are continuously monitored.

The following provides information regarding the country report and summary report to Congress, along with specific challenges encountered in meeting the mandated reporting timeframes.

Country Report

The country report may include a site-visit report; other baseline, background, and analytical information; and key findings, recommendations, and conclusions from the I&A intelligence assessment.

The VWPO staff, DOS, and U.S. embassy officials review and, when necessary, edit the country report before it is finalized. Figure 1 shows the review process.

² U.S. House of Representatives: Committee on the Judiciary, Committee on Foreign Affairs, and Committee on Homeland Security. U.S. Senate: Committee on the Judiciary, Committee on Foreign Relations, and Committee on Homeland Security and Governmental Affairs.



Figure 1. Country Report Process



Source: OIG analysis.

Country Report Challenges

The following factors contribute to delays in completing and issuing country reports:

- Staffing

VWP officials stated that inadequate staffing contributes to 40 percent of the delays. In addition to managing the statutorily required review process, the VWPO negotiates information sharing agreements and leads the interagency dialogue on law enforcement, immigration security, and travel facilitation issues related to the VWP. VWPO staffing levels have fluctuated over the past 4 years, and reached their lowest levels in fiscal year (FY) 2012. In FY 2008, the VWPO had seven staff members—a director and six advisors. Currently, the VWPO has four Senior Advisors and one Acting Director, who performs some of the duties of a Senior Advisor. Although the staffing level has decreased, nine countries have been added to the VWP since 2008, and other countries are under consideration. VWP officials expressed concerns about managing future country portfolios with the current VWPO staffing level if more countries are added to the program. During our fieldwork, we obtained a draft organization chart for FY 2013 that included a request for two additional positions.



- I&A Intelligence Assessments

I&A’s intelligence assessments of the VWP countries are a crucial part of the VWP country review process. I&A officials said that a major reason for reporting delays is I&A’s internal review process, which can take 3 months, and the competing work priorities of a small office. I&A and VWPO officials have engaged in discussions to streamline the process and produce more timely reports.

Summary Report to Congress

The summary report to Congress satisfies DHS’ statutory mandate to report to Congress (1) potential security concerns regarding VWP countries and (2) the Secretary’s decision regarding a country’s initial or continuing designation status. Figure 2 describes the summary report review process within DHS.

Figure 2. Congressional Summary Report Process



Source: OIG analysis.

Summary Report Challenges

Since the summary report is based on the country report, delays in completing the country report will affect the timeliness of the summary report. In addition, VWPO officials stated that the summary report review cycle, as depicted in figure 2, is lengthy and has resulted in additional delays.

VWPO officials explained that timeliness may be improved through the use of batch reporting. The VWPO has developed a batch reporting timeline to address



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delays in completing VWP reviews and associated reports. The reporting timeline and notification process will be fully implemented in 2013, with the first batch of reports planned for March 2013. With a complete schedule of reports to Congress available at the beginning of the fiscal year, the VWPO and other offices involved in the VWP review process hope to better manage their workload and meet projected deadlines.

Although the VWPO continually monitors the political and economic situation of all participating countries, timely summary reports represent an important tool for informing Congress of a country's VWP status and related security risks, and documenting the Secretary's decision regarding the continuing participation of VWP countries.

Recommendations

We recommend that the Office of Policy:

Recommendation #2: Develop and implement an overall reporting process that will satisfy the 2-year reporting timeframe for Congress to receive information regarding the status of VWP participating countries.

Recommendation #3: Staff the VWPO at a level to maximize its effectiveness in assessing VWP countries' compliance with program requirements.

Management Comments and OIG Analysis

Recommendation #2:

Office of Policy Response: The Office of Policy concurs. The VWPO has developed a reporting protocol and schedule to address delays in completing VWP eligibility reviews and associated reports. The protocol is in the process of being fully implemented.

OIG Analysis: The protocol developed to address the delays in completing reviews and reports satisfies the intent of this recommendation. Pending our receipt of documentation that the protocol has been implemented, and that the timeliness of the summary reports to Congress has improved, this recommendation remains resolved and open.



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Recommendation #3:

Office of Policy Response: The Office of Policy concurs. A position will be announced shortly to replace a Senior Advisor in the VWP who departed. When and if the VWP expands, additional resources will be considered, as appropriate.

OIG Analysis: Efforts to fill the Senior Advisor position represent a positive step in adequately staffing the VWPO. However, additional staffing should be considered. The VWP provided a draft organization chart for FY 2013 that included a request for two additional positions. Pending confirmation that these positions are filled, we consider this recommendation unresolved and open.

The VWPO Maintains Effective Collaboration With DOS and DOJ

Although DHS is responsible for determining a country's eligibility to participate in the VWP, DOS has a statutorily required consultative role in the review process. As such, DHS officials maintain on-going communication and collaboration with U.S. embassy representatives, DOS Regional Desk Officers, Bureau of Consular Affairs, Bureau of Counterterrorism, and DOJ staff in order to obtain and exchange information needed to determine participating countries' compliance with VWP requirements and monitor on-going concerns.

Collaboration Between DHS and DOS

DHS and DOS have different missions regarding the VWP countries. DHS focuses primarily on law enforcement and immigration issues, while DOS also considers diplomatic relationships. Even with their differing perspectives, DHS and DOS officials stated that they have a positive working relationship.

Following a nomination by the Secretary of DOS, DHS designates an eligible country as part of the VWP, evaluates its participation in the program, and terminates it if its participation threatens the law enforcement or security interests of the United States. DHS conducts VWP evaluations in consultation with DOS components, particularly the Bureau of Consular Affairs, the Regional Desks, and U.S. embassies before, during, and after site-visits and country reviews. In addition, embassy personnel provide country-specific information.

To monitor on-going issues and activities in VWP countries, VWPO and DOS officials exchange information. They also engage in discussions to ensure agreement on important issues related to the VWP. VWPO officials stated that



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communications with DOS personnel include email, telephone discussions, DOS cables, and meetings in Washington, DC.

Collaboration Between DHS and DOJ

DHS coordinates with DOJ to assess the law enforcement and security-related issues of the VWP in participating countries. DHS and DOJ co-chair negotiations of Preventing and Combating Serious Crime agreements with VWP countries and collaborate throughout the implementation of these agreements.

As part of the continuing designation reviews, DOJ's responsibilities include updating the law enforcement cooperation section of prior country reports and commenting on draft reports as needed. The VWPO solicits DOJ's input on U.S. extradition and mutual legal assistance relationships with VWP countries and other kinds of formal and informal law enforcement cooperation. A DOJ official stated that DOJ's collaboration with VWPO staff is excellent.

The VWPO's Placement Within the DHS Organizational Structure

The VWPO, originally called the Office of International Enforcement (OIE), was established in 2004 as part of Border and Transportation Security Directorate. In 2005, the OIE was placed under the newly created Office of Policy's Office of Policy Development and in 2007 was renamed the VWPO. Since the Office of Policy Development was eliminated in 2011, the VWPO is currently in an unofficial dual-reporting relationship with Office of International Affairs (OIA) and the Office of Policy for issues involving policy development, legislative proposals, and final approval of summary reports to Congress.

The OIA's functions are closely aligned with the duties and responsibilities of the VWPO. Consideration is being given to moving the VWPO to the OIA. A permanent reorganization to recognize this transfer would give the VWPO the support and management structure to accomplish its mission more effectively.

Recommendation

We recommend that the Office of Policy:

Recommendation #4: Assign the VWPO to an organization that will provide an effective management structure.



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Management Comments and OIG Analysis

Office of Policy Response: The Office of Policy concurs. The Office of Policy states that the VWPO's responsibilities necessitate that it be situated in a management structure that integrates, coordinates, and can provide departmental oversight across legal, policy operational, and international domains. Secretary Napolitano has determined that day-to-day operations of the VWPO should be located in the Office of International Affairs, while the Office of Policy continues to oversee and manage the policy issues associated with the Visa Waiver Program.

OIG Analysis: Pending our receipt of an approved Office of International Affairs organization chart, we consider this recommendation resolved and open.



Appendix A

Objectives, Scope, and Methodology

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the Department.

This review was included in the OIG Fiscal Year 2012 Annual Performance Plan. Our objectives were to determine (1) how effectively the Office of Policy's VWPO collaborates with key VWP stakeholders and (2) the adequacy of processes used by the VWPO to determine whether candidate countries satisfy the requirements for designation as VWP members, and participating countries' compliance with VWP requirements.

We conducted our fieldwork from February to May 2012, and interviewed VWPO officials and representatives of DOS and DOJ. We also interviewed DHS and DOS personnel at U.S. embassies in Austria, Norway, Germany, and the United Kingdom.

We conducted this review under the authority of the *Inspector General Act of 1978*, as amended, and according to the Quality Standards for Inspections issued by the Council of the Inspectors General on Integrity and Efficiency.



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Appendix B

Management Comments to the Draft Report



United States Department of State

*Assistant Secretary of State
for Consular Affairs*

Washington, D.C. 20520

October 9, 2012

Dear Acting Inspector General Edwards:

Thank you for the opportunity to provide comments on the draft report on the Visa Waiver Program (VWP). The Department of State concurs with the report's observations that DHS, State, and U.S. Embassy officials have a positive working relationship, and that the VWP is a vital component of U.S. border security policy. National security is the top priority for the Department of State, as well as DHS, and it is important for the report to reflect this fact.

Recognizing the important national security implications of information sharing agreements, the Department of State has undertaken extensive diplomatic work to ensure member countries sign these important agreements, and we will continue to do so. In addition to aggressive and consistent senior embassy official engagement in all member countries, State worked diligently to reinforce the message by ensuring that information sharing agreements were priority issues on the President's agenda when he met with counterparts of noncompliant countries.

The Department of State concurs with the conclusion that DHS could improve communication on VWP issues with member countries, and also notes DHS does not systematically report its findings to the member country upon completion of a country review. The member country receives no formal notice from DHS as to whether its membership in the VWP will continue, though DHS does usually engage the country, through the U.S. Embassy, on issues where DHS finds the country deficient. The Department believes the creation of a formal, consistent mechanism to communicate DHS decisions on VWP designations to member countries and to notify them of any deficiencies discovered would strengthen the overall VWP program. We recognize the increased workload these responsibilities entail and support the report's recommendation that DHS provide additional personnel and resources to the Visa Waiver Program Office.



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Again, thank you for the opportunity to review and provide comments on the draft report. If I may provide additional information, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in cursive script that reads "Janice L. Jacobs".

Janice L. Jacobs
Assistant Secretary of State
for Consular Affairs



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

OCT 16 2012



**Homeland
Security**

Charles K. Edwards
Acting Inspector General
U.S. Department of Homeland Security
245 Murray Drive, SW, Building 410
Washington, DC 20528

Re: Office of the Inspector General (OIG) Draft Report, "The Visa Waiver Program" (OIG Project No. 12-020-ISP-PLCY-VWP)

Dear Mr. Edwards:

Thank you for your August 21 memorandum and the opportunity to review and provide comments on draft report titled "The Visa Waiver Program" (OIG number 12-020-ISP-PLCY-VWP).

The Office of Policy (PLCY) appreciates that the draft report is broadly supportive of the Visa Waiver Program Office's (VWPO) efforts to implement established procedures and criteria to conduct security reviews of Visa Waiver Program (VWP) countries and aspirants seeking VWP designation. The draft report also notes that the security reviews conducted by the VWPO provide sufficient information and context to formulate a determination of a country's status in the VWP. Further, the report highlights that the VWPO engages in on-going communication and effective collaboration with other Federal agencies that have a role in the VWP. Finally, the draft report acknowledges that the VWPO needs appropriate resources and management structure to fulfill its duties.

The draft report contains four recommendations, all of which PLCY concurs with. Specifically:

Recommendation #1: Communicate to Department of State (DOS) and foreign officials the compliance standards and the criteria used to assess compliance.

Response: PLCY agrees that ensuring that the State Department and foreign officials understand what constitutes compliance and why certain data are collected among other requirements is a valuable element in building greater cooperation and compliance. As such, PLCY concurs and believes the Department of Homeland Security's (DHS) current practice meets the intent of the recommendation.

Specifically, the VWPO currently shares information regarding the statutory and policy requirements for VWP participation and what can be expected, during and after a security review with foreign officials from VWP countries and aspirants. Such communication occurs through

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meetings in Washington, DC with embassy representatives, as well as through meetings in-country with personnel from the host government. Further, the VWPO regularly notifies foreign governments of a security review's conclusion—a practice that was initiated in January 2011. These notifications are made either directly with embassies in Washington, DC, or in coordination with the U.S. Embassy in-country. If the VWPO identifies an issue of concern during a security review that necessitates communication with a foreign government, the VWPO coordinates with the U.S. Embassy in-country for these discussions.

Second, information regarding the statutory and policy requirements for VWP participation and the criteria used by the VWPO during VWP security reviews is also shared with State Department colleagues. For example, such communications occur as part of regular and sometimes daily meetings in Washington, DC with the DOS Bureau of Consular Affairs, Bureau of Counterterrorism, Regional Bureaus, and Legal Affairs officials, as well as in meetings in-country with U.S. Embassy personnel. The information is further communicated to State Department and other federal officials through periodic national security staff-led Interagency Policy Committees (IPCs) and sub-IPCs on VWP.

In addition, U.S. Embassy personnel accompany the VWPO on in-country meetings that are conducted as part of a VWP security review, and State Department officials are given an opportunity to review VWP reports produced during a review. They are also regularly updated on a review's progress.

Finally, over the past three years, the VWPO, in conjunction with the Bureau of Consular Affairs and the Bureau of Counterterrorism, has also provided guidance to VWP posts that outlines the various statutory and policy requirements for VWP designation. Posts additionally have been provided each country's status in meeting the VWP requirements.

The VWPO will continue this high level of communication and transparency with the State Department and foreign governments and will look for opportunities to enhance such communication as well.

Recommendation #2: Develop and implement an overall reporting process that will satisfy the 2-year reporting timeframe for Congress to receive information regarding the status of VWP participating countries.

Response: PLCY concurs with the recommendation and believes that DHS's updated reporting practices support the recommendation. The timing of VWP reporting was identified in a May 2011 Government Accountability Office (GAO) report. In response to this report, the VWPO developed a reporting protocol and schedule to address delays in completing VWP eligibility reviews and associated reports. That protocol and schedule is in the process of being fully implemented. Since the May 2011 GAO audit, 20 reports on VWP reviews have been submitted to Congress.

VWP reports are the product of an intra-Department and inter-agency collaboration. As such, the VWPO also reached out to DHS and interagency partners involved in the eligibility review



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process to ensure their awareness of the new reporting schedule, to discuss related workflow issues, and to establish timeframes for document production and required clearances.

In addition, the VWPO established a mechanism to inform Congress if there are potential delays for a particular VWP review or its associated reports. Such notifications will begin once the reporting process referenced above is fully implemented.

Recommendation #3: Staff the VWPO at a level to maximize its effectiveness in assessing VWP countries' compliance with program requirements.

Response: PLCY concurs with this recommendation. A position will be announced shortly to replace a Senior Advisor in the VWPO who departed the office in June 2012. Further, when and if the Visa Waiver Program expands (i.e., new countries seek eligibility review or designation review, or new countries are in fact added), additional resources will be considered, as appropriate.

Recommendation #4: Assign the VWPO to an organization that will provide an effective management structure.

Response: PLCY agrees with the importance of assigning the VWPO to an organization that will provide an effective management structure. The VWPO supports roles and responsibilities that cut across policy development and review, legal analysis, program management, and international engagement. The VWPO is responsible for reviewing and monitoring the status of existing VWP countries, determining the eligibility prior to designation of potential new VWP candidates, making determinations regarding compliance with policy and statutory requirements, negotiating related bilateral VWP information sharing agreements, and reporting regularly to Congress. This effort, thus, necessitates being situated in a management structure that integrates, coordinates, and can provide Departmental oversight across legal, policy, operational, and international domains. It also requires close coordination with other DHS Components and across the interagency. The VWPO was originally moved into PLCY in 2007 because of its central role and responsibility to integrate and coordinate efforts across legal, policy, operational and international domains. More recently, Secretary Napolitano has determined that day-to-day operations of the VWPO should be located in the Office of International Affairs, while PLCY continue to oversee and manage the policy issues associated with the visa waiver program.

Once again, thank you for the opportunity to review and comment on the draft report. If you have any questions, you may contact me at (202) 282-9708

Sincerely,

David Heyman
Assistant Secretary
for Policy



Appendix C

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Appendix D

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