

May 2011

# VISA WAIVER PROGRAM

## DHS Has Implemented the Electronic System for Travel Authorization, but Further Steps Needed to Address Potential Program Risks



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## Why GAO Did This Study

The Visa Waiver Program (VWP) allows eligible nationals from 36 member countries to travel to the United States for tourism or business for 90 days or less without a visa. In 2007, Congress required the Secretary of Homeland Security, in consultation with the Secretary of State, to implement an automated electronic travel authorization system to determine, prior to travel, applicants' eligibility to travel to the United States under the VWP. Congress also required all VWP member countries to enter into an agreement with the United States to share information on whether citizens and nationals of that country traveling to the United States represent a security threat. In 2002, Congress mandated that the Department of Homeland Security (DHS) review, at least every 2 years, the security risks posed by each VWP country's participation in the program. In this report, GAO evaluates (1) DHS's implementation of an electronic system for travel authorization; (2) U.S. agencies' progress in negotiating information-sharing agreements; and (3) DHS's timeliness in issuing biennial reports. GAO reviewed relevant documents and interviewed U.S., foreign government, and travel industry officials in six VWP countries.

## What GAO Recommends

GAO recommends that DHS establish time frames for the regular review of cases of ESTA noncompliance and take steps to address delays in the biennial review process. DHS concurred with the report's recommendations.

View [GAO-11-335](#) or key components. For more information, contact Jess Ford at (202) 512-4268 or [fordj@gao.gov](mailto:fordj@gao.gov).

## VISA WAIVER PROGRAM

### DHS Has Implemented the Electronic System for Travel Authorization, but Further Steps Needed to Address Potential Program Risks

#### What GAO Found

DHS has implemented the Electronic System for Travel Authorization (ESTA) and has taken steps to minimize the burden associated with the new program requirement. However, DHS has not fully evaluated security risks related to the small percentage of VWP travelers without verified ESTA approval. DHS requires applicants for VWP travel to submit biographical information and answers to eligibility questions through ESTA prior to travel. Travelers whose ESTA applications are denied can apply for a U.S. visa. In developing and implementing ESTA, DHS has made efforts to minimize the burden imposed by the new requirement. For example, although travelers formerly filled out a VWP application form for each journey to the United States, ESTA approval is generally valid for 2 years. Most travel industry officials GAO interviewed in six VWP countries praised DHS's widespread ESTA outreach efforts, reasonable implementation time frames, and responsiveness to feedback, but expressed dissatisfaction with the costs associated with ESTA. In 2010, airlines complied with the requirement to verify ESTA approval for almost 98 percent of VWP passengers prior to boarding, but the remaining 2 percent—about 364,000 travelers—traveled under the VWP without verified ESTA approval. DHS has not yet completed a review of these cases to know to what extent they pose a risk to the program.

To meet the legislative requirement, DHS requires that VWP countries enter into three information-sharing agreements with the United States; however, only half of the countries have fully complied with this requirement and many of the signed agreements have not been implemented. Half of the countries have entered into agreements to share watchlist information about known or suspected terrorists and to provide access to biographical, biometric, and criminal history data. By contrast, almost all of the 36 VWP countries have entered into an agreement to report lost and stolen passports. DHS, with the support of interagency partners, has established a compliance schedule requiring the last of the VWP countries to finalize these agreements by June 2012. Although termination from the VWP is one potential consequence for countries not complying with the information-sharing agreement requirement, U.S. officials have described it as undesirable. DHS, in coordination with State and Justice, has developed measures short of termination that could be applied to countries not meeting their compliance date.

DHS has not completed half of the most recent biennial reports on VWP countries' security risks in a timely manner. According to officials, DHS assesses, among other things, counterterrorism capabilities and immigration programs. However, DHS has not completed the latest biennial reports for 18 of the 36 VWP countries in a timely manner, and over half of these reports are more than 1 year overdue. Further, in the case of two countries, DHS was unable to demonstrate that it had completed reports in the last 4 years. DHS cited a number of reasons for the reporting delays. For example, DHS officials said that they intentionally delayed report completion because they frequently did not receive mandated intelligence assessments in a timely manner and needed to review these before completing VWP country biennial reports.

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**Abbreviations**

9/11 Act	Implementing Recommendations of 9/11 Commission Act of 2007
CBP	U.S. Customs and Border Protection
DNI	Director of National Intelligence
DHS	Department of Homeland Security
ESTA	Electronic System for Travel Authorization
HSPD-6	Homeland Security Presidential Directive 6
Interpol	International Criminal Police Organization
Justice	Department of Justice
LASP	Lost and Stolen Passports
PCSC	Preventing and Combating Serious Crime
State	Department of State
TPA	Travel Promotion Act of 2009
TSC	Terrorist Screening Center
VWP	Visa Waiver Program

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United States Government Accountability Office  
Washington, DC 20548

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May 5, 2011

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

In 2010, more than 17 million foreign nationals from 36 participating countries entered the United States for tourism or business for 90 days or less under the Visa Waiver Program (VWP). Congress established the program in 1986 to facilitate international travel without threatening U.S. security. The Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) called for the Department of Homeland Security (DHS), which implements the program, to take steps to enhance the security of the VWP.<sup>1</sup> Among the mandated changes were (1) the implementation of an electronic system for travel authorization designed to determine in advance of travel the eligibility of VWP applicants to travel to the United States under the program, (2) a requirement that all VWP countries enter into agreements to share information with the United States on whether citizens and nationals of that country traveling under the program represent a threat to the security or welfare of the United States, and (3) a requirement that all VWP countries enter into agreements with the United States to report or make available lost and stolen passport data to the United States. Prior to these changes, Congress also mandated in 2002 that DHS evaluate and report on the security risks posed by each visa waiver country's participation in the program at least once every 2 years. In 2006, GAO identified deficiencies in DHS's biennial reporting process and recommended the finalization of protocols that included deadlines for report completion.<sup>2</sup>

VWP 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. As a result,

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<sup>1</sup>Pub. L. No. 110-53 (Aug. 3, 2007).

<sup>2</sup>See 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).

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concerns have been raised that the VWP could be exploited to gain illegal entry into the United States. Effective oversight of the VWP is essential to find the right balance between facilitating legitimate travel and screening for potential terrorists, criminals, and others that may pose national security, law enforcement, or immigration concerns.

In response to your request, this report (1) reviews DHS's implementation of the Electronic System for Travel Authorization (ESTA); (2) assesses U.S. agencies' progress in negotiating the required information-sharing agreements with VWP countries; and (3) assesses the timeliness of DHS's biennial reports on VWP countries.

To assess the implementation of ESTA, we reviewed relevant documentation, including 2006 and 2008 GAO reports evaluating the VWP and statistics on program applicants and travelers.<sup>3</sup> We also interviewed consular, public diplomacy, and law enforcement officials at U.S. embassies in six VWP countries: France, Ireland, Japan, South Korea, Spain, and the United Kingdom. We met with political and commercial officers at five of the six U.S. embassies. In the six countries, we also met with airline officials and travel industry officials regarding ESTA implementation. While the results of our site visits are not generalizable, they provided perspectives on VWP and ESTA implementation. To assess DHS's progress in meeting information-sharing agreement requirements, we reviewed the templates used to begin negotiations for information-sharing agreements and lists of countries that have met the requirement to enter into information-sharing agreements with the United States. We interviewed officials from DHS, State, and the Department of Justice (Justice) at headquarters and at U.S. embassies in six VWP countries who have participated in negotiating or implementing information-sharing agreements with VWP countries. We also interviewed foreign government officials from agencies responsible for negotiating information-sharing agreements with the U.S. government and International Criminal Police Organization (Interpol) officials in Lyon, France, who receive the information on lost and stolen passports from VWP country governments. To assess the timeliness of biennial reports on VWP countries, we reviewed documentation of DHS biennial report completion and DHS's standard operating procedures for conducting biennial reviews.

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<sup>3</sup>See GAO, *Visa Waiver Program: Actions Are Needed to Improve Management of the Expansion Process, and to Assess and Mitigate Program Risks*, [GAO-08-967](#) (Washington, D.C.: Sept. 15, 2008).

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We conducted this performance audit from January 2010 to May 2011, 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.

We received written comments from DHS, which we have reprinted in appendix III. We also received technical comments from DHS, State, and Justice and incorporated those comments, as appropriate. DHS agreed with our recommendations and stated that it is undertaking and considering efforts to address them. DHS provided additional information on its efforts to monitor and assess issues that may pose a risk to U.S. interests.

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## Background

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### Legislation Authorizing the VWP

The Immigration Reform and Control Act of 1986 created the VWP as a pilot program,<sup>4</sup> and the Visa Waiver Permanent Program Act permanently established the program in October 2000.<sup>5</sup> The program's purpose is to facilitate the legitimate travel of visitors for business or tourism. By providing visa-free travel to the United States, the program is intended to boost international business and tourism, as well as airline revenues, and create substantial economic benefits to the United States. Moreover, the program allows State to allocate more resources to visa-issuing posts in countries with higher risk applicant pools.

In November 2002, Congress passed the Homeland Security Act of 2002, which established DHS and gave it responsibility for establishing visa policy, including policy for the VWP.<sup>6</sup> Previously, Justice had overall responsibility for managing the program. In July 2004, DHS created the Visa Waiver Program Oversight Unit within the Office of International Enforcement and directed that unit to oversee VWP activities and monitor

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<sup>4</sup>Pub. L. No. 99-603 (Nov. 6, 1986).

<sup>5</sup>Pub. L. No. 106-396 (Oct. 30, 2000).

<sup>6</sup>Pub. L. No. 107-296 (Nov. 25, 2002).

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participating VWP countries' adherence to the program's statutory and policy requirements. In September 2007, the office was renamed the Visa Waiver Program Office. To help fulfill its responsibilities, DHS established an interagency working group comprising representatives from State, Justice, and several DHS component agencies and offices, including U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement.

Since the attacks on the United States on September 11, 2001, Congress has passed several other laws to strengthen border security policies and procedures. For example, the Enhanced Border Security and Visa Entry Reform Act of 2002<sup>7</sup> increased the frequency—from once every 5 years to at least once every 2 years—of mandated assessments of the effect of each country's continued participation in the VWP on U.S. security, law enforcement, and immigration interests.<sup>8</sup> The 9/11 Act also added security requirements for all VWP countries, such as the requirement that countries enter into an agreement with the United States to share information on whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States or U.S. citizens.

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## VWP Member Countries

When the Visa Waiver Pilot Program was established in 1986, participation was limited to eight countries. Since then, the VWP has expanded to 36 countries.<sup>9</sup> Figure 1 shows the locations of the current member countries.

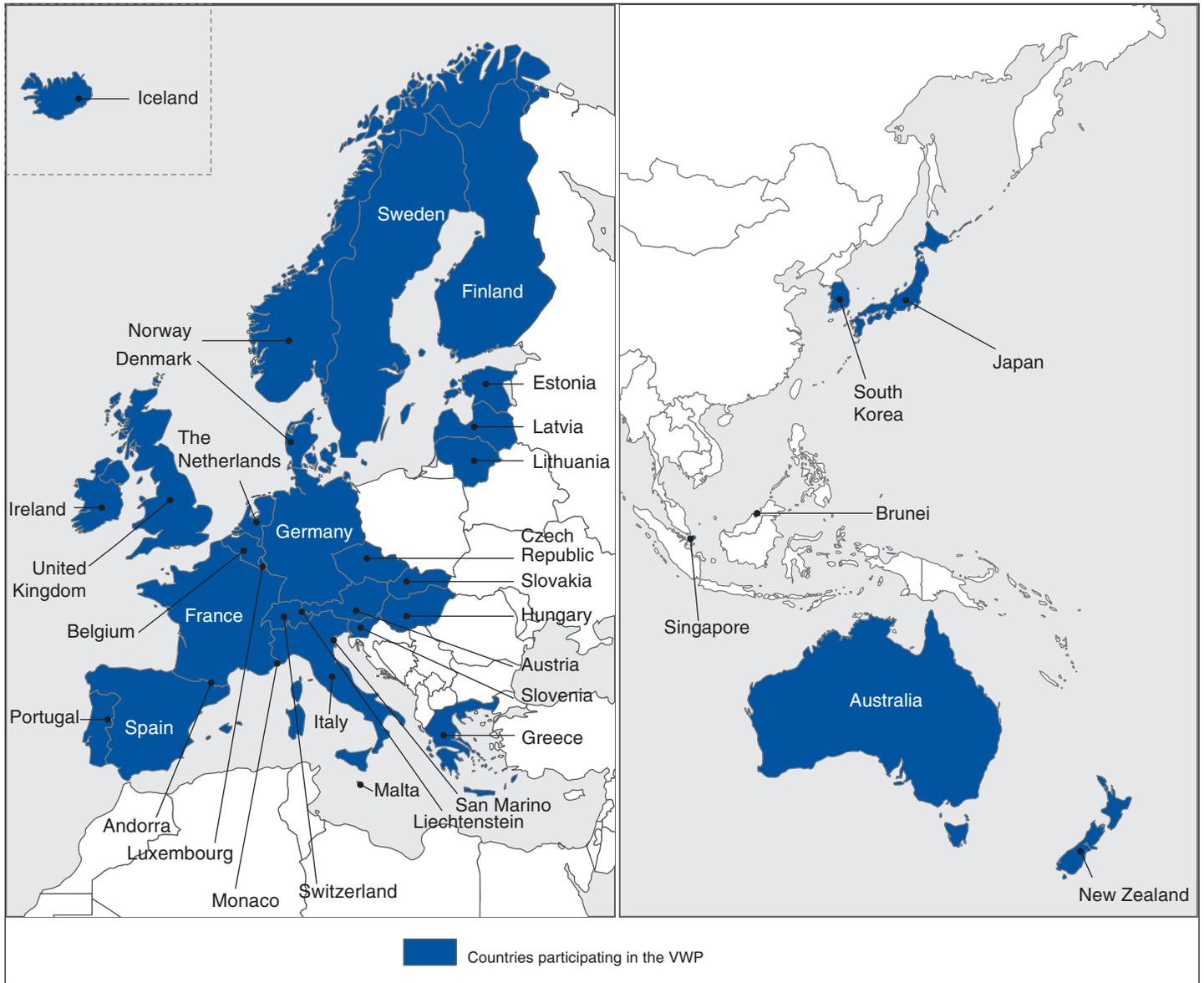
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<sup>7</sup>Pub. L. No. 107-173 (May 14, 2002).

<sup>8</sup>The Visa Waiver Permanent Program Act mandated that the U.S. government conduct VWP country reviews at least every 5 years.

<sup>9</sup>The Immigration Act of 1990 (Pub. L. No. 101-649) removed the limit on the number of countries that could participate in the program.

**Figure 1: Visa Waiver Program Member Countries**



Sources: DHS (data); Map Resources (map).

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## VWP Requirements

To qualify for the VWP a country must

- offer reciprocal visa-free travel privileges to U.S. citizens;
- have had a refusal rate of less than 3 percent for the previous fiscal year for its nationals who apply for business and tourism visas;
- issue machine-readable passports to its citizens;
- 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 information about the theft or loss of passports;
- accept the repatriation of any citizen, former citizen, or national against whom a final order of removal is issued no later than 3 weeks after the order is issued;
- enter into an agreement with the United States to share information regarding whether citizens and nationals of that country traveling to the United States represents a threat to U.S. security or welfare; and
- be determined not to compromise the law enforcement (including immigration enforcement) or security interests of the United States by its inclusion in the program.

In addition, all passports issued after October 26, 2005, must contain a digital photograph in the document for travel to the United States under the program, and passports issued after October 26, 2006, must be e-passports that are tamper-resistant and incorporate a biometric identifier.<sup>10</sup> Nationals from countries that have joined the VWP since 2008 must use e-passports in order to travel under the VWP. Effective July 1, 2009, all emergency or temporary passports must be e-passports as well for use under the VWP.

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<sup>10</sup>In general, e-passports contain a chip embedded in the passport that stores the same information that is printed on the data page of the passport, such as the name, date of birth, gender, place of birth, dates of passport issuance and expiration, place of issuance, passport number, and a photo image of the bearer. In addition, e-passports hold a unique identification number and a digital signature to protect the stored data from alteration. E-passports provide two key pieces of information: the digital signature and the digital image of the passport holder. Digital signatures provide a higher level of security for the passport by providing a means to electronically verify the authenticity of the data on the chip, including the traveler's photograph and biographical information.

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To be eligible to travel without a visa under the program, nationals of VWP countries must

- have received an authorization to travel under the VWP through ESTA;
- have a valid passport issued by the participating country and be a national of that country;
- seek 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;
- have complied with conditions of any previous admission under the program (for example, individuals must not have overstayed the 90-day limit during prior visits under the VWP);
- if entering by air or sea, possess a return trip ticket to any foreign destination 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.

Travelers who do not meet these requirements are required to obtain a visa from a U.S. embassy or consulate overseas before traveling to the United States. Unlike visa holders, VWP travelers generally may not apply for a change in status or an extension of the allowed period of stay. Individuals who have been refused admission to the United States previously must also apply for a visa. VWP travelers waive their right to review or appeal a CBP officer's decision regarding their admissibility at the port of entry or to contest any action for removal, other than on the basis of an application for asylum.

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## DHS Implemented ESTA to Meet Mandated Requirement but Has Not Fully Analyzed Risks from Noncompliance

DHS has implemented ESTA to meet the 9/11 Act requirement intended to enhance program security and has taken steps to minimize the burden on travelers to the United States added by the new requirement, but it has not fully analyzed the risks of carrier and passenger noncompliance with the requirement. DHS developed ESTA to collect passenger data and complete security checks on the data before passengers board a U.S. bound carrier. In developing and implementing ESTA, DHS took several steps to minimize the burden associated with ESTA use. For example, ESTA reduced the requirement that passengers provide biographical information to DHS officials from every trip to once every 2 years. In addition, because of ESTA, DHS has informed passengers who do not qualify for VWP travel that they need to apply for a visa before they travel to the United States. Moreover, most travel industry officials we interviewed in six VWP countries praised DHS's widespread ESTA outreach efforts, reasonable implementation time frames, and responsiveness to feedback but expressed dissatisfaction over ESTA fees. Also, although carriers complied with the ESTA requirement to verify ESTA approval for almost 98 percent of VWP passengers before boarding them in 2010, DHS does not have a target completion date for a review to identify potential security risks associated with the small percentage of cases of traveler and carrier noncompliance with the ESTA requirement.

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## DHS Implemented ESTA to Meet Congressional Requirement and Use Rose Rapidly After DHS Made It Mandatory

### DHS Implemented ESTA to Assist with Preboarding Checks of Passenger Data

Pursuant to the 9/11 Act, DHS implemented ESTA, an automated, Web-based system, to assist in assessing passengers' eligibility to travel to the United States under the VWP by air or sea before they board a U.S. bound carrier.<sup>11</sup> DHS announced ESTA as a new requirement for travelers entering the United States under the VWP on June 9, 2008, and began accepting ESTA applications on a voluntary basis in August 2008. Beginning January 12, 2009, DHS required all VWP travelers to apply for ESTA approval prior to travel to the United States. DHS began enforcing

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<sup>11</sup>In addition to ESTA, Secure Flight and the Advanced Passenger Information System also provide data on passengers that DHS uses to determine whether any passenger poses a security risk.

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compliance with ESTA requirements in March 2010, exercising the right to fine a carrier or rescind its VWP signatory status for failure to comply with the ESTA requirement. Although passengers may apply for ESTA approval anytime before they board a plane or ship bound for the United States, DHS recommends that travelers apply when they begin preparing travel plans.<sup>12</sup> Prior to ESTA's implementation, all travelers from VWP countries manually completed a form—the I-94W—en route to the United States, supplying biographical information and answering questions to determine eligibility for the VWP. DHS officials collected the forms from VWP passengers at U.S. ports of entry and used the information on the forms to qualify or disqualify the passengers for entry into the United States without a visa.

DHS uses ESTA to electronically collect VWP applicants' biographical information and responses to eligibility questions. The ESTA application requires the same information collected through the I-94W forms. When an applicant submits an ESTA application, DHS systems evaluate the applicant's biographical information and responses to VWP eligibility questions. (See table 1.) If the DHS evaluation results in a denial of the application, the applicant is directed to apply for a U.S. visa.<sup>13</sup> For all other applications, if this review process locates no information requiring further analysis, DHS notifies the applicant that the application is approved;<sup>14</sup> if the process locates such information, DHS notifies the applicant that the application is pending, and DHS performs a manual check on the information. For example, if an applicant reports that a

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<sup>12</sup>Although DHS officials said that most applicants receive notification of ESTA approval or denial within seconds of submitting the online application, DHS reserves the right to do manual checks that may take up to 72 hours before making a final decision on an ESTA application.

<sup>13</sup>A denied ESTA application means the applicant may not travel to the United States under the VWP. Travel to the United States is still possible if the applicant successfully applies for and obtains a visa for travel. State consular officers at five of the six U.S. embassies we visited in VWP countries said that people whose ESTA applications are denied frequently obtain a visa to travel to the United States after undergoing a full visa interview by a consular officer. State officials said they did not maintain statistics on how many visa applicants had been denied an ESTA or how many applicants who had been denied an ESTA were successful in obtaining a visa to visit the United States. Consular officers in the countries we visited said that they interviewed visa applicants every week who had been denied an ESTA.

<sup>14</sup>ESTA approval does not guarantee an applicant the right to enter the United States. It means that the applicant can board a U.S. bound airplane or ship without a visa if the passport presented at the port of departure matches the information provided in the approved ESTA application.

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previous U.S. visa application was denied, DHS deems the ESTA application pending and performs additional review. If on further review of any pending application DHS determines that information disqualifies the applicant from VWP travel, the application is denied, and the individual is directed to apply for a visa; otherwise the applicant is approved.

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**Table 1: Visa Waiver Program Eligibility Questions in the ESTA Application**

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- a) Do you have a communicable disease; physical or mental disorder; or are you a drug abuser or addict?

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  - b) Have you ever been arrested or convicted for an offense or crime involving moral turpitude or a violation related to a controlled substance; or have been arrested or convicted for two or more offenses for which the aggregate sentence to confinement was five years or more; or have been a controlled substance trafficker; or are you seeking entry to engage in criminal or immoral activities?

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  - c) Have you ever been or are you now involved in espionage or sabotage; or in terrorist activities; or genocide; or between 1933 and 1945 were you involved, in any way, in persecutions associated with Nazi Germany or its allies?

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  - d) Are you seeking to work in the U.S.; or have you ever been excluded and deported; or been previously removed from the United States or procured or attempted to procure a visa or entry into the U.S. by fraud or misrepresentation?

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  - e) Have you ever detained, retained or withheld custody of a child from a U.S. citizen granted custody of the child?

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  - f) Have you ever been denied a U.S. visa or entry into the U.S. or had a U.S. visa canceled?

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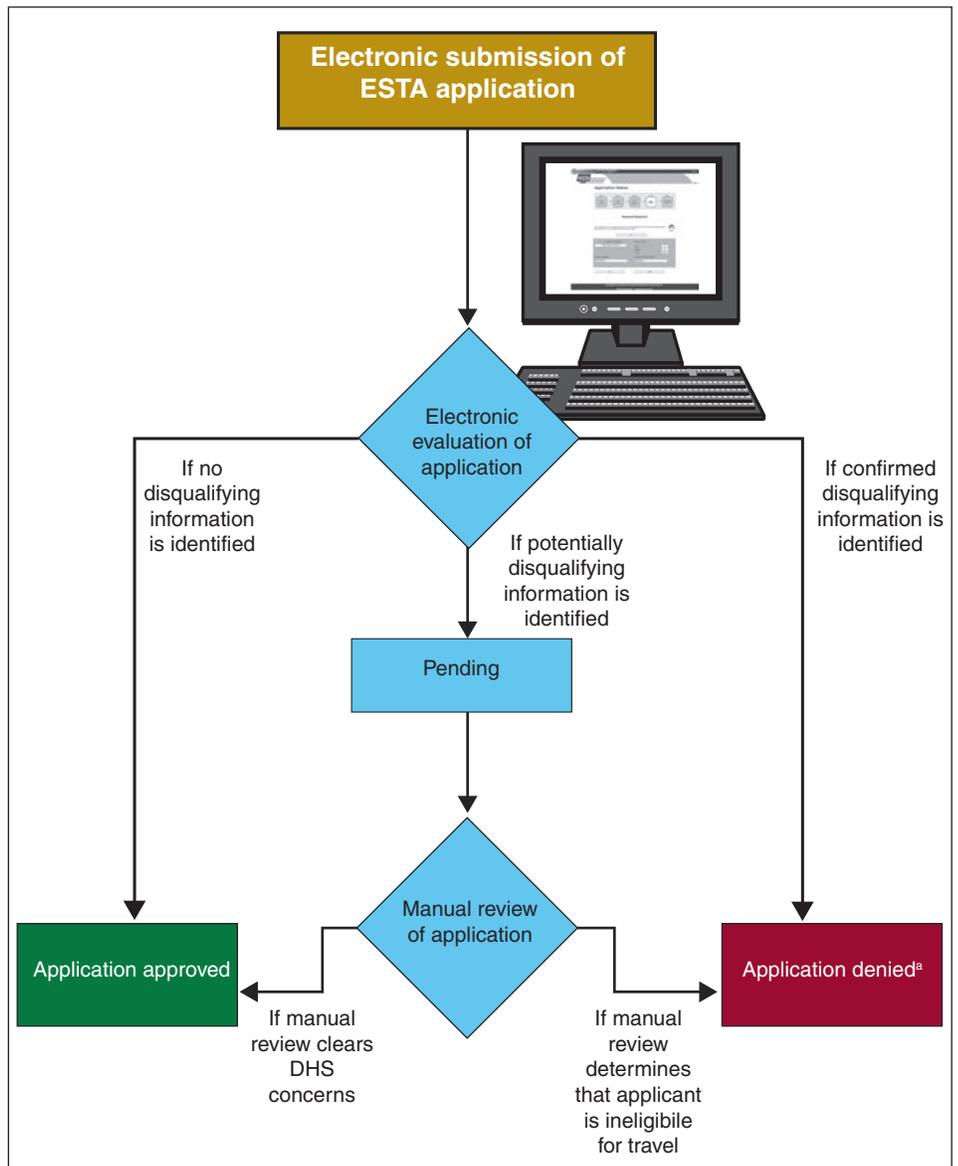
  - g) Have you ever asserted immunity from prosecution?
- 

Source: DHS Electronic System for Travel Authorization application.

Note: This table is a direct download from the DHS application with no changes.

Figure 2 illustrates the ESTA application review process. (See app. II for information on how to apply for ESTA.)

**Figure 2: DHS Process for ESTA Application Review**



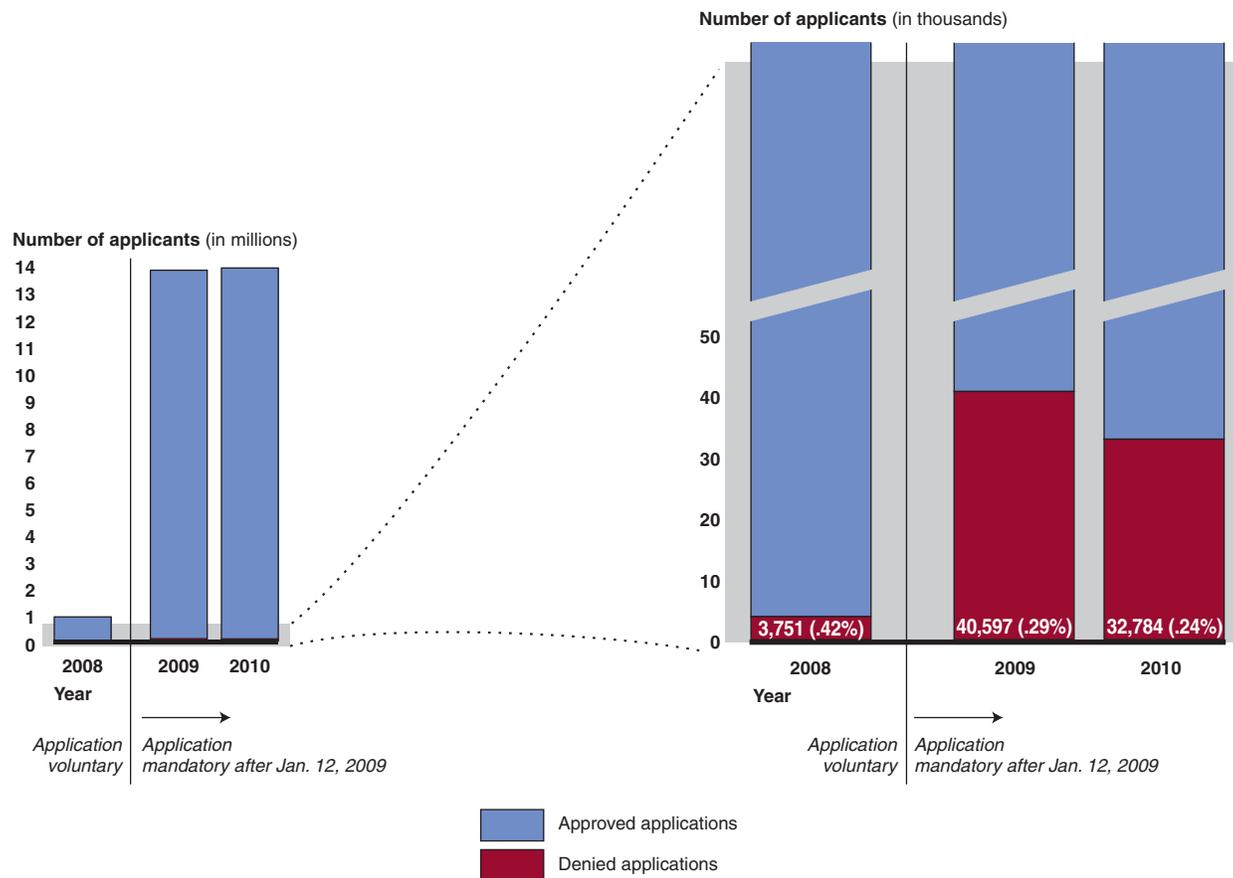
Source: GAO analysis of DHS data.

<sup>a</sup>When an application is denied, the response from DHS directs the applicant to State's Web site for information about applying for a visa.

**ESTA Use Rose Rapidly Once Mandatory; DHS Has Approved Most ESTA Applications but Deemed Thousands Ineligible**

According to DHS data, the number of individuals submitting ESTA applications increased from about 180,000 per month in 2008, when applying was voluntary, to more than 1.15 million per month in 2009 and 2010 after DHS made ESTA mandatory. DHS approved over 99 percent of the almost 28.6 million ESTA applications submitted from August 2008 through December 2010, but it also denied the applications of thousands of individuals it deemed ineligible to travel to the United States under the VWP. The denial rate has decreased slightly from 0.42 percent in 2008 to 0.24 percent in 2010. (See fig. 3.)

**Figure 3: ESTA Applications Approved and Denied, 2008-2010**



Source: GAO analysis of DHS data.

DHS data show that DHS denied 77,132 of the almost 28.6 million applications for VWP travel submitted through ESTA from 2008 through 2010. Reasons for denials included applicants' responses to the eligibility

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questions, as well as DHS's discovery of other information that disqualified applicants from travel under the VWP. Examples are as follows:

- DHS denied 19,871 applications because of applicant responses to the eligibility questions.
- DHS denied 36,744 pending applications because of the results of manual reviews of passenger data.
- DHS denied 15,078 applications because the applicants had unresolved cases of a lost or stolen passport that DHS decided warranted an in-person visa interview with a State consular officer.

In addition, ESTA applications are regularly reevaluated as new information becomes available to DHS, potentially changing applicants' ESTA status.

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## DHS Made Efforts to Minimize Burden of ESTA Requirement

In developing and implementing ESTA, DHS has taken steps to minimize the burden associated with ESTA's use.

- *Less frequent applications.* ESTA approval for program participants generally remains valid for 2 years. Prior to ESTA implementation, passengers traveling under the program were required to complete the I-94W form to determine their program eligibility each time they boarded a carrier to the United States. When DHS implemented ESTA, the burden on passengers increased because DHS also required ESTA applicants to complete an I-94W form. However, on June 29, 2010, DHS eliminated the I-94W requirement for most air and sea travelers who had been approved by ESTA. According to travel industry officials in the six VWP countries we visited, this change has simplified travel for many travelers, especially business travelers who travel several times each year. DHS officials said the change also eliminated the problems of deciphering sometimes illegible handwriting on the I-94W forms.
- *Earlier notice of ineligibility.* ESTA notifies passengers of program ineligibility, and therefore of the need to apply for a visa, before they embark for the United States. Prior to ESTA implementation, passengers from VWP countries did not learn until reaching the U.S. port of entry whether they were eligible to enter under the VWP or would be required to obtain a visa. Because DHS received passengers' completed I-94W forms at the port of entry, DHS officials did not recommend that carriers prevent passengers from VWP countries from boarding a U.S. bound carrier

without a visa unless they were deemed ineligible based on other limited preboarding information provided by carriers.

- Widespread U.S. government outreach.* VWP country government and travel industry officials praised widespread U.S. government efforts to provide information about the ESTA requirements.<sup>15</sup> After announcing ESTA, DHS began an outreach campaign in VWP countries and for foreign government embassy staff in the United States, with the assistance of other U.S. agencies, to publicize the requirement. DHS officials said they spent \$4.5 million on ESTA outreach efforts. Although none of the six embassies we visited tracked the costs associated with outreach, each embassy provided documentation of their use of many types of outreach efforts listed in table 2. VWP country government officials and travel industry officials we met said that although they were initially concerned that ESTA implementation would be difficult and negatively affect airlines and many VWP passengers, implementation went more smoothly than expected.

**Table 2: U.S. Government Outreach Efforts Undertaken to Publicize ESTA**

Outreach effort	Target audience	Where used (examples)
ESTA ads	General public, travel industry officials	U.S. embassy Web sites, travel industry publications, national newspapers, YouTube™
Informational and promotional materials	General public, travel industry officials	U.S. embassies, airports, travel agencies, travel industry events
Conferences and media events	General public, travel industry officials	U.S. embassies, airports, travel industry events
Outreach to U.S. and foreign government officials	U.S. embassy officials, foreign government officials	U.S. embassies, embassy day events

Sources: DHS and State officials.

- Reasonable implementation time frames.* Most of the VWP country airline officials with whom we met said that the ESTA implementation time frames set by DHS were reasonable. In 2008, DHS introduced ESTA and made compliance voluntary. The following year, DHS made ESTA mandatory but did not levy fines if airlines did not verify passengers' ESTA approval before boarding them. This allowed the U.S. government more time to publicize the requirement, according to DHS officials. Enforcement began in March 2010. According to most of the officials we interviewed from 17 airlines in the six VWP countries we visited, the phased-in

<sup>15</sup>Some of the travel officials said, however, that initial efforts to publicize ESTA were confusing and that U.S. government officials could not answer some of their questions.

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compliance generally allowed passengers sufficient time to learn about the ESTA requirement and allowed most airlines sufficient time to update their systems to meet the requirement. ESTA officials said that the phased-in compliance also provided time to fix problems with the system before enforcing airline and passenger compliance.

- *DHS responsiveness to travel industry feedback.* VWP travel industry officials said that DHS officials' efforts to adapt ESTA in response to feedback have clarified the application process. Since initial implementation of ESTA in 2008, DHS has issued updates to the system on 21 occasions. According to DHS officials, many of these changes addressed parts of the application that were unclear to applicants. For example, DHS learned from some travel industry officials that many applicants did not know how to answer a question on the application about whether they had committed a crime of moral turpitude because they did not know the definition of "moral turpitude." In September 2010, DHS released an updated ESTA application that included a definition of the term directly under the question. Further, updates have made the ESTA application available in 22 languages instead of only English. DHS also made it possible for denied applicants to reapply and be approved if they mistakenly answered "yes" to select eligibility questions. Although travel industry officials we met with in six VWP countries said there are still ways ESTA should be improved, they said that DHS's responsiveness in amending the ESTA application had made the system more user friendly.
- *Shorter reported passenger processing times.* According to a study commissioned by DHS and conducted at three U.S. ports of entry, ESTA has reduced the average time DHS takes to process a VWP passenger before deciding whether to admit them into the United States by a range of between 17.8 and 54 percent.<sup>16</sup> The study attributed this time savings to factors such as the reduction in number of documents DHS officers needed to handle and evaluate and the reduction in data entry needed at the port of entry.

Although DHS took steps to minimize the burden imposed by ESTA implementation, almost all government and travel industry officials we

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<sup>16</sup>GAO did not independently verify the results or methodology of this study. The study was completed by RTR Technologies, LLC, at three high-volume ports of entry. According to the study, RTR chose a sample size to ensure results at a 95 percent confidence level and compared the baseline data collected in 2008 with a control group in 2010 to ensure that the results were not attributable to factors other than ESTA.

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met in six VWP countries expressed dissatisfaction over the Travel Promotion Act of 2009 (TPA)<sup>17</sup> fee collected as part of the ESTA application. In September 2010, the U.S. government began to charge ESTA applicants a \$14 fee when they applied for ESTA approval, including \$10 for the creation of a corporation to promote travel to the United States and \$4 to fund ESTA operations.<sup>18</sup> According to many of the VWP country government and travel industry officials with whom we met, the TPA fee is unfair because it burdens those traveling to the United States with an added fee to encourage others to travel to the United States. Some of the officials pointed out that it was unrelated to VWP travel and that it runs counter to the program objective of simplifying travel for VWP participants. DHS officials said that many government and travel industry officials from VWP countries view the fee as a step away from visa-free travel and consider ESTA with the fee “visa-lite.” By comparison, a nonimmigrant visitor visa costs over \$100 but is generally valid for five times as long as ESTA approval. Several foreign officials said they expected that the fee amount would continue to rise over time. DHS officials stated that they cannot control the TPA portion of the ESTA fee because it was mandated by law.<sup>19</sup>

In addition, some airline officials expressed concern that the ESTA requirement was one of many requirements imposed by DHS that required the carriers to bear the cost of system updates. DHS officials said that the ESTA requirement did impose a new cost to carriers, but that it was necessary to strengthen the security of the VWP.

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<sup>17</sup>Pub. L. No. 111-145, 124 Stat. 49, 56 (Mar. 4, 2010).

<sup>18</sup>The law requires that the fee be the sum of \$10 per travel authorization and an amount that will at least ensure recovery of the full cost of providing and administering the system. DHS may only collect the \$10 fee until September 30, 2015. See 8 U.S.C. § 1187(h)(3)(B). According to DHS officials, the \$4 fee is paid for each application submitted and the \$10 TPA fee is only paid if the ESTA application is approved. The TPA fee is not for DHS use.

<sup>19</sup>DHS received an appropriation of \$36 million for ESTA in fiscal year 2008. It carried over \$11 million of that into fiscal year 2009. DHS officials said that because no funding was appropriated to the ESTA office in fiscal year 2010, DHS had to reallocate funds from other DHS components to cover ESTA operations. DHS completed a study to determine the fee amount that would cover its costs and, according to a DHS official, DHS policy allows for reevaluation of the fee amount as necessary.

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**Carrier Compliance with  
ESTA Requirement  
Increased After DHS Made  
ESTA Mandatory, but DHS  
Has Not Fully Assessed  
Risks of Noncompliance**

According to DHS, air and sea carriers are required to verify that each passenger they board has ESTA approval before boarding them. Carriers' compliance with the requirement has increased since DHS made ESTA mandatory and has exceeded 99 percent in recent months. DHS data show the following:

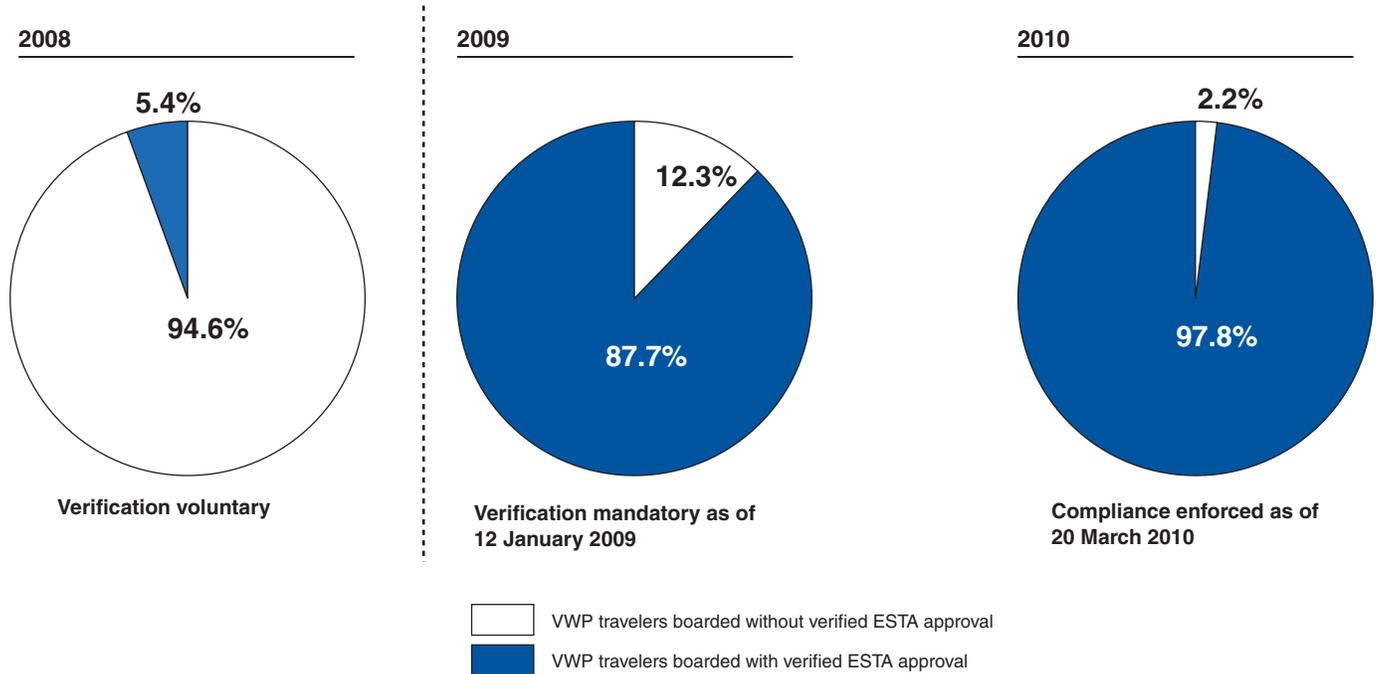
- *2008.* In 2008, when VWP passenger and carrier compliance was voluntary, airlines and sea carriers verified ESTA approval for about 5.4 percent of passengers boarded under the VWP. According to DHS officials, carriers needed time to update their systems to receive passengers' ESTA status, and DHS needed time to publicize the new travel requirement.
- *2009.* ESTA became mandatory in January 2009, and carriers verified ESTA approval for about 88 percent of passengers boarded under the VWP that year.
- *2010.* In March 2010, DHS began enforcing carrier compliance. In that year, carriers verified ESTA approval for almost 98 percent of VWP passengers. As of January 2011, DHS had imposed fines on VWP carriers for 5 of the passengers who had been allowed to board without ESTA approval.<sup>20</sup>

Figure 4 shows the percentage of VWP passengers boarded by carriers who had verified the passengers' ESTA approval. In addition, from September 2010 through January 2011, carrier compliance each month exceeded 99 percent.

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<sup>20</sup>DHS began enforcing carrier compliance with ESTA requirements in March 2010, exercising the right to fine a carrier \$3,300 for each passenger boarded under the VWP on a U.S. bound carrier without an approved ESTA application or to rescind the carrier's VWP signatory status for failure to comply with the ESTA requirement.

**Figure 4: Percentage of VWP Passengers Boarded with Verified ESTA Approval, 2008-2010**



Source: GAO analysis of DHS data.

**DHS Has Not Fully Analyzed Risks Associated with ESTA Noncompliance**

Although carriers verified ESTA approval for almost 98 percent of VWP passengers before boarding them for VWP travel in 2010, DHS has not fully analyzed the potential risks posed by cases where carriers boarded passengers for VWP travel without verifying that they had ESTA approval. In 2010, about 2 percent—364,086 VWP passengers—were boarded without verified ESTA approval. For most of these passengers—363,438, or about 99.8 percent—no ESTA application had been recorded. The remainder without ESTA approval—648, or about 0.2 percent—were passengers whose ESTA applications had been denied.<sup>21</sup> DHS officials told us that, although there is no official agency plan for monitoring and oversight of ESTA, the ESTA office is undertaking a review of each case of a carrier’s boarding a VWP traveler without an approved ESTA application;

<sup>21</sup>Representatives of 17 airlines with whom we met told us that they did not track the number of passengers not permitted to board because of a denied VWP application or failure to apply through ESTA. However, the officials said that at least a few such passengers were denied permission to board each day. DHS officials said that they had no way of tracking the number of passengers that airlines refused to board due to lack of ESTA approval.

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however, DHS has not established a target date for completing this review. In its review of these cases, DHS officials said they expect to determine why the carrier boarded the passengers, whether and why DHS admitted these individuals into the United States, and whether the airline or sea carrier should be fined for noncompliance.

DHS tracks some data on passengers that travel under the VWP without verified ESTA approval but does not track other data that would help officials know the extent to which noncompliance poses a risk to the program. For example, although DHS officials said that about 180 VWP travelers who arrive at a U.S. port of entry without ESTA approval are admitted to the United States each day, they have not tracked how many, if any, of those passengers had been denied by ESTA.<sup>22</sup> DHS also reported that 6,486 VWP passengers were refused entry into the United States at the port of entry in 2010, but that number includes VWP passengers for whom carriers had verified ESTA approval. Officials did not track how many of those had been boarded without verified ESTA approval. DHS also did not know how many passengers without verified ESTA approval were boarded with DHS approval after system outages precluded timely verification of ESTA approval.

Without a completed analysis of noncompliance with ESTA requirements, DHS is unable to determine the level of risk that noncompliance poses to VWP security and to identify improvements needed to minimize noncompliance. In addition, without analysis of data on travelers who were admitted to the United States without a visa after being denied by ESTA, DHS cannot determine the extent to which ESTA is accurately identifying individuals who should be denied travel under the program.

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## Only Half of VWP Countries Have Entered Into All Required Information-Sharing Agreements

Although DHS and partners at State and Justice have made progress in negotiating information-sharing agreements with VWP countries, required by the 9/11 Act, only half of the countries have entered into all required agreements. In addition, many of the agreements entered into have not been implemented. The 9/11 Act does not establish an explicit deadline for compliance, but DHS with support from State and Justice has produced a completion schedule that requires agreements to be entered into by the

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<sup>22</sup>DHS officials reported that CBP does not typically deny VWP travelers admission to the United States solely for lack of an approved ESTA. Most of those denied entry are deemed inadmissible for other reasons.

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end of each country's current or next biennial review cycle, the last of which will be completed by June 2012. In coordination with State and Justice, DHS also outlined measures short of termination that may be applied to VWP countries not meeting their compliance date.

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### DHS Requires VWP Countries to Enter Into Three Agreements

The 9/11 Act specifies that each VWP country must enter into agreements with the United States to share information regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States and to report lost or stolen passports. DHS, in consultation with other agencies, has determined that VWP countries can satisfy the requirement by entering into the following three bilateral agreements:

- Homeland Security Presidential Directive 6 (HSPD-6),
- Preventing and Combating Serious Crime (PCSC), and
- Lost and Stolen Passports (LASP).<sup>23</sup>

According to DHS officials, countries joining the VWP after the 9/11 Act entered into force are required to enter into HSPD-6 and PCSC agreements with the United States as a condition of admission into the program. In addition, prior to joining the VWP, such countries are required to enter into agreements containing specific arrangements for information sharing on lost and stolen passports. As illustrated in table 3 below, DHS, State, and Justice have made some progress with VWP countries in entering into the agreements.

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<sup>23</sup>For the HSPD-6 and PCSC agreements, DHS made the determination in consultation with State and Justice. For the LASP agreement, DHS made the determination in consultation with State alone.

**Table 3: Status of Information-Sharing Agreements Required Since 2007 for VWP Countries as Reported by U.S. Government Agencies**

Agreement	Number entered into	Percentage entered into	Number implemented	Percentage implemented	Type of information shared
HSPD-6	19	53	13	36	Known and suspected terrorists
PCSC	18 <sup>a</sup>	50	0	0	Perpetrators of serious crime
LASP	34	94	34 <sup>b</sup>	94	Lost and stolen passports

Sources: DHS, Justice, and State.

<sup>a</sup>As of January 2011, the following 18 countries have met the requirement to enter into PCSC agreements: Austria, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Italy, Latvia, Lithuania, Hungary, Malta, the Netherlands, Portugal, Slovakia, South Korea, Spain, and the United Kingdom. According to DHS officials, pre-existing agreements with one of these countries fulfill PCSC information-sharing requirements and eliminate the need to enter into a separate PCSC agreement.

<sup>b</sup>Although 2 VWP countries have not signed LASP agreements, according to Interpol officials, all VWP countries share LASP data.

All VWP countries and the United States share some information with one another on some level, but the existence of a formal agreement improves information sharing, according to DHS officials. As opposed to informal case-by-case information sharing, formal agreements expand the pool of information to which the United States has systematic access. They can draw attention to and provide information on individuals of whom the United States would not otherwise be aware. According to officials, formal agreements generally expedite the sharing of information by laying out specific terms that can be easily referred to when requesting data. DHS officials observed that timely access to information is especially important for CBP officials at ports of entry.

### HSPD-6 Agreement

HSPD-6 agreements establish a procedure between the United States and partner countries to share watchlist information about known or suspected terrorists. As of January 2011, 19 of the 36 VWP countries had signed HSPD-6 agreements, and 13 have begun sharing information according to the signed agreements.<sup>24</sup> (See table 3.) Justice’s Terrorist Screening Center (TSC) and State have the primary responsibility to negotiate and conclude these information-sharing agreements. An interagency working group, co-led by TSC and State that also includes representatives from U.S. law enforcement, intelligence, and policy

<sup>24</sup>HSPD-6 agreements are not exclusive to VWP countries and can be signed with any countries with the approval of the interagency working group. As of January 2011, in addition to the 19 VWP countries, 3 non-VWP countries have signed HSPD-6 agreements.

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communities, addresses issues with the exchange of information and coordinates efforts to enhance information exchange. While the agreements are based on a template that officials use as a starting point for negotiations, according to TSC officials, the terms of each HSPD-6 agreement are unique, prescribing levels of information sharing that reflect the laws, political will, and domestic policies of each partner country. TSC officials said most HSPD-6 agreements are legally nonbinding. Officials said that this allows more flexibility in information-sharing procedures and simplifies negotiations with officials from partner countries. The TSC officials noted that the nonbinding nature of the agreements may allow some VWP countries to avoid bureaucratic and political hurdles.

Noting that State and TSC continue to negotiate HSPD-6 agreements with VWP countries, officials cited concerns regarding privacy and data protection expressed by many VWP countries as reasons for the delayed progress. According to these officials, in some cases, domestic laws of VWP countries limit their ability to commit to sharing some information, thereby complicating and slowing the negotiation process. The terms of HSPD-6 agreements are also extremely sensitive, TSC officials noted, and therefore many HSPD-6 agreements are classified. Officials expressed concern that disclosure of the agreements themselves might either (1) cause countries that had already signed agreements to become less cooperative in sharing data on known or suspected terrorists and reduce the exchange of information or (2) cause countries in negotiation to become less willing to sign agreements or insist on terms prescribing less information sharing.

The value and quality of information received through HSPD-6 agreements vary, and some partnerships are more useful than others, according to TSC officials. The officials stated that some partner countries were more willing than others to share data on known or suspected terrorists. For example, according to TSC officials, some countries do not share data on individuals suspected of terrorist activity but only on those already convicted. In other cases, TSC officials stated that some partner countries did not have the technical capacity to provide all information typically obtained through HSPD-6 agreements. For example, terrorist watchlist data include at least the name and date of birth of the suspect and may also include biometric information such as fingerprints or photographs. According to DHS officials, some member countries do not have the legal or technical ability to store such information.

TSC has evidence that information is being shared as a result of HSPD-6 agreements. They provided the number of encounters with known or

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suspected terrorists generated through sharing watchlist information with foreign governments.<sup>25</sup> TSC officials noted that they viewed these data as one measure of the relevance of the program, but not as comprehensive performance indicators. Although TSC records the number of encounters, HSPD-6 agreements do not contain terms requiring partner countries to reveal the results of these encounters, and there is no case management system to track and close them out, according to TSC officials.

## PCSC Agreement

The PCSC agreements establish the framework for law enforcement cooperation by providing each party automated access to the other's criminal databases that contain biographical, biometric, and criminal history data. (See table 3.) As of January 2011, 18 of the 36 VWP countries had met the PCSC information-sharing agreement requirement, but the networking modifications and system upgrades required to enable this information sharing to take place have not been completed for any VWP countries. The language of the PCSC agreements varies slightly because, according to agency officials, partner countries have different legal definitions of what constitutes a serious crime or felony, as well as varying demands regarding data protection provisions.

Achieving greater progress negotiating PCSC agreements has been difficult, according to DHS officials, because the agreements require lengthy and intensive face-to-face discussions with foreign governments. Justice and DHS, with assistance from State, negotiate the agreements with officials from partner countries that can include representatives from their law enforcement and justice ministries, as well as their diplomatic corps. Further, sharing sensitive personal information with the United States is publicly unpopular in many VWP countries, even if the countries' law enforcement agencies have no reluctance to share information. Officials in some VWP countries told us that efforts to overcome political barriers have caused further delays.

Though officials expect to complete networking modifications necessary to allow queries of Spain's and Germany's criminal databases in 2011, the process is a legally and technically complex one that has not yet been completed for any of the VWP countries. According to officials, DHS is frequently not in a position to influence the speed of PCSC implementation

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<sup>25</sup>TSC defines an encounter as an authorized official contact with a person, such as when an individual attempts to board an aircraft or apply for a passport or visa, enter a country at a port of entry, etc.

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## LASP Agreement

for a number of reasons. For example, according to DHS officials, some VWP countries require parliamentary ratification before implementation can begin. Also U.S. and partner country officials must develop a common information technology architecture to allow queries between databases.

In a 2006 GAO report,<sup>26</sup> we found that not all VWP countries were consistently reporting data on lost and stolen passports. We recommended that DHS develop clear standard operating procedures for such reporting, including a definition of timely reporting. As of January 2011, all VWP countries were sharing lost and stolen passport information with the United States, and 34 of the 36 VWP countries had entered into LASP agreements.<sup>27</sup> (See table 3.)

The 9/11 Act requires VWP countries to enter into an agreement with the United States to report, or make available to the United States through Interpol or other means as designated by the Secretary of Homeland Security information about the theft or loss of passports. According to DHS officials, other international mandates have helped the United States to obtain LASP information. Since 2005, all European Union countries have been mandated to send data on lost and stolen passports to Interpol for its Stolen and Lost Travel Documents database. In addition, Australia and New Zealand have agreements to share lost and stolen passport information through the Regional Movement Alert System. According to officials, in fiscal year 2004, more than 700 fraudulent passports from VWP countries were intercepted at U.S. ports of entry; however, by fiscal year 2010, this number had decreased to 64. DHS officials attributed the decrease in the use of fraudulent passports in part to better LASP reporting to Interpol. More complete data has allowed DHS to identify more individuals attempting VWP travel with a passport that has been reported lost or stolen before they begin travel.

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

<sup>27</sup>According to DHS, LASP agreements took the form of either Memorandums of Understanding (MOU) or diplomatic notes, declaring the countries' intent to comply with the information-sharing requirement. Countries that joined the VWP between 2008 and 2010 each signed an MOU prior to their designation. These MOUs contain language on the exchange of LASP data, and therefore these countries were not also required to exchange diplomatic notes.

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## DHS Established a Compliance Schedule for Entering Into Information-Sharing Agreements

Although the 9/11 Act does not establish an explicit deadline, DHS, with the support of partners at State and Justice, has produced a compliance schedule that requires agreements to be entered into by the end of each country's current or next biennial review cycle, the last of which will be completed by June 2012. In March 2010, State sent a cable to posts in all VWP countries that instructed the appropriate posts to communicate the particular compliance date to the government of each noncompliant VWP country. However, DHS officials expressed concern that some VWP countries may not have entered into all agreements by the specified compliance dates.

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## DHS Has Outlined Measures to Encourage VWP Countries to Enter Into Information-Sharing Agreements

According to DHS officials, termination from the VWP is one potential consequence for VWP countries that do not enter into information-sharing agreements. However, U.S. officials described termination as undesirable, saying that it would significantly impact diplomatic relations and would weaken any informal exchange of information. Further, termination would require all citizens from the country to obtain visas before traveling to the United States. According to officials, particularly in the larger VWP countries, this step would overwhelm consular offices and discourage travel to the United States, thereby damaging trade and tourism. U.S. embassy officials in France told us that when the United States required only a small portion of the French traveling population—those without machine-readable passports—to obtain visas, U.S. embassy officials logged many overtime hours, while long lines of applicants extended into the embassy courtyard.

DHS helped write a classified strategy document that outlines a contingency plan listing possible measures short of termination from the VWP that may be taken if a VWP country does not meet its specified compliance date for entering into information-sharing agreements.<sup>28</sup> The strategy document provides steps that would need to be taken prior to selecting and implementing one of these measures. According to officials, DHS plans to decide which measures to apply on a case-by-case basis.

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<sup>28</sup>DHS drafted this classified document in coordination with State and Justice. It was submitted to the National Security Staff in January 2010 and subsequently approved.

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## DHS Has Not Consistently Completed Timely Biennial Reports

DHS conducts reviews to determine whether issues of security, law enforcement, or immigration affect VWP country participation in the program; however, the agency has not completed half of the mandated biennial reports resulting from these reviews in a timely manner. In 2002, Congress mandated that, at least once every 2 years, DHS evaluate the effect of each country's continued participation in the program on the security, law enforcement, and immigration interests of the United States. The mandate also directed DHS to determine based on the evaluation whether each VWP country's designation should continue or be terminated and to submit a written report on that determination to select congressional committees.<sup>29</sup>

To fulfill this requirement, DHS conducts reviews of VWP countries that examine and document, among other things, counterterrorism and law enforcement capabilities, border control and immigration programs and policies, and security procedures. To document its findings, DHS composes a report on each VWP country reviewed and a brief summary of the report to submit to congressional committees. In conjunction with DHS's reviews, the Director of National Intelligence (DNI) produces intelligence assessments that DHS reviews prior to finalizing its VWP country biennial reports.<sup>30</sup> According to VWP officials, they visited 12 program countries in fiscal year 2009 and 10 countries in fiscal year 2010 to gather the data needed to complete these reports. As of February 2011, the Visa Waiver Program Office had completed 3 country visits and anticipated conducting 10 more for fiscal year 2011. If issues of concern are identified during the VWP country review process, DHS drafts an engagement strategy documenting the issues of concern and suggesting recommendations for addressing the issues. According to VWP officials, they also regularly monitor VWP country efforts to stay informed about any emerging issues that may affect the countries' VWP status.

In 2006, we found that DHS had not completed the required biennial reviews in a timely fashion, and we recommended that DHS establish protocols including deadlines for biennial report completion. DHS

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<sup>29</sup>See the Enhanced Border Security and Visa Entry Reform Act of 2002. Prior to this change, DHS was required to report at least once every 5 years.

<sup>30</sup>The 9/11 Act requires the DNI to conduct an independent intelligence assessment of countries prior to their admission to the VWP and for all VWP countries in conjunction with the VWP biennial reports and to submit them to, among others, the Secretary of Homeland Security.

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established protocols in 2007 that include timely completion of biennial reports as a goal. Our current review shows that DHS has not completed the latest biennial reports for 50 percent, or 18 of the 36 VWP countries in a timely manner. Also, over half of those reports are more than 1 year overdue. In the case of two countries, DHS was unable to demonstrate that they had completed reports in over 4 years.<sup>31</sup> Further, according to the evidence supplied by DHS, of the 17 reports completed since the beginning of 2009, over 25 percent were transmitted to Congress 3 or more months after report completion, and 2 of those after more than 6 months. DHS cited a number of reasons for the reporting delays, including a lack of resources needed to complete timely reports. In addition, DHS officials said that they sometimes intentionally delayed report completion for two reasons: (1) because they frequently did not receive DNI intelligence assessments in a timely manner and needed to review these before completing VWP country biennial reports or (2) in order to incorporate anticipated developments in the status of information-sharing agreement negotiations with a VWP country. Further, DHS officials cited lengthy internal review as the primary reason for delays in submitting the formal summary reports to Congress. Without timely reports, it is not clear to Congress whether vulnerabilities exist that jeopardize continued participation in the VWP.

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## Conclusions

The VWP facilitates travel for nationals from qualifying countries, removing the requirement that they apply in-person at a U.S. embassy for a nonimmigrant visa for business or pleasure travel of 90 days or less. In an attempt to facilitate visa-free travel without sacrificing travel security, Congress has mandated security measures such as ESTA, information-sharing requirements, and VWP country biennial reviews. While ESTA has added a fee and a new pretravel requirement that place additional burdens on the VWP traveler, it has reduced the burden on VWP travelers in several other ways. DHS does not fully know the extent to which ESTA has mitigated VWP risks, however, because its review of cases of passengers being permitted to travel without verified ESTA approval is not yet complete. Although the percentage of VWP travelers without verified ESTA approval is very small, DHS oversight of noncompliant travelers may

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<sup>31</sup>In our review of DHS biennial reports, we identified inconsistencies in DHS recordkeeping. For example, as evidence of all completed biennial reports, DHS provided access to an internal DHS Web site that contained links to many, but not all completed reports. Further, DHS was unable to provide documentation of two reports that they said had been completed.

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reduce the risk that an individual that poses a security risk to the United States could board a plane or ship traveling to the United States. Even if DHS has authority to deny individuals entry to the United States in such cases, ESTA was designed to screen such individuals before they embark on travel to the United States. Moreover, with only half of the countries participating in the VWP in full compliance with the requirement to enter into information-sharing agreements with the United States, DHS may not have sufficient information to deny participation in the VWP to individuals who pose a security risk to the United States. In addition, the congressional mandate requiring VWP country biennial reports provides important information to Congress on security measures in place in VWP countries but also on potential vulnerabilities that could affect the countries' future participation in the program. Because DHS has not consistently submitted the reports in a timely manner since the legal requirement was imposed in 2002, Congress does not have the assurance that DHS efforts to require program countries to minimize vulnerabilities and its recommendations for continued status in the VWP are based on up-to-date assessments.

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## Recommendations for Executive Action

To ensure that DHS can identify and mitigate potential security risks associated with the VWP, we recommend that the Secretary of Homeland Security take the following two actions:

- establish time frames for the regular review and documentation of cases of VWP passengers traveling to a U.S. port of entry without verified ESTA approval, and
- take steps to address delays in the biennial country review process so that the mandated country reports can be completed on time.

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## Agency Comments and Our Evaluation

DHS provided written comments on a draft of this report. These comments are reprinted in appendix III. DHS, State, and Justice provided technical comments that we have incorporated into this report, as appropriate. In commenting on the draft, DHS stated that it concurred with GAO's recommendations and expects to be able to implement them. DHS provided additional information on its efforts to ensure that VWP countries remain compliant with program requirements and to monitor and assess issues that may pose a risk to U.S. interests. DHS also provided information on actions it is taking to resolve the issues identified in the audit. For example, DHS stated it will have established procedures by the

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end of May 2011 to perform quarterly reviews of a representative sample of VWP passengers who do not comply with the ESTA requirement.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees, the Secretary of Homeland Security, the Secretary of State, the Attorney General, and other interested parties. The report also will be available on the GAO Web site at no charge at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-4268 or [fordj@gao.gov](mailto:fordj@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors are listed in appendix IV.

A handwritten signature in black ink that reads "Jess T. Ford". The signature is written in a cursive style with a large, looping initial "J".

Jess T. Ford  
Director, International Affairs and Trade

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# Appendix I: Scope and Methodology

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To assess the implementation of the Electronic System for Travel Authorization (ESTA), we reviewed relevant documentation, including 2006 and 2008 GAO reports evaluating the Visa Waiver Program (VWP) and statistics on program applicants and travelers. Between June and September 2010, we interviewed consular, public diplomacy, and law enforcement officials at U.S. embassies in six VWP countries: France, Ireland, Japan, South Korea, Spain, and the United Kingdom. We also interviewed political and commercial officers at embassies in five of these countries. While the results of our site visits are not generalizable, they provided perspectives on VWP and ESTA implementation. We met with travel industry officials, including airline representatives, and foreign government officials in the six countries we visited to discuss ESTA implementation. We selected the countries we visited so that we could interview officials from VWP countries in diverse geographic regions that varied in terms of information-sharing signature status, number of travelers to the United States, and the existence in-country of potential program security risks. We met with officials from the Department of Homeland Security (DHS) in Washington, D.C. We used data provided by DHS from the ESTA database to assess the usage of the program and airline compliance with the ESTA requirements and determined that the data was sufficiently reliable for our purposes.

To evaluate the status of information sharing, we analyzed data regarding which countries had signed the agreements and interviewed DHS, Department of State (State), and Department of Justice (Justice) officials in Washington, D.C., and International Criminal Police Organization (Interpol) officials in Lyon, France. We reviewed the Implementing Recommendations of the 9/11 Commission Act of 2007, which contained the information-sharing requirement. We received and reviewed copies of many Preventing and Combating Serious Crime and Lost and Stolen Passport agreements. While conducting our fieldwork, we confirmed the status of the agreements in each of the countries we visited. We determined that the data on the status of information sharing were sufficiently reliable for our purposes. However, we were unable to view the signed Homeland Security Presidential Directive 6 agreements, because Justice's Terrorist Screening Center declined to provide us requested access to the agreements. We also met with foreign government officials from agencies involved with VWP information-sharing agreement negotiations in the six countries we visited to discuss their views regarding VWP information-sharing negotiations with U.S. officials. In addition, with Interpol officials in France, we discussed the status of the sharing of information on lost and stolen passports. Interpol officials were

unable to provide country-specific statistics regarding sharing of lost and stolen passport information due to its data privacy policy.

To assess DHS efforts to complete timely biennial reviews of each VWP country, we reviewed DHS documents, as well as the links to completed reviews on the DHS intranet Web site to determine whether the reviews were completed in a timely manner. We also reviewed a 2006 GAO report that recommended improvements to the timeliness of DHS's biennial reporting process.

We conducted this performance audit from January 2010 to May 2011, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

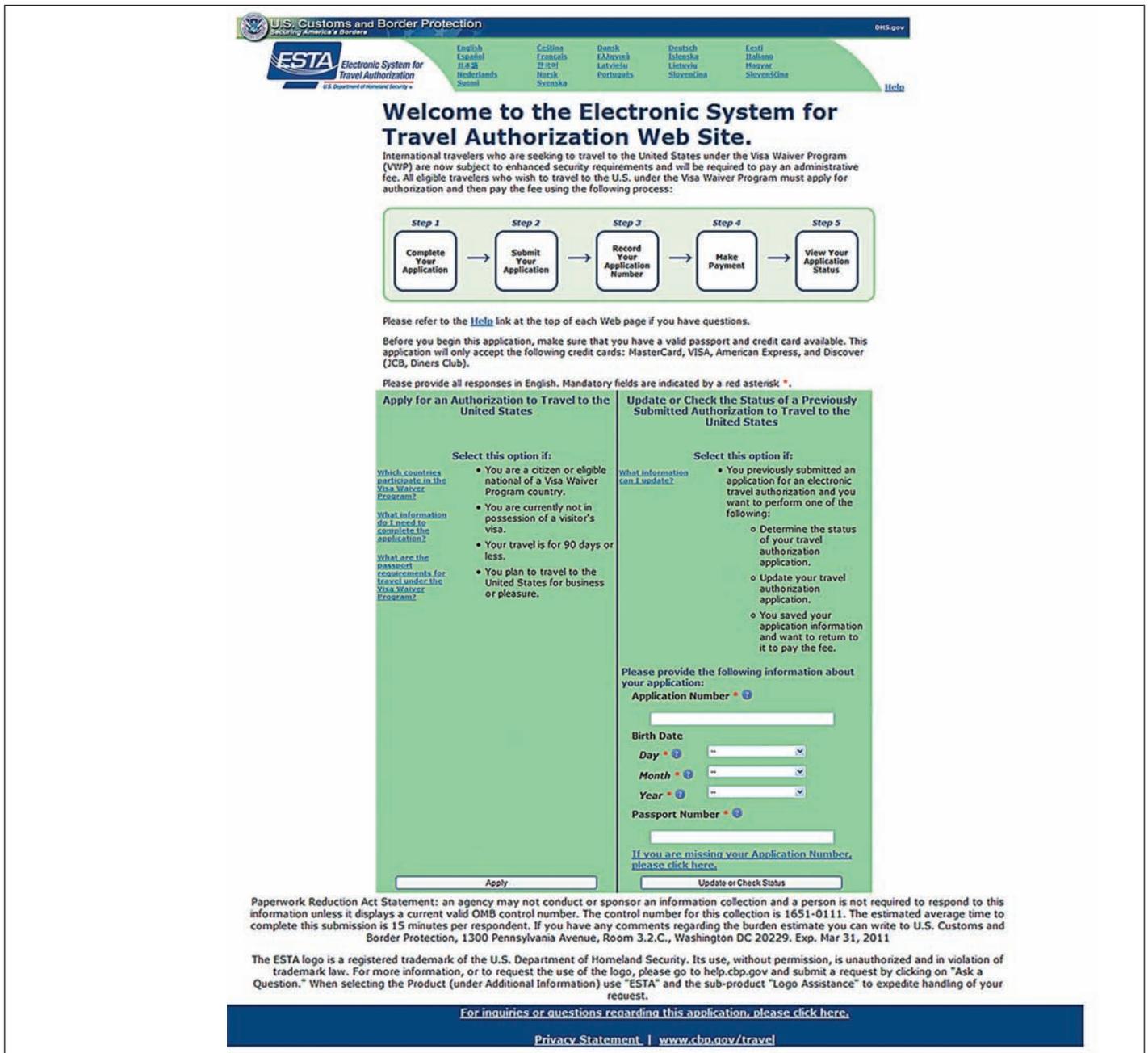
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# Appendix II: How to Apply for ESTA Approval

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The official ESTA application can be completed online at <https://esta.cbp.dhs.gov/esta/>. (See fig 5.) DHS officials told us they actively publicize the official Web site, because many unofficial Web sites exist that charge an additional fee to fill out an application for an individual. They said the unofficial Web sites are not fraudulent if they do not use the official DHS or ESTA logos and provide the service they promise.

Figure 5: The ESTA Application Welcome Page



Source: DHS.

# Appendix III: Comments from the Department of Homeland Security

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



**Homeland  
Security**

April 25, 2011

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

Re: GAO-11-335, Visa Waiver Program: DHS Has Implemented Electronic System for Travel Authorization but Further Steps Needed to Address Potential Program Risks

Dear Mr. Ford:

**Introduction:**

The Department of Homeland Security (DHS) appreciates the opportunity to review and provide comments on draft report number GAO-11-335 by the Government Accountability Office (GAO) titled "Visa Waiver Program: DHS Has Implemented Electronic System for Travel Authorization but Further Steps Needed to Address Potential Program Risks." The Department is actively resolving the issues identified in the audit.

**Context:**

The draft report is broadly supportive of the Department's efforts to date to enhance the security requirements of the U.S. Visa Waiver Program (VWP). It recognizes that DHS has implemented the Electronic System for Travel Authorization (ESTA) to conduct pre-travel screening for VWP travelers, and that the Department has minimized the burden of this requirement on VWP travelers and carriers. The draft report also concludes that DHS and the Departments of State and Justice have made progress in completing information sharing agreements with VWP countries, as required by the *Implementing Recommendations of the 9/11 Commission Act of 2007*, Pub. L. No. 110-53 (9/11 Act). Moreover, the two report recommendations are consistent with the Department's current approach, and we expect to be able to implement them.

Nonetheless, the Department finds that the report does not fully take into account important initiatives DHS undertakes outside of our continuing eligibility reviews of VWP countries to ensure that these countries remain compliant with the program's requirements and to monitor and assess issues that may pose a risk to U.S. interests.

I am confident that the steps DHS and its interagency partners have taken to implement the security-related provisions of the 9/11 Act and other VWP-related legislation continue to reduce program risks. In addition, the Department regularly monitors VWP countries, regardless of where they are in the eligibility review process. This also reduces program risks.

The following describes more fully the Department's response to issues raised by GAO's report:

**1. GAO States:**

*DHS has implemented ESTA to meet the 9/11 Act requirement intended to enhance program security and has taken steps to minimize the burden on travelers to the United States added by the new requirement, but has not fully analyzed the risks of carrier and passenger noncompliance with the requirement... DHS does not have a target completion date for a review to identify potential security risks associated with the small percentage of cases of traveler and carrier noncompliance with the ESTA requirement... Without a completed analysis of noncompliance with ESTA requirements, DHS is unable to determine the level of risk that noncompliance poses to VWP security and to identify improvements needed to minimize noncompliance.*

DHS has been reviewing and evaluating ESTA non-compliance since the system's inception. By the end of May 2011, DHS will have established procedures to review quarterly a representative sample of non-compliant passengers to evaluate, identify, and mitigate potential security risks associated with the ESTA program.

**2. GAO States:**

*DHS conducts reviews to determine whether issues of security, law enforcement, or immigration affect VWP country participation in the program; however, the agency has not completed half of the mandated biennial reports resulting from these reviews in a timely manner. In 2002, Congress mandated that, at least once every two years, DHS evaluate the effect of each country's participation in the program on the law enforcement, immigration and security interests of the United States...In conjunction with DHS's reviews, the Director of National Intelligence (DNI) produces intelligence assessments, that DHS reviews prior to finalizing the VWP reports...*

As noted by GAO, DHS has protocols in place that are intended to meet the goal of completing all VWP continuing eligibility reviews in the statutorily prescribed period. DHS has made significant improvements since the establishment of these protocols, but the Department does acknowledge that the reports to Congress associated with VWP countries' continuing eligibility reviews are still not always finalized within this period. The Department discussed with GAO several impediments to completing all continuing eligibility reviews and reports within the 2-year period, which are addressed in more detail below.

**3. GAO States:**

*DHS cited a number of reasons for the reporting delays, including a lack of resources. In addition, DHS officials said that they sometimes intentionally delayed report completion for two reasons: (1) Because they frequently did not receive DNI intelligence assessments in a timely manner and needed to review these before completing VWP country biennial reports; or (2) In order to incorporate anticipated developments in the status of information sharing agreement negotiations with a VWP country.*

DHS informed GAO that the process of receiving DNI's independent intelligence assessments—which are drafted by the DHS Office of Intelligence and Analysis (I&A) on behalf of DNI and by law are to be completed in conjunction with the continuing eligibility reviews—caused DHS to postpone finalizing a number of VWP reviews and reports in fiscal years 2009, 2010, and 2011. As noted by GAO, in several instances, the Department chose to postpone finalizing reviews and reports beyond the 2-year time period so that up-to-date information on VWP countries' compliance with the 9/11 Act information sharing requirements could be documented. Given congressional interest in VWP countries' compliance with the 9/11 Act, DHS felt it necessary to provide current information on this important issue.

Over the past year, the DHS Visa Waiver Program Office (VWPO) has worked with DHS I&A to address the timeliness of the intelligence assessments. Since 2008, DHS I&A has drafted independent intelligence assessments on each VWP country, as required by law. These assessments have established an analytical base line on a range of security issues. Now that an analytical baseline has been established, a new format for the intelligence assessment has been adopted that focuses on key security issues that may have shifted since the previous assessment. With the new format, DNI assessments are expected to be finalized more expeditiously. Additionally, DHS VWPO is considering process changes to address GAO concerns with the timeliness of continuing eligibility VWP reports.

**4. GAO States:**

*According to VWP officials, they also regularly monitor VWP country efforts to stay informed about emerging issues that may affect the countries' VWP status.*

DHS uses both the statutorily required eligibility reviews and a continuous monitoring process to ensure that VWP countries remain compliant with the program's requirements and to monitor and assess issues that may pose a risk to U.S. interests. For example, on a daily basis DHS VWPO monitors and assesses available information to ensure awareness of changing conditions in VWP countries so as to verify that these countries' participation in the VWP do not pose a risk to U.S. security and law enforcement interests (including immigration enforcement interests). VWPO has established points of contact at U.S. Embassies and Consulates with law enforcement, security, and consular officials in the 36 participating VWP countries as well as with the Departments of State and Justice and the Intelligence Community. This network of contacts allows for continuous and substantive information exchange between VWPO and diplomatic posts, as well as VWPO and its Washington-based partners.

During the GAO audit, DHS discussed its regular monitoring process for VWP countries in detail and provided specific examples where the Department detected issues of concern outside of countries' formal continuing eligibility reviews. Through engagement with its contacts, DHS worked with the VWP countries to remedy issues of concern before they threatened the countries' VWP statuses and/or U.S. interests.

**5. GAO States:**

*Without timely reports, it is not clear to Congress whether vulnerabilities exist that jeopardize continued participation in the VWP... Because DHS has not consistently submitted the reports in a timely manner since the legal requirement was imposed in 2002, Congress does not have the assurance that DHS efforts to require program countries to minimize vulnerabilities and its recommendations for continued status in the VWP are based on up-to-date assessments.*

DHS uses both the statutorily required eligibility reviews and a continuous monitoring process to ensure that VWP countries remain compliant with the program's requirements and to monitor and assess issues that may pose a risk to U.S. interests. The Department recognizes that timely reports provide Congress with information on a country's VWP status. Therefore, DHS VWPO is considering process changes to address GAO concerns with the timeliness of continuing eligibility VWP reports. However, DHS informed GAO that if a significant issue and/or vulnerability were detected during or outside of a continuing eligibility review, DHS, in consultation with its interagency partners, would take the appropriate steps to notify Congress expeditiously.

**Recommendations:**

**Recommendation #1: Establish timeframes for the regular review and documentation of cases of VWP passengers traveling to a U.S. port of entry without verified ESTA approval.**

DHS concurs with the recommendation. DHS has been reviewing and evaluating ESTA non-compliance since the system's inception. By the end of May 2011, DHS will have established procedures to review quarterly a representative sample of non-compliant passengers to evaluate, identify, and mitigate potential security risks associated with the ESTA program.

**Recommendation #2: Take steps to address delays in the biennial country review process so that the mandated country reports can be completed on time.**

DHS concurs with the recommendation. DHS VWPO is considering process changes to address GAO concerns with the timeliness of continuing eligibility VWP reports. Additionally, over the past year, DHS VWPO has worked with DHS I&A to address the timeliness of the intelligence assessments. Since 2008, DHS I&A has drafted independent intelligence assessments on each VWP country, as required by law. These assessments have established an analytical baseline on a range of security issues. Now that an analytical baseline has been established, a new format for the intelligence assessment has been adopted that focuses on key security issues that may have

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**Appendix III: Comments from the Department  
of Homeland Security**

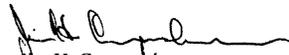
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shifted since the previous assessment. With the new format, DNI assessments are expected to be finalized more expeditiously.

**Conclusion:**

In summary, the Department concurs with the recommendations of the draft report. Once again, thank you for the opportunity to comment on the draft report. The Department looks forward to working with you on future Homeland Security engagements.

Sincerely,



Jim H. Crumpacker  
Director  
Departmental GAO/OIG Liaison Office

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

Jess T. Ford, (202) 512-4268, or [fordj@gao.gov](mailto:fordj@gao.gov)

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## Staff Acknowledgments

In addition to the individual named above, Anthony Moran, Assistant Director; Jeffrey Baldwin-Bott; Mattias Fenton; Reid Lowe; and John F. Miller made key contributions to this report. Martin DeAlteriis, Joyce Evans, Etana Finkler, Richard Hung, Mary Moutsos, Jena Sinkfield, and Cynthia S. Taylor also provided technical assistance.

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