

BACKGROUND: The Visa Waiver Program (VWP), created in 1986, is a critical tool for promoting travel to America and enhancing its public diplomacy efforts by permitting business and leisure travelers from 34 countries to visit the U.S. for up to 90 days without obtaining a non-immigrant visitor visa. In 2007, the countries in the VWP generated more than 15 million visits to the U.S. – roughly two-thirds of all overseas travelers – resulting in billions in spending for the economy. The VWP also allows the federal government to strengthen our nation’s homeland security efforts by allowing it to shift resources towards screening visitors from higher risk countries.

In 2007, the Administration and Congress strengthened the security requirements for VWP countries and offered the opportunity for several new countries to qualify for the program with passage of the 9/11 bill (*Implementing the Recommendations of the 9/11 Commission Act of 2007*). In addition, to requiring new security benchmarks, the 9/11 bill gave the Secretary of the Department of Homeland Security (DHS) waiver authority to allow new countries into the VWP if such country’s refusal rate for visa applications is 10 percent or less, versus the former standard of 3 percent or less. This waiver authority, however, was contingent upon DHS verifying the departure of 97 percent of foreign nationals exiting through U.S. airports – first through biographic means and then transitioning to biometric collection by June of 2009. DHS granted seven countries (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Slovakia and South Korea), which have met the new security benchmarks, entrance into the VWP on November 17, 2008.

ISSUES FOR THE NEW ADMINISTRATION

1. **Continue Expansion of the VWP:** In 2007, the U.S. welcomed two million fewer overseas visitors than it did in 2000 – despite an extraordinarily weak U.S. dollar and an additional 35 million long-haul travelers worldwide. Declining visitation to the U.S. carries steep costs to the U.S. economy, its competitiveness, and most of all to America’s public diplomacy efforts. The addition of seven new VWP countries in 2008 is a good first step to reversing this trend, but the new Administration will need to quickly act to build on these efforts.

Action Item:

- A new list of potential VWP countries should be developed by the new Administration. Other major international partners around the world that merit consideration include the remaining European countries, Israel, Taiwan, Argentina, Brazil and Chile. Furthermore, significant resources need to be allocated to conduct VWP security country reviews and undertake negotiations with European countries and the EU.
2. **Devise a Solution for US-VISIT Exit:** DHS failed to develop a plan to collect biometrics from departing foreign visitors that Congress would support in 2008. As a result, Congress directed DHS to conduct a series of pilots to examine the cost and efficiency of three different biometric collection points at airports. Each pilot proposal (counter, checkpoint and gate) will require resources and cooperation from airports and airlines. This, along with time needed to test the pilots, will undoubtedly delay the development of a final biometric air exit system beyond the June 30, 2009 Congressional deadline.

Action Item:

- Continued expansion of the VWP will require that the new Administration work quickly with Congress to adjust the June 30, 2009 deadline to meet the new timeframe for development of a biometric exit program. The Administration can work to gain Congressional support for delaying the June deadline by demonstrating that the existing biographic air exit system will effectively encourage and enforce compliance with U.S. immigration laws and allow for the development of meaningful data on visa overstay rates – both primary goals of a biometric exit system.
3. **Properly Implement ESTA:** One of the most important programs being developed by the Department of Homeland Security is the Electronic System for Travel Authorization (ESTA). Individuals traveling under the Visa Waiver Program, who have not been interviewed by a consular official, will be required to go online and submit a short form with biographical information (similar to that provided on the I-94 form currently) BEFORE traveling to the U.S. For nationals of countries newly admitted to the VWP, an ESTA is required effective November 17, 2008. For the 27 legacy VWP countries, ESTA will be required beginning January 12, 2009. ESTA is a critical and expansive new change in American entry policy for VWP travelers and must be implemented and communicated in an effective manner in order to ensure a proper balance between security and travel facilitation.

Action Items:

- The Administration should support immediate passage of the Travel Promotion Act (H.R. 3232 in the 110th Congress) in order to establish a robust program to communicate to tens of millions of prospective visitors from VWP countries the process and benefits of ESTA.
- The new Administration should direct DHS to immediately begin collecting an applicant processing fee for ESTA to cover the cost of running the ESTA system.
- A non-Internet ESTA solution must be developed by DHS in partnership with the private sector to allow an ESTA to be issued at airport check-in counters, via phone reservations and through travel agents.
- An adequate traveler redress system needs to be established for those individuals who are mistakenly denied ESTA approval.
- DHS should work in partnership with the State Department to develop a plan to provide additional consular resources in VWP countries should the ESTA refusal rate require additional visa applications and thus negatively impact visa interview wait times.